Tax

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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Additional information is available on www.fitchratings.com

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.

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 to Treasuries to compensate for that risk.

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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.

The Public Finance Tax Blog

By Joel Swearingen on August 16, 2017

Squire Patton Boggs

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

The Public Finance Tax Blog

Squire Patton Boggs

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

This article is presented for informational purposes only and is not intended to constitute legal advice.

[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

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.

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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.

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.

[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.”

“The 2008 regulations permitted quite a bit of flexibility,” IRS Branch 5 chief Vicky Tsilas. “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.”

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

Is This Obscure Bond Key to Rebuilding America's Crumbling Infrastructure?

The bond market has room for taxable muni bonds and investing in public-private partnerships

When the American Society of Civil Engineers slapped a "D+" grade on the nation's infrastructure in a report that identified a $2 trillion funding gap for repairs and upgrades over the next 10 years, the municipal bond market knew it had a fix.

It just had to retrain investors on how they typically think about munis.

No single source, or even a select few, can carry the financing burden necessary to build bridges, roads, dams, railroad tracks and more, but bond-market participants insist there's a lightly used investment that should get a lot more attention as part of a buffet of financing approaches to fix the nation's bones: taxable municipal bonds.

Those words rarely go together. After all, a muni bond's tax-exempt status is typically its calling card, appealing to higher-net-worth investors.

But not all munis have this traditional feature.

For the issuer, taxable munis are sometimes attached to projects that include private partnerships (think stadiums or investor-led housing developments and, in the current climate for many states, taxable issuance to help underfunded pension systems). For the investor, taxable munis tend to outyield their tax-exempt counterparts because they don't carry as much tax savings (some may still be exempt from certain state income taxes).

They instead entice investors with higher yields (and higher risk) comparably, while still carrying the relative security of government backing, and they could be part of a bond mix in a mutual fund.

Within the huge $3.8 trillion muni-bond market, there are about 10 times more tax-exempt bonds outstanding than taxable muni bonds. But according to some bond managers, taxable munis may be underappreciated.

To meet infrastructure demands, "there is capacity to increase issuance in the tax-exempt market, where 90% of municipal borrowing occurs, but even greater capacity exists in the taxable municipal market," said Duane McCallister, senior portfolio manager at Baird.

"Academic studies show that for every $1 spent on infrastructure, local government gets back $2-$4 over time," he said.

President Donald Trump has pledged $1 trillion in infrastructure spending, a proposal that will likely call for public and private funds. So far, the administration is touting tax credits to private investment as an infrastructure financing incentive. On the other side Sen. Chuck Schumer of New York, the Senate's top Democrat, has pitched direct federal investment.

Details remain thin—although Trump this week said he's open to a higher gasoline tax pegged to highway funding—as the administration works to first push a tax overhaul and revive a health-care revamp. By the president's timeline, he'll repair the nation's "badly depleted infrastructure…soon," he said in a mid-April speech in Wisconsin.

Taxable munis' biggest push into the limelight came with the 2009-2010 Build America Bonds program under the Obama administration, part of a $787 billion economic stimulus bill. After two years, it was left to expire. The outstanding bonds are still knocking around, including in the Nuveen Build America Bond fund NBB, +0.14% and the BlackRock Taxable Municipal Bond Trust BBN, -0.22%

The program's short run "was successful," said McCallister. "It opened the muni market to a broader audience. Institutional investors were looking to buy a large quantity of high-quality munis, and they could."

Jonathan Mondillo, portfolio manager of fixed-income funds at Alpine Funds, agrees that BABs may be back as Trump pushes for infrastructure spending, although they'll likely return under a different name as "all things President Obama seem to be on the chopping block, whether good for bad."

Standard & Poor's took up the topic of infrastructure funding brainstorming earlier this year when it laid out the case for allowing companies to repatriate the more than $2 trillion parked overseas on a tax-free basis if they committed 15% of that cash to investments in interest-bearing infrastructure bonds that would be issued by state and local governments.

Bob DiMella, co-head of municipal managers at MacKay Shields, said that so-called Public-Private Partnerships (P3) projects, a popular infrastructure financing structure outside of the U.S., will gain momentum stateside. They'll likely be combined with tax credit incentives.

"While P3 financing may displace some traditional tax-exempt issuance, we believe that the acceptance of P3 projects will be a net positive for additional two-way flow in the municipal market," DiMella said. "P3 projects should introduce a multitude of new entrants including private equity, developers and nontraditional buyers to the municipal market."

"We expect that these entities will be enticed by municipal financing attributes including attractive yields (for both borrower and lender), exposure to long duration, low correlation [to stocks and other bond types], cash flow stability and low default rates," he said.

Fear of the new supply expected to come with the infrastructure push, as well as worries that proposals for lower income-tax brackets would cut demand for tax-favorable munis, sent prices lower in the wake of the election. They've since stabilized as many fund managers smelled a buying opportunity.

DiMella, as part of a late-April Morningstar Investment Conference panel, stressed that the risk of lost tax advantages has seldom hurt the muni market for any sustainable period. The iShares S&P National AMT-Free Municipal Bond Fund MUB, +0.08% was little changed near $109 in Tuesday trading, about where it stood when the administration in April amped up its tax-reform talk.

Muni-market watchers have also stressed that Trump tax-reform proposals could support muni demand, which could help soak up infrastructure-linked bonds. For instance, the some $140 billion in outstanding municipal bonds that are subject to the alternative minimum tax, or AMT, which could go away under current proposals, are likely to trade better than non-AMT peers. Investors residing in high-tax states could have even greater need to manage their tax bills by picking munis should the deductibility of state and local taxes from federal income tax be eliminated, as proposed in the administration's tax plan.

DiMella said he has confidence that Treasury Secretary Steven Mnuchin and top White House economic adviser Gary Cohn understand how the muni bond market could fit into an infrastructure plan, but that the odds of that plan moving forward in full yet this year remains a political long shot.

As for investors, there may be too many unknowns for now, but its clear investors are paying attention.

"For the equity or fixed-income market to try get ahead of Washington policy is a little premature," said Mondillo. "I want to sit back and see the whites of their eyes with policy [on infrastructure and taxes] and not get caught over or under allocating in one or both."

MarketWatch

By RACHE KONING BEALS

Published: May 3, 2017 8:15 a.m. ET

State, Local Governments Applaud Introduction of Remote Sales Tax Legislation.

WASHINGTON – The seven leading organizations that represent state and local governments at the federal level – the National Governors Association, National Association of Counties, National League of Cities, U.S. Conference of Mayors, International City/County Management Association, National Conference of State Legislatures and The Council of State Governments – today issued the following statement on the introduction of remote sales tax legislation in both chambers of Congress:

"We welcome the introduction of the Marketplace Fairness Act by Senator Mike Enzi and commend Representative Kristi Noem and her co-signers for introducing the Remote Transactions Parity Act. We are pleased to see an appetite on Capitol Hill to address this crucial issue.

"We stand ready to work with the House and Senate to achieve passage of these measures and address any discrepancies during conference.

"Our organizations have long supported remote sales tax legislation that would ensure collection of existing sales and use taxes and level the playing field between online and Main Street businesses.

"Without the ability to enforce existing sales and use taxes on remote purchases, states and local governments lose billions each year, which could be used to reduce other taxes and invest in infrastructure, education, public safety and other services that improve residents' quality of life."

THE UNITED STATES CONFERENCE OF MAYORS

Demys'TIF'ying Tax Incentives.

Data on the world of government tax incentives will be a little richer thanks to a clarification from the Governmental Accounting Standard Board, which sought to clear up ambiguity regarding reporting on tax increment financing projects, or TIFs. Governments wanted to know if the board's [new rule](#) requiring them to report tax incentives as forgone revenue also applied to TIFs. For the most part, the board said this week that they do.

TIFs help subsidize development by taking the additional property tax revenue the project generates and putting it back into the development. There are three ways to do this: 1) The developer pays the taxes then is awarded a tax rebate by the government; 2) the government incrementally awards the back taxes to the developer after meeting specific development and jobs goals; and 3) the government uses the tax revenue generated by the development to pay back bonds that financed the project.

The first two, the accounting board said, have to be reported as lost property tax revenue. The third does not.

The Takeaway: Good Jobs First, which tracks government tax incentives, said the clarification bodes well for it and other sunshine groups that want more disclosure about what governments give up to woo corporations. Greg LeRoy, the group's executive director, told Governing this week that Midwestern and Western states make heavy use of this type of financing. "Until California canceled [the practice], they were TIF-ing $6 billion a year in property tax revenue," he said.

Because the clarification applies only to future fiscal years, governments might not include TIFs when they issue their fiscal 2017 reports later this year. "It means we'll see an uneven quality of data," LeRoy says. "But we expected the first year to be bumpy."

GOVERNING.COM

BY LIZ FARMER | MAY 5, 2017

IRS 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.

IRS Publication 5271

Sometimes the Truth is Stranger than Fiction – Update.

Not quite a year ago, I wrote a blog post entitled Sometimes the Truth is Stranger than Fiction. There has been a recent development in the relevant case that I think is worthy of a short update.

A very brief summary of what the relevant case involved is as follows. Two former Sprint executives (Mr. LeMay and Mr. Esrey) participated in several tax shelters that had been promoted by Ernst & Young ("EY") in the early 2000s. As a result of its promotion of these tax shelters, EY ended up settling with both the IRS and U.S. Attorney for the Southern District of New York for not quite $140 million. It appears that EY also paid an undisclosed sum to the two former Sprint executives. However, in LeMay and Esrey's collective opinion, they were not made whole in their failed attempt to defraud the IRS (and thus, the honest, tax-paying U.S. population). Accordingly, LeMay and Esrey sued the IRS for an astounding $159 million.

Continue reading.

The Public Finance Tax Blog

By Cynthia Mog on May 5, 2017

Squire Patton Boggs

TAX - NEW HAMPSHIRE

Appeal of Kadle Properties Revocable Realty Trust

Supreme Court of New Hampshire - March 10, 2017 - A.3d - 2017 WL 951768

Property owner appealed decision of the Board of Tax and Land Appeals (BTLA) concluding that property did not qualify for educational use tax exemption.

The Supreme Court of New Hampshire held that even if tenant of office building that offered computer classes operated a school, property that included the office building did not qualify for educational use property tax exemption, even though property owner and tenant were jointly owned.

TAX - COLORADO

City and County of Denver v. Expedia, Inc.

Supreme Court of Colorado - April 24, 2017 - P.3d - 2017 WL 1449530 - 2017 CO 32

Online travel companies sought review of hearing officer's determination that they owed lodger's taxes, along with penalties and interest, to city that assessed those taxes in connection with fees charged by companies for facilitating hotel reservations.

The District Court affirmed in part and vacated in part. Companies and city appealed. The Court of Appeals affirmed in part and reversed in part. City petitioned for review.

The Supreme Court of Colorado held that:

- Companies were "vendors" with responsibility to collect lodger's tax and remit it to city, and
- Companies' markup for selling reservations to lodgers, which companies retained, was subject to tax.

Online travel companies were "vendors" with responsibility to collect lodger's tax and remit it to city. Companies set rate they would accept from lodgers, lodgers transacted with companies and prepaid for reservations, and companies retained difference between price paid by lodgers and amount paid to hotels.

Online travel companies' markup for selling reservations to lodgers, which companies retained, was subject to city's lodging tax, which included tax on purchase price paid or charged for lodging. Purchaser had no option to decline markup in making his purchase of lodging from companies, and it was therefore inseparable from selling price of lodging.

Think Trump Tax Cuts Spell Doom for Municipal Bonds? Think Again.

- **Top rate cut would be too small to sap demand, analysts say**
- **AMT debt, high-tax states' bonds may benefit from changes**

President Donald Trump's push to slash corporate and individual income-tax rates would appear to pose risks to the $3.8 trillion municipal-bond market, a haven for individuals seeking interest income that's exempt from federal taxes.

But the brief outline released by administration officials had little impact on the price of state and local government securities — and could even lead some segments of the market to outperform, considering that Trump's proposal to phase out deductions could boost demand in high-tax states.

Here's a look at the major ways it may impact the municipal market if ultimately enacted by Congress, according to Wall Street analysts and investors, who remained skeptical of its prospects.

Lower Taxes = Lower Demand?

Any reduction to tax rates, particularly those on the wealthiest earners, would in theory weaken demand, given that the tax breaks would be less valuable. Yet, the securities have outperformed since Trump's surprise election in November, even with talk that the muni tax-exemption could be done away with by Congress.

Since the vote, municipals have slipped 0.5 percent, one third the decline posted by U.S. Treasuries, according to Bloomberg Barclays indexes. While 10-year municipal bond yields edged up 0.02 percentage point Wednesday to 2.16 percent, those yields remain below those on comparable Treasuries — reflecting the value of the tax exemption.

The proposed cut in the top-rate — from 39.6 percent to 35 percent — is too small to dampen demand for tax-free bonds, said Matt Dalton, chief executive officer of Rye Brook, New York-based Belle Haven Investments. "If you go from 39.6 to 35 and your state income tax has been climbing, I don't think you're running away from the muni bond market," Dalton said. "And if I just lost my deductions, how do I minimize taxes? The way to do it is to own tax-free municipal bonds."

Buying Opportunity

Among Trump's proposals was phasing out the Alternative Minimum Tax. That could be a boon to the $140 billion of outstanding municipal bonds that are covered by that tax. Those securities, which finance airports, housing agencies and non-profits, pay yields that are about half a percentage point more than traditional tax-exempt bonds because the interest is covered by the AMT. If Trump succeeds in eliminating that levy, as his administration proposed, that gap should disappear. Barclays PLC analysts previously wrote that doing away with the AMT would be "extremely positive" for those bonds.

"By eliminating the AMT, those bonds that were issued with or exposed to the AMT, now will trade closer to general market levels," said Jeffrey Lipton, head of municipal research at Oppenheimer &

Co.

More Demand, in High-Tax States

With lower tax rates, the Trump proposal would no longer allow Americans to deduct state and local taxes from their federally taxable income, a major deduction for residents of states with high taxes and property values, such as New York, California and New Jersey. That may actually prove positive for municipal bonds issued by governments in those states, as residents continue to seek out tax shelters.

"The deductions, except for charitable and mortgage are going away, including your state and local tax," said John Miller, who oversees $120 billion of municipal bonds at Nuveen Asset Management in Chicago. "Your effective rate could easily migrate up. As your effective tax rate migrates up, your demand for munis — which are still tax free under this plan — would be increased."

The biggest fear of the municipal market appeared to be averted: the elimination of the tax-exemption.

"Nobody is going after the municipal exemptions from what we know today," Miller said. "Of course that could change, but I think it's unlikely that they come up with guiding principles that don't include municipals and throw municipals in later."

Bloomberg BNA

by Martin Z Braun, Rebecca Spalding, and Molly Smith

April 26, 2017, 3:06 PM PDT

Owners of These Muni Bonds May Reap Windfall From Trump Tax Plan.

- **Repealing the Alternative Minimum Tax would affect some debt**
- **Bonds subject to AMT trade at lower prices, higher yields**

Anyone seeking to profit from President Donald Trump's tax plan may want to look at a $140 billion corner of the municipal-bond market.

Those securities, which finance airports, housing agencies and non-profits, pay yields that are about half a percentage point more than traditional tax-exempt bonds because the interest is covered by the Alternative Minimum Tax. If Trump succeeds in eliminating that levy, as his administration proposed Wednesday, that gap should, in theory, disappear.

"With the potential repeal, any muni AMT bond would trade pretty much equivalent to a tax-exempt muni. That'd definitely be a boost in terms of their prices going forward," said Tommy Chan, a credit analyst at Ziegler Capital Management who has been looking to buy the securities for clients. "With the repeal, yields would come down and prices would go up — those yields for AMT bonds would compress over time."

The pricing discrepancy was on display this week, when the Port Authority of New York and New Jersey issued debt: 10-year bonds subject to the AMT were priced at a yield of 2.73 percent, 0.46 percentage point above the similarly-dated, tax-exempt debt issued by the agency, data compiled by

Bloomberg show.

Bloomberg Markets

by Molly Smith

April 26, 2017, 12:09 PM PDT

State and Local Governments Express Concern About Trump's Tax Plan.

The seven largest organizations that represent state and local governments — including the National Governors Association, the National Conference of State Legislatures and the U.S. Conference of Mayors — say they strongly oppose President Donald Trump's plan to eliminate the federal income tax deduction for state and local taxes.

"Eliminating or capping federal deductibility for state and local property, sales and income taxes would represent double taxation, as these taxes are mandatory payments for all taxpayers," the groups said in a statement. "We fundamentally believe that Americans' income, property and purchases should not be taxed twice.

"Elimination could also effectively increase marginal tax rates and shrink disposable income, potentially harming the U.S. economy," they said.

Eliminating the deduction was included in a broad Trump tax plan that would scrap all personal federal tax deductions except for mortgage interest and charitable contributions.

Eliminating the deduction for state and local taxes would give the federal treasury an additional $1.3 trillion over a decade, according to the Tax Policy Center, a joint think tank of the progressive Urban Institute and the moderate Brookings Institution.

But states argue that getting rid of the deduction would increase taxes, particularly for higher-income residents in higher-income states like California, where 26 percent of taxpayers would see their tax bill rise. In New York, 27 percent of taxpayers would see their bills go up, and nearly 40 percent in Maryland and 35 percent in Connecticut would experience higher tax bills.

The governors, mayors and state lawmakers also warned that altering the deduction would upset "the carefully balanced fiscal federalism that has existed since the permanent creation of the federal income tax over 100 years ago."

Others signing the letter: the National Association of Counties, National League of Cities, the International City-County Management Association and The Council of State Governments.

By Elaine S. Povich

BY STATELINE | APRIL 28, 2017

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3 Ways Muni Bonds Could Benefit from Trump Tax Plan.

Overall, the muni market isn't reacting much — if at all — to President Trump's new tax plan. The iShares S&P National AMT-Free Municipal Bond Fund (MUB) has stayed right around $9.40 since news of the plan started to trickle out on Tuesday.

Not only is there not a lot of key details in the plan, but investors don't have high hopes for it passing as envisioned.

"One hundred days may not be a fair measure of performance, but given how much this administration has gotten done so far, you'd have to give about a 50-50 shot that nothing gets done on taxes," says Jim Robinson of Robinson Capital.

Still, John R. Mousseau of Cumberland Advisors, took a stab at pointing out some areas of the muni market that could benefit if the plan goes through in some semblance of its current form.

First, he thinks lower marginal rates are already priced into the muni market and now long-term bond yield ratios will come down, making munis a better bet than taxable bonds. He writes:

> Tax cuts have been baked into the muni market, thus the current yield levels – particularly in the long-maturity end – should stay around current levels, and yield ratios will most likely DRIFT DOWN over time. There is no current mention of capping municipal interest in this plan.

Second, bonds that are subject to the alternative minimum tax (AMT), which could go away, are likely to trade better than their non-AMT peers. Mousseau explains:

> The plan also calls for the elimination of the Alternative Minimum Tax. The AMT was enacted in 1982 to ensure that individuals paid a certain minimum income tax. The tax limited tax benefits from a variety of deductions (think state and local taxes among other things). One aspect of the bill mandated that income from certain private-activity municipal bonds (municipal bonds issued by corporations, housing bonds over certain cap limits, and other municipal issues that have a private end user) be included in the calculation of the AMT. This provision was one of the most poorly designed parts of the AMT, as individuals who would be subject to the AMT would not buy bonds subject to the AMT. The cumulative amount of tax raised from this aspect of the AMT has been negligible. But the provision has come at a cost to these private issuers… This difference should DISAPPEAR over time if the proposed tax plan is passed.

Finally, he thinks munis in high-tax states will see strong demand if the deductibility of state and local taxes from federal income tax is eliminated. He writes:

The demand for in-state tax-exempt bonds in high-tax states will climb, pushing yields down relative to yields for other munis.

He notes, however that it could be harder for those states to raise taxes in the future:

> There will be a decided pushback on state and local governments to forgo any tax increases and roll back tax rates if possible, since state taxes effectively increase suddenly and significantly from their current levels (which are partly subsidized by the

federal deduction).

Barron's

By Amey Stone

April 27, 2017, 2:41 P.M. ET

Trump Tax Effort Could Boost Muni ETFs.

Even against the backdrop of rising interest rates, investors have shown some signs of devotion to municipal bond exchange traded funds and that faith could be rewarded. The iShares National AMT-Free Muni Bond ETF (NYSEArca: MUB) is the largest municipal bond ETF.

Munis also help diversify fixed-income portfolios. Investors who typically follow the Barclays U.S. Aggregate Bond Index will not have municipal bond exposure, so a muni bond ETF can complement core fixed-income positions.

Municipal bonds continue to experienced robust demand from U.S. investors as reliable source of yield, especially among taxable accounts due to the debt securities' favorable tax-exempt status. Recently, Japanese investors have gobbled up U.S. munis as a way of generating income as Japan maintains negative interest rates.

Low and even negative yields on global government bonds have made U.S. assets, including munis, increasingly more appealing relative to other fixed-income assets. For example, foreign investors have increased the amount of municipal debt they hold by 44% to $85 billion from 2009 through 2015, according to the Federal Reserve.

President Donald Trump's tax reform efforts, if realized, could be a significant catalyst for municipal bonds and ETFs like MUB.

"If the plan in President Trump's new tax proposal to eliminate the deductibility of state and local taxes from Federal income tax actually becomes law (still a big "if"), municipal bonds could benefit.

Interest income from municipal bonds are still tax-free, according to the Trump administrations tax reform plans outlined Wednesday," reports Amey Stone for Barron's.

Since muni bond interest is exempt from federal taxes, muni ETFs are a good way for investors seeking tax-exempt income, especially those in higher tax brackets. Due to its tax-exempt status, the asset category is also best utilized in taxable accounts. The tax-exempt status also creates high demand for municipal bonds. Consequently, the perceived bond yields are typically lower than their taxable counterparts.

The VanEck Vectors High Yield Municipal Index ETF (NYSEArca: HYD) and SPDR Nuveen S&P High Yield Municipal Bond ETF (NYSEArca: HYMB) can be used for investors looking for some extra yield in their muni ETF allocations.

"Muni prices could get dampened due to the proposal to drop the top tax rate, which in theory should make munis less attractive to high-net worth investors. But even if the tax-equivalent yield falls a bit, munis are still more attractive than other fixed-income options, analysts from Goldman

Sachs wrote earlier this month," according to Barron's.

ETF Trends

April 28, 2017 at 10:23 am by Tom Lydon

Tax-Exempt Bond Market Left Worried by Proposed Trump Tax Plan.

WASHINGTON – Trump administration officials outlined a sweeping tax reform plan involving cuts in tax rates that would be paid for by economic growth and the elimination of tax deductions and loopholes for the wealthy, leaving municipal market participants in fear of losing the the tax exemption for municipal securities.

Top White House advisor Gary Cohn told reporters that the administration is proposing to save the deductions for mortgage interest and charitable contributions as well as the exclusion for retirement savings. "Other tax benefits will be eliminated," he said, telling one reporter later that includes the deduction for state and local taxes.

Neither Cohn nor Treasury Secretary Steve Mnuchin specifically mentioned the tax exemption for municipal bonds. But market participants raised concerns about the exemption, which is a tax exclusion.

The one-page briefing paper handed out by the administration said, "Eliminate targeted tax breaks that mainly benefit the wealthiest taxpayers."

Critics of tax-exempt munis have said they mostly benefit the wealthy, although municipal market participants contend they are critical for financing infrastructure.

"If accurate, we now know the Administration's opening bid on muni bond tax exemption (unless preserved under infrastructure plan)," Ernie Lanza an attorney with Clark Hill tweeted.

"I think this should give pause to the industry because the tax exemption for municpal securities was not specifically mentioned in today's announcement," said Curt Beaulieu, senior counsel at the Bracewell law firm and former tax counsel for the Senate Finance Committee. "Based upon what we heard, one can deduce that the tax exemption for munis would be eliminated."

"We should assume we are in play," Chuck Samuels, with Mintz Levin, said referring to the muni tax exemption, "It makes no sense for the tax plan to marry tax reform with infrastructure and then restrict municipal bonds, but we should assume the worst."

"The tax-exempt bond community is as organized as it's ever been. We have lots of resources and ammunition and we'll need to use it," he added.

One concern for the muni market should be that tax experts say the Trump plan would be so expensive and administration officials are so unrealistic in thinking it could be partly paid for with strong economic growth, that there will be a huge need for revenue raisers to be used as "pay fors." Historically lawmakers have looked at restricting tax-exempt muni bonds to create revenues. The Tax Reform Act of 1986 included a host of muni bond restrictions.

Tax experts also say the administration would have such a difficult time making this plan revenue neutral, that if it wants to push forward under a reconciliation bill that would need less votes in the Senate, the provisions would have to be temporary and last no more than 10 years.

This is the most significant tax reform legislation and one of the biggest tax cuts since 1986, said Cohn.

The plan, which Mnuchin and Cohn stressed must still be negotiated with the House and Senate, would reduce the seven personal income tax rates to three — 10%, 25% and 35%, while doubling he standard deduction for married couples. The top tax rate for individuals is now 39%.

“We are creating a zero tax rate for the first $24,000 of a married couples’ earnings,” said Mnuchin.

The plan would repeal the alternative minimum tax, which applies to most private activity bonds.

It would phase-out of the death tax and eliminate the 3.8% tax on capital gains and dividends that President Obama added under the Affordable Care Act.

The administration will reduce the rate on corporations and pass-throughs to 15% from 35% and wants a one-time tax on the repatriation of overseas earnings, but Mnuchin made it clear there will be an effort to focus on small businesses and prevent big firms from setting up pass-throughs to get the 15% rate.

Cohn and Mnuchin said they plan to hold “listening sessions” on the plan and will work with the House and Senate on legislation.

House and Senate Republican leaders said in a release that the principles released by the Trump administration are “critical guideposts for Congress and the administration as we work together to overhaul the American tax system and ensure middle-class families and job creators are better positioned for the 21st century economy.”

But Rep. Richard Neal, the top Democrat on the House Ways and Means Committee, said in a release, “President Trump’s tax proposal does not do nearly enough for working families and small businesses in this country. The tax cuts proposed by President Trump would disproportionately favor the wealthy and large corporations at the expense of our nation’s hardworking middle class.”

Rep Lloyd Doggett, D-Texas, ranking minority member of the committee’s tax policy subcommittee, added, “The claim that his multi-trillion dollar tax cut will pay for itself is as incredible as the claim that Mexico will pay for his multi-billion dollar border wall. Dripping in red ink, this proposal validates Trump’s boast that he is ‘the king of debt.”

The Bond Buyer

By Lynn Hume

April 26 2017, 5:06pm EDT

Trump's Tax Plan And Munis.

The Trump administration unveiled their tax plan yesterday, with details to follow. It will take a while to work the plan through Congress but this is our quick take on how the plan affects municipal bonds and municipal finance.

The plan calls for three tax rates – 35%, 25%, and 10%. These are whittled down from the existing seven levels of marginal rates. It eliminates the ObamaCare tax on investment income for families making over $200,000 and also eliminates the Alternative Minimum Tax (AMT). The result of that is that the *MARGINAL* federal tax rate will decline for the wealthiest individuals from 43.4% (39.6% +3.8%) to 35%. To put this in yield terms, a 3% tax-free municipal yield currently has a taxable equivalent yield of 5.30% (3.0/1-.434), which will fall to 4.61% at a 35% tax rate. While that is a pretty good change at the margin, it is important to realize that the *AVERAGE* federal tax rate paid by municipal bond holders is 25%. In addition, the elimination of a number of loopholes and deductions will keep municipal bonds in demand. For example, the AAA muni-yield-to-US-Treasury-yield ratios are 92% for 10-year levels and 101% for 30-year levels, which means that, for anything less than the most stellar of credits, the yield ratios are significantly higher currently. (Cumberland is still able to purchase some 4% AA-type yields in the long end, which means a 130% yield ratio). Tax cuts have been baked into the muni market, thus the current yield levels – particularly in the long-maturity end – should stay around current levels, and yield ratios will most likely *DRIFT DOWN* over time. There is no current mention of capping municipal interest in this plan.

The plan also calls for the elimination of the Alternative Minimum Tax. The AMT was enacted in 1982 to ensure that individuals paid a certain minimum income tax. The tax limited tax benefits from a variety of deductions (think state and local taxes among other things). One aspect of the bill mandated that income from certain private-activity municipal bonds (municipal bonds issued by corporations, housing bonds over certain cap limits, and other municipal issues that have a private end user) be included in the calculation of the AMT. **This provision was one of the most poorly designed parts of the AMT,** as individuals who would be subject to the AMT would not buy bonds subject to the AMT. The cumulative amount of tax raised from this aspect of the AMT has been negligible. But the provision has come at a cost to these private issuers. Attached is a Bloomberg graph showing the difference between AA Bonds subject to the AMT and AA bonds *NOT* Subject to the AMT over the past two-plus years. This difference should *DISAPPEAR* over time if the proposed tax plan is passed.

Continue reading.

Investing.com

By Cumberland Advisors – (John Mousseau) – Bonds – Apr 27, 2017 12:28PM ET

State and Local Governments Express Concerns About Trump Tax Plan.

Groups representing state and local governments said that they are "extremely concerned" about an aspect of President Trump's tax plan.

The president's plan, an outline of which was released Wednesday, would eliminate the deduction for state and local taxes.

Repealing the deduction is also a part of the House Republicans' tax plan. Opponents of the deduction argue that it largely benefits the wealthy and subsidizes municipal spending that may be excessive. Also, repealing the deduction could raise revenue to help pay for lowering federal tax rates.

But the state and local groups said in a statement that the deduction should be preserved because it gives municipalities the flexibility to provide services to their residents.

“Any alterations to the deduction would upset the carefully balanced fiscal federalism that has existed since the permanent creation of the federal income tax over 100 years ago,” they said.

The state and local groups also said that curbing the deduction would amount to double taxation.

“We fundamentally believe that Americans’ income, property and purchases should not be taxed twice,” they said.

In addition to urging Congress to preserve the state and local tax deduction, the groups urged lawmakers to keep the tax exemption for municipal bonds. State and local governments issue those bonds to finance infrastructure projects.

Trump’s tax plan did not specifically mention the municipal bond exemption but proposed eliminating “targeted tax breaks that mainly benefit the wealthiest taxpayers.”

“We urge Congress to maintain the state and local deduction and the tax exemption for municipal bond interest,” the groups said. “We will work with Congress to ensure that states and local governments have the tools we need to foster healthy, safe and vibrant communities.”

The groups that issued the statement are: the National Governors Association, the National Association of Counties, the National League of Cities, the U.S. Conference of Mayors, the International City/County Management Association, the National Conference of State Legislatures and the Council of State Governments.

THE HILL

BY NAOMI JAGODA – 04/26/17 09:58 PM EDT

States to Battle White House for Tax Deduction, Muni Exemption.

States and cities are fighting to preserve a deduction for taxes paid to local governments after the White House’s tax plan said it would jettison the popular tool.

Local governments say elimination of the deduction amounts to double taxation of its residents. Supporters of the president’s plan, however, say states are protecting a deduction for the wealthy, and elimination of the alternative minimum tax would offset losing the deduction.

President Donald Trump’s tax proposal, announced April 26, calls for an end to all itemized deductions for individual taxpayers, with the exception of mortgage interest and charitable contributions.

It fails to mention the tax exemption given for the interest earned from municipal bonds, the popular funding source for public projects like bridges and roads that appeal to investors.

But since the proposal was unveiled, many states and cities said they feel attacked by the White House’s plan.

‘Extremely Concerned’

“We are extremely concerned that President Trump’s proposal includes eliminating the deductibility of state and local taxes,” said a statement from the Big Seven, a coalition of state and local government groups. “The state and local tax deduction and tax-exempt municipal bonds were part of the original tax code in 1913 and have long served to meet critical needs in our communities.”

Representatives of local and state governments around the country immediately began calling members of Congress after the White House’s tax plan was announced, according to a staff member of a ranking Republican member of the House.

“I’d be very surprised if either the deduction” or the municipal bond exemption “were seriously in danger, but you never know,” he told Bloomberg BNA. “If the president wants this, the president will lose, I think.”

Wealthier states, such as New York and California, will press the hardest to protect the deduction for state and local taxes, Jared Walczak, policy analyst for the conservative-leaning Tax Foundation, told Bloomberg BNA. Those states largely voted Democratic in November.

“Any meaningful program of tax reform will have to take on deductions, credits and exemption that some people really like,” he said, “and there’s no doubt that high-income taxpayers who benefit from the state and local tax deduction are a powerful constituency.”

Big Apple Deductions

New Yorkers claimed $68 billion in itemized deductions for state and local taxes in 2014, according to an analysis by the conservative Empire Center for Public Policy. The average deduction in New York for state and local taxes was $21,038 that year.

The hardest-hit New Yorkers will be those earning $1 million or more, E.J. McMahon, Empire Center’s founder and research director, said in a blog post.

Elimination of the deduction “would do serious damage” to New York City, city Comptroller Scott Stringer said in a statement. “This isn’t a plan to deliver growth, it’s a recipe to destabilize our economy and widen the gaps between the wealthiest and those most in need,” he said.

Analysis conducted by the comptroller’s office showed that almost 40 percent of the city’s single parents would face an increased tax bill, Stringer said. That includes 47 percent of single parents who make $25,000 to $50,000 and 75 percent of those who make $50,000 to $100,000, he said.

More than 95 percent of city taxpayers with income between $500,000 and $1 million, and almost 92 percent of those with income above $1 million, would pay the same or less in taxes than they do today, according to the preliminary analysis.

On average, the tax bills of the city’s millionaires would decrease by $200,000 under Trump’s plan, Stringer said.

More than one-third of city taxpayers with incomes between $50,000 and $250,000 would pay more in taxes if the broad White House plan were enacted, he said.

California ‘Calculus’

California taxpayers would also be injured by the Trump proposal, state Sen. Robert Hertzberg (D) told Bloomberg BNA.

“It has changed the calculus tremendously,” he said. “It’s going to require us to modernize our tax code.”

Hertzberg favors a sales tax on services—or what he calls a consumption tax—that would be deductible. The pressure the Trump plan would put on state and local governments to reduce their own tax burdens creates an opportunity to enact wholesale changes such as those he proposes, Hertzberg said. Business and labor representatives are telling the senator that they would be more open to his proposal if the Trump plan is enacted.

More than 30 percent of federal returns from California taxpayers claim the state and local tax deduction, with an average claim of $17,100, according to 2014 data compiled by the Tax Policy Center at the Urban Institute and Brookings Institution. Only Connecticut, New Jersey and New York have more claims with higher average amounts.

Maryland was home to the greatest percentage of deduction takers. Forty-five percent of Marylanders claimed the deduction in 2014, according to the Tax Policy Center. The average deduction was $12,400.

Double Taxation?

Individuals who claim the deduction will face double taxation if the White House plan becomes law, according to the Big Seven, which represents the National Governors Association, the National Association of Counties, National League of Cities, the U.S. Conference of Mayors, Leaders at the Core of Better Communities, the National Conference of State Legislatures and the Council of State Governments.

Elimination could “effectively increase marginal tax rates and shrink disposable income, potentially harming the U.S. economy,” the Big Seven said in the statement. “Further, any alterations to the deduction would upset the carefully balanced fiscal federalism that has existed since the permanent creation of the federal income tax over 100 years ago.”

Colorado Gov. John Hickenlooper (D) said on CNBC April 27 that the loss of the deduction would mean double taxation.

“We’ve never done that before,” he said. “This is kind of a contract we’ve had between the federal and local and state governments.”

New Jersey Gov. Chris Christie (R), who was among Trump’s top advisers during the campaign, told reporters he has concerns about the loss of the deductions, but wants to “look at the entire plan” before passing judgment.

Christie told a group of reporters after the Commerce and Industry Association of New Jersey‘s annual luncheon “I haven’t seen the whole plan yet, so we can’t jump to conclusions about it. It raises a concern for the governor of a higher tax state if you’re going to take away the deductibility of state and local taxes.”

The White House plan, a one-page document, was unveiled April 26 by Trump’s top economic adviser Gary Cohn and Treasury Secretary Steven Mnuchin.

Pushback Coming

While Christie's response was measured, lawmakers from other parts of the country, including Missouri, expect to push back strongly if the drive to end the deduction picks up steam.

"Pushback is likely putting it mildly," Mark Haveman, executive director of the Minnesota Center for Fiscal Excellence, told Bloomberg BNA. "It would be an all-hands-on-deck assault. We are very dependent on our very progressive income tax and that dependency is enabled by state tax deductibility."

Minnesota taxpayers would be disproportionally impacted because a high percentage seek the deduction and the state and local burden is relatively high, Haveman said. Internal Revenue Service data shows 35 percent of taxpayers claimed the deduction in 2014, and the average deduction was 6.2 percent of adjusted gross income, placing Minnesota on the top 10 list of states benefiting from the deduction.

Regressive or Not

Walczak said the state and local tax deduction is one of the more "unusual features" of the otherwise highly progressive federal income tax code because "it represents a transfer from lower income individuals and lower tax states and localities to higher income individuals and higher tax states and localities."

The issue, for Walczak, is what the deduction incentivizes. The cost of government in wealthier states is being "subsidized by the rest of the country."

"If you think that this cheaper cost of government in higher income states and localities leads to more spending on social assistance for lower income individuals, maybe the system as a whole isn't that regressive even if the tax component is," he said.

Alternative Minimum Tax

Elimination of the deduction isn't the end of the story for taxpayers, McMahon said.

Trump's proposal to double the standard deduction would essentially offset the elimination of deductibility of state and local taxes for taxpayers in lower brackets, he said. And when it comes to high-income taxpayers, elimination of the alternative minimum tax would offset a large portion of the loss of the deductibility of state and local taxes for those earning between $200,000 and $500,000, according to analysis by the Empire Center.

The alternative minimum tax is a supplemental income tax in addition to baseline income tax for certain individuals, corporations, estates and trusts that have exemptions or special circumstances allowing for lower payments of standard income tax.

Thomas Shimkin, legislative counsel and director of the Multistate Tax Commission, told Bloomberg BNA that the alternative minimum tax strips out some or all state and local deduction when they represent too high a proportion of deductions or income.

"Of course, the answer will vary by individual tax situation," Shimkin said.

Municipal Bond Exemption

Meanwhile, states will continue to protect the exemption to interest earned from municipal bonds, even though the White House didn't mention it in the tax proposal, Susan B. Hirschmann, chief executive officer of the independent Washington lobbying firm of Williams and Jensen PLLC, told

Bloomberg BNA.

"I've been in D.C. long enough to know that an initial Executive Branch proposal, regardless of the administration, is a very long way from what eventually becomes law," she said.

That means those interested in "preserving the current tax treatment of municipal bonds as the most effective and efficient way to fund infrastructure projects need to continue working with the Municipal Finance Caucus to ensure this important tax treatment is maintained," she said.

Michael Decker, managing director and co-head of the municipal securities division of the independent Securities Industry and Financial Markets Association, said that some top congressional and White House leaders have suggested that curtailing or eliminating some tax deductions and exclusions should be a component of tax reform.

"And while the tax exclusion for municipal bond interest brings important economic benefits, municipal bonds are the single most important source of capital for financing infrastructure," he told Bloomberg BNA.

Hickenlooper said the federal government appears to be moving toward cost shifting.

"In other words, shifting the burden of costs back onto municipalities and counties, you know, local governments, just at a time when the federal government is telling us, 'Well, you're going to have to raise more money to build your bridges and your roads,'" he said. "It doesn't seem wise to me on the surface."

Philadelphia Mayor Jim Kenney said ending the exemption would be misguided.

"Anything that takes away incentives for municipalities to invest in infrastructure would be moving in the wrong direction," Mike Dunn, Kenney's spokesman, told Bloomberg BNA in an email.

Bloomberg BNA

By Che Odom

April 28, 2017

With assistance from Tripp Baltz in Denver; Michael J. Bologna in Chicago; William H. Carlile in Phoenix; John Herzfeld in New York; Laura Mahoney in Sacramento, Calif.; Leslie A. Pappas in Philadelphia; and Gerald B. Silverman in New York

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S&P: U.S. States May Have Solved The Riddle Of Lost Online Sales Tax.

States may finally have found a way to collect online sales tax, just in time to stem substantial losses in revenue. On April 1, 2017, Amazon increased the number of states in which it collects and remits sales taxes to all the states that impose them, although remittance does not apply to the third-party sellers that use its platform.

Continue reading.

Apr. 24, 2017

Overview Of Bond Financing For 501(c)(3) NonProfit Organizations.

INTRODUCTION

This memorandum provides a brief explanation and overview of tax-exempt Bond financing for 501(c)(3) nonprofit organizations under the Internal Revenue Code of 1986, as amended (the "I.R.C."). Tax-exempt 501(c)(3) Bonds may be issued for most facilities utilized for the exempt purposes of Section 501(c)(3) organizations, as outlined in this memorandum. The principal advantages of such bond financing are the low interest rates and the attractiveness of the debt to lenders and investors. Bond financing may permit a user to build its projects sooner, expand the scope of its projects, or direct its fundraising to other purposes. With facilities financed by low-interest, long-term bonds, fundraising can be directed to other purposes, as well as into debt reduction.

Purpose of this Overview. This brief overview discusses tax-exempt bond financing for 501(c)(3) nonprofit organizations (referred to herein as the "Nonprofit") under the I.R.C. The information provided may be useful in determining whether bond financing will be available in particular cases, how the transaction might be structured and proceed, what advantages exist, and what limitations are imposed. However, Bond Counsel should be consulted early to assist in determining whether a project qualifies and in assuring that the applicable legal requirements will be met.

BOND FINANCING

What is Bond Financing? Bond financing takes the form of loans, or some times leases or installment sales, from a local government entity, often a development authority or development corporation (the "Issuer"). State laws vary concerning Bonds, but they are available in most jurisdictions. The interest rate is low because Bonds issued by the Issuer can be qualified to pay tax-exempt interest to the investors under the I.R.C., and the low interest rate is passed on to the Nonprofit. The money raised from the Bonds is reloaned by the Issuer to the Nonprofit or used to acquire facilities to be leased or sold by the Issuer to the Nonprofit. The loan, lease or sale agreement is pledged by the Issuer as the payment source for the Bonds and the Issuer is not otherwise liable for the Bonds. Bonds offer considerable flexibility in structuring terms, such as variable and fixed interest rates, prepayment and long and short maturities. Tax-exempt Bonds issued to finance facilities for use by governmental bodies and by for-profit organizations are beyond the scope of this discussion, and are addressed in our "Overview of Governmental Financing" and our "Overview of Private Activity Bond Financing and Incentives," available on request.

Why Use Bond Financing? Interest on a qualified 501(c)(3) Bond is exempt from Federal income taxation, alternative minimum tax and, usually, income taxation in the state in which the Bonds are issued. Bond borrowing rates are substantially lower than interest rates on conventional borrowings. Such Bond issues usually are exempt from SEC and blue sky registrations. Another advantage to the use of Bond financing is that the public involvement in the financing can generate substantial community interest in and support for the Nonprofit.

How are Bonds Repaid? Bond financing is normally backed solely by the Nonprofit's credit and any credit enhancement that it furnishes, and sometimes by assets or other security that the Nonprofit may pledge for this purpose. Nonprofits commonly utilize bank letters of credit or other forms of "credit enhancement" such as bond insurance to back Bonds issued for their facilities. Credit enhancement assures that the Bonds can be readily sold and obtain the lowest interest rates, as investors examine and rely upon the credit enhancer's financial strength and not the Nonprofit's. The Nonprofit's credit, financial position, operating history and fundraising must be satisfactory to the credit enhancer, however, in order to obtain this type of financing.

Who Buys the Bonds? Tax-exempt Bonds may be publicly sold or privately placed. Bonds, particularly if they are credit enhanced, may be sold to institutional investors and mutual funds, and sometimes individuals, through an underwriter or placement agent. Banks may buy 501(c)(3) Bonds and hold them as loans, although the I.R.C. results in increased rates on bank-held Bonds unless they are "Bank-Qualified" as discussed below.

What are "Bank-Qualified Bonds"? Generally, Banks and other financial institutions holding tax-exempt Bonds are not entitled to a tax deduction for their related carrying costs, or "cost of funds", determined by the ratio of the institution's borrowed funds to its equity, and banks and other financial institutions may find it relatively unattractive to hold tax-exempt Bonds. However, most Issuers that reasonably anticipate issuing not more than $10,000,000 of 501(c)(3) or governmental bonds during any calendar year may designate such Bonds as "Qualified Tax-Exempt Obligations." Such "Bank-Qualified" Bonds are subject to only a 20% disallowance of the allocable carrying cost and are attractive for Banks to hold. For the purpose of determining compliance with the $10,000,000 limitation, obligations of the Issuer and any subordinate entities must be aggregated, together with some obligations of superior entities. Note that an Issuer's Bank-Qualified Bonds may count against the ability of the superior entities to issue Bank-Qualified obligations.

Contents of this Memorandum. The remainder of this memorandum will outline who may issue 501(c)(3) Bonds and for what purposes, the limitations and requirements imposed by state and Federal law on 501(c)(3) Bond financing, the typical structures for such transactions, the steps necessary to complete the same, other incentives, and the role of Bond Counsel.

WHEN A PROJECT IS FINANCEABLE

What is Financeable? 501(c)(3) Bonds may be issued to finance most facilities used for the operation of 501(c)(3) non-profit organizations, such as charities and certain educational and healthcare organizations. No more than 5% of the proceeds of such Bonds may be used with respect to property that meets both of the "private business tests" described below. Outstanding conventional debt or loans in many cases can be refinanced with 501(c)(3) Bonds, if the debt paid costs that are financeable, and Bond Counsel is satisfied with the documentary record.

Private Business Tests. A 501(c)(3) Bond will be disqualified for tax exemption if more than 5% of the proceeds are put directly or indirectly to "private business use" and if payment of more than 5% of the Bonds is directly or indirectly secured by or to be derived from property put to "private business use" (or payments with respect to such property). "Private business use" means use by the 501(c)(3) organization that would be treated as "unrelated taxable business income" or use by others in any nongovernmental trade or business. In less technical terms, although property financed with 501(c)(3) Bonds may be used in the exempt operations of the 501(c)(3) organization and by the general public or governmental units, issues arise when property is used by other persons or entities or by the 501(c)(3) organization itself for non-exempt purposes. Of particular concern are leases, management contracts and similar user arrangements affecting financed property. A 501(c)(3) Bond also will be disqualified for tax-exemption if the private loan financing test is met. The private loan financing test is met if the lesser of 5% of Bond proceeds or $5,000,000 is used directly or indirectly to make or finance loans to persons other than governmental units. An indirect loan may be found, for example, if borrowings are used to finance facilities to be used by less than all of the general public and paid for by user fees. Any private business issues should be analyzed by Bond Counsel in the light of detailed regulations.

Management Contract Safe Harbors. Part or all of facilities to be financed by 501(c)(3) organizations, particularly healthcare organizations, are sometimes managed or operated by for-profit companies. "Safe harbor" guidelines can be used to assure that such arrangements do not impair the tax exemption of 501(c)(3) Bonds. Briefly, the guidelines require that the manager's or operator's compensation be determined by a periodic fixed fee, a capitation fee (an amount per person, regardless of services rendered), a per-unit-of-services fee, or a percentage of gross revenues or expenses, but in no case by a percentage of net revenues or profits. The permitted length of a contract (including all binding renewal options) is limited depending on the type of compensation; the more fixed compensation, the longer a contract may extend. If compensation is based on at least 95% fixed fees, contracts may be for a term up to 15-years; if at least 80% fixed fees, 10-years; if 50% fixed fees or 100% capitation fees (or a combination), 5-years (if the contract is cancellable by the 501(c)(3) within 3 years); if per-unit fees, 3-years (if the contract is cancellable by the 501(c)(3) within 2 years). A special rule applies to new facilities during a start-up period or to facilities primarily providing services to third parties: compensation can be based entirely on a percentage of fees charged, or a combination of per-unit-of-services fees and a fixed fee (or during the start-up period, a percentage of gross revenues, adjusted gross revenues or expenses), if the contract has a term of 2-years or less (cancellable by the 501(c)(3) within 1 year).

Intent to Finance Costs Must be Documented. For facility costs paid prior to the Bond issue to be financed with tax-exempt 501(c)(3) Bonds, an "official intent" to finance those costs must be declared not later than 60 days after the payment of such costs. A simple form of such declaration is a resolution of the board of directors of the 501(c)(3) organization evidencing such intent. An "official intent" must declare an intent to finance, establish a maximum amount of debt covered and generally describe the project. Bond counsel should be consulted to determine the sufficiency of an "official intent". An "Inducement" (discussed below under "Procedural Steps") by the Issuer also will serve as a declaration of official intent. If a declaration of official intent is made, Bonds generally may be issued as late as 3 years after the declaration and within 18 months after the facilities are completed. There is no downside to adopting an "official intent", as it only preserves the possibility of using Bonds in the future.

Disqualified Uses. In no event may proceeds of a 501(c)(3) Bond be used to provide an airplane, private luxury box, gambling facility or liquor store.

BOND ISSUERS

State Law. Bonds for 501(c)(3) organizations must be issued by governmental authorities. Virtually all states authorize Bond financing, and the types of Issuers and the projects that they may finance vary. Frequently included in financeable costs are preliminary studies, direct costs of the project, attorneys' fees and other financing and issuance costs, interest paid during construction and certain reserve funds. For illustrative purposes, several of the Issuers in the State of Georgia are described below.

Development Authorities. Created by statute in every Georgia city and county, and active in many, Development Authorities may issue 501(c)(3) Bonds to finance the acquisition, construction, improvement, modification, renovation or rehabilitation of any land, buildings, structures, facilities, fixtures, machinery, equipment, furniture or other property, provided that a majority of the directors of the Development Authority determines by resolution that the project will develop and promote trade, commerce, industry and employment opportunities for the public good and general welfare, and will promote the general welfare of the State. No facility may be financed by a Development Authority unless it will increase or maintain permanent employment in the jurisdiction to some degree. A number of regional Development Authorities also have been created in Georgia.

Downtown Development Authorities. Downtown Development Authorities also can be activated in any incorporated municipality in Georgia. A Downtown Development Authority may finance 501(c)(3) projects that the Authority determines will further the public purposes for which it was created. However, Downtown Development Authorities may finance projects only in designated downtown development areas.

Healthcare Authorities. Residential Care Facilities for the Elderly Authorities and Hospital Authorities also exist or can be activated in each county, with the capacity to issue 501(c)(3) Bonds for certain healthcare projects.

Constitutional Authorities. In approximately two-thirds of Georgia's counties, special authorities have been created by amendment to the Georgia Constitution with powers to issue Bonds. The particular legislation must be consulted in each instance.

ARBITRAGE

Arbitrage Restrictions. Bonds are not entitled to tax exemption if they are deemed "arbitrage bonds." Arbitrage rules are complex, and only a brief sketch is provided below. Bonds are arbitrage bonds if more than the lesser of 5% or $100,000 of amounts treated as bond proceeds are reasonably expected to be used, or to replace funds used, directly or indirectly to acquire higher yielding investments. Amounts treated as bond proceeds can include amounts pledged to payment of Bonds, or sinking funds or other funds from which repayment of Bonds may reasonably be expected to be made. The concept of "investments" is broad, including virtually any contract or property to which a rate of return can be ascribed. Exceptions are made for investment of proceeds during certain temporary periods, including the temporary investment of monies in a bona fide debt service fund and in a fund for proceeds awaiting use. The temporary period for investment of proceeds pending use for the acquisition or construction of property is three years. Amounts in a reasonably required reserve or replacement fund are not subject to investment yield restrictions, provided that the reserve or replacement fund cannot generally exceed 10% of the proceeds of the issue.

Replacement Funds and Fundraising. If Bonds finance facilities for which other funds were earmarked, these funds (as well as other School funds that secure repayment of the Bonds or having a sufficient "nexis" to the Bonds) may be subject to arbitrage yield restriction. This can occur when fundraising will be conducted in connection with the project. Bond counsel should be consulted early to ascertain whether such "replacement funds" are created.

Arbitrage Rebate. Even though Bonds may comply with the arbitrage rules referred to above, arbitrage earnings in excess of the yield on the Bonds must be rebated periodically to the federal government. The rebate rules require that periodic computations and filings be made. However, there are limited "2-year construction," "18-month" and "6 month" exemptions from the rebate requirement. The ability to comply with the appropriate exemption may influence the timing of when the Nonprofit will want to close the Bond issue.

2-Year Construction Exemption. The construction exemption applies to financings where at least

75% of the “net proceeds” of the obligations are to be used for construction, reconstruction or rehabilitation. The rebate requirement does not apply if the net proceeds are expended in accordance with the following minimum requirements: 10% within six months; 45% within one year; 75% within 18 months; and 100% within two years (except that the two year period may be extended to three years if the requirement would have been met within two years but for a reasonable retainage not exceeding 5% required to ensure compliance with the terms of a construction contract). “Net proceeds” includes the proceeds of the issue (except for amounts placed in a reasonably required reserve fund) plus investment proceeds earned before the close of the period. If, however, an election is made on the closing date, net proceeds excludes interest earnings on any reasonably required reserve fund, but interest earnings on such fund will be subject to the rebate requirement from the closing date, rather than from the end of the two-year expenditure period. If an election is made on or before the closing date to pay a penalty in lieu of payment of the rebate amount, the rebate requirement is deemed to be satisfied if the Issuer pays a penalty with respect to the close of each six-month period after the closing date equal to 1.5% of the amount of the net proceeds of the issue, which as of the close of such period are not spent as required.

18-Month Exemption. An exemption from the rebate requirement applies if all gross proceeds (except for proceeds placed in a reasonably required reserve fund) are expended in accordance with the following schedule: At least 15% within 6 months; at least 60% within 12 months; and 100% within 18 months (with an exception for reasonable retainage spent within 30 months).

Six-Month Exemption. An exemption from the rebate requirement applies if all gross proceeds (except for proceeds placed in a reasonably required reserve fund) are expended within six months.

Limitation of Exemptions. Compliance with the construction, 18-month or 6-month exemptions does not relieve the obligation to rebate arbitrage from investment of a reasonably required reserve fund or arbitrage on a bona fide debt service fund in excess of $100,000 per year.

OTHER LIMITATIONS

Length of 501(c)(3) Bond Financing. The average maturity of a 501(c)(3) Bond issue is limited by Federal law to 120% of the average reasonably expected economic life of the project financed. Average economic life must be weighed by taking into account the respective costs of the components of the project. Economic life is to be determined as of the later of the date a Bond is issued or the date facilities are placed into service. Midpoint lives under the old ADR system for personal property and guideline lives under Revenue Procedure 62-21 for buildings may be treated as safe harbors for determining economic lives. Land generally is not to be taken into account in determining the average.

Federal Guaranty Prohibition. 501(c)(3) Bonds are not entitled to tax exemption if the payment of principal or interest is directly or indirectly guaranteed in whole or in part by the United States or any of its agencies or instrumentalities. Bonds will be treated as guaranteed by the federal government if 5% or more of the proceeds are used to make loans guaranteed by the federal government or to invest in federally insured deposits or accounts. Exceptions are made to permit proceeds to be invested in United States Treasury obligations and to permit investments of bona fide debt service funds, reasonably required reserve funds, and funds to hold proceeds prior to their initial use.

Speculative Projects. Compliance with several provisions of Federal and state law requires that the particular assets to be financed with a 501(c)(3) Bond be ascertained with reasonable certainty prior to issuance. A 501(c)(3) Bond generally cannot be issued to finance undetermined projects or contingencies, or in an amount substantially in excess of that required for the project.

Issuance Costs. No more than 2% of the proceeds of a 501(c)(3) Bond may be used to pay costs associated with the issuance of the Bond. Any excess costs may be paid from other sources.

Change in Use. A change in use of a facility financed with a 501(c)(3) Bond to a use for which such a Bond could not have been issued may result in the interest on the Bond becoming taxable or other consequences.

INDUCEMENT

Inducement Resolutions. Although not necessarily required, the first step in a 501(c)(3) Bond transaction normally is obtaining an inducement resolution and agreement from the Issuer (the “Inducement”). This constitutes an agreement in principle by an Issuer to issue Bonds for a proposed Project. The Inducement can serve as the as the declaration of “official intent” discussed above, in lieu of a School’s board resolution.

Expiration. An Inducement may or may not have an expiration date. In any event, a 501(c)(3) Bond must be issued within three years after the declaration of official intent and eighteen months after the later of the date a Project is acquired or placed in service.

FORM OF TRANSACTION

General. Because a 501(c)(3) Bond transaction utilizes an Issuer as an intermediary, the transaction takes a form different from a conventional financing transaction. The exact form to be used depends on the desires of the parties and local requirements. In any transaction the Issuer sells the Bond and makes the proceeds available for the Project. Three forms of transaction commonly are used: loans, leases and installment sales.

Loans. An Issuer may be authorized by statute to loan 501(c)(3) Bond proceeds to a Nonprofit for use on a project. When this form is used, the Nonprofit enters into a loan agreement with the Issuer and usually gives its note to evidence the loan. The Issuer will assign the loan agreement and note as security for the Bond. The Nonprofit holds title to the project in such a transaction. This is the simplest and most common arrangement.

Leases. Most Issuers can, and some Issuers must, own the project financed and lease it to the Nonprofit. When such form is used, the project site normally is conveyed to the Issuer and the project is constructed or acquired in the name of the Issuer with the proceeds from the Bond. The project is then leased to the Nonprofit, which agrees to pay rents to be applied to service principal and interest on the Bond. The Issuer assigns its rights under the lease as security for the Bond. When the Bond is paid, the Nonprofit normally purchases the project at a nominal purchase price.

Installment Sales. An installment sale transaction sometimes is used. This type of transaction is similar to the lease transaction in that the Issuer takes title to the project. Instead of leasing the project to the Nonprofit, the Nonprofit enters into an installment sale agreement whereby it agrees to pay purchase price installments equal to debt service on the Bond. Title to the project may be conveyed to the Nonprofit immediately or upon payment of the Bond.

Nonprofit’s Control Over Project. Under any arrangement, loan, lease or sale, the Nonprofit normally is responsible for insurance, taxes and maintenance, has freedom with respect to design and construction, and may be regarded as the project “owner” for all practical purposes. During the term of the financing, the Nonprofit has essentially the same control over the project as under conventional financing. Furthermore, covenants and security devices usual in conventional lending normally can be incorporated in the Bond transaction.

Credit for Bonds. Regardless of the form of the transaction, usually neither the Issuer, the local government nor the state provides any credit for the Bonds. The bondholders look to the underlying obligation of the Nonprofit and any guaranties, mortgages, security instruments, insurance, letters of credit or other funds or credit enhancements that may be provided as arranged by the Nonprofit to pay the Bonds.

"Variable Rate Demand Bonds" Specialized methods of financing have developed in the Bond area that provide highly favorable terms. The "variable rate demand bond (VRDB)" or "lower floater" method of financing accesses short-term markets for a longer-term stated maturity, but with a "put" option whereby the bondholder at regular intervals (usually weekly) may cause the Bond to be repurchased on behalf of the Nonprofit. Because of the "put" feature, a variable rate demand Bond can be sold in the short-term market, which involves the lowest interest costs. Such a Bond bears interest at rates that may be reset by a remarketing agent. A variable rate demand Bond may be held by a particular holder for any period and normally would be "put" if the holder has other needs for its funds or market interest rates have shifted upward such that the rate borne by the Bond is not currently attractive. If a lower floater Bond is "put" because of an upward shift in rates, the remarketing agent will set a new, higher rate at which a remarketing agent can re-place the Bond; if market rates fall below the Bond rate, the agent will reset the rate at the lowest rate that will avoid the Bond being "put." A credit facility of a rated institution must be available to advance the repurchase price of any variable rate demand Bond that is "put" back.

PROCEDURAL STEPS

Bond Placement. After an Inducement is obtained and Bond Counsel has determined that the transaction can be appropriately structured as a 501(c)(3) Bond project, generally the Nonprofit will place the Bonds, generally through an investment banker or underwriter. Bonds may be privately placed, for example, with an investor group or a financial institution, placed with a mutual fund or sold publicly. Disclosure documents normally are prepared when a bond fund or public sale is utilized. Depending on the nature and number of the bondholders, a trustee may be appointed for the issue.

Legal Documentation. When the type of Bond sale has been determined, the terms and provisions of the Bond and the related documents must be negotiated and settled upon. Bond Counsel will prepare most of the necessary documentation for the transaction. Provided that a declaration of official intent has been made, the acquisition and construction of the Project could be commenced during this period if funds are available.

"TEFRA" Hearing. Federal law requires that a public "TEFRA" hearing be held at least 14 days after the giving of published notice apprising the community of a proposed 501(c)(3) Bond and the nature and the location of the project. Following such public hearing, both the Issuer and an appropriate elected official or legislative body with jurisdiction over the project must approve the Bond.

Validation and Other Procedures. States frequently require additional procedural steps prior to the issuance of a Bond. For example, most Bonds in Georgia must be judicially validated in a proceeding to which the State, the Issuer and the Nonprofit are parties. Another public notice must be published in advance of this proceeding. Both the TEFRA and the state procedures affect the closing date.

Information Report. In connection with the closing of the transaction, an information report providing details of the 501(c)(3) Bond, the Issuer, the Nonprofit and the project must be filed with the Internal Revenue Service.

LIVING WITH A BOND ISSUE

After Bonds are issued, there are only a few obligations of the Nonprofit that are different from a conventional loan. Principally, the Nonprofit must remain its 501(c)(3) status and the project must not be used by for-profit entities or operations. The Nonprofit must avoid arbitrage practices and pay arbitrage rebate if an exemption does not apply.

BOND COUNSEL

Counsel experienced in municipal bond law should be retained to serve as Bond Counsel. The function of Bond Counsel is to structure and document the transaction and to issue an opinion on the validity and tax status of the Bond. Fees of Bond Counsel are payable by the Nonprofit from Bond proceeds. Bond Counsel may represent other parties or the Nonprofit, the Issuer and the Bond purchaser or underwriter may be separately represented. Smith, Gambrell & Russell, LLP is a "Red Book" listed Bond Counsel firm.

SUMMARY

This memorandum has been designed to provide a brief overview of 501(c)(3) Bond financing. Tax-exempt Bonds may provide significant advantages, but are subject to extensive regulation on the federal and/or state levels. This outline can do no more than touch upon some of the more salient issues and must not be regarded as an in-depth treatment on all legal issues. Instead, this Overview provides some basic information that may serve as the basis for further discussions with Bond Counsel.

Last Updated: April 26 2017

Article by James P. Monacell

Smith Gambrell & Russell 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.

Availability Of Tribal Economic Development Bond Allocations: Holland & Knight

Based on a recent Internal Revenue Service (IRS) announcement, the Published Value Cap Limit for Tribal Economic Development Bonds (TEDBs) is steadily shrinking.

The IRS reported on March 31, 2017, that the TEDB Published Volume Cap Limit for the period commencing April 1, 2017, has now been reset at $155 million per tribal applicant. This figure represents 20 percent of the amount of the total remaining available volume cap of $777 million. As described in Notice 2012-48, 2012-31, IRS guidance provides that no tribal government will receive an allocation that would cause the aggregate amount of volume cap allocated to that tribal government to exceed the Published Volume Cap Limit in effect. The Published Volume Cap Limit for any period is the greater of: 1) 20 percent of the amount of available volume cap as of the first day of such period, as described in the notice; or 2) $100 million. The notice also indicates that the IRS will allocate an amount of available volume cap equal to the amount requested in the application on a first-come, first-served basis by order of submission date.

In 2009, Congress initially designated a total of $2 billion in volume cap for TEDB allocations. Since that date, approximately 61 percent of the TEDBs allocations have been used by tribal governments. Initially, there was little use of TEDBs by tribal governments. Recently, however, the utilization of TEDBs by tribes has accelerated noticeably.

As the overall volume cap diminishes, the amount that can be requested by any one tribe is reduced. For example, at $500 million in overall available cap, the maximum request per tribe will be reduced to $100 million. Under the formula, it will stay at that level until the aggregate amount is used in its entirety. Once the overall TEDB Volume Cap is exhausted, it can only be reauthorized by an act of Congress.

Congress is likely to consider changes to the tax-exempt bond rules in the context of tax reform. While state and local governments are working diligently to preserve their current ability to issue tax-exempt bonds for a variety of uses, tribal governments are pressing for parity with other governmental issuers. Unfortunately, there is no guarantee that TEDB Volume Cap will be replenished or that other favorable legislative changes sought by tribes for many years, such as elimination of the "essential governmental function" test, will be achieved this year.

TEDB allocations may be used not only for bonds, but for tax-exempt bank loans, including draw-down loans. (See Holland & Knight alert, "IRS Amends TED Bond Volume Cap Rules to Accommodate Draw-Down Loans," Dec. 8, 2015).

With interest rates on the rise and the economy improving, many tribal governments are considering whether to pursue tax-exempt financing for economic development projects.

Last Updated: April 19 2017

Article by Kathleen M. Nilles and Randolf A. DelFranco

Holland & Knight

Kathleen M. Nilles is a partner in Holland & Knight's Washington D.C., office and Randolph A. DelFranco is a partner in Holland & Knight's New York office.

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.

TAX - CONNECTICUT

Fairfield Merrittview Limited Partnership v. City of Norwalk

Appellate Court of Connecticut - April 11, 2017 - A.3d - 172 Conn.App. 160 - 2017 WL 1234223

Taxpayer appealed decision of city board of assessment appeals upholding fair market value of $49,036,800 for office building.

The Superior Court sustained appeal, concluded that fair market value was $34,059,753 and ordered a reduction in the assessment. City appealed. The Appellate Court reversed. Taxpayer appealed. The Supreme Court reversed and remanded.

On remand, the Appellate Court held that:

- Superior Court's finding that building's net rentable area was 243,586 square feet was not clearly erroneous;
- Superior Court did not clearly err by excluding from calculation of building's potential gross income $165,637 of interest income derived from taxpayer's money market account; and
- Superior Court did not clearly err by excluding from calculation of building's potential gross income $14,264 in purported income from use of conference room in common area.

On appeal of city's 2008 tax revaluation of office building, trial court's finding that building's net rentable area was 243,586 square feet was not clearly erroneous, since trial court reasonably could have discredited conflicting testimony of taxpayer's and city's appraisers related to net rentable area, and trial court acted within its discretion when it considered taxpayer's 2006, 2007, and 2008 rent rolls but ultimately determined that 2006 annual income and expense report was more reliable.

On appeal of city's tax revaluation of office building, trial court did not clearly err by excluding from calculation of building's potential gross income $165,637 of interest income derived from taxpayer's money market account, since parties' appraisers disagreed as to whether interest income was attributable to building itself, and trial court was therefore within its province to credit testimony of taxpayer's appraiser, who testified that interest and dividends should not have been included as income, under direct capitalization method, because income was unrelated to building, and that in his 25 years of experience he had never included interest income when calculating a property's fair market value pursuant to income capitalization approach.

On appeal of city's tax revaluation of office building owned, trial court did not clearly err by excluding from calculation of building's potential gross income $14,264 in purported income from use of conference room in common area, since trial court was presented with conflicting testimony as to whether conference room was amenity provided to tenants, or whether tenants were required to pay fee to use conference room, which could be considered as income, and thus trial court either could have reasonably concluded that building did not receive income from conference room, or reasonably could have found that it lacked sufficient evidence as to consistency of conference room's use for income-generating purposes.

TAX - FLORIDA

Villages of Avignon Community Development District v. Burton

District Court of Appeal of Florida, Second District - March 17, 2017 - So.3d - 2017 WL 1040739

County tax collector brought declaratory-judgment action against community development district to resolve the relative priority of tax liens and district's recorded assessment liens on three parcels of real property that the district owned after foreclosing on them due to unpaid assessments.

The Circuit Court declared that the tax collector could issue tax certificates but that the certificates would be sold subject to the assessment liens. Community development district appealed.

The District Court of Appeal held that:

- Tax liens were coequal to assessment liens, and
- Tax collector could issue tax certificates that would be subject to the assessment liens.

County's tax liens on three parcels of property were coequal and not superior to assessment liens held by the community development district. The plain language of the statute on community development district taxes said that a district's liens were coequal with the liens of the county.

County tax collector could issue tax certificates that would be subject to the community development district's recorded assessment liens on three parcels of property that district owned after it foreclosed on them due to the unpaid assessments. The district could have made county a party to its assessment lien foreclosure action so that the issue regarding the priority and satisfaction of the competing coequal liens could have been resolved before district took title to the parcels, and a district's liens survived the issuance of tax certificates and deeds per statute.

TAX - KANSAS

Heartland Apartment Association, Inc. v. City of Mission

Supreme Court of Kansas - April 7, 2017 - P.3d - 2017 WL 1294554

Landowner associations brought action against city for declaratory judgment and recovery of amounts paid, claiming that the city's transportation "user fee," which was assessed on developed real property based on a formula that attempted to estimate the number of vehicle "trips" a particular property generated, was a prohibited excise tax.

The District Court entered summary judgment in favor of city. Associations appealed, and city cross-appealed. The Court of Appeals reversed and remanded. City petitioned for review, which was granted.

The Supreme Court of Kansas held that:

- User fee was a tax rather than a fee, even though revenue generated from user fee was earmarked for maintenance of city streets, and
- User fee was a tax on the enjoyment of a privilege, and thus it was a prohibited excise tax.

City's transportation "user fee," which was assessed on developed real property based on a formula that attempted to estimate the number of vehicle "trips" a particular property generated, was a "tax" rather than a "fee" assessed against those who gained an exclusive benefit of a service, for purposes of determining whether user fee was a prohibited excise tax, even though revenue generated from user fee was earmarked for maintenance of city streets. User fee was levied against owners of all developed property in the city, user fee was a general revenue measure and not for specific improvements, and user fee was not voluntary.

City's transportation "user fee," which was assessed on developed real property based on a formula that attempted to estimate the number of vehicle "trips" a particular property generated, was a tax on the enjoyment of a privilege, and thus user fee was a prohibited excise tax. User fee was a tax on real property owners based on the use of their property rather than a tax on the property itself.

Counties Grapple with Short-Term Rentals.

Short-term rentals are a mixed bag of complaints and tax revenue for counties

When Airbnb, Homeaway or FlipKey move into town, the short-term rental surge they set off can be a blessing or a curse to local governments. The new business model can put an average of $6,100 a year in hosts' pockets, according to Airbnb, especially in areas that attract a lot of tourists, raising questions about tax rates and tax collection.

Even the prospect of companies like Airbnb moving into town can prompt local opposition and pit neighbor against neighbor with local governments stuck smack in the middle. Again raising another set of questions: this time, about zoning and regulation.

A look across the country shows a landscape of answers to the more perplexing questions.

Do we want short-term rentals in our county at all?

On one side of the issue, are hosts who want to make extra money from renting their home to tourists. On the other side are residents who prefer not to live next door to a quasi B&B or "party hotel."

Residents complain that guests aren't acting too neighborly. In Nashville and Davidson County, for example, the city received at least 975 complaints against 568 addresses with active short-term rental permits from April 2015 to February 2017, The Tennessean recently reported. The complaints were about everything from noise to trash to cars parking on grass to intoxicated persons and indecent exposure.

The Metro Planning Commission there is set to vote on phasing out growth of short-term rentals that aren't occupied by owners or placing a temporary moratorium on issuing new permits for short-term rentals. The commission has deferred the vote, requested by Airbnb and Homeaway, to April 13.

States attempt to assert control over short-term rentals

At the state level in Tennessee, two bills that have been introduced (and crafted with the help of Airbnb and Homeaway, the Knoxville News-Sentinel reported), in the state Legislature would curtail local control over short-term rentals. The proposed statewide law would limit local regulations to enforcing public health and safety issues. If passed, a new law would overturn any current bans on short-term rentals in the state, including one in Brentwood, a community in Williamson County, Tenn.

In Florida, counties are fighting similar proposed legislation that would take control of short-term rentals out of their hands. A Florida senator's bill says counties can't treat vacation rental homes differently from any other residential use.

"This bill would basically preempt local governments from making those decisions," said state Sen. Jose Javier Rodriguez (D-Miami). "Local government is the best level of government to mediating these issues."

Bills in the House and Senate have cleared several hurdles. The Florida Senate Community Affairs Committee postponed a vote April 3 on the bill after local government representatives noted that they would not be able to enforce local safety regulations if the bill passed. It's expected to come before the committee again the week of April 17.

Virginia hands control to local government

In Virginia, where Airbnb hosts raked in $41 million last year, Gov. Terry McAuliffe (D), signed a bill that allows localities to regulate short-term rentals. The new law allows local governments to require hosts to register with the county; counties would be allowed to charge fees to register and levy fines to anyone who violates regulations.

The law follows regulations made last year by Arlington County, Va., that requires hosts to register with the county. If taxes (a 7 percent transient occupancy tax) aren't paid, registration would be revoked and hosts would face misdemeanor charges and interest penalties on any unpaid taxes. If someone makes more than $10,000 a year from his short-term rental, they're also required to apply for a business license.

Arlington County legalized short-term rentals in December; rented units must be owner-occupied for at least six months of the year and meet state building codes. The county requires fire and smoke detectors and a fire extinguisher be on the property. It also sets limits on the number of visitors — six per unit or two per bedroom.

Collecting taxes

In tourism-heavy Florida, Broward County joined more than 30 other counties April 4 when it approved an agreement for Airbnb to begin collecting a 5 percent tax (the same amount that hotel guests in the county pay) they say could exceed $1 million a year. The agreement says both sides retain their options, including the county suing Airbnb over past due taxes, the Sun-Sentinel reported.

Miami-Dade County also reached an agreement with the company April 4, voting 10-3 to approve a memorandum of understanding between the county tax collector and the provider. County Commissioner Joe Martinez, who voted no, argued the county should first come up with regulations before taxing Airbnb users. "It's putting the cart before the horse," the Real Deal, a local real estate newspaper, reported him saying. "I know a lot of people in my neighborhood who don't want it."

The Broward County Commission is also set to consider allowing county staff to pursue similar agreements with other online short-term rental platforms. Airbnb said it collected $20 million in tourist tax dollars in Florida in 2016. It currently has agreements in place to collect tourist taxes in 39 of Florida's 63 counties.

In New Mexico, a recent report by Southwest Planning and Marketing estimates counties and cities there are missing out on $2.6 million annually. An old state law from 1969 prevents counties from collecting taxes for short-term rentals. Local governments have gotten behind proposed legislation introduced last month in the state House and Senate that aims to remove the exemption.

In some areas of the country, counties might be sending a mixed message. In Shasta County, Calif., near Lassen Volcanic National Park, the county collected more than $100,000 in taxes from vacation rentals last year (and even provides a form on the county tax Web site for homeowners to fill out, to obtain transient occupancy tax certification) but recently sent letters to homeowners and managers telling them to stop renting out their homes because they were violating the county's zoning code.

Shasta County Supervisor Les Baugh said it confuses residents when one department says short-term rentals are OK and another says they're illegal, the Redding Record Searchlight reported. "There are those who thought they did right because they took the time to follow all the instructions that are on the Web site," he said.

Baugh said he thinks the county should revisit the issue to help bring more tourism dollars into the county. "It's not just the economics of the rentals," he said, "but when people come to visit, they leave their money."

NATIONAL ASSOCIATION OF COUNTIES

By MARY ANN BARTON

Apr. 17, 2017

[Fitch: Medicaid Expansion May Benefit Some U.S. Nonprofit Hospitals.]

Fitch Ratings-Chicago/New York-13 April 2017: Nonprofit hospitals in some states could see a fiscal benefit if their legislatures expand Medicaid under The Patient Protection and Affordable Care Act (ACA), according to Fitch Ratings.

The failure of recent proposed legislation that would have repealed the ACA may have contributed to broader support for Medicaid expansion. Among the 19 states that did not expand the program under the ACA, a number of legislatures have indicated a willingness to expand their Medicaid programs in recent weeks.

North Carolina's legislature filed a bill to expand and Maine will put Medicaid expansion to a voter referendum in November. Additional expansion bills may be introduced in Nevada and South Dakota, according to media reports. Expansion efforts in four states have failed though, as legislatures in Kansas and Virginia did not pass expansion bills while Georgia and Idaho legislatures adjourned without considering them.

Nonprofit hospitals in states that expand Medicaid benefits would initially see similar fiscal impacts to those in the states that expanded benefits following the implementation of the ACA's coverage provisions in 2014. For those providers, meaningful reimbursement benefits resulted in sharp declines in charity care and bad debt.

In subsequent years, providers in certain markets had steady or higher year-over-year inpatient and ambulatory volumes driven by a higher number of newly eligible Medicaid patients. This superseded a broader industry-wide trend of declining inpatient volumes as providers work to reduce unnecessary readmissions and length of stay, and as clinical care shifts further toward ambulatory settings.

Past experience suggests that more states will eventually opt to expand., About half of all states established programs within one year after Medicaid was created in 1965. After four years, all but two states had established programs.

However, the federal government will reduce the enhanced federal matching rate this year to states that expanded Medicaid eligibility effective January 2014. States such as Washington and Connecticut have announced reduced Medicaid reimbursement rates for 2017. This would likely also affect hospitals in the states that expand this year over the longer run.

The Trump administration may afford states more say in Medicaid program requirements. Reduced program funding could result if states choose to narrow coverage and/or eligibility from current levels. Furthermore, renegotiations of supplemental Medicaid funding systems in some states over the next few years could result in program changes or payment modifications.

Fitch has a negative sector outlook on nonprofit hospitals based on our long term view that the sector will be increasingly challenged by regulatory and political uncertainty, the growth in Medicare and Medicaid payor exposure and meager rate increases.

Nonprofit hospitals in all states will have to contend with additional stresses in the coming years whether or not their states decide to expand Medicaid. Improvement in the labor market is raising the demand for nurses and mid-level clinical staff, resulting in higher salary and benefits costs. The impact is more pronounced in areas with higher levels of hospital competition and population and economic growth.

We also expect nonprofit hospital margins to be pressured when the shift to value-based/risk-based contracts accelerates. The movement toward risk-based contracts by commercial payors is likely to grow around the integrated health systems that have developed in several major metropolitan areas.

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The above article originally appeared as a post on the Fitch Wire credit market commentary page. The original article can be accessed at www.fitchratings.com. All opinions expressed are those of Fitch Ratings.

You Paid Your Taxes. So How About a Receipt?

Giving the public a detailed view of what their taxes pay for is a way to encourage citizens' involvement in how government spends their money.

Happy Tax Day! Once you've filed your federal taxes, wouldn't you like a receipt? After sending all that money to the IRS, don't you feel entitled to some detail on what you bought? If so, go to Balancing Act's FederalTaxpayerReceipt.com, which is based on a budget simulation produced by Bipartisan Policy Center. Answer a few quick questions, click submit, and the next page looks like a Home Depot receipt, itemizing how many of your tax dollars went to defense, health care, highways, national parks and more.

If your filing status is single, you earned the 2015 average income of $46,120 last year and you don't have any additional dependents, for example, you paid about $1,099 for defense, $37 for Temporary Assistance for Needy families (what used to be called welfare), $110 for highways and $101 for Obamacare subsidies. You can also get estimated figures for NASA, national parks, Social Security, interest on the debt and more. Try it out. You may be surprised at what you learn.

While it's certainly interesting to see where your federal taxes go, it can be just as instructive for other levels of government. In local government, for example, "the taxpayer receipt is a viable information-sharing tool that can be used to educate and inform citizens about numerous aspects of government at the community level," wrote Whitney Alfonso, an assistant professor in the University of North Carolina School of Government, in a [2014 paper] on early governmental efforts to create taxpayer receipts.

Wheat Ridge, Colo., is one local government that has taken on this challenge. The Denver suburb of about 30,000 has published [its own version of a taxpayer receipt] based on estimates of sales and property taxes. Sales tax is estimated by asking for total income and age to get an approximation of how much income is available to purchase sales-taxable items. For property tax, users are directed to the assessor's website to look up assessed value.

Here's a typical example. A 43-year-old Wheat Ridge resident making the local average income of $31,828 who owns an average-value home of $253,337 (assessed value of $20,165) and who makes 70 percent of his purchases within city limits would pay approximately $297 toward city services, including $89 for police, $41 each for public works and parks and recreation, and $3 toward the city manager's operations.

Whether or not paying these amounts for these services is a good deal is, of course, in the eye of the beholder. But if you have ever dialed 911 at 3 a.m. and minutes later had a police officer at the door ready to put her life on the line for you, you might well have thought you were getting your money's worth.

However, the value of a government taxpayer receipt goes deeper than "simply an accounting of a taxpayer's total tax burden," writes Alfonso, by "encouraging even greater citizen involvement in the budgeting process." That can lead to better public understanding of tough public-finance issues and help create a fact-based dialogue about priorities.

Tax receipts also serve as an educational tool for hard-to-illustrate facts, such as how property-tax revenue is split among public entities such as municipalities, counties and school districts. An administrator in a town with high property values told me she wanted residents to know that even though they pay high property taxes only a sliver goes to the city. Municipal receipts can also be a subtle reminder to buy local by illustrating that purchases made elsewhere pay for someone else's sidewalks.

GOVERNING.COM

BY CHRIS ADAMS | APRIL 18, 2017

Taxation Of Municipal Bonds?

Is there a threat to the municipal bond interest deduction?

The new administration's focus on tax reform, especially as many of us pay our federal and state taxes this week, draws our attention to the taxation of interest on municipal bonds. I recently heard a presentation by Steve Benjamin, mayor of Columbia South Carolina and executive director of the board of Municipal Bonds for America (MBFA), a group that comprises state and local government officials, municipal industry groups such as the American Public Power Association, and Bond Dealers of America. The mission of the MBFA is to educate members of Congress about the benefits of municipal bonds. The organization, along with the National Association of Counties (NACo) and many others, have sent letters to Congress extolling the virtues of municipal bonds and urging Congress not to tax municipal bond interest or eliminate the federal deduction for state and local taxes. Individuals and organizations can learn more about the MBFA and even sign the letter to Congress at municipalbondsforamerica.org.

The letters specifically remind current members that Congress officially recognized the importance of the federal/state partnership on October 3, 1913, when the tax system was codified. The exemption of interest on municipal bonds was one of 12 personal deductions and exclusions considered essential to the functioning of the nation. The principle of reciprocal immunity, by which the federal government does not tax states and local governments and vice versa, was considered imperative. A description of the original tax code is on the MBFA website; and the NACo site has a copy of the 1862 Emergency Federal Income Tax (a tax that incidentally was later determined to be unconstitutional), which included deductions for state and local taxes.

Tax-exempt municipal bonds play an important role in our building of infrastructure – we see the results every day in roads and bridges, airports, mass transit systems and affordable housing, hospitals and universities. Tax exemption results in lower interest expense for issuers, thus reducing property or other taxes and fees for residents. Private activity bonds (not to be confused with the internationally utilized public–private partnership model) are a type of municipal bond that helps fund infrastructure. Some of the revenue for bond repayment derives from the activities of private entities (such as an airport's collecting gate fees from airlines) or accrues when a private developer builds a project, for example a city hall, and leases it back to the municipality. Private activity bonds (PABs) are currently subject to the alternative minimum tax (AMT). If the AMT were abolished, it would result in lower costs and wider market access for PAB funded projects as well. Federal taxation of interest on municipal bonds would drive up funding costs and make projects more expensive.

To provide offsets to the proposed reduction in personal and corporate tax rates, some lobbyists have suggested that everything is on the table, including taxation of municipal bonds. In Citibank's March 6 2017 Municipal Weekly, the bank concludes that the potential revenue over 10 years from the taxation of municipal bonds would not be significant and that the political fallout from such a drastic step could be extremely negative for incumbent members of Congress. A retroactive tax on outstanding municipals could cause wealth reduction of $450–$500 billion, as the value of the municipal bonds would erode. This tax option is considered unlikely because it would be a breach of trust since the buyer was sold the bond with tax-exemption and with clean legal opinions issued under then current law. The option would generate $272 billion over 10 years, while the option of taxing only new bonds would yield $196 billion over 10 years. By comparison, the House GOP tax plan estimates a revenue loss of $2.2 trillion over 10 years from the reduction in individual income and payroll taxes.

Tax exemption of municipal bond interest is often seen as a boon to the wealthy, and according to 2014 tax data, roughly 40% of municipal interest is received by individuals with adjusted gross incomes above $200,000, while another 15% goes to those with AGI between $100,000 and $200,000. However, Citi (NYSE:C) also points out that 62% of municipal interest is received by those over 65, while another 23% is received by those aged 55 to 65.

Some say municipal bonds are inefficient and have prevented the development of a healthy private system for funding our infrastructure. We pause for a moment here to recognize that many P3 (PPP: public–private partnerships) deals in Europe involve the government's guaranteeing the private operator a return on investment, e.g., a minimum level of toll revenue for a toll-road project. With the P3 model there can be efficiencies gained due to experience and reduced bureaucracy, and certain risks become the responsibility of the operator. Our infrastructure needs are so great that there is room for many financing schemes. Municipal bonds have financed over $1.65 trillion of infrastructure in the last 10 years; however, the 2017 Report Card by the American Society of Civil Engineers once again assigned our overall infrastructure a grade of D+, the same as it did in 2013, the last time the infrastructure survey was conducted. There was modest improvement in seven infrastructure sectors, including schools, rail, inland waterways, wastewater, hazardous waste, ports, and levees, while there were lower grades in parks and recreation, solid waste, and transit.

Simplification of our tax code and reductions in tax rates was widely anticipated by the market and had contributed to expectations of improved economic conditions. Now, however, the market assumes a slower realization of gains due to delays in the implementation of tax reform. The fear that municipal bond interest will be taxed has been one factor contributing to the muni–Treasury ratio's being higher than average. Additionally, Treasury bonds may have lower yields than usual due to their attractiveness in a world of low-to-negative interest rates. They may also be benefiting from a flight to quality.

The muni–Treasury ratio historical average is 76%, in line with taxable equivalent yield. Since the end of the 2008 financial crisis, the muni-Treasury ratio has remained above its historical average, and has at times spiked such as in 2011 when Meredith Whitney issued comments regarding municipal credit quality, during the taper tantrum in 2013 and again as municipal prices were hurt post-the election of President Trump.

At Cumberland we have taken advantage of this disruption in the markets to buy bonds when municipal bond yields exceed their normal relationship to Treasuries, a strategy that has resulted in out-performance when the ratios return to more normal levels. For example, as the reality of the difficulty of implementing President Trump's proposed changes to healthcare and taxation has become clear, the muni-Treasury ratio has shifted back to a more normal level.

We do not think municipal bonds will lose their tax-exempt status. Further, if the maximum tax rate is lowered to 33%, municipal bonds will still be attractive, since the average tax rate for municipal buyers is 25%. If certain deductions are not allowed at the personal and corporate levels, municipal bonds will be one of the few tax breaks that remain. However, it is clear that the exemption is in play and that there are folks fighting hard for its continuation.

Investing.com

by Cumberland Advisors

Apr 20, 2017 09:27AM ET

[Is the Pendulum of Bond Pricing Beginning to Swing Back Toward Discount Bonds? If So, We Need to Be Prepared for the Resulting Bond Yield Calculations.]

Premium bonds have been the choice of investors now for many years but is that preference beginning to shift in favor of discount bonds? Discount bonds are appearing in bond structures with increasing regularity in recent months. We lawyers leave that question for the underwriters and financial advisors as interest rates turn upward. However, we need to be prepared for the shift in bond yield calculations that accompany a re-emergence of discount bonds.

Continue reading.

By Bob Eidnier on April 21, 2017

The Public Finance Tax Blog

Squire Patton Boggs

Taxable Versus Tax-Exempt Bond Financing For Project Financing: Smith Gambrell & Russell

When an industrial expansion will create jobs, revenues and development, many communities will offer incentives to attract the location. Bonds are an important incentive, authorized by state law to provide advantageous financing for certain businesses. A government body may issue bonds to finance a qualifying project, and the company operating the facility must pay amounts to service the bonds.

Federal tax law changes have restricted the use of tax-exempt industrial development bonds (IDBs) prompting communities to develop alternatives. In many jurisdictions "Taxable Bonds" can be issued with some of the same advantages.

Tax-Exempt IDBs

Interest on qualified IDBs is exempt from regular federal income taxation and, usually, income tax in the state where the bonds are issued. Due to the tax-exemptions, borrowing costs are lower than with conventional loans.

The federal law authorizes tax-exempt IDBs for manufacturing operations. "Manufacturing" includes facilities used in the manufacture, production or processing of tangible personal property, and up to 25% of the financing can be used for on-site related and ancillary office, warehouse and other space. Tax-exempt IDBs are available, without size constraints, also for some transportation, waste-related and other specialized facilities. See our "Overview of Private Activity Bonds and Incentives.

What are Taxable Bonds?

In most jurisdictions, public bodies can issue "Taxable Bonds," bonds that do not qualify for federal income tax exemption. Despite their name, Taxable bonds may bear interest that is exempt from state or local income tax and intangibles tax in the state in which they are issued, and other incentives might be utilized in connection with the bond financing.

Taxable Bonds may be issued without several size limitations imposed on tax-exempt IDBs. Tax-exempt IDBs are subject to an aggregate $1,000,000 limitation in any particular city or county, although this limitation can be increased to $10,000,000 if all capital expenditures in the jurisdiction made by users of the project during the six year period spanning the bond closing date are counted. Every user of tax-exempt IDB-financed facilities is subject to a further aggregate nationwide $40,000,000 limitation. Tax-exempt IDBs also must receive an allocation for a "volume cap" applicable to each state.

Taxable Bonds are not subject to many of the restrictions imposed on tax-exempt IDBs. Taxable Bonds often may be used for other-than-manufacturing projects, including warehouse, distribution, office, and research and development facilities. Tax-exempt IDBs are restricted when financing previously-used facilities, but Taxable Bonds are not. Limitations on and rebate of investment of funds borrowed with tax-exempt IDBs are also inapplicable to Taxable Bonds. Tax-exempt IDBs involve public hearing and approval, state volume cap, allocation and IRS reporting proceedings that are not required for Taxable Bonds.

Financial institutions cannot fully enjoy the benefits of tax-exempt IDBs they fund because their cost of funds is not tax deductible. Some banks buy IDBs at below-prime lending rates, but lesser rates are available when the bonds are sold to other investors. Financial institutions can purchase Taxable Bonds without the disallowance of their cost of funds, and Taxable Bonds can be attractive to banks.

Advantages of Taxable Bonds

Because interest earned on Taxable Bonds may be exempt from state and local income or intangibles taxes imposed in the state in which the bonds are issued, taxpayers in the state may purchase the bonds at reduced interest rates.

Furthermore, the participation of governmental bodies in a bond issue fosters community interest, often at the highest levels, in an industrial location. Government officials are likely to support such a project in other respects.

Perhaps most importantly, a bond issue is part of a total package of incentives in many jurisdictions, and may be a necessary vehicle for the use of some incentives. For example, there may be legal authority for the company to obtain a break in ad valorem taxes if the public body issuing the bonds takes title during the period a project is financed, although the company may be required to pay negotiated amounts in lieu of taxes. Some bond issuers taking title to a facility also may avoid the payment of sales tax on the project components. A community might have authority to contribute or discount land, other property or services in connection with a bond-financed project, or to provide a reduced rent.

Form of Transaction: Loan, Lease or Sale

A bond issuer sells the bonds and applies the proceeds to the project in one of three ways. Some issuers loan the bond proceeds to the company for use on the company's project, and assign the company's note to pay the bonds. Other issuers must own the project and lease or sell it on an installment basis to the company. When the latter methods are used, the project site is conveyed to the issuer and the project is constructed or acquired at the direction of the company with the bond proceeds. In such a case, the company enters into a lease or installment sale contract with the issuer which is assigned to pay the bonds, and the company obtains title to the project by the end of the contract term.

Whether a loan, lease or sale is used, the company has essentially the same control over the project as under conventional financing. The company normally is entitled to any depreciation and investment tax credit, is responsible for insurance, taxes and maintenance, and has freedom with respect to design and construction.

How to Obtain Taxable Bond Financing

Although bond financing appears to present a maze of technicalities, it can pay great dividends and Taxable Bonds involve fewer complications. The ability to use Taxable Bonds may exist even where local officials are not familiar with the technique. A company should consult recognized Bond Counsel experienced with Taxable Bonds early in the search process for advice on the availability of bond financing and other incentives in particular jurisdictions.

Bond may be issued by a development authority, board or agency, either at the state or local level. Usually a simple application is required to obtain an "inducement," a preliminary approval of the use of bond financing. For tax-exempt IDBs, the inducement should be obtained prior to the incurrence of costs to be financed, but the inducement may not be critical in determining what costs can be financed by Taxable Bonds.

Following inducement the financing must be arranged. Although some bond issuers may handle the placement of the bonds, most serve merely as "conduits" to the bond purchasers and the company must arrange for the placement and sale of the bond through professionals it selects. Usually the governmental unit does not provide credit for the bonds. The bondholders look only to the company and any mortgages or other credit enhancements it provides.

When Bond Counsel has completed all proceedings and documentation, the bond issuer adopts a final authorizing resolution. In some states a further centralized approval or a bond validation is required. However, the transaction will shortly be closed and the proceeds from the sale of the bonds made available for the project.

Growing Awareness of Taxable Bonds

Tax-exempt bonds have long been the favored tool for industrial expansion. With the use of tax-exempt IDBs restricted, awareness is growing that Taxable Bonds can provide many similar cost savings and can be used in conjunction with other development incentives. A company considering expansion sites ought to explore whether the incentives associated with Taxable Bond financing are available.

Article by James P. Monacell

Last Updated: April 19 2017

Smith Gambrell & Russell 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.

Reminder: New IRS Issue Price Rules Go Into Effect June 7.

The value at which a bond's price is determined at issuance is important to issuers of tax-exempt governmental debt because it is essential for determining the yield of a tax-exempt bond issue for arbitrage compliance purposes. It is also important for matters of compliance when a certain threshold is determined for the use of the proceeds—such as bank-qualified debt or voter-authorized debt. The final IRS issue price regulations are significantly different from prior regulations, which determined issue price by a reasonable expectation standard, established as the "first price at which a substantial amount of the bonds is reasonable expected to be sold to the public." This definition will change to the price at which bonds are actually sold to the public and it applies to bonds issued on or after June 7, 2017.

Ultimately, the documentation to accompany the debt issue, including underwriter certifications, Notice of Sale, and pricing wires will be required to establish issue price and should be should be discussed between the issuer, the issuer's municipal advisor, bond counsel, and the underwriter in advance of the sale. GFOA encourages state and local governments to consult bond counsel as to how these changes may impact upcoming bonds sales. Stay tuned in the next couple weeks for a member alert on the final rules and likely impact to issuers.

Government Finance Officers of America

Wednesday, April 12, 2017

IRS TEB Update: Automated Return Acknowledgement for Form 8038 Series Returns; Interactive Form 8038-CP.

Form 8038 series receipt acknowledgements
The return acknowledgement process for the Form 8038 series returns is automated. The IRS will send you a Notice CP152, CP152A or Letter 86C for each form you file. Don't include an acknowledgement copy of your return with your filing; it may delay processing or cause a duplicate filing.

Avoid Form 8038-CP processing delays
All required lines must be completed on your Form 8038-CP, Return for Credit Payments to Issuers of Qualified Bonds, before we can process it. We'll request any missing information from you by mail, leading to delays in getting your refund. To avoid these delays, use our interactive Form 8038-CP. Complete it in the order presented and you'll be alerted to missing fields and other errors.

Form 8038 Corner
The Form 8038 Corner on IRS.gov has links to the Form 8038 series returns, filing tips and the sequestration rates that affect Form 8038-CP filers.

NABL's Model Issue Price Certificates – Some Observations.

Joel Swearingen reported last week that the National Association of Bond Lawyers ("NABL") recently released exposure drafts of model issue price certificates that reflect the final Treasury regulations on issue price that take effect for tax-advantaged bonds sold on or after June 7, 2017. As Joel reported, the model issue price certificates cover the direct sale of tax-advantaged bonds by an issuer to a purchaser, the public offering of tax-advantaged bonds pursuant to a negotiated sale between the issuer and an underwriter(s), and the public offering of tax-advantaged bonds pursuant to a sale of the bonds from the issuer to an underwriter in a competitive bidding process.

Joel also promised that we would have more to come on the model issue price certificates that NABL released. If I learned anything from my mediocre high school athletic endeavors, it's that one should never show up, or let down, a teammate. In accordance with Joel's promise, herewith are some observations on NABL's model issue price certificates.

Continue reading.

The Public Finance Tax Blog

By Michael Cullers on April 12, 2017

Squire Patton Boggs

‘Trump Trade’ Reversal is Afoot as Money Flows to Bonds.

Muni inflows suggest investors scaling back tax-cut expectations: BAML

If fund flows are an indication, investors are giving up on the “Trump trade.”

As doubts about the timing and scope of President Donald Trump’s plans for corporate tax cuts, infrastructure spending and other policies grow, disillusioned investors have departed U.S. stock funds in favor of bonds, emerging markets and even European equities, according to weekly data compiled by analysts at Bank of America Merrill Lynch.

The fortunes of bonds have peaked as investors shift away from risky assets to haven investments, said Michael Hartnett, Bank of America Merrill Lynch’s chief investment strategist, in a Friday note. Even though stocks accrued $6.3 billion of additional cash against the $6.1 billion rushing into bonds for the week ending April 14, the longer-term trend remains firmly in favor of fixed-income assets.

In the past four weeks, U.S. bond funds drew around $36 billion in flows compared with the $4.2 billion that moved into stock funds. As investors bid up Treasurys, the 10-year Treasury note yield TMUBMUSD10Y, +0.00% continued to fall, this week hitting 2.233%, the lowest since November. Yields and bond prices move in opposite directions.

Similar dynamics have benefited the municipal bonds sector. Municipal bond funds recorded their third largest inflows ever of $1.6 billion, which “hints at acceptance U.S. tax reform will be far more modest than initially advertised,” Hartnett wrote.

The asset class’s recent outperformance has enjoyed a bump from doubts surrounding the outlook for tax changes. Municipal bonds attract rich retail investors that benefit from their considerable tax exemptions. But if Trump brings down income-tax rates for the wealthy or waters down the existing tax exemption, the chief appeal of holding municipal bonds will fade.

Elsewhere, European stocks have gained ground as the region’s economy shows signs of strength. European equity funds notched $1.8 billion of inflows, the highest they’ve been in 68 weeks, the analysts said.

Analysts say Trump’s touted desire for the dollar to weaken strengthens the case for investing in emerging markets. Emerging market assets, especially bonds denominated in dollars, tend to gain in value when the U.S. currency is weaker as foreigners find it easier to service debt. Funds investing in emerging market debt have recorded 11 straight weeks of inflows.

MarketWatch

by Sunny Oh

Published: Apr 14, 2017 12:13 p.m. ET

Help! Why Did the Tax Lawyers Change the Issue Price Certificate?

New Issue Price Regulations for Municipal Bonds and Newly Released SIFMA and NABL Model Documents

On Jan. 9, 2017, the U.S. Department of the Treasury (Treasury) published in the Federal Register (81 FR 88999) final regulations under Section 148 of the Internal Revenue Code of 1986, as amended (the Code), amending the "issue price" definition (the New Issue Price Regulations). The issue price definition is used to determine yield on a tax-exempt bond issue, which is needed for determining whether the bond issue satisfies the arbitrage rules of Code Section 148. Notice 2010-35 applies this definition to other tax-advantaged bonds, including build America bonds and other qualified tax credit bonds. While the concept of issue price is used for many other purposes in the tax-advantaged bond rules, the Section 148 definition technically applies only for the arbitrage rules. The Issue Price Regulations apply for bonds sold on or after June 7, 2017.

The promulgation of the New Issue Price Regulations is the culmination of a somewhat contentious process that Treasury began in response to Internal Revenue Service (IRS) beliefs that underwriters were abusing how bonds were priced under the existing issue price definition in Treas. Regs. Section 1.148-1 (Existing Definition). Treasury published its first proposal to change the issue price definition in the Federal Register on Sept. 16, 2013 (78 FR 56842). This proposal faced significant public criticism, and was withdrawn and replaced with another proposed definition (the 2015 Proposed Regulations) that was published on June 24, 2015 (80 FR 36301). While the 2015 Proposed Regulations were more favorably received, they still generated significant comments, resulting in Treasury making substantive changes from the 2015 Proposed Regulations in the New Issue Price Regulations.

The New Issue Price Regulations set forth a procedural framework that allows issuers to determine issue price under a range of circumstances depending on the pricing mechanism the issuer employs for its bonds sale. Given this, the National Association of Bond Lawyers (NABL) and the Securities Industry and Financial Markets Association (SIFMA) drafted model documents for underwriters and issuers to use when the New Issue Price Regulations take effect. On March 30, SIFMA released draft riders for its model agreements, and on March 31, NABL released its model certifications. These model documents are designed to address the new regulatory requirements for various types of transactions (i.e., negotiated public offerings, competitively bid public offerings, and private placements) under various circumstances. This GT Alert discusses the regulatory framework and form documents to answer questions about why tax attorneys changed the issue price certificates.

Background on Existing Issue Price Definition

Under Code section 148(h), issue price is generally determined under Code sections 1273 and 1274; under Section 1273(b), the issue price of publicly-offered bonds issued for money is the initial public offering price at which a substantial amount of bonds is sold. The Existing Definition modified this rule for tax-exempt bonds and provided that "substantial amount" meant 10 percent and, importantly for bona-fide public offerings, permitted issuers to determine issue price as of the sale date based on reasonable expectations regarding the initial public offering price. Separate issue prices were established for bonds with different payment and credit terms and "public" did not include "bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers." This one-paragraph definition dates back to 1993 (and the concept of using initial offering price, to 1979).

The IRS began expressing concerns about the Existing Definition around the time the Municipal Securities Rulemaking Board (MSRB) opened its electronic pricing system, EMMA (Electronic Municipal Market Access) in 2008-2009, which produced more transparency in bond pricing. Apparently, finding discrepancies in issue prices reported to the IRS and bond prices reported on EMMA, the IRS expressed concern that some underwriters were buying bonds from the issuer at one price and quickly reselling at a higher price with the financial benefit going to the underwriter. The tax problem, the IRS stated, was these actions understated issue price, likely resulting in an issuer incorrectly computing a higher yield on the bond issue and, thus, a higher permitted investment yield. We note that a recent release by the Securities and Exchange Commissioner supports the IRS concerns.

The 2015 Proposed Regulations

The 2015 Proposed Regulations were designed to reduce the potential for abuses by basing issue price not on reasonable expectations but on the actual price of the first 10 percent of each maturity of bonds sold. Using actual sales created problems, however, when the issuer needed certainty about issue price on the sale date. The underwriter may not have been able to sell 10 percent of each maturity in the bond issue by the sale date. The 2015 Proposed Regulations addressed this problem by allowing an issuer to use the initial offering price for undersold maturities if the underwriter made certain certifications and covenants about not filling orders at prices higher than the initial offering price. The 2015 Proposed Regulations:

- Generally removed the ability to base issue price on reasonable expectations; issue price was the price at which the first 10 percent of each maturity of the bonds was actually sold;
- Provided an alternative method for determining issue price when the issuer did not receive orders for 10 percent each maturity by the sale date. The issuer could treat the initial offering price to the public as the issue price, provided that:

    1. The underwriters filled all public orders at the initial offering price on or before the sale date and no underwriter filled an order at a price higher than the initial public offering price on or before the sale date;
    2. The lead underwriter certified to the issuer the initial offering price, that the above requirements were met, and that no underwriter would fill an order from the public received after the sale date and before the issue date at a price higher than the initial offering price unless such higher price was the result of a market change, such as a change in interest rates (the hold-the-price-period);
    3. The underwriter provided the issuer with supporting documentation for matters covered in the certifications; and
    4. The issuer did not know or have reason to know, after exercising due diligence, that the underwriter's certificate was false.

- Defined public as any person other than an "underwriter" (and related entities) and defining "underwriter" as: (i) any person that enters into a contract with the issuer (or lead underwriter) to participate in the initial sale of the bonds to the public, and (ii) any person that, on or before the sale date, directly or indirectly enters into arrangement to sell the bonds with any of the foregoing.

Concerns with the 2015 Proposed Regulations

While the industry was more receptive to the 2015 Proposed Regulations than they had been to the withdrawn proposed regulations, there were still concerns and comments, including:

- Requests for special simple rules for private placements (for example, bankloans) and competitive sales (the commentators pointed out that competitive sales have their own check on issue price through the bidding process and thus, should not create the same concerns as negotiated sales);
- While agreeing a special rule was needed to allow the initial offering price to be used, commentators noted several problems with the proposed alternative rule, including the lead underwriter would have to certify for other underwriter's actions,and problems with the hold-th--price period including the length of the period, the lack of clear industry benchmarks supporting when the price could not be held firm, and the increased cost to the issuer of the hold-the-price rule because underwriters would want to be compensated for their risk in holding the price;
- The desire for issuers to have the flexibility to choose the method used to determine issue price when more than one method applies;
- Requests for a special rule based on a percentage of sales of the aggregate issue (rather than separate percentages for bonds with different payment and credit terms);
- Concerns about the underwriter definition, including concerns about what "arrangement" created an underwriter relationship with the issuer;
- Concerns that the diligence standard required of an issuer relying on an underwriter certification appeared to be higher than the general standard for reasonable expectations under Code section 148;
- The lack of conclusiveness about issue price on the sale date (for example, when the underwriter fails to hold the price firm, as required);
- Problems applying the rules to competitive sales;
- The desire to use the issue price definition for other tax-exempt bond rules.

The New Issue Price Regulations incorporate many of these comments and provide a somewhat simpler approach to determining issue price.

The New Issue Price Regulations

<u>1. Alternatives for Determining Issue Price:</u>

Under the New Issue Price Regulations, an issuer may determine the issue price of a maturity of bonds with the same payment and credit terms under one of the following methods:

- The first price at which a substantial amount (10 percent) of a maturity of the bonds is sold to the public (Actual Sales Price Rule);
- For private placements to a single buyer other than an underwriter (or related party), the price actually paid (the Private Placement Rule), which is an application of the Actual Sales Price Rule;
- For competitive sales, the reasonably expected initial offering prices to the public as of the sale date that was used in formulating the bid, provided the issuer obtains the required certification from the winning bidder and the competitive sale meets the specified definition, which include rules for a three-bid competitive process (the Competitive Sales Rule); or
- For all sales in which clearly defined conditions are agreed to and met, the initial offering price to the public on the sale date (the Initial Offering Price Rule, which replaced the alternative rule in the Proposed Regulations).

If more than one method applies, the issuer may elect on or before the issue date which method it wants to apply.

<u>2. The Initial Offering Price Rule</u>

The Initial Offering Price Rule may be used in a public offering when:

- The underwriters offer the bonds to the public at a specified initial offering price on or before the sale date and the lead underwriter certifies to that effect to the issuer and provides supporting documentation (such as pricing wire), on or before the issue date; and
- Each underwriter agrees in writing that it will neither offer nor sell the bonds to any person at a price in excess of the initial offering price during a period (the new "hold-the-price" period) starting on the sale date and ending on the earlier of 1) the fifth business day after the sale date, or 2) the date on which the underwriter sells a substantial amount (i.e., 10 percent) of the bonds to the public at a price no higher than the initial offering price.

3. Competitive Sale Rule

The Competitive Sale Rule may be used when an issuer sells its bonds under a defined competitive bidding process. That definition requires:

- The issuer disseminates the notice of sale in a manner reasonably designed to reach potential underwriters;
- All bidders have an equal opportunity to bid (the regulations refer to the three-bid requirements for guaranteed investment contracts at Treas. Reg. Section 1.148-5(d)(6)(iii)(A)(6));
- The issuer receives at least three bids from underwriters of municipal bonds with established industry reputations for underwriting new issuances of municipal bonds; and
- The issuer awards the bid to the bidder that submits a firm offer to purchase the bonds at the highest price (or lowest interest cost).

NOTE – When an issuer can use more than one method, it may elect which method it wants to apply up until the issue date. Thus, if an issuer is engaging in a competitive sale and cannot meet the competitive sale definition (e.g., the three-bid requirement), it can still elect to use the Initial Offering Price Rule if the requirements for that rule are met. Of course, the issuer could face problems making this election if the agreements with the underwriter do not contemplate this possibility. As discussed below, SIFMA's and NABL's model certificates and agreements have been designed to address these possibilities as well as to provide issuers with all underwriter certifications required by the regulations.

4. Other Changes that Narrow Underwriter Definition and Change Issuers Due Diligence

The New Issue Price Regulations narrow the definition of underwriter to remove the reference to an "arrangement," and include only those persons in a contractual relationship with the issuer (or the lead underwriter) to participate in the initial sale of the bonds to the public, and any person that agrees pursuant to a written contract directly or indirectly with one of those persons in contractual relationship with the issuer to participate in the initial sale of the bonds to the public (e.g., under a retail distribution agreement). The New Issue Price Regulations also remove the issuer's special due diligence requirement, relying instead on a general reasonable expectations requirement.

Model Documents to Help Issuers Effectuate the Issue Price Regulations

The New Issue Price Regulations necessitate changes to various documents between the issuer and the underwriter and among underwriters. To help issuers and underwriters comply with the new regulations, on March 30, SIFMA released draft riders to various model documents, and on March 31, NABL released model issue price certifications.

1. NABL's Model Issue Price Certifications

NABL has produced five model certificates, each very concise and self-contained. These model certifications support determining issue price using:

- The Actual Price Rule for all maturities;
- The Initial Offering Price Rule for all maturities;
- A combination of the Actual Price Rule for some maturities and the Initial Offering Price Rule for other maturities;
- The Competitive Sale Rule (this certification includes a municipal advisor certificate about the bidding process); and
- The Private Placement Rule.

NABL also provided a consolidated form for negotiated sales that applies whether the issue price of one or more maturities is determined under actual sale prices and/or initial offering prices. This certification is similar to the combination certification except it provides options for when the issue price is determined solely under initial offering prices or actual sale prices.

2. SIFMA Draft Model Riders

SIFMA provided draft riders for the master Agreements Among Underwriters, the master Selling Group Agreement, the Retail Distribution Agreement, the Bond Purchase Agreement, and the Notice of Sale. Of particular note are the draft riders for competitive sales. These riders provide rights and obligations when, despite the issuer's reasonable efforts, the competitive bidding process is not met (e.g., the issuer does not receive three bids). One alternative under these riders is the underwriter may revoke its bid if the issuer determines to apply the hold-the-price-firm requirement for any maturity, in which case the issuer may award the securities to another bidder under the notice of sale. If the underwriter does not revoke its bid, it will have agreed to meet those requirements (and through riders to agreements with other underwriters in the group or syndicate, for those underwriters to also meet the requirements). The draft riders also include an option that does not permit the underwriter to revoke its bid, and requires the underwriter(s) to meet the hold-the-price requirements.

The riders also help the lead underwriter to make certifications about actions of other underwriters in the syndicate, such as the prices at which the maturities were sold and, if necessary, that the underwriters in the syndicate followed the special-rule requirements.

In the end, the New Issue Price Regulations seem much less controversial than Treasury's interim proposals. Nevertheless, they represent a significant change in the law and will necessitate changes in contractual arrangements between issuers and underwriters. It will be interesting to see how their implementation affects larger practice over time.

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

April 11 2017

Greenberg Traurig LLP

After Postelection Rout, Money Moves Back to Muni Bond Funds.

Flows into munis serve as a gauge of investor expectations for tax reforms

Investors' hopes for a quick enactment of the Trump administration's pro-growth policies continue to wane.

Money is rushing back into municipal bonds. Some $1.6 billion moved into mutual and exchange-traded funds that own muni bonds in the week ended April 12, according to Bank of America Merrill Lynch and EPFR Global. It was the third-largest weekly influx on record and the largest in more than four years.

Flows into munis have served since the election as a gauge of investor expectations for tax reforms because interest payments from these bonds, often backed by revenues of states, cities and other services, are typically free from federal taxes.

Investors dumped muni bonds in the wake of November elections that handed Republicans control of the White House and Congress as anticipation for a tax overhaul and spending on highways and other big projects under the Trump administration soared. Lower personal tax rates could lessen the after-tax yield advantages that muni bonds have relative to Treasuries, or other types of taxable bonds. Additionally, a new supply of tax-exempt bonds to finance spending on infrastructure projects could saturate the market, some analysts said. Some $3 billion rushed out of muni bond funds in the week after the U.S. elections, the most in more than three years.

But as uncertainty about the White House's pro-growth policies has increased this year, money has moved back into muni bonds. To Michael Hartnett, chief investment strategist at Bank of America Merrill Lynch, the recent rush into municipal bond funds "hints at acceptance U.S. tax reform will be far more modest than initially advertised."

THE WALL STREET JOURNAL

By CHRIS DIETERICH

Apr 17, 2017 9:06 am ET

Why Bond Investors Should Avoid Big-Box Retailers.

Unless you are a commercial real estate expert, tax assessor or bond geek, you've probably not heard of the retail Dark Store theory. This may sound a bit hair-brained but it's 100% true.

Many big-box retailers—names with which you are familiar such as Target, Lowe's Home Improvement, Wal-Mart, CVS and Home Depot—are appealing their property tax assessments. They are claiming the appraisal should be based on the store's vacant or "dark" value.

It is abundantly clear that Internet sales are crushing the old brick and mortar retailers. This has given the large box retailers that are still standing new incentive to sue for massive property tax reductions. Arbitrations and lawsuits are flying. It's not happening just in little towns or counties. This property tax litigation wave is in Dallas, Houston, Indiana, Madison Wisconsin and Michigan, to name a few.

Litigation costs are soaring for these municipalities, already with scarce resources to fend off the lawsuits. Eventually, they will have to settle for a reduction in their property tax revenue rather than go broke trying to prove they're right.

What does this have to do with bond investing?

Everything! Everything you've grown to believe about why municipal bonds are secure. Think about it. A big-box retailer wins a major property tax reduction suit. That municipality's revenues decline. And in the process it incurred massive litigation expenses that were never budgeted. Any way you cut it, this contributes to revenue deficiencies.

According to a *Bond Buyer* February 21, 2017 article, "Dark-store assessment theory has prevailed in legal battles in Michigan, Indiana and other states, contributing to millions in lost local tax revenue."

I have railed for years that General Obligation bonds no longer take priority in our investment protocol. Nor should they in yours. Revenue bonds that have a dedicated revenue stream beat out GOs. Now, in some areas, property taxes are in decline and may be in permanent jeopardy as the Internet not only disrupts retailers but the areas in which they reside.

So keep it simple and safe. Invest in senior lien airport revenue bonds only from major hubs—no regionals. Invest in water & sewer municipal bonds in economic upscale areas. Invest in personal income tax bonds, toll bridges and turnpikes.

Internet disruption will only amplify. Don't let it affect your munis.

Forbes

Apr 17, 2017

by Marilyn Cohen, Contributor

Marilyn Cohen is founder and CEO of Envision Capital Management, a Los Angeles fixed-income money manager.

California Just Did What Trump and Congress Won't.

The Golden State passes a massive infrastructure plan—paid for by (gasp!) new taxes

Yesterday, the California legislature passed the largest gas tax increase in state history in a move projected to raise $52 billion over 10 years to fix the state's crumbling roads, bridges, and public transit systems. The state already has some of the highest gas taxes in the country. But the falling price of gas, increased fuel efficiency, and the popularity of hybrid and electric vehicles has recently crimped tax revenues, contributing to an estimated $135 billion backlog in road and bridge repairs. The new tax is designed to plug that gap with a 12-cent per gallon increase in the gas tax, as well as new taxes on diesel fuel, a $100 annual fee for electric cars, and higher vehicle registration fees.

California now joins 17 other states—half of them controlled by Republicans—that have enacted gas tax increases since 2013. Yet this approach remains a nonstarter for many Republicans on Capitol Hill and within the Trump administration, which are pushing a national infrastructure plan funded by granting tax credits to private investors.

"The Speaker of the House of Representatives is ideologically opposed to public investment in public infrastructure," says Rep. Peter DeFazio (D-Ore.), the ranking member of the House Transportation and Infrastructure Committee. Like California's plan, DeFazio's Penny For Progress Act would use increased gas taxes to fund federal highway and transit investment. But it has yet to receive a hearing in Congress. “Anything that involves a tax or a user fee, [Speaker Paul Ryan] is against it. So that’s the roadblock here.”

Passing the California tax was a major victory for 79-year-old Gov. Jerry Brown, who has positioned the Golden State as a bulwark against the right-wing policies and legislative incompetence of the Trump administration. In a mere eight days, the veteran governor went from announcing the bill to assembling the two-thirds supermajority of lawmakers required to enact a tax increase. All of the votes except one came from Democrats, and after the vote Brown slammed Republicans for their opposition. “I appreciate being a Democrat and what the Democrats did,” he said. “There is a reason why the members of the other party have been going downhill for so many decades. That’s because they are doing nothing. We did something to fix the roads of California.”

Brown had crisscrossed the state to win over Democratic moderates from rural and suburban areas who were concerned about the tax’s impact on farmers, truckers, and commuters. Taxing drivers is a sensitive issue in sprawling California; in 2003, Democratic Gov. Gray Davis was recalled in part due to a backlash over hiking vehicle registration fees. “Now is the time—don’t blow it guys,” Brown said at a press conference Tuesday in the Inland Empire district of Democratic state Sen. Richard Roth, one of the last holdouts. When his term ends in 2018, Brown said, “I’m going off to my ranch. You’re going to be driving on these damn roads. Fix them now, or we may never get them fixed.”

Brown’s skill at legislative deal-making contrasts sharply with the progress of Trump’s proposed $1 trillion infrastructure deal, which has been tied up in Republican infighting. Speaker Ryan and a faction within the Trump administration led by billionaire leverage buyout specialist-turne--Commerce Secretary Wilbur Ross want almost all of the spending to come from tax credits given to private investors who underwrite infrastructure projects such as toll roads. Ross argues that $137 billion in tax credits over 10 years could spur $1 trillion in infrastructure investment, matching Trump’s campaign promise. But some conservative economists say the approach doesn’t hold water.

“I don’t think that is a model that is going to be viewed as successful or that you can use it for all of the infrastructure needs that the US has,” Douglas Holtz-Eakin, president of the center-right American Action Forum think tank, told the Associated Press. It would only work for projects that generate tolls or user fees, Holtz-Eaken said, and even then, the plan might reward investors for projects that would have been built anyway.

In contrast, DeFazio’s bill would raise $500 billion in infrastructure investment by issuing bonds that would be paid off by increasing federal gasoline and diesel taxes, which have lost 40 percent of their purchasing power since 1993 due to inflation. According to the Department of Transportation, the United States faces an $926 billion backlog in necessary highway, bridge, and public transit investments. DeFazio says many rank-and-file Republicans in Congress like his proposals but won’t put their names on his bill because “House Speaker Paul Ryan thinks that only the private sector should do these projects, even if it’s public infrastructure.”

Even with the new gas tax, California still needs federal infrastructure investment. “States can’t do it on their own,” DeFazio says. “California can’t raise enough money in and of itself, nor can any other state. And a substantial number of red states have raised their gas taxes in recent years and no one’s been recalled and no one’s lost their elections. Americans get it.”

MOTHER JONES

JOSH HARKINSON

APR. 7, 2017 2:23 PM

IRS Published Volume Cap Limit for Tribal Economic Development Bonds.

The Published Volume Cap Limit for the period commencing April 1, 2017 is $155,597,589.70 (20% of the amount of available volume cap of $777,987,948.52 determined as described in Notice 2012-48).

In Notice 2012-48, 2012-31 I.R.B. 102 (July 30, 2012), the Treasury Department and the IRS provided guidance regarding applications for allocations of the available amount of national bond volume limitation authority (volume cap) for tribal economic development bonds. The Notice provides that, except as otherwise provided in the Notice, for applications filed with the IRS that meet the requirements detailed in the Notice, the IRS will allocate an amount of available volume cap equal to the amount requested in the application on a first-come, first-served basis by order of submission date (as defined in the Notice).

The Notice also provides that no Indian tribal government will receive an allocation of volume cap that would cause the aggregate amount of volume cap allocated to that Indian tribal government pursuant to the Notice (not including certain amounts forfeited as described in the notice) to exceed the Published Volume Cap Limit in effect for the period that includes the submission date. The Published Volume Cap Limit for any period is the greater of (1) 20% of the amount of available volume cap as of the first day of such period (determined as described in the Notice); or (2) $100 million.

For purposes of this limitation, an Indian tribal government includes the Indian tribal government, together with any political subdivisions of the Indian tribal government, and any entities controlled by the Indian tribal government. An application that requests an allocation of volume cap in an amount that would cause the Published Volume Cap Limit in effect on the date of submission to be exceeded will be treated as incomplete until the day the applicant supplements the application in a manner that complies with the requirements of the notice and does not cause such limit to be exceeded.

In accordance with the Notice, the IRS plans to publish updated Published Volume Cap Limits on the IRS website at Information for Tax Exempt Bonds.

TAX - OHIO

Nibco Inc. v. City of Lebanon

United States Court of Appeals, Sixth Circuit - February 27, 2017 - Fed.Appx. - 2017 WL 763908

Due to its employee's clerical error, a municipality mistakenly undercharged a customer for electricity over a period of 65 months and, upon realizing its mistake, demanded that the customer pay the full $1.27 million undercharge.

The parties' relationship was governed not by an individualized contract, but by a municipal ordinance, which had no provision authorizing the municipality to recoup undercharges arising from its own clerical error.

The district court declared the ordinance ambiguous, held that the customer's interpretation would lead to an "absurd result," and ordered the full payment.

The Court of Appeals reversed, finding that the ordinance was not ambiguous under Ohio law and that the customer was correct that the municipality had no authority to recoup this undercharge.

State and Local Governments Press Congress on Tax Reform Priorities.

Groups representing state and local governments on Tuesday urged Congress to preserve two tax preferences in tax reform legislation: the state and local tax deduction and the tax exemption for municipal bonds.

“These essential components of the tax code support vital investments in infrastructure, public safety and education, encourage economic growth and provide states and local governments with financial flexibility to meet our residents’ needs,” the groups wrote in a letter to lawmakers.

Tax reform is high on the agenda for congressional Republicans and President Trump.

House Republicans are working on legislation based on a blueprint they released last year, which would do away with the state and local tax deduction and does not explicitly mention the municipal bond tax exemption. Trump told a group of mayors in December that he supports the municipal bond tax exemption, and the most recent version of his campaign tax plan capped itemized deductions for high earners.

The state and local groups said that curbing the deductibility of state and local taxes would amount to double taxation. They also said that elimination of the deduction would reduce state and local governments’ control over their own tax systems.

“Abolishing federal deductibility could also greatly constrain policy options available to states and local governments facing economic hardships and increased responsibilities due to the devolution of federal programs,” they wrote.

The groups also said that the municipal bond tax exemption is important to them because it makes it less expensive for state and local governments to finance infrastructure projects.

“Any tax reform bill should not sacrifice – and drive up the costs – of one of our nation’s most effective methods of financing for critical infrastructure,” they wrote.

The groups that sent the letter were the Council of State Governments, the National Association of Counties, the National Governors Association, the National Conference of State Legislatures, the National League of Cities, the U.S. Conference of Mayors and the International City/County Management Association.

THE HILL

BY NAOMI JAGODA – 04/04/17 09:18 PM EDT

State Deduction Among Possible Targets If ACA Taxes Axed.

Republicans could try to eliminate the municipal bond interest tax exemption or the state income tax deduction after the failure of the House GOP health care bill undermined their ideal tax reform baseline.

Repealing the Affordable Care Act and its taxes had been Republicans' plan to find the savings for a revenue-neutral overhaul of the tax code, ending billions of dollars in spending on credits and subsidies and lowering the baseline to make tax reform a little easier. Since that effort fell apart, lawmakers may have to turn to alternatives.

"The question hinges on whether lawmakers will now seek to repeal some or all of the ACA taxes," Scott Greenberg, an analyst at the conservative-leaning Tax Foundation in Washington, told Bloomberg BNA.

The taxes include net investment income and medical device taxes.

U.S. House Speaker Paul Ryan (R-Wis.) withdrew the GOP-authored American Health Care Act March 24 when it became clear it lacked the votes to succeed. Ryan and President Donald Trump said they would move on to tax reform, returning to health care later.

"If lawmakers do try to repeal the ACA taxes as part of tax reform, then the budget math will become more difficult, and they may need to look more seriously at unpopular measures to raise additional revenue," Greenberg said.

Alternatively, lawmakers could decide that ACA taxes shouldn't be repealed until the health law itself is. In that case, the budget math for tax reform shouldn't be any harder as a result of the failure of ACA repeal, he added.

Hard to Predict

Charles Henck, an attorney and partner in the Washington office of Ballard Spahr LLP who specializes in tax matters, told Bloomberg BNA that the exemption for municipal bond interest and the state and local tax deduction are probably safe, but that he wouldn't be surprised if they were on the table.

"Predicting what Congress will do" is nearly impossible, he said, adding that municipal bonds, a popular method used by states and local governments to pay for roads, bridges and other public projects, often come up in congressional tax reform talks.

Border Adjustment

Other factors are at play for states. If Congress doesn't pass a border-adjustment tax, that also could put exemptions and deductions that states care about in jeopardy.

"If the border-adjustability piece, which raises close to a trillion dollars, is not completed, and we've heard mixed views on that, then everything is on the table," including the exemption for municipal-bond interest, said Jim Febeo, senior vice president of government relations at Fidelity Investments.

In general, imports would be taxed and exports would be exempt under the border adjustment plan.

Revenue-Neutral Goal

All of these issues are interrelated, even more than they otherwise would be, because Speaker Ryan and Senate Majority Leader Mitch McConnell (R-Ky.) have said they want a revenue-neutral tax plan so that it can pass the Senate with just 50 votes. Vice President Mike Pence could provide the tie-breaking vote, if needed. The picture is in flux, however, and some lawmakers have said they are less committed to revenue neutrality in a tax bill.

Scott Pattison, CEO of the National Governors Association, said his organization is asking congressional leadership to consult with governors on issues that might impact state budgets. The group and individual governors have been very active this term reaching out to House and Senate members, as well as the White House, Pattison said.

He said he has been pleased with the reception governors have received from lawmakers.

Bloomberg BNA

By Che Odom

April 3, 2017

To contact the reporter on this story: Che Odom in Washington at codom@bna.com

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TAX - LOUISIANA

Filmore Parc Apartments II v. Foster

Court of Appeal of Louisiana, Fourth Circuit - February 15, 2017 - So.3d - 2017 WL 605014 - 2016-0568 (La.App. 4 Cir. 2/15/17)

Taxpayer filed petition to recover ad valorem taxes, alleging that it provided public housing and, therefore, was exempt from ad valorem taxation.

The District Court granted summary judgment for parish assessor. Taxpayer appealed.

The Court of Appeal held that remand was required for determination of whether housing units were dedicated to public use.

Remand was required on appeal from trial court’s determination that housing units did not constitute public housing for purposes of exemption from ad valorem taxes, where, after determining that the units were privately owned, trial court failed to examine whether the units were dedicated to public use.

Bill Would Ease PAB Restrictions for First-Time Farmers.

WASHINGTON – Rep. David Young, (R)Iowa, has introduced a bipartisan bill that would ease tax-exempt private activity bond restrictions for first-time farmers.

The Facilitating Farmers Access to Resources and Machinery Act, H.R. 1750, has five cosponsors – the other four Iowans in the House, Reps. Dave Loebsack, a Democrat, Rod Blum, a Republican, and Steve King, a Republican, as well as Reps. Collin Peterson, a Democrat from Minnesota and Darin LaHood, a Republican from Illinois.

Roughly 19 states in the nation provide financing programs for first-time farmers, with the largest being Iowa, according to the Council of Development Finance Agencies.

The federal tax code currently permits first-time farmers to use up to $450,000 of tax-exempt private activity bond proceeds for land or depreciable property. The law was amended in 2007 to provide a cost-of-living adjustment that effectively took that amount up to $524,200. The bill makes clear the amount is $524,200 and adjusts it annually for inflation going forward from 2017, rather than 2007.

The current tax code limits to $62,000 the amount of tax-exempt PAB proceeds that can be used to finance the purchase of used farm equipment. The bill would repeal this limit.

Under the law, the proceeds cannot be used for any issue if more than $250,000 of the net proceeds of the issue are used to provide depreciable farm property for which the principal user is or will be the same person or two or more related persons. The bill would raise the amount of net proceeds to $524,200 from $250,000.

Current tax law, in determining whether a farmer is first-time, says he or she must not have previously owned and operated "substantial farmland," defined as land equal in size or larger than 30% of the median size of farms in the same county. The bill would change "median" to "average," which would probably mean an increase in size because very large farms would affect the average more than the median. One Iowa official said that a number of small "hobby farms" have started up in some states and have been skewing the numbers downward.

The bill has been referred to the House Ways and Means Committee.

Six states issued tax-exempt agricultural bonds in 2015, according to an annual survey done by CDFA. Iowa issued $16.9 million, Pennsylvania $8.6 million, Nebraska $700,000, Minnesota $500,000, Maryland $300,000 and South Dakota at least $200,000, according to the survey.

Other states that can issue such bonds are: Arkansas, Colorado, Idaho, Illinois, Indiana, Kansas, Missouri, Montana, North Dakota, Oklahoma, and Wisconsin, according to CDFA. Maine and New York are implementing programs, it said.

The Bond Buyer

By Lynn Hume

Published April 03 2017, 4:56pm EDT

Goldman: Munis Still Attractive Even If Top Tax Rate Falls.

For investors in a top tax bracket, muni yields on a tax-equivalent basis, are roughly 5% — far more attractive than investment grade corporates (3%), agency mortgage-backed securities (2%), or Treasuries at 1.5%.

But even if tax rates fall, munis are still more attractive than all those options, **Goldman Sachs Asset Management** shows in a new report. Strategists write:

> After adjusting the current highest tax bracket from 43.4% to a hypothetical 33%, municipal bonds remain attractive compared to other investment grade fixed income.

The tax equivalent yield just drops closer to 4%.

Another point in the same report is that investors should “stay dynamic, not just “ladder” their maturities and stick with that. Strategists write:

> Municipal bond investing has often been characterized by a static commitment to buy-and-hold “ladder” portfolios. However, we believe structural shifts in insurance, issuance, inventory, and the variable nature of returns are best addressed by a flexible approach that includes the capacity to shift duration, term structure, and credit quality.

In 2017 throught the end of February, the top performing muni sub-sectors are 30-year high yield munis and 5-year triple Bs. The worst-performing was 10-year triple-As.

The benchmark-tracking **iShares National Muni Bond ETF** (MUB) has a 2.3% current yield and is up 1.2% on a total return basis this year. The index it follows is up 1.68%.

Barron’s

By Amey Stone

April 4, 2017, 4:50 P.M. ET

As Tax Season Arrives, 8 Ways You Can Get Taxed on Municipal Bonds.

It’s tax season and the April tax filing deadline is less than two weeks away. Death and taxes are both supposed to be unavoidable. Most people do eventually come to the realization that death is the inevitable outcome in the game of life. When it comes to investing, some investors do manage to get tax-free income by investing in municipal bonds. Some muni-bond investments just might not be quite as tax-free as some investors hope.

After featuring the 19 mistakes that the IRS does not want you to make, 24/7 Wall St. wanted to remind investors that the world of muni bonds can still create instances in which investors may have to pay taxes.

What is generally not taxed at the federal level by the Internal Revenue Service is basic coupon payments and income. Other aspects of muni-bond investments may get taxed directly, while other aspects of them may inadvertently trigger other federal taxes. There can also end up being taxes at the state level.

It is always important for investors to understand exactly what it is that they own. It is each investor’s responsibility to know whether or not they will get taxed on something they think is tax-free. Relying solely upon a broker to say a muni-bond is tax-free will not get investors out of a tax bill. Sadly, investors also might have to pay taxes even though a tax professional might have thought a muni-bond investment was tax-free.

Here are eight ways that investors can still get stuck with a tax bill on municipal bond investments. Unfortunately, there are likely other ways that investors may find out their tax-free investment wasn’t quite as tax-free as they thought.

1. Capital gains taxes.

The most basic formula for bond investing is that yields and bond prices move inversely. As interest rates fall, the face value of a bond (all things being equal) will rise. If you own a 20-year municipal bond with a 4% coupon, and in just a few years the same municipality can issue debt at a 3% coupon, the value of that bond has likely risen considerably. If that investor sells out at a profit before maturity, then a capital gain was just created that can be taxed at the federal level. It may also be taxed as a capital gain at the state tax level, depending on the state in which the investor lives. One way to avoid getting a capital gains tax on a muni-bond is to "hold to maturity."

2. State income taxes in muni-bonds.

State and locally issued tax-free municipal bond income is not taxed at the federal level. Most states do not tax that income if the bond is issued in that same state, but they may have a tax on a muni-bond that is issued from another state. This varies greatly from state to state, and one rule of thumb is that the states with higher taxes tend to tax these out-of-state muni-bonds. Investors that reside in a state without a state income tax get to avoid a state-level tax on municipal bonds.

3. Some muni-bonds aren't even tax-free!

Unfortunately, not every single muni-bond is automatically tax-free on the income portion. A small amount of muni-bonds that have been issued are classified as taxable municipal bonds. Some of these bond issuances by a city, county or other district may be issued to help an underfunded pension system. Others might fall under the Build America Bonds program. These can be taxed at the federal level, even though they might still avoid certain state income taxes. A good rule of thumb is that taxable muni-bonds usually have higher yields than their tax-free counterparts — usually. It is each investor's responsibility to make sure that the high-yield tax-free coupon that sounded too good to be true might actually taxable after all.

4. Taxation on Social Security benefits.

You have paid into Social Security your whole adult life. Unfortunately, the IRS counts income from muni-bonds in each taxpayer's modified adjusted gross income, or MAGI, to determine how much of that Social Security benefit is actually taxable. Charles Schwab shows that if your combined income from Social Security checks and from investments (dividends and bond interest included) is over $34,00 for an individual or $44,000 for a married/joint filing, then about 85% of the taxpayer's Social Security benefit can be taxed at the federal level.

5. Higher Medicare premiums?

If your health insurance is through Medicare, you might not be quite as home-free as you thought. The tax-exempt interest earned from muni-bonds can sometimes increase the amount that you have to pay for Part B or prescription drug coverage. If your MAGI is more than $170,000 under a married or joint filing (half that for individual filers), then you may have to pay more for that Medicare Part B and Medicare prescription drug coverage. The good news about tax-free muni-bond income is not part of that 3.8% Medicare tax under Obamacare/ACA for those in the higher tax brackets.

6. That pesky Alternative Minimum Tax.

The IRS has known for many years that some muni-bond buyers buy these because they do not get taxed on the income. There is a dual tax system that allows the government to still tax people, even if they thought they might escape federal taxes. There is the ordinary income tax that hits most of us, but there is an Alternative Minimum Tax, the AMT, which blocks some of the deductions that are otherwise allowed by the IRS under the tax code for ordinary income. This was first designed to keep a few old wealthy people from avoiding federal taxes, but the AMT has reached more and more people over the years. It turns out that the IRS gets to tax you at the rate that would generate the higher tax bill. And some muni-bonds that fund more business-oriented efforts can also be subject to AMT. What looked like a great 5% yield might really be a 4% yield (or less) by the time AMT gets figured into the equation.

7. Taxing at the de minimis level.

You do not hear the term "OID" that much anymore, which was an Original Issue Discount bond in which the bond may have had a par-value (100) at maturity but was issued at a discounted price. What is far more common today is a bond value that falls and an investor buys the bond at a substantial discount to the 100 par value. This can trigger the de minimis rule in taxes. Investors buying bonds at a discounted price under 0.25% for each year (purchase date to maturity date), those incremental price gains in the discount get taxed as capital gains. If the rate is over 0.25% per year then that discount gets taxed at the investor's income tax rate. PIMCO, Fidelity, Schwab and other sites offer details about the de minimis tax rule, and there are warnings that rising interest rates may fuel more concerns on this front.

8. Bond funds versus individual bonds.

Many investors hate taking individual issue risks, whether they are in stocks, bonds, annuities, CDs or other instruments. That steers some investors into mutual funds or exchange traded funds. Many investors will see a bond yield in a muni-bond fund (open-end or closed-end) and they might believe they are avoiding the multiple catch-all tax buckets. Unfortunately, many bond funds use a bit of leverage to juice up their bond yields and that can create certain taxable events. Some muni-bond funds also buy bonds that are taxable munis or they may own muni-bonds that get hit by the AMT (sports arena bonds, pension fund bonds or airport bonds) and it can translate into the fund investor eventually getting a tax bill. Some muni funds also trade in and out of their bonds long before maturity, which can create capital gains that an investor might not have otherwise considered when investing. The Closed-End Fund Association (CEFA) website can help investors identify individual closed-end funds with AMT and which part of a dividend might have capital gains.

24/7 Wall St.

By Jon C. Ogg April 6, 2017 8:05 am EDT

[States, Cities Ask Congress to Save Tax Deduction, Muni Exemption.]

A coalition of nonpartisan groups representing state and local governments is asking Congress to preserve a popular income tax deduction, as well as an exemption on interest earned from municipal bonds.

The coalition, known as the Big 7, consists of the National Governors Association, the National Association of Counties, the Council of State Governments, the National League of Cities, the National Conference of State Legislatures, the U.S. Conference of Mayors and the International City/County Management Association.

The Big 7 sent members of Congress a joint letter late April 4, explaining that the deduction for state and local taxes and the exemption of municipal bond interest are "essential tools for states and local governments across the country."

They support "vital investments in infrastructure, public safety and education, encourage economic growth and provide states and local governments with financial flexibility to meet our residents' needs," the letter said.

The deduction and exemption have been around since the federal tax code's inception in 1913, but Republicans are under pressure to make sweeping changes to the tax code while they have control of Congress and the White House.

The exemption and deduction have many defenders in Congress. Early last month, more than 150 lawmakers asked the House Ways and Means Committee leadership in a letter to preserve the municipal bond exemption.

Recurring Target

Controversy over municipal bonds comes up every few years, said Charles Henck, an attorney and partner in the Washington office of Ballard Spahr LLP who specializes in tax matters.

The bonds are the primary method used by states and local governments to finance public projects, including roads, bridges, schools, hospitals and water infrastructure. They could become an important method for financing some of the $1 trillion worth of infrastructure spending advocated by President Donald Trump.

The exemption "reduces the cost of issuing municipal bonds," the Big 7 letter said.

Commerce Secretary Wilbur Ross, prior to joining Trump's cabinet, criticized the exemption, calling municipal bonds an inefficient way of paying for projects. Trump, however, reportedly told a group representing the U.S. Council of Mayors in December that he had no plans to end the exemption.

However, some tax attorneys and policy experts warn that Republicans might end or limit the exemption as a way to provide tax relief elsewhere. Some have said the exemption may be more in peril if Affordable Care Act taxes are targeted or Congress fails to pass a border adjustment business tax, which taxes imports while exempting exports.

Jim Febeo, senior vice president of government relations at Fidelity Investments, told Bloomberg BNA in March that if border adjustability, "which raises close to a trillion dollars," is not enacted, then "everything is on the table."

Bloomberg BNA

By Che Odom

April 6, 2017

Text of the letter is at http://src.bna.com/nEO.

[Model Issue Price Certificates Released: Squire Patton Boggs]

As Alexios wrote about a few weeks ago (here), we are in the middle of a dry spell when it comes to new guidance from the IRS. Thankfully, the National Association of Bond Lawyers ("NABL") recently released exposure drafts of several model issue price certificates (see here and here). The draft certificates are the product of collaboration between NABL and the Securities Industry and Financial Markets Association ("SIFMA") and are intended to help implement the final issue price regulations (discussed here). The final regulations take effect on June 7, 2017 and the draft certificates should help facilitate agreement between issuers, financial advisors, underwriters, purchasers, bond counsel, and any other interested parties within a working group. In order to finalize the drafts in advance of the effective date of the final regulations, NABL has requested comments to be submitted no later than Friday, April 14, 2017.

Continue reading.

The Public Finance Tax Blog

By Joel Swearingen on April 7, 2017

Squire Patton Boggs

U.S. Tax Cuts Could Drive Key Buyers Away From Muni-Bond Market.

- 'Most realistic near-term threat to the market,' says analyst
- Banks, insurers have swelled holdings of tax-exempt debt

President Donald Trump's push to cut corporate taxes threatens to undermine a key pillar of the $3.8 trillion municipal-debt market.

Banks and insurance companies emerged as major buyers of U.S. state and local government bonds over the last seven years by adding $415 billion to their holdings, leaving them with their largest share of the market since the late 1980s, according to Federal Reserve Board data.

While the details, timing and scope of Trump's plans haven't taken shape, he's made it a priority to lower corporate tax rates — a step that would weaken demand for municipals, which are a draw because the interest payments are tax exempt.

"The corporate tax cut is probably the most realistic near-term threat to the market," said Mikhail Foux, head of municipal strategy at Barclays Plc.

The rollback could cause the price of municipal bonds to underperform other assets and increase costs to governments that rely on them to finance public works. Such concerns, though, have largely taken a back seat since Trump's election, with state and local debt outperforming Treasuries amid speculation that his tax and spending plans will stoke the economy and further increase interest rates.

The ability of Trump to act swiftly on his agenda, however, been cast into doubt by the failure of his effort to repeal the Affordable Care Act, and his mixed signals on tax reform are vexing Republican hopes of achieving consensus. The House Republican blueprint endorsed by Speaker Paul Ryan envisions a 20 percent "border-adjusted" corporate tax rate that applies to domestic sales and imports, while exempting exports. Trump has floated a corporate tax rate as low as 15 percent, without specifying how — or if — the cost of doing so would be offset by other changes.

So far, no action has been taken in Congress. Representative Kevin Brady of Texas, a Ryan ally who chairs the tax-writing Ways and Means Committee, reiterated on Thursday his commitment to action on a bill this spring, while key Senate Republicans, including Finance Committee Chairman Orrin Hatch, have questioned on the prospects of passing permanent tax changes without Democratic support.

Any cut to the tax rate could sap demand for tax-exempt securities from businesses. While highly rated 10-year municipals would still provide a better after-tax yield than comparable corporate debt if the rate were cut to 25 percent, that wouldn't be the case if it were reduced to 20 percent, according to Matt Caggiano, who helps oversee more than $9 billion of municipals from insurance companies at Deutsche Bank AG.

For banks, their "sweet spot" are bonds due in 15 to 20 years, which otherwise have "no natural buyers" since retail investors prefer shorter maturities, said Foux, the Barclays analyst. Should banks scale back their purchases, that part of the curve would be most affected.

Insurers also gravitate toward longer-dated bonds. Property and casualty insurers have already started selling some securities and letting others mature without replacing them, said Foux and Caggiano.

Some municipal bonds are already trading above comparable Treasuries, despite the tax breaks. During the broad fixed-income selloff that followed Trump's election, the yields on 10-year benchmark tax-exempt debt jumped to as high as 108 percent of Treasuries, indicating that the price of municipals was cheap by comparison. While that has since declined, benchmark municipal bonds maturing in 13 years or more still yield more than U.S. government debt, according to data compiled by Bloomberg.

"Buying 15-year triple-A munis at almost 110 percent of Treasuries seem like a pretty good deal unless you believe taxes are going to zero," said James Iselin, head of the municipal fixed income team in New York at Neuberger Berman, which oversees about $10 billion in munis.

For investors concerned about the uncertainty ahead, seven- to 15-year maturities are attractive, said Deutsche's Caggiano. Iselin also advises steering clear of lower-rated municipals, which may be hit hardest if tax changes spur investors to yank money from mutual funds.

"If there's tax reform that has a real negative consequence on muni buying behavior, the greatest pain is going to be felt on the more duration you have and potentially the lower quality stuff that you have," Iselin said. "This is the time to be a little bit more cautious until we have more clarity."

Bloomberg

by Romy Varghese and Sahil Kapur

April 7, 2017, 6:26 AM PDT

Learning from Buffalo and Denver: Can Tax Credits Help Restore Polluted

Sites?

Tax credits can help clean up pollution and renew communities, three experts from Buffalo and Denver told Oregon leaders and professionals during a visit to Portland last week – but it's important to think carefully as they're set up.

There are thousands of known or suspected polluted properties – often called "brownfields" – around greater Portland, ranging in size from big industrial sites to corner gas stations and dry cleaners. Leaders, advocates and business are all interested in finding workable tools to get these sites cleaned up and renewed for better uses, including jobs, homes and commercial opportunities.

The Legislature has expanded the brownfield toolbox several times in recent years, making tools like land banking and property tax abatements available to local governments that want to use them to help spur cleanup and development.

But Oregon still does not have a tool that more than a dozen other states are using to help with particularly troublesome brownfields – those where whoever is responsible for the pollution has gone bankrupt, disappeared or abandoned the site.

Last week, three brownfield experts shared how state tax credit programs have helped make cleanup of abandoned brownfields possible in Denver and Buffalo, New York. Their visit culminated with a lunchtime discussion at the Collaborative Life Sciences Building in Portland's South Waterfront, itself one of the region's ongoing brownfield cleanup stories.

They shared tips for how tax credits can help with brownfield cleanup. Here are a few of the highlights.

Continue reading.

Oregon Metro News

By Craig Beebe

March 29, 2017 10:40 a.m.

Scott: IRS Should Go After Developer, Lawyers in DC Bond Deal.

WASHINGTON – The District of Columbia is appealing the Internal Revenue Service's finding that some of its bonds are taxable, at the same time a former IRS official is urging the agency to go after the developer and bond counsel in the transaction.

Mark Scott, the former head of the IRS' tax-exempt bond office who now represents whistleblowers in private practice, said both the developer, LCOR New Oyster School LLC, and the bond counsel should have known the bonds did not comply with the federal tax requirements at the time they were issued.

DC issued the $11 million of PILOT revenue bonds in 1999 as part of a much-lauded public-private partnership to build the James F. Oyster Elementary School. The bonds were used to finance construction of the school and were to be entirely repaid by payments-in-lieu of taxes (PILOTS) to be made by LCOR. The school was built on .79 of an acre.

As part of the deal, D.C. sold LCOR about .88 of an acre next to the school, estimated to be worth roughly $3.7 million, on which the developer constructed a 211-unit luxury residential apartment complex. The district had no financial interest in the apartment building, but exempted LCOR from paying property taxes on the building's land in return for LCOR's making PILOTS to the district for debt service on the bonds.

Scott claims the bonds are actually taxable private activity bonds. He says that D.C., in essence, made an indirect loan to LCOR of about $3.7 million and then allowed the developer to pay for it with the PILOTS, based on a tax-exempt rate. Scott contends the bonds fall under the federal anti-abuse rule for private activity bonds and that, under that rule, the IRS commissioner can reallocate the $3.7 million value of the property as a loan to the developer.

Under tax requirements, bonds are PABs if they involve a private loan that is the lesser of 5% or $5 million. Five percent of $11 million of bonds would be $550,000. The bonds would be taxable because luxury apartment complexes do not fall into one of the qualified categories of projects that can be financed with tax-exempt PABs.

The IRS apparently agreed with Scott and on Feb. 2, it sent D.C. a Proposed Adverse Determination that its bonds were taxable.

On Monday, D.C. filed an appeal of that determination with the IRS' Office of Appeals. It announced the appeal in a notice filed on the Municipal Securities Rulemaking Board's EMMA website.

Scott said he doesn't think D.C. will prevail in the appeal.

"The chance of appeals coming up with a different decision is slim because this has already been reviewed for legal sufficiency by an IRS legal review team," Scott said, based on documents he obtained from the district through a Freedom of Information Act request.

The IRS "should go after the developer here, which is taking a deduction presumably for the full amount of property taxes and part of those taxes are actually payments on the loan that should not be deductible," said Scott. "LCOR duped D.C. and is now making millions from the Oyster P3 bond deal. Shouldn't they pay to resolve the adverse IRS exam?" he asked.

Scott said the IRS should also go after the bond counsel, too, because it never should have given the opinion that the bonds were tax-exempt. "They should go after Hunton & Williams under Section 6700" of the Internal Revenue Code, he said.

Hunton & Williams was listed on the official statement as bond counsel. But Andrew Kintzinger, counsel at the firm, said on Thursday, "The lawyers who handled this issue left Hunton soon after the issue was completed. Since that time, we have not been involved in that matter. We understand that Ed Oswald, as The Bond Buyer has reported, is handling the audit for the District."

Oswald, with Orrick, Herrington & Sutcliffe, is serving as tax controversy and representing the District in the IRS matter. The lawyers involved in the deal left Hunton & Williams and went to Orrick after the deal was completed, sources said.

Section 6700 allows the IRS to go after transaction participants, rather than the taxpayers, for violations of tax law requirements. But this section of the tax law does not appear to have been used in recent years.

The Bond Buyer

By Lynn Hume

March 23, 2017

Shake-Ups and Changes at the Tax-Exempt Bond Branch.

The IRS has announced that it will combine the Tax-Exempt Bonds Branch and the Indian Tribal Government Branch of the IRS Office of Tax Exempt and Government Entities (TE/GE). The new combined entity will be headed by Christie Jacobs, who has long been the Director of the Indian Tribal Government Branch. (Though Ms. Jacobs apparently does not have any experience with tax-exempt bonds, Sunita Lough, the Commissioner of TE/GE, assures us that Ms. Jacobs is a "very smart person" and "very capable.") The Tax-Exempt Bonds Branch has been without a permanent Director since Rebecca Caldwell-Harrigal left the post in December 2016 (Imraan Khakoo served as acting Director in the meantime).

Formerly, the IRS Tax-Exempt Bonds Branch was divided into a Field Operations division (focusing on examinations) and a Compliance and Program Management (CPM) division (which, among other things, oversaw the administration of the VCAP program). As part of the reorganization, CPM will cease to exist, and its operations will be spread between a Compliance, Planning and Classification group that will span the full breadth of TE/GE (which includes some areas other than TEB and the Indian Tribal Government Branch), and a smaller, core "technical support" group that will continue to exist within TEB after it is combined with the Indian Tribal Government group. It is unclear whether this reallocation of resources will allow TEB to focus more attention and energy on examinations.

Continue reading.

By Johnny Hutchinson on April 3, 2017

The Public Finance Tax Blog

Squire Patton Bogs

TAX - OHIO

State ex rel. Delaware Joint Vocational School Dist. Bd. of Edn. v. Testa

Supreme Court of Ohio - March 8, 2017 - N.E.3d - 2017 WL 939001 - 2017 -Ohio- 796

Joint vocational school district board of education sought writ of mandamus to compel State Tax Commissioner to apply reduction factors and calculate tax rates on levy that school district had sought to renew.

The Supreme Court held that Commissioner had no such duty absent valid election result ascertained and announced by proper authority.

There was no valid election result ascertained and announced by proper authority, and thus State Tax Commissioner had no duty to apply reduction factors and calculate tax rates for levy for multicounty joint vocational school district, where board of elections in largest county included in school district failed to send resolution to boards of elections in other counties that were part of district, levy was never voted on in those counties, and board of elections did not certify election results using form prescribed by Secretary of State and failed to list final vote totals of each county in school district.

The Oakland Raiders Sack the Taxpayers.

It's time to stop stadium financiers from exploiting a tax-code loophole that lets them use municipal bonds.

It's official: The Oakland Raiders are moving to Las Vegas. Beginning in 2020 they will play in a shiny new 65,000-seat stadium, outfitted with a retractable roof, that's expected to cost $1.9 billion. If you're an American taxpayer, you'll help fund it—even if you live nowhere near Nevada. About $750 million for the project will be financed through municipal bonds, which are tax exempt. The federal tax break is projected to amount to some $120 million, according to the Brookings Institution.

Congress and President Trump should take the Raiders' bad example as impetus for reform. As they consider a $1 trillion plan to restore America's aging roads, airports, waterways, bridges and rails, lawmakers should ask why so many stadiums are following the Las Vegas model.

The alternative is what Oklahoma City did in 1993. Residents there passed a temporary 1% increase in the sales tax to fund—without incurring debt—a building spree called Metropolitan Area Projects, or MAPS. Over five years, the plan raised $350 million for nine projects, including a stadium now called the Chesapeake Energy Arena, home of basketball's Oklahoma City Thunder.

This pay-as-you-go approach may sound unremarkable, but it is nothing short of exceptional. Most professional sports stadiums these days are financed with municipal bonds. But this kind of debt wasn't intended for lavish football or basketball arenas.

Municipal bonds were supposed to give communities a way to build public projects—hospitals, schools, roads—without having to pay federal taxes on the debt's interest. The point was to ease the financial burden on cities and states that invest in expensive but essential infrastructure.

Over the past 30 years, however, stadium financiers have exploited a loophole in the tax code to qualify professional sports arenas for municipal bonds. Because federal taxes aren't incurred on the interest of this debt, stadiums essentially receive multimillion-dollar subsidies from Washington.

Last year a Brookings study examined 45 stadiums built or seriously renovated since 2000. Thirty-six were funded at least in part with municipal bonds, resulting in forgone federal tax revenue of $3.7 billion. That's enough money to employ 88,000 military staff sergeants or give each state a $74 million block grant. Or it could help reduce the national debt.

To solve this problem, I have introduced the No Tax Subsidies for Stadiums Act, which would prohibit arena financiers from using municipal bonds. Instead of building enormous, lavish sports facilities on the backs of unsuspecting taxpayers across the nation, financiers should ask communities to "buy in" to their vision. If residents want a stadium to be built, they will be willing to pay for it—as they did in Oklahoma City. Otherwise, sports franchises and leagues always have the option to finance construction privately.

Funding an upgrade to America's core infrastructure shouldn't require Congress to use budget gimmicks or run up the national debt. Closing loopholes, such as requiring stadium financiers to pay federal taxes on bond interest, would move lawmakers hundreds of millions of dollars closer to the $1 trillion goal post.

THE WALL STREET JOURNAL

By STEVE RUSSELL

March 29, 2017 7:02 p.m. ET

Mr. Russell, a Republican, represents Oklahoma's Fifth Congressional District.

Jackpot! Las Vegas Raiders Shake Down Tax Payers For $750 Million Stadium.

$750 million.

That's how much Mark Davis and the Las Vegas Raiders want Nevada taxpayers to fork over in order to build a new 65,000-seat, $1.9 billion stadium, part of the deal to woo the team from their longtime home in Oakland.

ESPN's Kevin Seifert crunched the numbers, and determined that taxpayers have given almost $7 billion in tax money to the NFL to help fund the building of stadiums.

So will Nevada see a big economic boost for laying so much money on the table to help keep a bunch of billionaires rich? It's doubtful.

According to a study by the Brookings Institute, there is little evidence that new stadiums provide enough local economic benefit to pay back the hundreds of millions of dollars taxpayers forked over to build them.

"Decades of academic studies consistently find no discernible positive relationship between sports facilities and local economic development, income growth, or job creation," the authors of the study explained in their report. "And local benefits aside, there is clearly no economic justification for federal subsidies for sports stadiums."

And that price tag doesn't include the cost to federal taxpayers thanks to the use of tax-exempt bonds, which teams frequently employ to finance the constriction of their stadiums.

Take the New York Yankees, who finished construction on the new Yankee Stadium in 2009. The final bill was estimated to be $2.5 billion, but of that, nearly $1.7 billion was financed by tax-exempt municipal bonds issued by New York City.

"Because the interest earned on the municipal bonds is exempt from federal taxes, a large amount of tax revenue that would have been collected—had the bonds been issued as taxable—went toward the construction of the stadium," the authors of the report explained.

And we're not even talking about the costs to taxpayers for things like added infrastructure, gifting city-owned land, economic opportunity grants, a waiver from anti-trust laws, subsidies from the U.S. military… the list goes on and on.

All this while the NFL is making more money than they know what to do with. SportsBusiness Daily pegged the NFL's annual revenue at $14 billion annually.

While average people in Nevada will fork over their hard-earned money to help build the new stadium, only wealthy fans, wielding their expense-account, will be able to afford to set foot in the arena.

Where's the revolt? – Rob Tornoe

FORBES

MAR 30, 2017 @ 09:37 PM

[JCT's Flawed Analysis on Munis is Hurting Case for Tax-Exempts.]

WASHINGTON – The analysis used by the Joint Committee on Taxation to show tax-exempts are inefficient is flawed and unfairly hurts municipal bonds, George Friedlander, a managing partner at Court Street Group Research, said at a conference in Florida last week.

Friedlander has been making his case that the JCT is wrong as fears grow that Congress will propose revenue-neutral, comprehensive tax reform to lower individual and corporate tax rates and broaden the tax base, using caps or the elimination of tax-exempt bonds to pay for that.

At The National Municipal Bond Summit in Palm Beach, Fla., sponsored by The Bond Buyer and Bond Dealers of America last week as well as in a recent paper, Friedlander said the JCT estimates that eliminating tax exemption could raise up to $50 billion a year.

But this level of revenues can only be achieved if the elimination of tax exemption is applied retroactively – an outcome that would be devastating to the value of the $3.5 trillion to $3.7 trillion of outstanding bonds and that would cause a breach of promise made to bondholders. If the JCT's methodology is applied to only new bonds, the amount of additional revenues to Treasury would be only $20 billion over a five-year period, assuming current tax rates, he said.

The JCT has viewed tax exemption as an "inefficient subsidy" for years, based on its methodology, which it detailed in a report in July 2012. But Friedlander contends the JCT's methodology is flawed because it uses an "apples and oranges" comparison. It compares triple-A corporate bonds using a Standard and Poor's index to bonds rated A1/A+ in the Bond Buyer index, he said.

"They assume that because muni yields appear to be high as a percentage of corporate bond yields, the marginal tax rate of the marginal buyer of tax-exempt bonds must be low; and thus, everyone on a higher tax bracket must be earning a 'windfall,'" Friedlander said. "However … when muni yields are compared to what muni yields would have to be if these bonds came as taxable bonds, the low marginal tax rates for the marginal buyers of municipals disappears."

In comparing the two indices, Friedlander said, "We also noted that the Bond Buyer Index always yields sharply more than actual bonds in the muni market – at least 100 basis points more back then and at least 50-60 basis points more in the current, lower-yield environment."

In addition, he said, the JCT fails to take into account that the 20year corporates it compares to tax-exempts are essentially noncallable, while almost all munis have 10year calls. The committee also fails to take into account that corporates are typically very large bullet maturities preferred by institutional buyers of taxable bonds and have better disclosure, compared to munis, which often have smaller, serial maturities and less disclosure.

Taking all of these factors into account, "munis priced in comparison with what they would have to yield in the taxable market puts the marginal rate of the marginal buyer of munis at around 30% and eliminates a very large proportion of the purported windfall," Friedlander said.

The JCT and other critics of munis assume that if tax-exempts didn't exist, investors would buy fully taxable bonds and pay taxes at their marginal rates, which is "the underpinning of their entire analysis," Friedlander said. But this is "a highly flawed assumption" because many investors would buy equities instead or would stay in cash or near-cash investments, he said.

"And the cost to state and local governments of having to fund in the fully taxable market would be sharply higher than under the JCT analysis," Friedlander said.

"The bottom line is that the efficiency of the tax-exemption, when measured properly, is actually quite high," he said.

He also contends that the tax-exempt bond market provides a kind of "sort and selection mechanism" for infrastructure projects. "There just isn't any easy way to measure the 'right amount' of support for infrastructure projects, unless the recipient of the support is committing to pay for a portion of the project in the form of bond debt service," he said.

The Bond Buyer

By Lynn Hume

March 20, 2017

Bills Seek Infrastructure Funding Through Tax Reform.

DALLAS – More than $170 billion of revenue would be provided for infrastructure from the repatriation of $2 trillion of accumulated U.S. corporate overseas earnings through tax reform under a pair of bills filed Wednesday by a bipartisan trio of lawmakers.

The legislation would bridge the partisan gap in Congress over how to fund future infrastructure spending, said Rep. John K. Delaney, D-Md., the chief sponsor of both bills.

"Our broken tax code and our crumbling infrastructure are two problems that are dragging down productivity and economic growth," Delaney said of the measures, which mirror legislation he sponsored in 2015.

The legislation was filed as a new study by Moody's Investors Service forecasts a slow ramp up to increased federal infrastructure spending due to a lack of bipartisan agreement over funding mechanisms and how to implement a massive infrastructure program.

Moody's expects additional infrastructure spending to be modest in 2017 and 2018 despite calls by President Trump and Senate Democrats for $1 trillion over 10 years of new funding in separate proposals, said AJ Sabatelle, a managing director at Moody's and the lead author of the report.

“The pace of new project launches will be slow,” the report said. “Infrastructure spending will increase in the coming years, but … the rate of increase will more likely be in the low- to mid-single digits in the near term.”

The public-private partnerships, envisioned as the heavy lifter in the Trump plan, may not be applicable to projects without a revenue stream, while the direct public investments proposed in the Democrats’ plan would likely require higher levels of state and local borrowing, as well as increased taxes to support the debt, according to Sabatelle.

“Either proposal would amount to a $100 billion annual increase in spending on infrastructure,” Sabatelle said. “But finding a reasonable balance between direct government spending and private investment will take time.”

The Partnership to Build America Act sponsored by Delaney and Rep. Rodney Davis, R-Ill., would create a $50 billion infrastructure bank to provide financing for transportation, water, and education projects by states and local governments.

The American Infrastructure Fund would be financed by the proceeds from the purchase by corporations of $50 billion of 50-year bonds. The corporations would be allowed to repatriate an undetermined amount of overseas earnings with no federal tax liability for every $1 invested in the 1% bonds.

Those proceeds could be leveraged to provide $750 billion of low-interest loans and loan guarantees, Delaney said.

The fixed-rate infrastructure bonds would not be guaranteed by the federal government and are not intended as a good investment on their own, he said.

At least 35% of the projects financed by the infrastructure bank must have a minimum of 10% of their funding from private debt or equity.

The Infrastructure Act 2.0 introduced by Delaney and Rep. Ted Yoho, R-Fla., would provide six years of solvency to the Highway Trust Fund and establish a bipartisan House and Senate joint commission to develop a permanent solution that would bring additional revenues into the fund.

The bill would subject existing overseas corporate earnings by U.S. multinational corporations to a mandatory, one-time tax of 8.75% instead of the current 35% rate and sets an 18-month deadline for comprehensive tax reform.

The reforms would bring in $120 billion for the HTF, enough to cover the expected funding gap for six years and also provide $25 million for a pilot program of regional infrastructure accelerators, Yoho said.

If reforms were not enacted by the deadline, the corporate tax rate would be set at 12.25% for overseas profits for corporations not paying foreign income taxes and at 2% if they were paying a 25% tax rate.

The Bond Buyer

By Jim Watts

March 22, 2017

Hawkins Advisory: (2017 Average Area and Nationwide Purchase Price Safe Harbor Limits)

This issue of the Hawkins Advisory provides information of specific interest to single-family housing bond issuers regarding Average Area and Nationwide Purchase Price Safe Harbor Limits for 2017 (Rev. Proc. 2017-27).

Read the Advisory.

3/21/2017

Orrick: IRS Revenue Procedure 2017-13 Safe Harbor Requirements for Services Contracts.

IRS Revenue Procedure 2017-13 (the "***Revenue Procedure***") sets forth, and significantly liberalizes, the requirements for determining whether a contract (a "***Services Contract***") with a service provider or manager (a "***Service Provider***") can cause the Service Provider to be treated as a private business user of a facility financed with tax-exempt bonds (a "***Project***"). This guidance provides a safe harbor relating to government purpose and 501(c)(3) bonds. Satisfying the requirements means the Services Contract will not cause private business use ("***Private Use***").

SAFE HARBOR REQUIREMENTS
Reasonable Fee: The fee paid to the Service Provider must be reasonable. Fees determined through a competitive process or fees within a normal range for such services will be reasonable.

No Net Profits: Compensation to the Service Provider cannot be based, even in part, on the net profits of the Project. This includes directly sharing net profits, as well as designing incentives that are based on a combination of gross revenues and expenses. Incentive compensation based on performance metrics like quality of services or productivity is not necessarily treated as a net profits incentive. In practice, payments under most Services Contracts are split between (i) reimbursement for actual Service Provider costs, subject to the approval of annual budgets by the Project owner, and (ii) a separate management fee. The cost reimbursement payments generally are ignored in determining if there is a net profits interest. The IRS strongly prefers this split payment approach, as opposed to an "all-in" compensation structure in which the Service Provider is paid a comprehensive fee and is entirely responsible for paying all operating costs out of that fee. Such all-in contracts raise net profits concerns and may also conflict with the Control and Risk of Loss requirements described below. Finally, even in the context of all-in contracts, certain types of management fees defined in the Revenue Procedure (one or more of a capitation fee, a periodic fixed fee, a per-unit fee, or a fee based on certain performance metrics) are not considered to be net profits arrangements. Although subordinated management fees can raise net profits concerns, this feature is discussed in Net Losses, immediately below.

No Net Losses: Very similar to the net profits prohibition, compensation to the Service Provider cannot be based, even in part, on the net losses of the Project. The most common example of a net losses problem is if the fee paid to the Service Provider is subordinate to the payment of debt service and if the fee would never be paid if there are insufficient funds at the time the fee is due. Subject primarily to some timing limitations, a solution can be for any unpaid fees to accrue with interest. A Service Provider whose compensation is reduced by a stated dollar amount for failure to keep the managed property's expenses below a specified target will not be treated as bearing a share of net losses as a result of this reduction. Like the net profits prohibition, all-in contracts raise significant concerns, the reimbursement of costs generally is ignored, and management fees that are capitation fees, periodic fixed fees, and per-unit fees are not considered to be net losses arrangements, even in all-in Services Contracts.

Term Limitation: The term of the Services Contract may not be longer than 30 years, or 80% of the remaining useful life of the Project if shorter. The useful life of a newly constructed Project that consists primarily of building construction or improvements should support a 30-year Services Contract.

Control: The Project owner must exercise control over the Project. This control requirement is met if the Project owner approves (i) the annual operating budget, (ii) any capital expenditures, (iii) the disposition of property, (iv) the rates charged for the use of the Project, and (v) the general nature and type of use of the Project. For Services Contracts with cost reimbursement plus a management fee, these control requirements should be satisfied under typical practices.

Risk of Loss: The Service Provider cannot be responsible for replacing the Project if there is a catastrophic loss. The Service Provider can, however, be responsible for obtaining adequate insurance, so long as the cost of the insurance is a cost reimbursement item.

Service Provider Tax Position: The Services Contract must state that the Service Provider will not claim any depreciation or amortization deduction, investment tax credit, or deduction for any payment as rent with respect to the Project.

Limitation on Rights: Finally, the Service Provider must not have a role or relationship with the Project owner, such as the CEO of the Service Provider being in a similar position with the Project owner, that as a practical matter would limit the Project owner's rights to take action under the Services Contract.

PROFESSIONAL SERVICES CONTRACTS
The requirements described above apply in a specialized manner when the contract relates to services provided solely by individuals or groups of professionals, for example physician contracts. The control requirements relating to budgeting, capital expenditures and disposition are not meaningful in that context. Control over rates charged can be meaningful, but the Revenue Procedure allows for the rates in this context to simply be "reasonable and customary as specifically determined by, or negotiated with, an independent third party (such as a medical insurance company)." Similarly, it is difficult for these contracts to be anything other than all-in contracts, because the primary expense is simply the compensation to the professional.

EXCLUDED INCIDENTAL SERVICES
An important point that often is ignored is that contracts for ancillary or incidental services are not considered to be Services Contracts and therefore do not cause the Service Provider to be a private business user even if the term of the contract is longer than 30 years.

Incidental Services. Contracts for services that are solely incidental to the primary governmental function of the financed facility are not considered to be Services Contracts. Excluded incidental services include routine, hard asset services, such as repair and maintenance, that do not give the Service Provider control over the business represented by the Project (such as setting prices) or compensate the Service Provider directly based on the economic performance of the Project. For example, a 40-year, all-in contract to maintain and repair a Project will not result in Private Use, if the compensation to the Service Provider is not based on Project net profits and the Service Provider is not economically responsible for replacing components of the Project. Similarly, an asset manager retained by the Project owner purely to oversee the Service Provider is an excluded incidental contract.

Cost Reimbursement Contracts. Even if the contract is not for incidental services, if the only compensation payable to the Service Provider is the reimbursement of the Service Provider for actual and direct expenses paid by the Service Provider to unrelated parties, the contract is not considered to be a Services Contract. If the Project consists predominantly of electric generating facilities, electric transmission facilities or other public utility property, the contract also is not considered to be a Services Contract if the only compensation is (i) the reimbursement of actual and direct expenses of the Service Provider, and (ii) reasonable administrative overhead expenses of the Service Provider.

CONCLUSION
The Revenue Procedure replaces prior guidance, most notably Revenue Procedure 97-13, and provides a new approach. The old formulaic approach to balancing the contract term and the fixed portion of the compensation is entirely replaced. The main takeaways from the discussion above are (i) except in the context of certain contracts for professional services (e.g., physician contracts), Services Contracts generally should be structured so that the payments to the Service Provider are split between reimbursement for actual Service Provider costs, subject to an annual budgeting process, and a separate management fee that can include incentives and (ii) most of the tax analysis, even for very long term contracts, will focus on the net profits/losses limitation. Also, when contemplating a repair and maintenance services arrangement for a Project, the first question should be whether the contract is solely for excluded incidental services.

Orrick Public Finance Alert | 03.23.17

by Charles C. Cardall

Partner, Tax

The Regulatory Freeze: Where do we stand now?

The IRS tax exempt bond group ("TEB") continues to work on completing its 2016-'17 Guidance Plan, as Bob Eidnier wrote last week. However, it might be some time before we see that guidance because of executive branch actions intended to reduce regulations and regulatory costs. The restrictions on new guidance are very broad, and appear to apply to more than just regulations. Tax Notes reported on February 14 that it will be "a while" before new guidance is released by the IRS. For those of you who have lost track, see below for links to and a summary of President Trump's executive orders and related executive branch guidance concerning the regulatory freeze and regulatory reform.

Continue reading.

The Public Finance Tax Blog

By Alexios Hadji on March 24, 2017

Squire Patton Boggs

TAX - CALIFORNIA

[California State University, Fresno Association, Inc. v. County of Fresno]

Court of Appeal, Fifth District, California - March 2, 2017 - Cal.Rptr.3d - 2017 WL 818475 - 17 Cal. Daily Op. Serv. 2010

A nonprofit public benefit corporation that operated state university's on-campus arena brought a property tax refund action against county.

The Superior Court entered judgment for nonprofit corporation after bench trial. County appealed.

The Court of Appeal held that:

- Filing period for refund claim began to run when county assessment appeals board mailed written notice of determination to corporation;
- Refund claim was subject to a one-year filing period; and
- Equitable tolling did not apply to the one-year filing period.

The one-year filing period for taxpayer's property tax refund claim against county began to run when the county assessment appeals board made a final determination on the assessment reduction application and mailed a written notice of the determination to the taxpayer, not on the later date when taxpayer paid the tax.

Taxpayer's property tax refund claim against county was subject to the one-year filing period for a claim after "the county assessment appeals board makes a final determination on the application for reduction in assessment or on the application for equalization of an escape assessment of the property, and mails a written notice of its determination to the applicant and the notice does not advise the applicant to file a claim for refund," where board mailed a notice to taxpayer that did not advise taxpayer to file a claim for refund, taxpayer paid the outstanding taxes and penalties, and then taxpayer filed a refund claim.

Equitable tolling does not apply to the statutory one-year filing period for a refund claim after "the county assessment appeals board makes a final determination on the application for reduction in assessment or on the application for equalization of an escape assessment of the property, and mails a written notice of its determination to the applicant and the notice does not advise the applicant to file a claim for refund," since the statute is not a statute of limitations.

[Changes in the Audit Process for Tax Advantaged Bonds Related to IRS Division Reorganization.]

Last week at the National Association of Municipal Bond Lawyer's Tax and Securities Law Institute, the IRS Commissioner for the Office of Tax Exempt and Government Entities (TE/GE) announced changes to TE/GE's operations and structure. These changes will consolidate and standardize certain operations. In particular:

Effective May 1, 2017, TE/GE will implement the following changes:

- TE/GE will consolidate into a new Compliance, Planning and Classification Office (CP&C), discussed below,certain work being done in each of the TE/GE functions:

– Exempt Organizations (EO)
– Employee Plans (EP)
– Federal State and Local Government (FSLG)
– Indian Tribal Government (ITG)
– Tax Exempt Bonds (TEB)

- TE/GE will move FSLG, which largely deals with employment tax issues, to EO.
- TE/GE will restructure TEB and consolidate it with ITG under a new Director TEB/ITG, discussed below.
- Effective April 1, 2017, TE/GE will standardize the information document request (IDR) and related enforcement process for TE/GE IDRs, including IDRs for tax-advantaged bonds.

This Alert discusses these changes and is relevant to taxpayers, including issuers and borrowers, and their attorneys working with TEB, as well as attorneys who work with TE/GE's EO, EP, FSLG, and ITG Offices.

Compliance, Planning and Classification Office

CP&C is a new office that will be responsible for case selection and closed case quality review for all the TE/GE functions. For case selection, CP&C will conduct research and review data, identify issues with the help of technical experts from each of the functions, and select and assign cases to the functions. CP&C will be led by Steve Martin, who currently works on case classification and delivery in the Large Business and International (LB&I), transfer pricing office.

TEB Restructuring and Consolidation with ITG

TE/GE is consolidating TEB and ITG under a Director TEB/ITG, who will initially be Christie Jacobs, the current Director ITG. This Director will have the ITG and TEB examination functions to which CP&C will assign cases and a technical function. The TEB examination work will remain largely unchanged, but that office will be reduced from five to three workgroups. TEB's Compliance and Program Management Office will be eliminated and the operations of that office not consolidated within CP&C will be moved to the technical function that will be responsible for TEB's Voluntary Closing Agreement Program (VCAP), direct-pay bond allocations, and Knowledge Management (K-Net) which is a formal structure created in 2015 to consolidate technical expertise and facilitate knowledge transfer. The Commissioner did not specify which function would perform education and outreach activities currently done by CPM and ITG.

IDR Process

Beginning April 1, TE/GE will implement new standard procedures and best practices for IDRs. This new process largely incorporates LB&I's IDR practice. In short, it reflects an effort to make the IDR process more collaborative and to provide standard IDR procedures.

Under the new process:

1. An agent will mail to the taxpayer the initial contact letter, which the procedures suggest should include the initial IDR.
2. After 10 business days, the agent will contact the taxpayer to discuss the issues being examined and the items being requested in the IDR.
3. The agent may refine the IDR based on that conversation and will attempt to arrive at a mutually agreed upon response date with the taxpayer; the Commissioner made clear that a request for significant time to obtain an attorney would likely not be granted. If a date cannot be agreed

upon, the agent is to set a reasonable date.
4. The agent will review the response and notify the taxpayer whether the response is complete or whether additional information is needed.
5. If additional information is needed, the additional material will be also be subject to due dates, some of which are mandated in the procedures and may be as short as 15 business days.
6. If the request is not fully and timely met after a second extension to submit the additional information, the agent is instructed to begin the enforcement process, which could lead to a pre-summons and summons to supply the information.

by Rebecca L. Caldwell-Harrigal

March 15 2017

Greenberg Traurig LLP

Introduction To Tax For Public Finance – Orrick Tax Presentation.

Topics covered:

- Introduction to Tax for Public Finance
- Tax-Exemption for State and Local Bonds
- Inefficiency in Tax-Exempt Subsidy
- Types of Tax-Exempt Bonds
- Overview of Federal Income Tax Restrictions
- Use of Proceeds and Financed Project Private Activity Restrictions
- Privately Used Projects
- Arbitrage and Rebate
- Other Federal Income Tax Restrictions
- Tax Definitions—New Money vs. Refunding
- Tax Definitions—Issuer and "Issue"

Read Article.

Last Updated: March 9 2017

Article by John Stanley

Orrick

TAX - TEXAS

Valero Refining–Texas, L.P. v. Galveston Central Appraisal District

Supreme Court of Texas - February 24, 2017 - S.W.3d - 2017 WL 727276

Taxpayer, which owned oil refinery, filed petition for review of order by county appraisal review board regarding appraisal of refinery for property tax purposes, asserting that appraisal district had appraised refinery unequally as compared to other oil refineries.

Following jury trial, the District Court rendered judgment on jury verdict in favor of taxpayer. Appraisal district appealed. The Court of Appeals reversed and remanded. Appraisal district and taxpayer filed petitions for review, which were granted.

The Supreme Court of Texas held that:

- Trial court had jurisdiction over taxpayer's appeal of valuations from only certain tax accounts, as components of refinery;
- Some evidence supported jury's finding that medium conversion refinery was comparable to taxpayer's heavy conversion refinery;
- Component accounts of taxpayer's refinery could be compared to component accounts of comparable refineries without consideration of refineries' total valuation;
- Value of pollution control equipment was not required to be considered in determining whether taxpayers' processing operations had been taxed unequally; and
- Refineries' values could be adjusted by calculating equivalent distillation capacity.

Trial court had jurisdiction over taxpayer's appeal from valuations by county appraisal review board of only three tax accounts arising from appraisal district's division of taxpayer's oil refinery and its improvements into separate accounts and individual appraisal of those accounts, though district asserted taxpayer was required to challenge valuation of whole tract. Taxpayer filed separate protests of some, but not all, of account appraisals, board decided protests by separate orders for each account, taxpayer timely appealed those orders, taxpayer's petition sufficiently identified property covered by tax accounts, and nothing in provisions governing appeals required taxpayer to challenge all appraisal accounts used to appraise its property.

Some evidence supported jury's finding that medium conversion oil refinery was comparable to taxpayer's heavy conversion refinery located in same county, such that medium conversion refinery could be considered as comparable property in determining whether taxpayer's refinery was appraised unequally based on its appraised value exceeding the median appraised value of medium conversion refinery and other heavy conversion refinery, though medium conversion refinery had much less capacity and complexity. Taxpayer presented evidence that all three refineries had same business functions of processing crude oil, similar storage facilities, equal access to utilities, and on-site support facilities, and appraisal district used similar accounts and appraisal methods for all three refineries.

Component accounts created by appraisal district for determining value of components of taxpayer's refinery could be compared to component accounts of other comparable oil refineries, in determining whether processing operations components of taxpayer's refinery had been taxed unequally as compared to other oil refineries, without consideration of refineries' total valuation, though district asserted value of property in one tax account was affected by value of property in other accounts. Property in each account could be viewed in isolation, as district used separate accounts in appraising refineries, and property owner was entitled to have notice of what was in each account to ensure property was not double-taxed.

Value of pollution control equipment, as component of taxpayer's oil refinery, was not required to be considered in determining whether processing operations components of taxpayer's refinery had been taxed unequally as compared to other oil refineries, though appraisal district asserted that equipment was required to be included in comparing values of taxpayer's processing units and tanks, as such equipment was integral part of refinery, without which refinery could not operate and that excluding valuation substantially impacted equalized values calculations in taxpayer's favor.

Since equipment could be appraised separately, then other account appraisals could be compared without regard to the pollution control equipment appraisals, and benefit to taxpayer's position was irrelevant.

Oil refineries' values could be adjusted by calculating equivalent distillation capacity, in determining whether processing operations components of taxpayer's refinery had been taxed unequally as compared to other oil refineries, though appraisal district asserted equivalent distillation capacity metric only measured what refinery process units took in and yielded and did not apply to buildings or tanks, where even appraisal district's experts agreed that equivalent distillation capacity was a useful factor in adjusting values for comparison.

TAX - COLORADO

City of Aurora v. Scott

Colorado Court of Appeals, Div. I - February 23, 2017 - P.3d - 2017 WL 710507 - 2017 COA 24

City and city's urban renewal authority brought action against county assessor, seeking an order for assessor to delay allocation of tax increment financing (TIF) following city's adoption of urban renewal plan under the Urban Renewal Law (URL).

The District Court entered judgment in favor of assessor. City and authority appealed.

The Court of Appeals held that:

- Arbitration was not the exclusive remedy for assessor's challenge to city's plan;
- Assessor was neither party to, nor in privity with a party to, public hearings in which city's urban renewal plan was approved, and therefore claim preclusion did not bar assessor's subsequent challenge to plan's timeline for allocation of TIF; and
- Provision of URL stating that TIF cannot "exceed [25] years after the effective date of adoption of [a TIF] provision" does not allow city, in adopting an urban renewal plan, to choose any date as the effective date of adoption regardless of when the provision was actually approved.

County assessor's challenge to city's urban renewal plan's timeline for tax increment financing (TIF) under the Urban Renewal Law (URL) was not related to compliance with statutory TIF timeline, and therefore arbitration was not exclusive remedy for assessor's challenge, where challenge was unrelated to any requirement specifically enumerated in subsection of URL as subject to challenge through arbitration but rather was based on interpretation of different TIF subsection of URL.

County assessor was neither party to, nor in privity with a party to, public hearings in which city's urban renewal plan was approved, and therefore claim preclusion did not bar assessor's subsequent challenge to plan's timeline for allocation of tax increment financing (TIF), even if assessor had notice of public hearings, whether neither assessor nor county had any role in decision to adopt or reject plan.

Provision of Urban Renewal Law (URL) stating that tax increment financing (TIF) cannot "exceed [25] years after the effective date of adoption of [a TIF] provision" does not allow city, in adopting an urban renewal plan, to choose any date as the effective date of adoption regardless of when the provision was actually approved.

Even if home rule city's adoption of urban renewal plan was a legislative act, adoption of plan was not within scope of city's powers; urban renewal was matter of mixed state and local concern, and plan conflicted with state statute's timeline for tax increment financing (TIF).

Report from TSLI – What Can We Expect in the Near Term from the IRS?

Last week I attended the NABL Tax and Securities Law Institute, which always provides valuable insights from representatives of Treasury and the IRS. Vicky Tsilas, Chief, Branch 5, Financial Institutions and Products, was a panelist for Tax Hot Topics and gave a very interesting status report on the 2016-2017 Guidance Plan (first reported on here by Mike Cullers), which was issued on August 15, 2016. In addition to noting those projects that have been completed, she also discussed the remaining items, indicating her priorities and possibly the order in which they will be completed, recognizing of course that TEB does not have control over the timing of the necessary approvals within Treasury. (I'd also like to thank Ms. Tsilas for our subsequent discussion clarifying several points for this report.)

Continue reading.

The Public Finance Tax Blog

By Bob Eidnier on March 17, 2017

Squire Patton Boggs

CO Ruling Says Tax-Increment Financing Must Begin Immediately.

Tax-increment financing is something that just can't wait.

The Colorado Court of Appeals has affirmed a court ruling from one year ago that favored the Arapahoe County Assessor's Office and its strict interpretation of the legally accepted timeline for when such approved financing plans should begin in a city's urban-renewal areas.

In 2015, then-Arapahoe County Assessor Corbin Sakdol was sued by the City of Aurora and the Aurora Urban Renewal Authority in a challenge to his interpretation of a state law on the start date of such plans.

Tax-increment financing is a tool municipal governments can use to finance the redevelopment of so-designated "blighted" property by diverting property taxes that would have been collected by counties, school districts and special districts for up to 25 years to help pay off certain costs associated with urban renewal.

In 2014, the City of Aurora approved two urban-renewal plans, each with its own tax-increment provisions, including a delayed start date of up to three years in some areas.

Sakdol, who retired in January, determined the 25-year clock was to begin as soon as the plans were adopted. Aurora filed an unsuccessful lawsuit in district court disputing that contention.

"Nothing in the plain language of [state statute] permits an urban-renewal plan's [tax-increment financing] provision to have a start date that is different than the effective date of approval of the plan itself," stated Sakdol's legal argument as now affirmed by both courts.

Assessor Marc Scott, who was appointed to the position upon term-limited Sakdol's voluntary retirement two months ago, was gratified by the Court of Appeals' decision.

"We are pleased that once again the courts have reaffirmed our interpretation of Colorado law as it pertains to urban -renewal authorities and [tax-increment financing]," Scott said. "We look forward to working with our municipalities and urban-renewal authorities on future projects that will benefit the citizens of Arapahoe County."

Aurora could appeal the case to the state Supreme Court.

THE VILLAGER

BY PETER JONES

March 15, 2017

Bond Documents Being Revised for Issue Price Rules.

WASHINGTON – Bond lawyer and dealer groups are drafting revisions to bond documents for market participants to begin using by June 7 when the Internal Revenue Service's issue price rules take effect.

The tax committee of the National Association of Bond Lawyers is drafting a model issue price certificate, Perry Israel, a lawyer with his own firm, told NABL members meeting here Thursday at the group's 15th annual Tax and Securities Law Institute. He is co-chairing TSLI.

Issue price certificates, which underwriters provide issuers, have been used for years and historically have been attached to the tax certificates at transaction closings. But in recent years, as sensitivity has grown over the issue price of bonds, lawyers and underwriters tried to add various sentences and clauses to the certificates.

NABL's tax committee is drafting model language that it hopes everyone will use. Israel said the model certificate has been circulated to NABL's board of directors, as well as SIFMA and the tax-exempt financing committee of the American Bar Association. It could be released as soon as the end of next week and, if not then, certainly later this month, he said.

SIFMA is working on revisions to its agreement among underwriters, the bond purchase agreement, and the notice of sale.

Leslie Norwood, SIFMA's co-manager of municipal securities who was at the NABL meeting, said the dealer group is revising the documents "in an effort to make sure that all of the parties are clear about the issue price rules and their requirements and responsibilities" and that everyone is "on the same page."

Some lawyers at TSLI talked about adding language about issue price to the notice of sale, so that an underwriter bidding on the bonds agrees to certify as to the issue price.

Issue price is important because it is used to help determine the yield on bonds and whether an issuer is complying with arbitrage rebate or yield restriction requirements. It is also used to determine whether the subsidy payments for direct-pay bonds such as Build America Bonds are appropriate.

Under existing rules that have been in place for years, the issue price of each maturity of bonds that is publicly offered is generally the first price at which a substantial amount, defined as 10%, is reasonably expected to be sold to the public.

But tax regulators became concerned that some dealers were “flipping” bonds — selling them to another dealer or institutional investor who then sold them again almost simultaneously — with the prices continually rising before the bonds were eventually sold to retail investors. The regulators worried that the “reasonably expected” issue prices for bonds were not representative of the prices at which the bonds were actually sold.

To address their concerns, the regulators adopted a general rule under which the issue price is the price at which the first 10% of a maturity of bonds is actually sold to the public. If 10% of a maturity is not sold, a special rule can be used under which the issue price is the initial offering price (IOP) as long as the underwriters hold at the IOP for five business days after the sale date.

The five-day “hold-the-offering-price” provision is an anti-flipping or an anti-abuse provision. The lead underwriter must certify the IOP to the issuer, as well as provide documentation, such as the pricing wire. Each underwriter in a syndicate must agree in writing that it will not offer or sell the bonds at a price higher than the IOP for five business days after the sale date.

Under a special rule for competitive sales, an issuer may treat the reasonably expected IOP of the bonds to be sold to the public as the issue price if the issuer obtains a certification from the winning underwriter bidder as to the reasonably expected IOP upon which it based its bid. To achieve a competitive sale: the issuer must disseminate the notice of sale in a manner reasonably designed to reach potential underwriters; all bidders must have an equal opportunity to bid; the issuer must receive bids from at least three underwriters “who have established industry reputations for underwriting new issuances of municipal bonds;” and the issuer must award the bonds to the bidder who offers the highest price or lower interest cost.

Issuers have the option of using any of these rules up until the closing (issue) date for their bond transactions.

The Bond Buyer

By Lynn Hume

March 9, 2017

How Poker Reminded Me That the Rev. Proc. 97-13 Safe Harbors for Management Contracts Live On: Squire Patton Boggs

Poker has a well-established hierarchy of winning hands. If you’re holding a full house, you’ve got a right fine hand, but if you reach for the pot when the last bets are called and another player has four deuces, you will at best be the object of ridicule and at worst the subject of grievous bodily harm or death (it all depends on with whom you are playing). Legal authorities also have a strict order of priority. The most extreme adverse consequences that can befall one who forgets the priority of winning poker hands are unlikely to meet one who forgets which legal authorities take precedence over others, but it’s good practice to be mindful of the hierarchy of legal authorities.

The recent issuance of Rev. Proc. 2017-13 is a case in point. As Bob Eidnier discussed in his recent post on this Revenue Procedure, the Internal Revenue Service issued it in response to requests from the National Association of Bond Lawyers and others for clarification of Rev. Proc. 2016-44 (which superseded Rev. Proc. 97-13)[1] that a management contract does not result in the manager receiving net profits from the managed facility (and, thus, in private business use of the tax-exempt bond proceeds that financed that facility) if the qualified user of the facility pays the manager a form of compensation permitted under Rev. Proc. 97-13 (percentage of gross revenue or expense (but not both), per-unit fees, capitation fees, periodic fixed fees, and certain types of incentive compensation) and the manager also bears some amount of the cost of operating the managed facility. Stated another way, NABL requested that the IRS make clear that the various management contract compensation arrangements permitted under the Rev. Prov. 97-13 safe harbors from private business use not be treated as the sharing of net profits of the managed facility under Rev. Proc. 2016-44.

Continue reading.
