TAX - PENNSYLVANIA

Lohr v. Saratoga Partners, L.P.

Supreme Court of Pennsylvania - October 1, 2020 - A.3d - 2020 WL 5823332

Property owners filed petition to redeem property that had been sold in an upset tax sale.

The Court of Common Pleas denied the petition. Owners appealed, and the Commonwealth Court affirmed. Owners sought discretionary review, which was granted.

The Supreme Court held that:

- Equal protection challenge to the omission of a post-sale right of redemption from the Real Estate Tax Sale Law (RETSL) was subject to rational basis review, rather than strict scrutiny;
- Legislature had a legitimate interest in enacting provision of RETSL barring redemption of property after an upset tax sale; and
- Legislature's decision to include a post-sale redemption remedy in Municipal Claims and Tax Liens Act (MCTLA) but not in RETSL did not violate equal protection.

Property owners' asserted right to redeem property after an upset tax sale was not a fundamental constitutional right, but a statutory remedy provided as part of the legislative tax collection process, and thus owners' equal protection challenge to the inclusion of that right in the Municipal Claims and Tax Liens Act (MCTLA), which applied to two large urban counties in the state, but not in the Real Estate Tax Sale Law (RETSL), which applied in the county in which their property was located, was subject to rational basis review, rather than strict scrutiny.

Legislature had a legitimate interest in enacting provision of Real Estate Tax Sale Law (RETSL) barring redemption of property after an upset tax sale, for purposes of property owners' equal protection challenge to legislature's omission of the post-sale redemption remedy from the RETSL while including it in the Municipal Claims and Tax Liens Act (MCTLA); purposes of the RETSL were to expedite the collection of delinquent real estate taxes, to retain the productivity of the real estate, and to maintain economic value, which were legitimate state interests.

Legislature's decision to include a post-sale redemption remedy in Municipal Claims and Tax Liens Act (MCTLA), which applied to two large urban counties, but not in Real Estate Tax Sale Law (RETSL), which applied to most other counties, was rationally related to legitimate government purpose of expediting collection of delinquent real estate taxes, and thus distinction did not violate equal protection; lack of a redemption provision in RETSL ensured certainty and finality for tax sales, which, in turn, likely encouraged higher bids based on the greater security provided to the purchaser, RETSL provided greater pre-sale protections than MCTLA, and state constitution specifically granted legislature power to classify counties according to population.

[University Research Parks and Opportunity Zones, with Brian Darmody.]

Can university research parks, incubators, and accelerators catalyze innovation in Opportunity Zones?

Brian Darmody is CEO of the Association of University Research Parks (AURP). Many of AURP's member institutions are located in Opportunity Zones.

Click the play button below to listen to my conversation with Brian.

Continue reading.

OpportunityDb

By Jimmy Atkinson

October 14, 2020

[Group Seeks Extension of Relief for Issuers of Tax-Exempt Bonds.]

SUMMARY BY TAX ANALYSTS

The Rhode Island Health and Educational Building Corporation has asked Treasury and the IRS to extend to at least December 31, 2021, the temporary COVID-19 relief provided in Rev. Proc. 2020-21 regarding the public approval requirement under section 147(f) for tax-exempt qualified private activity bonds.

FULL TEXT PUBLISHED BY TAX ANALYSTS

October 7, 2020

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United States Department of the Treasury
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Re: Extension of COVID-19 Relief for Issuers of Tax-Exempt Bonds

Dear Mr. Kautter, Mr. Vallabhaeni, and Mr. Desmond:

The widespread outbreak of the novel coronavirus disease (the “COVID-19 Pandemic”) is the subject of an ongoing emergency declaration made by the President of the United States pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act on March 13, 2020. The COVID-19 Pandemic has also been, and continues to be, the subject of numerous emergency declarations by state and local governments. The COVID-19 Pandemic prompted state and local governments to severely limit or, in some cases, prohibit in-person gatherings by members of the general public.

In response to the COVID-19 Pandemic, Revenue Procedure 2020-21 (“Rev. Proc. 2020-21”), effective May 4, 2020, provides temporary guidance regarding the public approval requirement under §147(f) of the Internal Revenue Code for tax-exempt private activity bonds. Rev. Proc. 2020-21 provides that for the period ending on December 31, 2020, hearings held by teleconference that are accessible to the residents of the approving governmental unit by calling a toll-free telephone number will be treated as held in a location that, based on the facts and circumstances is convenient for residents of the approving governmental unit for the purpose of §1.147(f)-1(d)(2) of the Treasury Regulations.

The same factors that led to the temporary relief provided in Rev. Proc. 2020-21 continue to exist in many jurisdictions, including Rhode Island. Even in areas where explicit restrictions have been relaxed, members of the public generally have been encouraged to continue to practice social distancing, and, while personal choices vary, certain members of the public continue to limit engagement with others. Still others are required to quarantine in their homes after potential exposure to those with confirmed cases of COVID-19.

Accordingly, we respectfully request that the time period for the temporary relief provided in Rev. Proc. 2020-21 be extended to at least December 31, 2021.

If you have any questions, please contact Kim Mooers at 401-831-3770, or through email at kmooers@rihebc.com

Sincerely,

Kimberly Mooers
Executive Director
Rhode Island Health and Educational Building Corporation
Providence, RI

CC:
Helen M. Hubbard, Associate Chief Counsel, Financial Institutions & Products, Internal Revenue Service
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Brett York, Acting Deputy Tax Legislative Counsel, U.S. Department of the Treasury

California Supreme Court Will Hear Bay Area Tolls Case.

The California Supreme Court will consider whether a bridge toll increase in the San Francisco Bay Area was an unlawfully approved tax.

According to an October 16 release by the supreme court, justices accepted review of the appellate court's decision in *Howard Jarvis Taxpayers Assn. v. Bay Area Toll Authority* on October 14, but deferred briefing until it rules on a separate case, *Zolly v. City of Oakland*, which addresses a similar question.

In July 2018 the tax watchdog group Howard Jarvis Taxpayers Association challenged the June 2018 passage of Regional Measure 3, a ballot measure to increase tolls on San Francisco Bay Area bridges by $1 in 2019, 2022, and 2025, for a cumulative increase of $3. The toll increase was promoted as a means to raise revenues for local transportation improvements in the region. The measure was approved with a 55 percent majority of voters in the nine-county Bay Area, but the association alleged in its suit that the toll increase is actually a tax under state law that thus required a two-thirds vote of approval.

The association notes that the tolls will be spent on a wide range of transportation improvements in the region that will be used by payers and nonpayers of the toll increase alike. It argues that under state law, the fee amount and the use of its revenue must be closely related to the benefit or service it's charged for, or else it's a tax. The group claims that the toll revenue is being used too broadly to qualify as a fee for bridge use.

California law "classifies an exaction as a 'fee' if it is charged for goods or services delivered to the payer," or mitigates harm caused by a payer, Tim Bittle, director of legal affairs for the Howard Jarvis association, wrote in a September 2018 newsletter explaining the group's position. "A 'tax,' on the other hand, raises revenue for government programs and policies without requiring any direct nexus between the payer and the use of the funds."

Both the San Francisco County Superior Court and the California First Appellate District ruled against the association. However, the supreme court's decision to hear the case means justices are willing to consider its arguments.

Randy Rentschler of the Bay Area's Metropolitan Transportation Commission told Tax Notes October 16 the supreme court's decision to review the case is disappointing, and that the legal uncertainty threatens key transportation projects in the region. He said the 2018 measure was the third of such measures approved since 1988.

"In the past, no one took it to court," Rentschler said, arguing the group's claim that the toll increase is a tax is erroneous. But voters in 2010 approved Proposition 26, which treats more levies as taxes under state law. According to Rentschler, however, judges have agreed that the toll is not a tax under Proposition 26. "We've had two courts look at this and ruled against them."

The issue in the case is similar to the one in *Zolly v. City of Oakland*, which the supreme court will hear first. That case involves a dispute over whether Oakland's waste management franchise fees are unlawfully approved taxes. A separate panel of the California First Appellate District Court in March determined that the fees were taxes because they weren't reasonably related to the value of the franchise rights for which they're charged.

The appellate court's ruling in *Bay Area Toll Authority* and the *Zolly* opinion conflict with one another. At issue is language in Proposition 26 that amended the state constitution to restrict the types of charges that aren't considered taxes and therefore don't require a two-thirds majority vote to pass. The amendment created a list of such charges and included in the criteria for several that they be based on the actual cost to the government of the service for which the fee is charged. But the criteria for the type of charge that encompasses bridge tolls and franchise fees — charges for entrance, use, purchase, rental or lease of government property — lacks that wording.

However, the law also contains a general provision burdening government with proving that a charge is not a tax, including that its amount is linked to the cost of the service it's charged for, "and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity."

The appellate court in *Bay Area Toll Authority* determined that the absence of any reference to a cost relationship in the list's description of charges for entrance or use of government property means the general provision doesn't apply to that particular type of fees. The *Zolly* court, in contrast, determined that the general provision means that all nontax levies on the list must be linked to the cost of the service to the government, regardless of whether the specific description of each one on the list says so or not.

Bittle told Tax Notes October 16, "We're encouraged the supreme court has granted review" of Bay Area Toll Authority, and "we believe the court of appeal in *Zolly* got it right."

"Everything about Prop. 26 was intended to narrow the field of fees and expand the universe of taxes so that more things would require a two-thirds majority approval," Bittle said.

In *Howard Jarvis Taxpayers Assn. v. Bay Area Toll Authority*, the Howard Jarvis association and plaintiffs are represented by the group's attorneys; the Bay Area Toll Authority is represented by attorneys with the Metropolitan Transportation Commission and Orrick, Herrington & Sutcliffe LLP; the State Legislature is represented by attorneys with the Office of Legislative Council and Olson Remcho LLP; and the Metropolitan Transportation Commission is represented by its own counsel and Orrick, Herrington & Sutcliffe LLP.

TAX ANALYSTS

By PAUL JONES

POSTED ON OCT. 20, 2020

TAX - CONNECTICUT

Town of Redding v. Georgetown Land Development Company, LLC

Supreme Court of Connecticut - September 21, 2020 - A.3d - 2020 WL 5637649

Town, water pollution control commission, and fire district brought action to foreclose municipal tax liens against, among other lienholders, assignee of real estate tax liens originally levied by special taxing district created to finance development project.

Town and fire district filed motions for partial summary judgment with respect to priority, asserting that their tax liens had priority over the tax liens that assignee had acquired from taxing district. Assignee also moved for partial summary judgment.

The Superior Court granted plaintiffs' motions for partial summary judgment and denied that of assignee, and the Superior Court subsequently rendered a judgment of strict foreclosure in favor of town and fire district. Assignee appealed from both orders, and appeal was transferred to the Supreme Court.

The Supreme Court held that:

- Assignee's liens were subordinate to town's liens, but
- Assignee's liens were superior to those of fire district.

In priority dispute over real estate tax liens held by different municipal entities on the same property, tax liens held by assignee, which were originally levied by special taxing district created to finance development project, were subordinate to tax liens held by town; it was undisputed that district's assignment of tax liens to assignee did not affect priority of those liens, priority clause of special act of legislature that created district for this project provided that district's lien for unpaid taxes "shall take precedence over all other liens or encumbrances except a lien for taxes of the town," use of word "except" indicated legislature's intent to remove town's tax liens from class of liens over which district's liens had priority, and review of other statutes addressing lien priority indicated that legislature intended phrase "except a lien for taxes of the town" in priority clause to convey, not just absence of priority over town's liens, but subordination to them.

In priority dispute over real estate tax liens held by different municipal entities on the same property, tax liens held by assignee, which were originally levied by special taxing district created to finance development project, were superior to those of fire district; it was undisputed that taxing district's assignment of tax liens to assignee did not affect priority of those liens, priority clause of special act of legislature that created taxing district for this project provided that taxing district's lien for unpaid taxes "shall take precedence over all other liens or encumbrances except a lien for taxes of the town," and by listing town's tax liens as the only type of lien that was not inferior to taxing district's liens, legislature was presumed to have intended to exclude all other types of liens and encumbrances, including tax liens held by fire district, such that fire district's liens were inferior to taxing district's liens.

Opportunity Zone Rule Change Seeks to Entice Foreign Investors.

IRS considering new rules for overseas investors who want to reap benefits from the tax program

Potential changes to the rules for Opportunity Zones could soon allow some foreign investors to reap major tax benefits from the program.

The Internal Revenue Service is considering new rules pertaining to foreign investors' ability to defer capital gains in the Opportunity Zones program. The new regulations could be released in December, according to the White House Office of Management and Budget. The extent of the changes is unclear, but experts predict they will be geared toward giving foreign investors more clarity on their tax liabilities.

Bloomberg Tax first reported the news.

Both Democrats and Republicans have been targeting Opportunity Zones. President Donald Trump claims the initiative has helped uplift Black and Latino communities, while Democratic presidential candidate Joe Biden said he wants to reform the program to ensure it's being used to help distressed areas.

Continue reading.

The Real Deal

By Keith Larsen

September 25, 2020

State and Local Tax Ballot Measures to Watch on Election Day 2020.

Read the report.

October 5, 2020

Announcing OZ Pitch Day 2020, an Online Investor Matchmaking Event.

If you're an investor with capital gains, how can you find your Opportunity Zone investment and get invested before the end of this year? Today I'm officially launching the OpportunityDb OZ Pitch Day 2020 Online Event.

OZ Pitch Day will take place on Tuesday, November 17, 2020 and will feature roughly one dozen Qualified Opportunity Funds.

Continue reading.

Opportunitydb.com

By Jimmy Atkinson

October 7, 2020

TAX - DISTRICT OF COLUMBIA

Jaswant Sawhney Irrevocable Trust, Inc. v. District of Columbia

District of Columbia Court of Appeals - September 3, 2020 - A.3d - 2020 WL 5250476

Property owner appealed from decision of the District of Columbia Office of Tax and Revenue (OTR) that denied application for real property tax exemption.

The Superior Court dismissed for failure to state a claim. Property owner appealed.

The Court of Appeals held that:

- Property owner was not required to be the same legal entity as the Gurdwara's congregation in

order to qualify for a property tax exemption for a church building;
- Sikh Gurdwara, owned by nonprofit charitable corporation and operated in an auxiliary nature by that same organization, could satisfy the concurrent ownership and use requirement for a property tax exemption for a church building;
- Property owner's statement, that the property since its purchase had been dedicated to the identical purpose of the prior owner, was insufficient to establish that the prior owner continued to operate the Gurdwara, and thus, that the current property owner would not qualify for the exemption; and
- Property owner's claim could not be defeated on the basis property owner could have been characterized as doing more to serve another cause in the public interest on a not-for-profit basis.

Fitch: Mortgage Delinquencies Will Not Notably Affect Property Tax Payments

Fitch Ratings-New York-29 September 2020: Fitch Ratings does not expect fiscal 2021 property tax collections to be meaningfully affected by mortgage forbearance programs or delinquencies, but potential for timing delays is elevated. Mortgage servicers are obligated to advance property taxes when a borrower is not making mortgage payments and, due to the elevated number of delinquent loans and loans in forbearance, servicer liquidity is critical. Unemployment levels remain high, and Fitch expects a slower economic recovery following a third-quarter 2020 bounce back. In the absence of further federal aid, mortgage delinquencies may increase, placing greater pressure on mortgage servicers.

Property taxes have traditionally been a stable and predictable source of revenues for local governments, moderating higher volatility in more economically sensitive taxes, service charges and state aid. Overall property tax collections saw minimal declines during the Great Recession despite widespread mortgage defaults and foreclosures.

Home prices are still rising, as detailed in our U.S. RMBS Sustainable Home Price Report (Second-Quarter 2020), although growth is decelerating. Mortgage delinquencies, excluding mortgages in foreclosure, declined in August to 6.9%, but the rate of decline was slower than in the previous two months, according to Black Knight. The states with the highest delinquency rates were Mississippi, Louisiana, Hawaii, New York and Florida. During the Great Recession, the total delinquency rate peaked at 10.6%.

Forbearance has been offered in greater numbers than during the Great Recession but is trending downward from its peak in June. The share of mortgages in forbearance was 6.87% as of September 20, per the Mortgage Bankers Association. Mortgages in forbearance are generally reported as delinquent, although some borrowers with loans in forbearance are still making payments on time.

A few local governments postponed property tax deadlines or waived late payment fees for payers who can demonstrate they are affected by the coronavirus. Property tax delays are predictable and allow officials to plan for alternate sources of liquidity until tax payments are received. In contrast, an inability by servicers to advance payments to governments could cause an unexpected short-term liquidity shortfall. Almost all Fitch-rated local governments have sufficient liquidity, through internal resources, cash management tools or access to the short-term market, to offset this risk, which is reflected in higher ratings. Those local governments with weaker liquidity tend to be rated low investment-grade or non-investment grade.

A majority of US mortgages are pooled in securitizations as a tool for financing the loans. US mortgage servicers for private residential mortgage-backed securities (RMBS), Government National Mortgage Association (GNMA) RMBS, or Fannie Mae and Freddie Mac (Government Sponsored Enterprises, or GSEs) RMBS, are required by transaction documents or servicing guidelines to advance property taxes for delinquent borrowers to preserve the lien position, and did so even through the 2007-2008 housing crisis. Servicers of GSE and GNMA loans are also incentivized to continue to advance principal and interest (P&I) and taxes and insurance (T&I) to maintain their relationships with GSEs and GNMA, which guarantee mortgage performance. Mortgages guaranteed by the GSEs comprise 60%-70% of the mortgage market, while the remainder is mainly held by bank and credit union portfolios.

While most banks are unlikely to face near-term difficulties with advancing requirements, nonbank servicers, which have weaker credit profiles, are more challenged as they have greater loan exposure by dollar amount than banks. In response, master servicers, the GSEs and GNMA increased oversight of nonbank primary servicers to ensure servicer continuity and continued payments of P&I and T&I.

Many nonbank servicers secured additional lines of credit to make advances, and diversified entities benefitted from the GSE's four-month limit on the obligation to advance P&I. So far, servicers have shown adequate liquidity to advance missed payments, and T&I are generally a smaller percentage of total monthly payments and do not materially add to servicers' advancing obligations.

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TAX - NEBRASKA

[State ex rel. McNally v. Evnen]

Supreme Court of Nebraska - September 10, 2020 - N.W.2d - 307 Neb. 103 - 2020 WL 5505918

Sponsors of three proposed initiatives relating to gaming devices petitioned for writ of mandamus to compel Secretary of State to place initiatives on ballot in general election.

The Supreme Court issued alternative writ requiring Secretary of State to place initiatives on ballot.

The Supreme Court held that:

- Supreme Court would exercise its original jurisdiction over petition for writ of mandamus
- As matter of first impression, it was appropriate to review each initiative individually, rather than as whole, even if each initiative bore connection to others;
- Initiative to amend state constitution's prohibition against gambling by creating exception that would authorize games of chance conducted within licensed racetrack enclosures did not violate single subject rule;
- Initiative to amend constitution did not present risk of impermissible logrolling;
- Alleged impact on gaming at tribal casinos from proposed ballot initiative to amend constitution was not relevant to whether initiative violated requirement that it contain single subject;
- Initiative for enactment of statute allowing games of chance to be conducted by licensed racetrack enclosures and for establishment of Nebraska Gaming Commission to regulate same did not violate single subject rule; and
- Initiative for enactment of statutes establishing annual tax on gross revenues generated by games of chance within licensed racetrack enclosures, which would distribute 70% of tax revenue to provide property tax relief, did not violate single subject rule.

TAX - VIRGINIA

[International Paper Company v. County of Isle of Wight]

Supreme Court of Virginia - September 17, 2020 - S.E.2d - 2020 WL 5554579

Corporate taxpayer, which had successfully obtained tax refund judgment for prior tax years, filed application for correction of new county machine and tools tax assessment, claiming the assessment was non-uniform, invalid, and illegal.

The Isle of Wight Circuit Court granted county's motion to strike, and taxpayer appealed.

The Supreme Court held that:

- Machinery and tools tax plan did not improperly interfere with corporate taxpayer's vested right to tax refund judgment;
- County had the statutory and constitutional authority to impose taxes on corporate taxpayer's machinery and tools property as well as authority to execute tax relief program;
- Taxpayer provided prima facie evidence sufficient to show that tax relief program payments were integrated into the taxation process and had the same effect as partial tax exemptions; and
- Taxpayer provided prima facie evidence that county machinery and tools tax assessment was non-uniform, invalid, and illegal.

County's machinery and tools tax plan did not improperly interfere with corporate taxpayer's vested right to tax refund judgment, although tax plan may have "clawed back" the money paid to taxpayer under refund judgment, where taxpayer received the money it had a vested right to receive, county had authority to increase the tax rate, and tax increase did not retroactively alter the prior tax rates or interfere with the paid judgment.

County had the statutory and constitutional authority to impose taxes on corporate taxpayer's machinery and tools property as well as authority to execute tax relief program, even if the practical effect was to "claw back" tax refunds paid to taxpayer for prior years; county did not revise previous assessments, but instead increased tax rate for subsequent years, and tax relief program was to help businesses negatively impacted by the adjustment to the tax rate.

Corporate taxpayer provided prima facie evidence sufficient to show that county machinery and tools tax relief program payments were integrated into the taxation process and had the same effect as partial tax exemptions, and thus that taxpayer's machinery and tools tax assessment was non-uniform, invalid, and illegal, as required to survive motion to strike; stated purpose of tax relief program was to relieve liability for tax rate increase for certain class of taxpayers whom county deemed to be "harmed" by the rate increase, county structured the program to directly exempt certain tax liability and payments from the program directly offset tax liability, program factually correlated with tax rate increase and was funded predominantly by the tax rate increase, and relief payments were calculated by using tax figures.

Corporate taxpayer provided prima facie evidence that county machinery and tools tax assessment was non-uniform, invalid, and illegal; tax relief formula treated taxpayers differently based upon whether the county had lawfully owed that taxpayer a refund on taxes overpaid in prior years, which created a sub-class of taxpayers, refund and relief payment were negatively correlated, only taxpayers who had received a refund were required to pay the tax assessment increase, and net tax rates paid by taxpayers, given the payments made to some taxpayers by the tax relief program, were not uniform.

Securities Law Considerations for Opportunity Zone Funds.

What securities laws should Qualified Opportunity Fund issuers be aware of before they start raising capital from investors? And what are the major differences between the different types of private placement offerings?

Clem Turner is a New York-based corporate and securities attorney for CSG He leads the firm's alternative capital practice and specializes in Opportunity Zones, among other alternative investment vehicles.

Continue reading.

Opporunitydb.com

September 30, 2020

TAX - OHIO

Village of Put-in-Bay v. Mathys

Supreme Court of Ohio - September 16, 2020 - N.E.3d - 2020 WL 5537009 - 2020 -Ohio-4421

Village filed criminal complaints against operators of business that made motorized golf carts available for rent within village, alleging they violated ordinance requiring owners of vehicles that were made available for hire and use within the municipality to pay a license fee on those vehicles.

After transfer from village's mayor court, the Court of Common Pleas granted operators' motions to dismiss. Village appealed. The Court of Appeals reversed and remanded. Operators appealed, and the Supreme Court accepted the appeals.

The Supreme Court held that:

- Ordinance was constitutional exercise of village's right to tax, and
- Ordinance did not violate constitutional provision relating to operation or use of vehicles on public highways.

Village ordinance requiring owners of vehicles that were made available for hire within municipality to pay license fee on those vehicles was not expressly preempted by statutes imposing state license tax on motor vehicles and allowing an additional $5 tax by counties and municipalities under certain circumstances, and thus ordinance was constitutional exercise of village's right to tax; fact that municipalities were limited in their ability to impose a tax on the operation of a motor vehicle did not mean that General Assembly had prohibited all taxes involving motor vehicles, and municipal tax imposed by village ordinance was not same as, or similar to, state license tax, as it imposed business tax on rental vehicles, not license tax on operation of motor vehicles on public highways.

Village ordinance requiring owners of vehicles that were made available for hire within municipality to pay license fee on those vehicles did not violate prohibition in Home Rule Amendment to State Constitution stating that no monies derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways could be expended other than for listed purposes and "other statutory highway purposes," though funds collected from taxes levied by local ordinance were expended on local purposes; ordinance operated as a business tax on the privilege of renting one's vehicle as a business venture and did not concern or otherwise place any limitations on operation or use of vehicles on public highways.

TAX - ALABAMA

Campbell v. City of Gardendale

Supreme Court of Alabama - September 4, 2020 - So.3d - 2020 WL 5268049

Taxpayer brought putative class action against city, county, and county's tax collector based on challenge to the constitutionality of two municipal taxes adopted by city in connection with city's planned creation of a municipal school system, which was a plan that had been rejected by the Court of Appeals.

Circuit Court entered summary judgment for defendants. Taxpayer appealed.

The Supreme Court held that Alabama Constitution's local amendment providing that the Jefferson County property tax for schools is reduced by the amount of municipality's special or additional taxes levied and collected for public-school purposes was not a basis for invalidating ad valorem taxes collected by Jefferson County municipality in connection with city's planned creation of a municipal school system, regardless if the municipal taxes were special or additional taxes being levied and collected for public-school purposes.

Timing Considerations for Opportunity Zone Investors, with Ashley Tison.

As we approach the fourth quarter of 2020, what are some of the most important timing considerations for Opportunity Zone…

CONTINUE READING »

TAX - SOUTH CAROLINA

Weaver v. Recreation District

Supreme Court of South Carolina - September 2, 2020 - S.E.2d - 2020 WL 5224473

Taxpayer brought declaratory judgment action against special purpose district and others to challenge constitutionality of statute addressing millage levied in certain special purpose districts.

The Circuit Court granted judgment to defendants. Taxpayer appealed.

The Supreme Court held that:

- Statute does not violate constitutional prohibition on taxation without representation;
- Statute is not unconstitutional special legislation; and
- Statute does not violate Home Rule.

The statute addressing the millage levied in certain special purpose districts is not special legislation prohibited by the South Carolina Constitution; the statute affects all special purpose districts with unelected governing bodies throughout the state, so the legislation is applied uniformly to a valid class of entities.

The statute addressing the millage levied in certain special purpose districts is not special legislation prohibited by the South Carolina Constitution; the statute affects all special purpose districts with unelected governing bodies throughout the state, so the legislation is applied uniformly to a valid class of entities.

The statute addressing the millage levied in certain special purpose districts does not violate the Home Rule as set forth in the state constitution and the Home Rule Act; the statute applies to a broad class of districts having similar characteristics, and a county council retains its authority over taxation.

Opportunity Zones Get Big Push as Critics Question Who They Help.

- **Trump pitching tax break expansion during reelection campaign**
- **Incentives are drawing investment, but benefits still in question**

Contentious economic development incentives lawmakers and the White House are pitching as an answer to the nation’s economic and social ills are structurally unable to help fix those problems—and may even exacerbate them—critics say.

Opportunity zones, originally a bipartisan proposal from Sens. Tim Scott (R-S.C.) and Cory Booker (D-N.J.), are meant to lift struggling neighborhoods out of poverty by luring investors with tax breaks. President Donald Trump has repeatedly touted the tax incentives as one of his administration’s major wins since they were enacted in the 2017 tax code overhaul.

“I got criminal justice done, I got opportunity zones,” Trump said during a recent interview with Axios, weeks after tweeting something similar. “I did more for the Black community than anybody with the possible exception of Abraham Lincoln, whether you like it or not.”

Continue reading.

Bloomberg Tax

by Lydia O’Neal

Sept. 8, 2020, 1:46 AM

Where to Find Some of the Best Opportunity Zone Opportunities.

A widespread group of mostly-impoverished, densely-packed urban neighborhoods offers some of the best potential for Opportunity Zone investment, according to ATTOM Data Solutions and CityBldr. A study from the two firms spotlights 11 neighborhoods in seven states and the District of Columbia for some of the nation’s most attractive opportunities to take advantage of federal reinvestment tax benefits.

These range from Anacostia in southeast Washington, DC, to the South Shore area of Chicago to City Heights in central San Diego. Other neighborhoods identified include Mid-City in central Los Angeles; Parramore in west-central Orlando; Central District in eastern Seattle; West Colfax in western Denver; Spartan Keyes in eastern San Jose; North End/New Center in northern Detroit; Buckman/Kerns in southeastern Portland, OR; and Hilltop in central Tacoma.

Most of those neighborhoods stand out as notably poorer and more densely populated than the U.S. as a whole, with lower income and educational levels and far higher percentages of renters than homeowners. However, contributing to their economic potential, a few have above-average educational levels, and most have home values far above the national median home price.

These neighborhoods also have seen a wide range of median home price increases and decreases over the past year. In South Shore, prices have nearly doubled in the past 12 months, while in L.A.’s Mid-City section, they’ve declined nearly 12%, according to ATTOM data.

ATTOM and CityBldr reported that between 53% and 98% of households rent homes in the 11 areas, compared to 36% nationwide. The lowest rental rate is in Detroit’s North End/New Center, while the highest is in Orlando’s Parramore community.

The areas were identified by CityBldr as among those where both communities and housing developers have the most to gain from Opportunity Zone tax benefits. The findings were based on machine learning technology from various data sources and a detailed understanding of the various markets.

"This data tells us that housing developers should consider investing in these neighborhoods because they have an immense amount of potential, plus tax benefits aimed at realizing that potential," said Bryan Copley, co-founder and CEO of CityBldr. "What we've done with this study is create a standardized score to compare every Opportunity Zone in the U.S. to determine which areas would yield the highest average return on investment."

September 4, 2020

Board of Education of Richland School District No. 88a v. City of Crest Hill

Appellate Court of Illinois, Third District - July 24, 2020 - N.E.3d - 2020 IL App (3d) 190225 - 2020 WL 4251700

School Board filed verified complaint that challenged city's approval of tax increment financing (TIF) for redevelopment project's noncompliance with statutory mandates and procedural requirements.

The Circuit Court granted summary judgment for the city. School Board appealed.

The Appellate Court held that parcels separated by utility right-of-way were not contiguous.

Tax Increment Allocation Redevelopment Act for redevelopment of blighted property did not allow city to jump a 234.9 foot portion of natural gas right-of-way, located in unincorporated excluded area of approved tax increment financing (TIF) district, to establish required contiguity between two parcels, and, thus, financing district was not contiguous.

The contiguity touching requirement for tracts of land that touch or adjoin one another in a reasonably substantial physical sense ensures a municipality has properly constructed a tax increment financing (TIF) district and is legitimately reaping tax increment financing benefits under the Tax Increment Allocation Redevelopment Act for redevelopment of blighted property.

Point-to-point touching or cornering is generally not sufficient to satisfy the requirement of contiguity of tracts of land under the Tax Increment Allocation Redevelopment Act for the redevelopment of blighted tracts of land that will benefit from tax increment financing (TIF); point-to-point touching and cornering are merely a subterfuge to reach outlying areas.

TAX - PENNSYLVANIA

Dechert LLP v. Pennsylvania Department of Community and Economic Development

Commonwealth Court of Pennsylvania - June 23, 2020 - A.3d - 2020 WL 3421689

Business filed petition for review, seeking declaratory relief that the Department of Community and Economic Development (DCED) misconstrued the Keystone Opportunity Zone, Keystone Opportunity Expansion Zone and Keystone Opportunity Improvement Zone Act (KOZ Act) as precluding a beneficiary who previously enjoyed tax exemptions in a now-expired zone from moving to an active zone and again enjoying tax exemptions.

The Commonwealth Court holds, as a matter of first impression, that the movement from an expired zone into an active zone is not grounds for deeming a business unqualified for the tax benefits under the KOZ Act, assuming the business qualifies under the KOZ Act and meets the express relocation requirements.

[Family Office Investing in Provo OZ Tech Accelerator Campus, with Hall Labs.]

What are the strategic advantages to investing in early growth, patent-protected technology companies located in Opportunity Zones? Matt Van Dyke…

CONTINUE READING »

Opportunity Db

September 9, 2020

Novogradac Conference Speakers Expect Opportunity Zones Will Continue to be a Game-Changer for Low-Income Communities.

Legislators, policymakers and stakeholders at the Novogradac 2020 Opportunity Zones Virtual Conference in July discussed opportunity zones (OZ) legislation, reporting requirements, guidance and the evolving marketplace–all in the context of how the OZ incentive can play a role in strengthening communities and the economy.

"Opportunity zones changed the conversation," said Daniel Kowalski, Counselor to the Secretary of Treasury, during the Novogradac conference. "Most economic incentive programs are grants or debt and the opportunity zone is an equity play. … It's important we have this new tool that focuses on equity and changes the conversation about what you need to do in order to build up a low-income community."

Bipartisan Support in Washington

Conference speakers shared their outlook on OZ legislation, generally agreeing that the two most likely vehicles for OZ legislation this year are a COVID-19 relief bill or an end-of-year tax package. In particular, proposals for an extension of the OZ incentive and for an expansion of reporting requirements have gained traction in Congress.

"The COVID-19 pandemic has made it clear that legislation around a two-year time extension is now more important and more necessary than ever before," said Sen. Tim Scott, R-S.C., author of the original OZ legislation and a member of the tax-writing Senate Finance Committee, during his conference keynote address. "This will allow those using the OZ incentive to weather the storm and give our communities more time to plan and harness the potential of opportunity zones."

Sen. Scott said he would continue working to get his bipartisan Improving and Reinstating the Monitoring, Prevention, Accountability, Certification and Transparency Provisions of Opportunity Zones (IMPACT) Act passed into law so that decision makers can better track and understand the impact of OZs. The IMPACT Act would institute reporting requirements that were included but later stripped from the 2017 tax reform package that enacted OZs.

“We really need to work to get the IMPACT Act passed,” said Emily Lavery, legislative assistant to Sen. Scott. “It’s extremely robust … and includes the largest scope of minute-level data on actual community impact, which is really what we’re trying to understand.”

Chad Maisel, economic policy advisor for Sen. Cory Booker, D-N.J., said that there is support from both sides of the aisle and from both chambers of Congress for OZs to succeed.

“I think the basis of any legislative package to move forward is likely to revolve around reporting and increased transparency,” said Maisel. “It’s something that Sen. Booker has talked a lot about and Sen. Scott has talked a lot about.” Maisel added that Sen. Booker is also interested in phasing out the small percentage of higher-income [contiguous] census tracts designated by governors as OZs, but that might not need a federal tax incentive as much as other areas.

In addition to having support in Congress, the OZ incentive is also a priority for the White House Opportunity and Revitalization Council. The council is made up of 17 federal agencies and federal-state partnerships working together to focus resources into OZs and other economically distressed communities.

Alfonso Costa Jr., former deputy chief of staff for the U.S. Department of Housing and Urban Development, outlined the White House Opportunity and Revitalization Council’s report on OZ best practices and said that additional actions will be made public in the near future.

“The White House Opportunity and Revitalization Council is intently focused on making sure that OZs are places where existing residents are the ultimate beneficiaries of the funds being invested through qualified opportunity funds, and that will never change,” said Costa.

Reporting and Data Collection

On the topic of reporting and data collection, Kowalski said the Internal Revenue Service (IRS) Form 8996 for qualified opportunity funds (QOFs) will provide two key pieces of information to help evaluate the OZ incentive: the amount of investment being made and the location of those investments.

Kowalski estimates that it will take about 18 months for Treasury to compile and process OZ information reported through Form 8996, so a complete set of data for 2019 OZ investments might not be available until mid-2021.

Kowalski said that once Treasury processes the Form 8996 information, the department should be able to create a heat map to illustrate where OZ investments are being made. Different gradations of color can show the depth of investment in a particular tract on a dollar basis.

Certain economic indicators are not tracked through Form 8996, such as income, poverty levels and job creation and destruction–information that will be available through the American Community Survey (ACS). The challenge is comparing ACS data, which is averaged over five years, with single-year data for OZ investments reported through Form 8996. Kowalski said Treasury will need to work through the time difference between the two data sets.

IRS Guidance

Notice 2020-39
As a response to the COVID-19 pandemic, the IRS in June provided OZ deadline relief through

Notice 2020-39. Among several provisions, the guidance provided extensions for taxpayers to invest their capital gains in a QOF.

Panelists said the deadline extensions in Notice 2020-39 provided welcome relief, especially for transactions negotiated pre-COVID-19 that may need re-examination. “In some cases, you are seeing [developments] looking for capital and not necessarily meeting investor expectations that have changed post-COVID,” said Julia Shin, vice president and managing director of impact investing for Enterprise Community Investment Inc. “The additional time that has been granted [through Notice 2020-39] has been helpful in working through some of these questions and I think will still be very helpful moving forward.”

Implementing the Final Rule

Novogradac partner and conference chairman John Sciarretti led a discussion with representatives from the IRS on the final OZ regulations released in December 2019. The panel covered several aspects of the final rule, including the investment standard test, which requires that a QOF hold at least 90 percent of its assets in OZ property at the end of a six-month period. Under the final rule, the option to disregard recently contributed property for up to six months before a testing date does not address any earnings on that property nor does it address any capitalized organizational or startup costs that funds might have during the process.

Sciarretti suggested that Treasury allow funds to exclude earnings on the temporary contribution and to ignore any capitalized costs related to organization and startup. Panelist Alfred Bae, general attorney for the IRS, responded that it is reasonable for funds to disregard the earnings on contributions that were otherwise being disregarded under the Treasury regulations. Bae said that taxpayers should also be allowed to ignore organization and startup costs. QOFs having no assets in either the numerator or the denominator due to these disregarded assets can report as 100 percent on Form 8996, according to Bae.

Another discussion topic was how the IRS would treat a change in the use of working capital plan as a result of COVID-19. Sciarretti gave examples of how some entities have found it necessary to adjust their plans because of COVID-19, including difficulty raising financing or needing to change plans for a full-service hotel to office or residential space. Julie Hanlon Bolton, deputy associate chief counsel for the IRS, said the IRS is considering stakeholder requests that entities that modify or change their business plans because of COVID-19 are not considered to fail the working capital safe harbor requirement to use working capital assets in a manner “substantially consistent” with their written plan and schedule.

Other topics covered by the IRS panel included the treatment of related-party additions to basis, the infusion of working capital assets, triple-net leases and measuring the working capital safe-harbor COVID-19 extension.

Future Regulations

Since final regulations were issued in December 2019, followed by technical corrections in April, Kowalski said he considers the status of OZ regulations complete for now. One area in which Treasury may consider issuing guidance is the redrawing of census lines after the latest census update.

OZ Marketplace

Another topic discussed was the effects of the COVID-19 pandemic and an observed slowdown or pause in some OZ activity. Factors stemming from COVID-19, such as economic uncertainty, construction delays and underwriting challenges have contributed to some OZ participants taking a pause. Panelists said that those planning OZ developments in commercial retail and hospitality, in particular, may be rethinking their strategies.

The pandemic has also prompted businesses to think about evolving patterns of commerce, such as a greater focus on online shopping, which makes warehousing and delivery services even more important. There may also be a push to produce more goods domestically to avoid supply chain disruptions, especially in the pharmaceutical industry. Panelists said business can consider OZ investments as an opportunity to meet these evolving market demands while benefiting OZ communities.

Speakers discussed a final rule published by federal regulatory agencies June 25 to modify the Volcker Rule's prohibition on banking entities sponsoring or investing in covered funds—a ruling that allows banks to participate in the OZ incentive. Panelists said this rule change makes them optimistic that more dollars will flow into the OZ space.

The conference also included discussion of OZ investment in operating businesses. "It's been well documented that the overwhelming majority of OZ investments to date have been in real estate," said Michael Kressig, a Novogradac partner and panel moderator. "The original sponsors of the incentive certainly envisioned a place for real estate investments, but they also believed that in order for this incentive to have its intended economic, catalytic impact on these distressed communities that it was really important that operating businesses and the job creation that they generate have a big place in the market."

"I think that the recent regulation changes are very helpful to the operating business environment," said Terry Jester, CEO of Solpad and the Impact OZ Fund. "There is a challenge of getting the message out about whatever these operating businesses' needs are and applicability for distressed communities or distressed areas."

Outlook

Despite challenges, including the COVID-19 pandemic, speakers expressed optimism that the OZ incentive will continue to drive capital into neighborhoods in need.

"The time to reinvest in our most distressed communities is right now," said Sen. Scott. "The IRS has worked hard to create flexibility that will allow folks investing in 2020 to have the time they need to make smart, impactful investments. I also want to encourage those creating powerful change through opportunity zones to be vocal–I mean be loud, be seen, be heard. We need to hear your stories because the more information is in the public forum about the success of the opportunity zones, the more traction the zones will have across the country."

Published by Teresa Garcia on Tuesday, September 1, 2020

[11 U.S. Neighborhoods Emerge As Best Candidates For Opportunity Zone Investments.]

Areas Identified Are More Impoverished and Densely Populated, With Low Homeownership Rates; Most Already Have Home Prices Far Exceeding National Levels; While Prices Have Both Increased and Decreased Since First Half of 2019

IRVINE, Calif., Sept. 3, 2020 /PRNewswire/ — ATTOM Data Solutions, curator of the nation's premier property database and first property data provider of Data-as-a-Service (DaaS), teamed up with CityBldr, a Seattle-based proptech company that uses AI to determine the best use of land, to discover that a widespread group of mostly-impoverished, densely-packed urban neighborhoods ranging from Anacostia in southeast Washington, DC, to the South Shore area of Chicago, IL, to City Heights in central San Diego, CA, offer some of the most attractive opportunities in the nation for housing developers to take advantage of federal reinvestment tax benefits.

CityBldr data spotlights 11 neighborhoods in seven states and the District of Columbia with some of the best potential for using Opportunity Zone tax benefits designed to spur revival in low-income communities across the United States. The zones were established by Congress under the 2017 Tax Cut and Jobs Act.

Along with Anacostia, South Shore, and City Heights, other neighborhoods identified include Mid-City in central Los Angeles; Parramore in west-central Orlando, FL; Central District in eastern Seattle, WA; West Colfax in western Denver, CO; Spartan Keyes in eastern San Jose, CA; North End/New Center in northern Detroit, MI; Buckman/Kerns in southeastern Portland, OR; and Hilltop in central Tacoma, WA.

Most of those areas stand out as notably poorer and more densely populated than the U.S. as a whole, with lower income and educational levels and far higher percentages of renters than homeowners. However, contributing to their economic potential, a few have above-average educational levels, and most have home values that far exceed the national median home price. They also have seen a wide range of median home price increases and decreases over the past year, from nearly doubling in Chicago's South Shore neighborhood, to a drop of 12 percent in the Mid-City section of Los Angeles, according to ATTOM.

The areas were identified by CityBldr as among those where both communities and housing developers have the most to gain from Opportunity Zone tax benefits, based on machine learning technology from various data sources and a detailed understanding of the various markets.

"This data tells us that housing developers should consider investing in these neighborhoods because they have an immense amount of potential, plus tax benefits aimed at realizing that potential," said Bryan Copley, co-founder and CEO of CityBldr. "What we've done with this study is create a standardized score to compare every opportunity zone in the U.S. to determine which areas would yield the highest average return on investment."

Todd Teta, chief product officer with ATTOM Data Solutions, noted that ATTOM contributed another key element showing home price changes from the first half of 2019 to the first half of 2020 in those areas.

"Factoring in home values and how they've done in the past year adds a critical piece of data to the picture," said Teta. "Developers can get a demographic snapshot of what these areas look like, plus the hard numbers on how home prices are changing."

Key data points for areas spotlighted in the study:

- Median household incomes in these areas range from $20,205 in Tacoma's Hilltop area to $57,009 in the Spartan Keyes section of San Jose. Seven of the 11 areas have median household incomes below $40,000 and all 11 are beneath the national level of $61,937.
- Population densities range from about 2,400 people per square mile in the North End/New Center neighborhood in Detroit to 19,400 per square mile in Chicago's South Shore area. Nationwide, the

number is just 93 per square mile.
- All 11 areas have poverty levels that are higher than the national rate of 13.1 percent, running from 16.3 percent in the Mid-City section of Los Angeles to 49.4 percent in the City Heights area of San Diego.
- Between 53 percent and 98 percent of households rent homes in the 11 areas, compared to 36 percent nationwide. The lowest rental rate is in Detroit's North End/New Center area, while the highest is in Orlando's Parramore community.
- In three areas, the percentage of adults with college degrees outpaces the national figure of 32.6 percent: Spartan Keyes in San Jose (37.5 percent), Central District in Seattle (48.7 percent) and Buckman/Kerns in Portland (56.5 percent). Levels in other spotlighted areas range from 3.6 percent in the Parramore section of Orlando to 31.5 percent in Denver's West Colfax neighborhood.
- Despite relatively high levels of economic distress, the typical home sells for more than the national median home price in eight of the 11 areas, according to data collected by ATTOM in the first half of 2020. The lowest median home prices are in North End/New Center in Detroit ($40,501), Parramore in Orlando ($105,000) and Hilltop in Tacoma ($217,000). The highest are in Central District in Seattle ($795,500), Mid-City in Los Angeles ($860,750) and Spartan Keys in San Jose ($885,000).
- The largest increases in median home prices from the first half of 2019 to the first half of 2020, based on ATTOM data, were in North End/New Center in Detroit (up 25 percent), Parramore in Orlando (up 31 percent) and South Shore in Chicago (up 91 percent). The biggest declines were in Spartan Keys in San Jose (down 7 percent), Mid-City in Los Angeles (down 12 percent) and Hilltop in Tacoma (down 32 percent). However, while the opportunity zone in Hilltop (census tract 614) saw a sharp decline of 32 percent, the city of Tacoma, WA saw an increase of 12 percent in median home sales prices from last year.

Report methodology

The overview of these opportunity zones looked at high redevelopment values defined by CityBldr in an analysis designed to showcase area that offer the greatest value to be gained by investors for building multifamily apartments, rowhomes or townhomes in those areas. Those census tracts included in the analysis also must have sufficient home sales prices from ATTOM Data Solutions, to show a year-over-year and two-year median home sales price change. Various data points mentioned above to help offer context for these opportunity zones came from Censusreporter.org.

About CityBldr
CityBldr is a technology company that determines the best use of land. The company offers commercial real estate, residential real estate, government and architecture products and powers acquisitions for some of the world's most admired companies. For a ranking of sites within these or other opportunity zones, submit inquiries to hello@citybldr.com.

About ATTOM Data Solutions
ATTOM Data Solutions provides premium property data to power products that improve transparency, innovation, efficiency and disruption in a data-driven economy. ATTOM multi-sources property tax, deed, mortgage, foreclosure, environmental risk, natural hazard, and neighborhood data for more than 155 million U.S. residential and commercial properties covering 99 percent of the nation's population. A rigorous data management process involving more than 20 steps validates, standardizes and enhances the data collected by ATTOM, assigning each property record with a persistent, unique ID — the ATTOM ID. The 9TB ATTOM Data Warehouse fuels innovation in many industries including mortgage, real estate, insurance, marketing, government and more through flexible data delivery solutions that include bulk file licenses, property data APIs, real estate

market trends, marketing lists, match & append and introducing the first property data delivery solution, a cloud-based data platform that streamlines data management – Data-as-a-Service (DaaS).

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[Opportunity Zones Continue to Make an Impact.]()

Edmon Rakipi, principal at Opp Zone Capital, shares why he expects the Opportunity Zone Program to revitalize some of the hardest-hit real estate sectors going forward.

The investment activity trajectory in qualified Opportunity Zones has been fluctuating since the end of last year, when important clarifications were added to the program legislation. Mirroring the economic outlook, the program had a great start to 2020, followed by a slowdown in spring and a rebound at the beginning of summer, according to commercial real estate valuation firm BBG.

Although the nation is bracing for a new slowdown in the last quarter of the year, Notice 2020-39—issued by the Internal Revenue Service in June—is expected to boost investors' confidence in placing capital. Edmon Rakipi, principal at Opp Zone Capital—an entity that provides specialized Opportunity Zone investment and fund management services nationwide—expects the OZ program to contribute to the revitalization of some of the hardest-hit real estate sectors.

Continue reading.

Commercial Property Executive

By Roxana Baiceanu

AUG 31, 2020

Opportunity Zone Investing in Silicon Valley, with Urban Catalyst.

Does the Silicon Valley tech migration create a unique investment case for ground-up development in fast-growing downtown San Jose's Opportunity…

CONTINUE READING »

Opportunity Db

September 2, 2020

TAX - NEW YORK

International Student Exchange, Inc. v. Assessors Office of Town of Islip

Supreme Court, Appellate Division, Second Department, New York - July 15, 2020 - N.Y.S.3d - 185 A.D.3d 815 - 2020 WL 3980650 - 2020 N.Y. Slip Op. 03911

Nonprofit public benefit corporation brought an article 78 proceeding to annul determination of town board of assessment review that denied nonprofit's application for property tax exemption.

The Supreme Court granted petition, annulled board's determination, and directed town's assessor's office, board, and town to grant nonprofit a full property tax exemption for tax year. Defendants appealed.

The Supreme Court, Appellate Division held that:

- Nonprofit was organized exclusively for a tax exempt purpose, but
- Issue of fact existed as to whether nonprofit used its property exclusively for exempt educational purpose.

Nonprofit public benefit corporation that facilitated student exchange was organized exclusively for a tax exempt purpose for purposes of Real Property Tax Law, where nonprofit's Articles of Incorporation stated that it was not organized for the private gain of any single person, and even if the nonprofit benefited economically from its programs or from the rental of the property, its filed financial documents set forth that the benefit inured to the organization, not to its officers or employees personally.

Issue of fact existed as to whether nonprofit benefit corporation that facilitated exchange students used its property exclusively for exempt educational purpose, thus requiring that matter be remitted to trial court for determination of whether nonprofit was entitled to full or partial property tax exemption, on appeal from trial court's determination that nonprofit was entitled to full property tax exemption; no evidence indicated what portion of the building was actually used in furtherance of educational purpose, and nonprofit indicated on its application that it intended to lease portion of property.

White House Estimate: $75 billion Raised by Opportunity Zone Funds Thru 2019.

In a report released earlier this week, the White House Council of Economic Advisers estimated that $75 billion of private…

CONTINUE READING »

Opportunity Db

August 25, 2020

Challenges for Smaller Opportunity Zone Developers, with Garth Everhart.

What are some challenges that smaller Opportunity Zone project developers face? And are there benefits to investing in a smaller…

CONTINUE READING »

Opportunity Db

August 26, 2020

When Will Tax Revenues Rebound? It Depends on the Tax.

Some taxes are more impaired by the pandemic recession than others, and each jurisdiction is impacted differently, but many will still suffer revenue slumps into next year and even beyond.

Without claiming to own a crystal ball, my multi-decade experience in public finance and investment analysis gives me some insights that can hopefully help state and local government policymakers, budgeters, managers and union leaders as they plan ahead for the economy's transition from pandemic recession to an elongated economic and fiscal recovery.

It doesn't take a crystal ball to see that even if the economy grows by 6 percent in 2021 from this winter's bottom-out point, as the most optimistic Wall Street economists forecast, many states and localities will remain underwater, struggling or unable to maintain full-scale public services in the face of continuing revenue shortfalls.

Let's first clear the air about the stock market and its limited forecasting value for public budgeting. The major stock indexes are back up to pre-pandemic levels, but that is not a useful predictor for governmental tax revenues. The lost earnings of 2021 will have only a fractional impact on the long-run value of shares in big businesses; blue-chip investors are already looking out toward 2022 and beyond. Where the business-sector pain will continue to be felt most acutely is in the lower tier of smaller public companies and the even smaller privately owned businesses.

Continue reading.

GOVERNING.COM

GIRARD MILLER, FINANCE COLUMNIST | AUGUST 18, 2020

TAX - WASHINGTON

PeaceHealth St. Joseph Medical Center v. Department of Revenue

Supreme Court of Washington - August 6, 2020 - P.3d - 2020 WL 4516799

Department of Revenue appealed a decision of the Board of Tax Appeals granting taxpayers, which were non-profit medical center operators, a refund of business and occupation taxes paid on compensation received from out-of-state subsidized health care programs.

The Superior Court reversed. Taxpayers appealed. The Court of Appeals affirmed. Taxpayers petitioned for review, which was granted.

The Supreme Court held that:

- Statute establishing a business and occupation tax deduction for public and nonprofit hospitals for "compensation for health care services covered under…medical assistance, children's health, or other program under [statutory chapter governing Medicaid and Children's Health Insurance Programs (CHIP) programs]" applies only to compensation received from in-state Medicaid and CHIP programs, not to compensation received from all states' Medicaid and CHIP programs, and
- Such statute did not violate dormant commerce clause pursuant to government function exemption.

Pursuant to government function exemption, state statute limiting business and occupation tax deduction available to public and nonprofit hospitals for Medicaid and Children's Health Insurance Programs (CHIP) compensation to only in-state, rather than out-of-state, compensation did not violate dormant commerce clause; deduction supported a quintessentially public function by helping to subsidize government's provision of essential health care services to state's citizens by facilitating expansion of government's overall purchasing power for such services.

TAX - VERMONT

Martinez v. Town of Hartford

Supreme Court of Vermont - August 7, 2020 - A.3d - 2020 WL 4557061 - 2020 VT 70

Taxpayer, proceeding pro se, appealed from decision of Property Valuation and Review Division (PVR) hearing officer setting the fair market value of his single-family dwelling at $509,900, equalized to a value of $492,300, for purposes of town's property tax grand list.

The Supreme Court held that:

- Although the sale price of a property in a contemporaneous arms-length transaction is strong presumptive evidence of fair market value, for purposes of Vermont's property tax statute, it is not solely determinative and may be overcome, in rare cases, by other evidence of value, and
- In the present case, the hearing officer did not err by relying on comparable sale evidence in concluding that the sale price did not accurately reflect fair market value.

Although the sale price of real property in a contemporaneous arms-length transaction is strong presumptive evidence of fair market value, for purposes of Vermont's property tax statute, it is not solely determinative and may be overcome, in rare cases, by other evidence of value; statute expressly and without qualification allows factfinder to consider other factors beyond the recent, arms-length sale price, and, while case law emphasizes that such sale establishes a strong presumption as to the fair market value of the property, Supreme Court has never held that existence of a bona fide sale price conclusively establishes fair market value or precludes hearing officer from considering competing evidence of fair market value.

Hearing officer's appraisal of taxpayer's single-family dwelling at $509,900, equalized to a value of $492,300, for purposes of town's property tax grand list, was rationally derived from the findings and evidence, even though taxpayer had recently purchased the home for $350,000; while it was undisputed that sale was bona fide, other evidence showed that sale price did not represent property's fair market value, including town's unchallenged comprehensive market analysis report which valued taxpayer's property at $510,000 based on nine recent sales of comparable properties in the same planned unit development whose adjusted prices ranged from $501,400 to $515,000, and under these circumstances, hearing officer did not abuse his discretion by affording greater weight to independent market data than to sale price in determining fair market value.

Potential Legislative Improvements to Opportunity Zones, with Emily Lavery.

Why are Opportunity Zones more important now than ever before, and what legislative changes are being considered to improve the…

CONTINUE READING »

August 19, 2020

PUBLIC UTILITIES - FEDERAL

SFPP, L.P. v. Federal Energy Regulatory Commission and United States of America

United States Court of Appeals, District of Columbia Circuit - July 31, 2020 - F.3d - 2020 WL 4377850

Partnership oil pipeline filed tariff increases and, after Federal Energy Regulatory Commission (FERC) issued three orders, the Court of Appeals vacated the orders in part.

On remand, FERC issued two further orders that removed the income tax allowance, among other holdings. Pipeline and shippers petitioned for review.

The Court of Appeals held that:

- FERC's decision to remove income tax allowance was not arbitrary and capricious;
- Pipeline was not entitled to reopen administrative record;
- FERC decision to direct partnership oil pipeline to use its originally filed index rates was not arbitrary;
- FERC did not act contrary to law or arbitrarily and capriciously in permitting pipeline to remove deferred tax account from its cost of service; and
- FERC's decision to allow pipeline to recover litigation expenses through three-year surcharge was adequately explained and reasonable.

Federal Energy Regulatory Commission (FERC) reasonably identified double-recovery problem in granting both an income tax allowance and a discounted cash flow return on equity, and thus FERC's decision to remove income tax allowance for partnership oil pipeline was not arbitrary and capricious; FERC explained that granting an income tax allowance for investor-level taxes did not alter investor's discounted cash flow rate of return, but rather it only inflated pipeline's cost of service with tax costs already covered by that return.

Partnership oil pipeline was not entitled to reopen record at Federal Energy Regulatory Commission

(FERC) regarding tariff dispute and FERC's decision to remove income tax allowance; even though other parties would not be precluded from arguing that their recovery of income tax allowance did not result in double-recovery of investors' income tax costs, pipeline had fully litigated issue at FERC and Court of Appeals, and FERC could deny pipeline another bite at the apple while leaving door open for others to argue issue on facts of their cases.

Federal Energy Regulatory Commission's (FERC) decision to direct partnership oil pipeline to use its originally filed index rates in its compliance filing, which calculated certain refunds, was not arbitrary; FERC explained that it would not permit refunds following a rate case that were based on index rates different from those previously filed by pipeline and accepted by FERC, cost-of-service litigation neither altered industry-wide annual inflationary changes justifying annual index changes nor addressed annual cost changes pipeline itself experienced, and allowing pipeline retroactive adjustment would have inoculated pipeline from risk of its chosen ratemaking strategy.

Federal Energy Regulatory Commission (FERC) did not act contrary to law or arbitrarily and capriciously in permitting partnership oil pipeline to remove deferred tax account from its cost of service; refunding tax account to ratepayers or continuing to remove it from rate base would have constituted impermissible retroactive ratemaking, as decision by FERC to return account to shippers would have as a necessary predicate a conclusion that account should not have been collected in the first place, regardless of reason that account became overfunded.

Federal Energy Regulatory Commission's (FERC) decision to allow partnership oil pipeline to recover tariff litigation expenses through three-year surcharge was adequately explained and reasonable, despite contention that costs should have been spread over 11 years of litigation, where 85.9% of expenses were incurred over three-year period to which surcharge would apply.

TAX - ARIZONA

State ex rel. Brnovich v. City of Phoenix

Supreme Court of Arizona - August 3, 2020 - P.3d - 2020 WL 4431892

Attorney General brought special action seeking resolution of issue of whether ordinance imposing fees on commercial ground transportation providers who transported passengers to and from airport violated state constitution's prohibition on the imposition or increase of taxes or other transaction-based fees on services.

The Supreme Court held that:

- Fees imposed by ordinance were not transaction-based and thus did not violate constitutional prohibition on the imposition or increase of taxes or other transaction-based fees on services, and
- Statutory requirement for local government to post a bond, in a special action by Attorney General to determine whether a local law violates state law or constitution, was so incomplete and unintelligible as to be unenforceable.

Trip fees which ordinance imposed on commercial ground transportation providers who transported passengers to and from airport were not transaction-based and thus did not violate constitutional prohibition on the imposition or increase of taxes or other transaction-based fees on services; neither imposition of trip fee nor its amount depended on whether a passenger took a ride, cancelled it, or even paid for it, but rather, trip fees were based on providers' use of airport property in picking up and dropping off passengers at designated sites as recorded by technology-based trip-tracking or provider reports.

Statutory requirement for local government to post a bond, in a special action by Attorney General to determine whether a local law violates state law or constitution, was so incomplete and unintelligible as to be unenforceable, where neither statute nor legislative history clarified bond's purpose, conditions on which it was based, what would happen if no bond were posted, or what conditions were required to exonerate bond.

Why 2020 is Primed For Opportunity Zone Investments.

OZs are an effective investment vehicle, especially in this precarious moment

Amid all the bad news, there may be one bright spot this summer (and beyond) for investors: Opportunity Zones. New deadlines, growing momentum, and various market factors will converge to make such investments — and the positive social impact they bring — more attractive than ever.

First, a new IRS deadline extension should help put 2019 capital gains to work this summer and the months that follow. Here's why: in normal times, regulations dictate that investors have 180 days from when capital gains are realized to invest them in a qualified opportunity fund (QOF); however, in response to the economic crisis, these regulations have been adjusted such that investors who realized capital gains on or after October 4, 2019 now have until the end of 2020 to invest in a QOF. This gives investors sorely needed time to make decisions and should ultimately prime OZs for the rest of the year.

The recent selloff in the stock market only adds to the dry powder on hand this summer. Coming off a strong bull run, COVID-19 incited some investors to sell stock and take (a potentially unplanned) recognition of capital gains. Investors with newfound liquidity might find OZs an appealing diversifier in a volatile environment.

But none of this would matter if OZs weren't such an effective investment vehicle, especially in this precarious moment. Their long-term nature (investors must hold onto assets for 10 years to realize their full benefit) provides ample time for projects to move through the downturn and appreciate before investors look to sell.

OZ investors today can also be confident knowing they're getting in at the start of a new real estate cycle, replete with lower labor, land and construction costs, and historically low-interest rates.

These factors, in tandem with the growing momentum of Q3 and Q4 OZ investments from 2019, have already borne fruit. QOFs have continued to make deals, close construction financing agreements and break ground on new developments. At least four new OZ developments have started construction since March in the D.C. area alone.

Most importantly, as the U.S. begins to emerge from the immediate aftermath of COVID-19 – and with protests continuing across the country – there will be an added focus on social impact and equitable recovery of our hardest-hit and historically underfunded communities. These priorities are shared by the OZ program, which aims to invest and uplift these very communities.

In this respect, we expect residential housing to remain the top investment area, be it affordable housing, apartment buildings in emerging regions, or multifamily housing serving a growing population. On the other hand, retail and hospitality may remain at higher risk, given the uncertainty of these industries' recoveries.

The coming wave of OZ investment will also underscore the need for specialty financial administration, [more transparency and better reporting](). Now more than ever, new and existing investors will demand a quantitative measurement of their dollars' social impact, a clear picture of how many jobs it created, and whether it met affordability mandates. And with so much else in our lives still wracked with unknowns, they'll want to know that the QOF they choose fully understands the complex tax, accounting, and compliance nuances inherent in a specialty fund.

With all that said, one thing is clear: For those looking to escape the turbulent market for calmer waters — while contributing to the recovery of our hardest-hit communities — now may be the perfect time to check out Opportunity Zones.

Governor Gavin Newsom's 2019-2020 proposed budget includes language which addresses the issue of federal conformity related to the Opportunity Zones, on page 94 of the budget summary: "The state will also make EIFDs a more attractive economic tool by pairing them with the federal Opportunity Zones program. To make Opportunity Zones more effective, the state will conform to federal law allowing for deferred and reduced taxes on capital gains in Opportunity Zones for investments in green technology or in affordable housing, and for exclusion of gains on such investments in Opportunity Zones held for 10 years or more.

californiaglobe.com

By Reid Thomas, July 31, 2020 10:45 am

Can Opportunity Zones Recover from the COVID-19 Crisis? (Episode #104)

Do Opportunity Zones have the potential to create a more optimistic and hopeful outlook, and to help build national recovery…

CONTINUE READING »

HUD's Carson Provides Opportunity Zone Updates.

The Mayor of Fort Myers, Florida said he is "encouraged" by results of the Opportunity Zone initiative for economically struggling neighborhoods in his city.

U.S. Housing and Urban Development Secretary Dr. Benjamin Carson, Chairman of the White House Opportunity and Revitalization Council, this week delivered an update on government-designated Opportunity Zones located in Fort Meyers Florida.

Carson visited Opportunity Zone neighborhoods in Fort Myers to view the progress made as a result of the 2017 Tax Cuts and Jobs Act, which created Opportunity Zones in the effort to stimulate long-term investments in low-income communities. Opportunity Zone plans are in place for communities in all 50 states this year.

"Today, I am encouraged by the force of positive change happening here in Fort Myers as a result of the Opportunity Zones initiative. I thank [Fort Myers] Mayor [Randy] Henderson and the local leadership for their determined partnership in ensuring economic growth and opportunity for all," Carson said.

Henderson added that the Opportunity Zone initiative is an important program for the City of Fort Myers.

"Secretary Carson has championed attainable housing and public private partnerships that make it possible to attract investors, particularly in our Opportunity Zones."

Housing advocates such as the National Association of Realtors (NAR) have expressed support for Opportunity Zones as a tool for building more housing in economically distressed areas.

On December 12, 2018, the White House established the Council to support the administration's pledge to encourage public and private investment in urban and economically distressed areas, including Opportunity Zones.

Secretary Carson last month delivered the latest report outlining Opportunity Zone best practices and examples of revitalization occurring nationwide to President Donald Trump.

At that time, Carson reported, "There are inspiring stories happening in real time, with action being taken by State governments, local governments, Qualified Opportunity Funds, public-private partnerships, and others to spur revitalizing investments in the areas of most need. This report will prove to be especially helpful and encouraging to communities as they continue to admirably fight the invisible enemy known as COVID-19."

dsnews.com

TAX - FLORIDA

Discount Sleep of Ocala, LLC v. City of Ocala, Florida

District Court of Appeal of Florida, Fifth District - June 19, 2020 - So.3d - 2020 WL 3394724 - 45 Fla. L. Weekly D1490

Businesses brought class action against city, challenging city's fire service user fee as an unconstitutional tax.

The Circuit Court granted city's motion to dismiss. The District Court of Appeal reversed. On remand, the Circuit Court denied class certification. The District Court of Appeal reversed again and, after a bench trial, the Circuit Court entered judgment in favor of city. Businesses appealed.

The District Court of Appeal held that:

- Fee was not paid in exchange for a particular governmental service;
- Fee benefited payors in a manner not shared by non-payors;
- Fee was not paid by choice;
- Law-of-the-case doctrine precluded the Circuit Court from concluding that statute of limitations barred businesses' claims;
- Voluntary payment defense did not preclude refund of fee payments;
- City did not act in good-faith reliance on a presumptively valid statute in imposing the fee; and
- Refund of fee payments would not have imposed an intolerable burden on city.

City’s fire service user fee was not a charge paid in exchange for a particular governmental service, as factor for determining validity of fee in businesses’ class action challenging the fee as an unconstitutional tax; city provided comprehensive fire services to anyone within the city limits regardless of whether they had paid the fee, and fire services did not constitute a utility.

City’s fire service user fee benefited payors in a manner not shared by non-payors, as factor for determining validity of fee in businesses’ class action challenging the fee as an unconstitutional tax; although payors and non-payors had access to the same fire services, payors received special financial benefits such as lower insurance premiums.

City’s fire service user fee was not paid by choice, as factor for determining validity of fee in businesses’ class action challenging the fee as an unconstitutional tax; the fee appeared on businesses’ utility bill along with charges for water, sewer, and electric services, failure to pay fire service fee would lead to disconnection of water, sewer, and electric services by city, and unpaid fire service charges constituted a lien on the property.

City ordinance repealed city’s fire service user fee, and thus law-of-the-case doctrine precluded trial court from concluding, contrary to prior appellate court judgment which remanded the matter, that the statute of limitations barred businesses’ class action claims challenging user fee as an unconstitutional tax; ordinance’s plain language made it clear that repeal became effective on the mayor’s signing and mayor did sign the ordinance.

Businesses challenging city’s fire service user fee as an unconstitutional tax did not pay the fee voluntarily, and thus voluntary payment defense did not preclude refund of fee payments; failure to pay the service fee resulted in loss of water, sewer, and electric services, as well as a lien on the property to which services had been provided.

City did not act in good-faith reliance on a presumptively valid statute in imposing a fire service user fee, and therefore good-faith defense did not preclude a refund to businesses challenging the fee as an unconstitutional tax, where no statute specifically allowed city to charge a fire service fee.

Refund of fire service user fee payments would not have imposed an intolerable burden on city, and therefore good-faith defense did not preclude a refund to businesses challenging the fee as an unconstitutional tax; city could have authorized a special assessment, used a portion of reserve funds, implemented bonds, sold surplus city property, or transferred funds from other city accounts to provide for the refund.

TAX - MARYLAND

Carbond, Inc. v. Comptroller of Treasury

Court of Special Appeals of Maryland - July 29, 2020 - A.3d - 2020 WL 4354908

Corporate taxpayer sought judicial review of Tax Court’s denial of its refund claim and affirmed the Comptroller’s assessments of admissions and amusement taxes. The Circuit Court affirmed the Tax Court’s decision. Taxpayer appealed.

The Court of Special Appeals held that taxpayer’s electronic gaming devices were “games of entertainment” subject to admissions and amusement taxes.

Coin-operated electronic gaming devices placed in bars, restaurants, and convenience stores throughout city and county were “games of entertainment” subject to admissions and amusement taxes; the refrigerator-sized machines, replete with spinning wheels and lights, inherently involved use of recreational facilities or equipment.

IRS Final Rules Offer Safe Harbors for Users of SALT Workarounds.

Final regulations addressing payments to charitable organizations in exchange for state or local tax credits stick closely to the proposed regs but make some clarifications for safe harbors.

Safe harbors in the August 7 final regs (T.D. 9907) allow a C corporation or specified passthrough entity that receives or expects to receive state or local tax credits in return for payments to or for the use of a section 170(c) entity to treat the credit-sized portion of the payment like an ordinary and necessary business expense under section 162.

The treatment matches the proposed rules (REG-107431-19) from December 2019 to make it clear that such payments constitute an allowable deduction as a trade or business expense under section 162 rather than a charitable deduction.

Continue reading. (Subscription required.)

TAX ANALYSTS

POSTED ON AUG. 10, 2020

FRED STOKELD

Finding Uncommon Value in Untapped OZ Markets, with Four Points Funding.

What are some of the economic advantages of rural multi-asset multifamily and outdoor-focused hospitality Opportunity Zone fund investing? Chris Montgomery…

CONTINUE READING »

TAX - MICHIGAN

Rafaeli, LLC v. Oakland County

Supreme Court of Michigan - July 17, 2020 - N.W.2d - 2020 WL 4037642

Former property owners brought action against county and its treasurer, alleging due-process and equal-protection violations as well as unconstitutional taking by selling their real properties in satisfaction of their tax debts and retaining surplus proceeds from tax-foreclosure sale of their properties.

The Circuit Court granted summary disposition to county and treasurer, and denied reconsideration. Taxpayers appealed. the Court of Appeals 4803570, affirmed. Taxpayers appealed.

The Supreme Court held that:

- Former owners did not “forfeit” all rights, titles, and interests they had in their properties under the General Property Tax Act (GPTA) by failing to pay their real-property taxes;
- GPTA did not create new rights beyond those prescribed in Michigan and United States Constitutions;
- Nature of former owners’ claim was taking without just compensation, not deprivation of property without due process of law;
- Aggrieved property owners had cognizable, vested, common law right to collect surplus proceeds from tax-foreclosure sale of his or her property;
- Amendments to GPTA did not abrogate aggrieved property owners’ cognizable, vested, common law right to collect surplus proceeds from tax-foreclosure sale of his or her property;
- Government’s retention of surplus proceeds from tax-foreclosure sale was unconstitutional taking; and
- Government could not rely on its taxing power to justify retention of surplus proceeds from tax-foreclosure sale under GPTA.

Under the General Property Tax Act (GPTA), “forfeiture” simply permits defendants to seek a judgment of foreclosure; forfeiture does not affect title, and it does not give the county treasurer, or the state if the state is the foreclosing governmental unit, any rights, titles, or interests to the forfeited property.

Former property owners did not “forfeit” all rights, titles, and interests they had in their properties under the General Property Tax Act (GPTA) by failing to pay their real-property taxes; former owners did not use their properties for illicit purposes or commit criminal offense by not paying their property taxes.

General Property Tax Act (GPTA) did not create new rights beyond those prescribed in Michigan and United States Constitutions, and therefore former property owners could not contest legitimacy of government’s authority to foreclose on their properties for unpaid tax debts and they could not contest sale of their properties to third-party purchasers on due process grounds to extent government complied with due-process, since GPTA stated its intent to only comply with minimum requirements of due process.

Nature of former property owners’ claim was taking without just compensation, not deprivation of property without due process of law, where former owners alleged that compliance with General Property Tax Act (GPTA) notice provisions did not justify defendants’ retention of surplus proceeds from tax sale and asked court to reverse decision of Court of Appeals and remand to circuit court for determination of just compensation.

Aggrieved property owners had cognizable, vested, common law right, protected by Michigan’s Takings Clause in inverse-condemnation action, to collect surplus proceeds from tax-foreclosure sale of his or her property, although General Property Tax Act (GPTA) did not recognize divested property owner’s right to surplus proceeds.

Amendments to General Property Tax Act (GPTA) did not abrogate aggrieved property owners’ cognizable, vested, common law right, protected by Michigan’s Takings Clause in inverse-condemnation action, to collect surplus proceeds from tax-foreclosure sale of his or her property.

Although government was entitled to seize owners’ properties under General Property Tax Act (GPTA) to satisfy unpaid delinquent real-property taxes, as well as any interest, penalties, and fees associated with foreclosure and sale of those properties, government’s retention of surplus proceeds from tax-foreclosure sale was unconstitutional taking.

Government could not rely on its taxing power to justify retention of surplus proceeds from tax-foreclosure sale under General Property Tax Act (GPTA), since government's ability to take taxpayers' properties was limited by what taxpayers actually owed as result of failing to pay their taxes and therefore any physical taking of property was arbitrary and disproportionate tax.

SPECIAL ASSESSMENTS - NORTH DAKOTA

Holter v. City of Mandan

Supreme Court of North Dakota - July 22, 2020 - N.W.2d - 2020 WL 4210906 - 2020 ND 152

Landowner sought review of city's decision to specially assess her undeveloped residential lots for street improvements.

The District Court dismissed. Landowner appealed.

The Supreme Court held that special assessments, based on linear feet, were not arbitrary, capricious, or unreasonable.

City's special property tax assessments, based on linear feet, on undeveloped residential lots for street improvements were not arbitrary, capricious, or unreasonable, even if assessments were slightly less than total value of the properties, where properties were assessed under city special assessment policy, city used policy to determine benefits and assessments to properties in an improvement district, and special assessment commission did more than simply take total cost of project and divide it by using a formula.

TAX - MINNESOTA

Enbridge Energy, Limited Partnership v. Commissioner of Revenue

Supreme Court of Minnesota - July 8, 2020 - N.W.2d - 2020 WL 3818130

Taxpayer filed petitions to challenge valuation of pipeline system for two tax years.

The Tax Court entered judgment in favor of Commissioner of Revenue. Taxpayer appealed.

The Supreme Court held that:

- Tax Court was not required to exclude indirect construction expenses from the cost indicator of value;
- It did not commit clear error in determining that taxpayer did not carry its burden regarding expenditures listed in its construction work in progress (CWIP) accounts;
- Taxpayer was not entitled to include only expansionary construction work in progress (CWIP) expenses;
- Tax Court error in requiring taxpayer to show that nationwide or industrywide factors contributing to pipeline obsolescence affected pipeline to a greater extent than other pipelines was harmless; and
- Tax Court had discretion to depart from default weightings to pace equal weight on the cost and income indicators of value.

Tax court was not required to exclude indirect construction expenses from the cost indicator of value for pipeline system under construction; under general appraisal practices and industry standards for pipeline company accounting, construction work in progress (CWIP) expenses included the direct and indirect costs of construction.

Tax court valuing pipeline under construction did not commit clear error in determining that taxpayer did not carry its burden to show that expenditures listed in its construction work in progress (CWIP) accounts reflected the cost of items that were not installed as of the valuation dates; although taxpayer argued that evidence of in-service dates it offered were synonymous with when projects were installed, it conceded that the in-service dates could relate to an entire project and might not capture when portions of that project were installed.

Taxpayer was not entitled to include only expansionary construction work in progress (CWIP) expenses and exclude non-expansionary expenses for valuing pipeline system under cost approach.

Tax court error in requiring taxpayer to show that nationwide or industrywide factors contributing to pipeline obsolescence affected pipeline to a greater extent than other pipelines was harmless; although court erred by expecting proof that governmental regulations affected taxpayer more than others, its underlying finding that governmental regulations did not adversely affect taxpayer since it was regulated on a cost-of-service basis was not clearly erroneous, record indicated taxpayer’s inability to meet existing demand undercutting claims that drop in oil prices negatively affected demand and competitors were interfering with business, and evidence supported court’s concerns regarding appraiser’s methodology.

Tax court had discretion to depart from default weightings to pace equal weight on the cost and income indicators of value to calculate the unit value of the pipeline system if dictated by the circumstances of the case.

COVID's Impact on Opportunity Zone Funds May Surprise You.

It seems no industry has remained unscathed or unaffected by the coronavirus pandemic up to this point. As some industries thrive others are devastated, leaving participating investors in opportunity zones wondering how their investments and funds may be impacted.

Opportunity zones (OZs) are designated census tracts that were created as a part of the Tax Cut and Jobs Act of 2017 (TCJA) and offer major tax benefits to participating investors that redirected capital into an opportunity zone fund (OZF) established for the development of new business, real estate, or expansion of established businesses in an opportunity zone.

OZs aren’t hit as hard as you may have thought

Considering that opportunity zones are 8,700 of the most rural or low-income census tracts across the United States, concern over the performance of these funds as well as their ability to execute their initial projects is understandable. The Economic Innovation Group (EIG) conducted a national study in June in which 52% of the respondents stated they have been negatively impacted by the coronavirus in some way.

Continue reading.

The Motley Fool

Jul 27, 2020 by Liz Brumer

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9 Early Conclusions of Opportunity Zones for Equitable Development, with Brett Theodos.

In its early days, how effective has the Opportunity Zone incentive been for equitable development projects? Brett Theodos is senior…

CONTINUE READING »

Opportunity Db

July 29, 2020

IRS Provides Additional Relief for Tax-Exempt Hospitals.

Deadline for completing certain needs assessment requirements moved to Dec. 31

WASHINGTON — Because of the burdens the COVID-19 pandemic has placed on hospitals, the Internal Revenue Service today provided additional relief to hospital organizations that must meet the Community Health Needs Assessments (CHNA) requirements.

Notice 2020-56 extends the deadline for conducting a CHNA and adopting an implementation strategy to meet the community health needs identified through the CHNA to Dec. 31, 2020.

Tax-exempt hospital organizations filing Forms 990 must indicate on Schedule H if they have conducted a CHNA in the current taxable year or in either of the two immediately preceding taxable years and if they have adopted an implementation strategy to meet the significant health needs identified through the most recently completed CHNA. Since these requirements may affect the hospital's tax-exempt status and because the law imposes a $50,000 tax on a hospital organization for each hospital facility that fails to meet either or both of these requirements, the extension provided in the notice provides significant relief.

Under Notice 2020-56, the time for hospitals to comply with any CHNA requirements due to be performed on or after April 1, 2020, and before Dec. 31, 2020, is extended to Dec. 31, 2020.

Previously, the IRS issued guidance extending the due date to July 15, 2020; today's guidance further extends that due date.

Hospitals using the relief in today's notice that file Form 990 prior to Dec. 31, 2020, should state in the narrative of Part V.C. of Schedule H (Form 990) that they are eligible for and are relying on the relief provided in the notice, and should not be treated as failing to meet the requirements of section 501(r)(3) prior to Dec. 31, 2020.

Additional tax relief related to the COVID-19 pandemic can be found on IRS.gov.

Tax Analysts

July 14, 2020

IRS Asks Puerto Rico Power Utility to Return BAB Payments.

- **Prepa must return subsidy payments on BABs in bankruptcy**
- **Island power authority issued $676 million of BABs in 2010**

The U.S. Internal Revenue Service told Puerto Rico's electric company that it has to repay the federal subsidies it received for bonds sold a decade ago as part of the government's stimulus program in the last recession.

The IRS in a July 10 letter asked the Puerto Rico Electric Power Authority to return Build America Bond subsidy payments made since July 1, 2017, the day before the utility's bankruptcy, according to a filing to bondholders on the Municipal Securities Rulemaking Board's website.

Prepa, as the utility is known, sold a combined $676 million of taxable Series YY and EE Build America Bonds in 2010. The federal government covers 35% of interest costs on BABs. The IRS began examining Prepa's subsidy payments in 2019.

The IRS also won't make subsidy payments for credits that Prepa has requested since July 2017, according to the bondholder filing.

"Prepa intends to respond to the IRS and is currently considering its options," according to the filing.

Bloomberg Markets

By Michelle Kaske

July 21, 2020, 8:34 AM PDT

TAX - CALIFORNIA

City and County of San Francisco v. All Persons Interested in Matter of Proposition C

Court of Appeal, First District, Division 4, California - June 30, 2020 - Cal.Rptr.3d - 2020 WL 3529750 - 20 Cal. Daily Op. Serv. 6497 - 2020 Daily Journal D.A.R. 6829

City brought action to establish that voter initiative to adopt special tax was validly enacted.

The Superior Court granted city judgment on pleadings, and initiative's opponents appealed.

The Court of Appeal held that:

- Constitutional provision requiring two-thirds vote of qualified electors to approve special taxes adopted by "Cities, Counties and special districts" did not apply to limit citizens' initiative power to raise special tax by majority vote;
- Constitutional provision requiring two-thirds vote of qualified electors to approve special taxes adopted by "local government" did not apply to limit citizens' initiative power to raise special tax

by majority vote; and
- City charter did not require that voter initiative to impose special tax obtain concurrence of two-thirds of voters.

TAX - NEW JERSEY

Gourmet Dining, LLC v. Union Township

Supreme Court of New Jersey - June 30, 2020 - A.3d - 2020 WL 3525557

Operator of fine dining restaurant located on university campus sought judicial review of county tax board's dismissal of operator's challenges to property tax assessments.

The Tax Court denied operator's motion for summary judgment and granted township's motion for summary judgment. Operator appealed, and the Superior Court reversed and remanded. The Supreme Court granted petition for certification.

The Supreme Court held that:

- Commercial success, rather than public purpose, was paramount factor, and
- Restaurant was not a use of the building for the university.

Commercial success, rather than public purpose, was paramount factor in arrangement between university and operator of competitive high-end restaurant located on university's campus, and thus restaurant operator was not entitled to public property tax exemption; providing food services for students, or even faculty or administrators, was not the key purpose of the restaurant, which was not even promoted as a form of convenience for students and researchers at the building, or the university generally, benefits such as employment opportunities for students were incidental, and while portion of restaurant's revenue went to scholarships, that could not transform otherwise nonexempt purpose a public purpose.

High-end restaurant located in building on university campus was not a use of the building for the university but rather for the restaurant operator, and thus restaurant was not exempt from taxation on grounds it was used for college; profit, after all expenses were paid, went to restaurant.

Conscious Capitalism in Opportunity Zones, with Travis Steffens.

What is conscious capitalism, and how can choosing to adhere to this concept create positive social impact in Opportunity Zones?

CONTINUE READING »

Opportunity Db

July 15, 2020

Key Takeaways from the Novogradac OZ Conference, with Mike Novogradac and John Sciarretti.

What were the biggest highlights from last week's Novogradac Opportunity Zones Virtual Conference? Mike Novogradac is the managing partner of…

CONTINUE READING »

Opportunity Db

July 22, 2020

Little-Noticed Change to TIF Law Allows Ohio Municipalities and Townships to Redirect up to 25 percent of their TIF Funds to Public Safety, Road and Bridge Maintenance During FY 2020 & 2021.

This month, the Ohio General Assembly fast-tracked a school construction finance measure as a mini-capital appropriations bill. Amended Senate Bill (Am. SB) 4 was signed into law by Governor DeWine on July 24, 2020, after the measure was prioritized by leaders in the Ohio House and the Senate. A provision included in Am. SB 4 deserves attention among municipal and township officials and economic developers.

Am. SB 4 became the legislative vehicle of choice for state lawmakers to insert a key change in municipal and township tax increment financing (TIF) law. With this amendment, municipalities and townships can ostensibly "borrow" from their respective TIF funds to cover certain costs unrelated to underlying TIF projects.

Contained in so-called uncodified language (i.e., a legislative directive neither published nor otherwise to appear in the Ohio Revised Code), Section 17 of Am. SB 4 states that municipalities or townships may do either or both:

- *During their fiscal year ending in 2020.* Appropriate and expend the sum of (1) up to 25 percent of the unencumbered moneys on deposit in the subdivision's TIF fund as of October 12, 2020 (Am. SB 4's effective date); plus (2) up to 25 percent of the amounts to be deposited during the remainder of the 2020 fiscal year. The legislative authority must act between Oct. 12 and the last day of its 2020 fiscal year.
- *During their fiscal year ending in 2021.* Appropriate and expend the sum of (1) up to 25 percent of the unencumbered balance of the TIF fund as of fiscal year 2021's first day; plus (2) up to 25 percent of the amounts to be deposited during fiscal year 2021. The legislative authority must act during the 2021 fiscal year.

A simple mathematical example may be helpful. A municipal TIF fund with $500,000 on-deposit as of Oct. 12, of which $200,000 is unencumbered, and that receives another $500,000 during the remainder of fiscal year 2020 would have $175,000 in TIF fund moneys that could be redirected.

If it chooses to act during these periods, a municipality or township may use such TIF fund moneys "solely to pay current public safety expenses or road and bridge maintenance expenses" of the subdivision that are not eligible to be reimbursed by its CARES Act – Coronavirus Relief Fund payment (e.g., Ohio House Bill 481).

Note, however, that moneys in the TIF fund to be redirected to public safety, road and bridge maintenance must be unencumbered. In other words, TIF fund moneys cannot be redirected if they are otherwise spoken for (i.e., encumbered) to pay debt service on TIF bonds or other contractual obligations.

A key feature of this uncodified law change is that the redirected TIF fund moneys are treated as a (forgivable) loan. That is, a municipality or township must reimburse the TIF fund, but only so long as and to the extent that federal funds are received by the subdivision "that may be used to pay for or reimburse those expenses[.]" Put another way, a municipality or township that chooses to redirect its unencumbered balance of TIF fund moneys this year and/or next may not have to replenish its TIF fund by the amount of the loan if federal funds for public safety, road and bridge maintenance are not received before the TIF exemption period expires.

Although initial reporting on this amendment to Am. SB 4 emphasized the loan nature of these redirected TIF fund moneys, payments from a TIF fund can be used for public safety, roads and bridges without need for repayment from the subdivision's local revenue sources; any such repayment would be sourced from the federal government, if future Congressional legislation were to allow. Such repayment may not be required if the federal funds never materialize.

Bricker & Eckler LLP

July 22, 2020

TAX - HAWAII

[Ocean Resort Villas Vacation Owners Association v. County of Maui]

Supreme Court of Hawaiʻi - June 19, 2020 - P.3d - 2020 WL 3397756

Taxpayers brought action against county, seeking declaratory relief regarding the legality and constitutionality of county's timeshare real property tax classification and whether its method of promulgation violated the Hawaiʻi Sunshine Law.

The Circuit Court granted taxpayers' motions for partial summary judgment. County brought an interlocutory appeal, and the Supreme Court accepted transfer of the appeal from the Intermediate Court of Appeals. After voluntary mediation and settlement, county moved to partially dismiss the appeal and for remand for vacatur, and the motion was denied.

The Supreme Court held that:

- The Circuit Court lacked subject matter jurisdiction;
- Taxpayers' recourse was through county procedures for appealing tax assessments; and
- Disapproval of stipulation and motion for partial dismissal were warranted without remand for evaluation of potential vacatur.

Taxpayers' declaratory-judgment action challenging legality and constitutionality of county's timeshare real property tax classification was a "controversy with respect to taxes," and thus circuit court lacked subject matter jurisdiction pursuant to declaratory judgment statute; taxpayers' original and amended complaints all sought declaratory relief in form of voiding county's real property timeshare tax, a result which would have interfered with assessment or collection of taxes.

Taxpayers' recourse to challenge legality and constitutionality of county's timeshare real property tax classification was through county procedures for appealing tax assessments, rather than declaratory judgment in circuit court; taxpayers alleged classification and rates violated equal protection clauses, rights of free speech and to petition, and procedural due process rights, taxpayers sought declaratory judgment as to illegality of amended assessment, and taxpayers brought § 1983 action that was dependent upon alleged constitutional violations.

Supreme Court's disapproval of appellees' and appellant's stipulation and order to remand and vacate circuit court's decision, and denial of appellant's motion for partial dismissal of appeal, were warranted without remand for circuit court to evaluate potential vacatur; there were grave concerns with adopting process by which an appellate court, based solely on settlement of parties, approved stipulation to dismiss an appeal when parties' end goal was vacating judgment, mootness on appeal occurred solely by reason of voluntary settlement of parties, and no fact-intensive inquiry was required.

TAX - PENNSYLVANIA

Colonial School District v. Montgomery County Board of Assessment Appeals

Commonwealth Court of Pennsylvania - May 28, 2020 - A.3d - 2020 WL 2758698

School district appealed decision of county board of assessment appeals to issue notice of no change to taxpayer's assessment.

Taxpayer filed petition to dismiss school district's tax assessment appeal. The Court of Common Pleas denied taxpayer's petition to dismiss. Taxpayer appealed.

The Commonwealth Court held that:

- Trial court's order denying taxpayer's petition to dismiss was collateral order, and
- Trial court relied on factual findings not supported by substantial evidence.

Trial court's order denying taxpayer's petition to dismiss school district's appeal of county board's tax assessment ruling was a collateral order, and therefore the order was appealable as of right; trial court's order related to taxpayer's constitutional issue asserting that school district's tax assessment appeal policy violated Uniformity Clause of state constitution, and the constitutional issue was separable from merits of school district's appeal challenging taxpayer's real estate valuation as too low, trial court's order involved an important question involving Uniformity Clause, and if Commonwealth Court declined immediate review, taxpayer's constitutional claim would be postponed and taxpayer would incur substantial cost.

In denying taxpayer's petition to dismiss school district's appeal of county board's tax assessment ruling, trial court relied on factual findings not supported by substantial evidence when it concluded that school district's decision to appeal valuation of taxpayer's mall conformed to Uniformity Clause of state constitution; school district's stated basis for filing assessment appeal was a recorded mortgage that, on its face, indicated that taxpayer's mall had higher fair market value than shown in the assessment, and trial court's finding that mortgage on mall exceeded its fair market value was based on a statement of counsel for school district, which did not constitute evidence.

TAX - CALIFORNIA

Howard Jarvis Taxpayers Association v. Bay Area Toll Authority

Court of Appeal, First District, Division 2, California - June 29, 2020 - Cal.Rptr.3d - 2020 WL 3496798 - 20 Cal. Daily Op. Serv. 6366

Taxpayers brought action against regional transportation commission, regional toll authority, and state legislature to challenge the validity regional ballot measure increasing tolls on area state-owned bridges, which was a ballot measure that received a simple majority of votes in the legislature and at the election but not, as taxpayers alleged was required by the state constitution, a two-thirds majority in both houses of the legislature and at the election.

The Superior Court entered judgment on the pleadings for regional transportation commission, regional toll authority, and state legislature. Taxpayers appealed.

The Court of Appeal held that:

- Toll increase was imposed by state legislature and not by regional transportation authority, and
- Toll increase was a charge imposed for entrance to or use of state property.

Increase in tolls to cross region's state-owned bridges, which was increase approved by simple majority of voters at election pursuant to bill passed by state legislature, was imposed by state legislature and not by regional transportation authority, as was relevant to determining, pursuant to state constitution, what kind of majorities needed to approve increase in state legislature and at election, assuming that increase was a "tax" as defined by state constitution's provision on tax increases; legislative bill at issue required boards of supervisors in region's counties to call a special election, bill required imposition of a toll increase of up to three dollars, subject to voter approval, and bill specified in great detail the uses to which the resulting revenue would be put.

Increase in region's tolls to cross state-owned bridges, which was an increase approved by simple majority of voters at election called pursuant to bill passed by the state legislature, was a charge imposed for entrance to or use of state property, and thus it was not a "tax" as defined by state constitution's provision on majorities required for tax increases, despite argument that funds resulting from toll increase were to be used for improvements to public transit and other programs unrelated to crossing the bridges.

TAX - CALIFORNIA

City of Chula Vista v. Sandoval

Court of Appeal, Third District, California - May 27, 2020 - 49 Cal.App.5th 539 - 263 Cal.Rptr.3d 236 - 20 Cal. Daily Op. Serv. 4859 - 2020 Daily Journal D.A.R. 5050

Seven cities filed a petition for a writ of mandate and a complaint for declaratory relief against county auditor-controller, challenging the methodology used to distribute the residual pool of former tax increment following dissolution of redevelopment agencies.

The Superior Court granted the petition. Auditor-controller appealed.

The Court of Appeal held that taxing entities with favorable passthrough agreements are paid in full and can also receive a proportionate amount of the residual pool of money.

Taxing entities which have favorable passthrough agreements with a redevelopment agency are paid in full and can also receive a proportionate amount of the residual pool of money left after the obligations, including passthrough agreements, are paid, when county auditors distribute the residual pool of former tax increment from the dissolution of redevelopment agencies; passthrough payments are not capped at their pro rata shares.

New Tax Schemes To Help Fill State Coffers.

MUNIS in FOCUS: Eric Kazatsky, Senior U.S. Municipals Strategist for Bloomberg Intelligence, discusses the new tax schemes that will be needed to help fill state coffers. Hosted by Paul Sweeney and Vonnie Quinn.

Play Episode.

Bloomberg Radio

July 10, 2020

Annual Top 25 Opportunity Zone Influencers List Released.

The prestigious insider listing of who’s who in the Opportunity Zone industry – the Top 25 OZ Influencers – has been released in the latest edition of Opportunity Zone Magazine.

The prestigious insider listing of who’s who in the Opportunity Zone industry – the Top 25 OZ Influencers – has been released in the latest edition of Opportunity Zone Magazine. The annual tribute showcases the industry’s leading and most influential OZ professionals, who inspire and lead through their vision and innovative accomplishments. Through their work and advocacy, the Opportunity Zones continue to change lives by serving as a driving force to revitalize the economy and distressed communities across the country.

New for this year is the ranked Top 25 category, honoring the most powerful OZ professionals who stand out among their peers. The list also revealed the winners in five other categories: attorneys, fund managers/developers, tax specialists, policy influencers and professionals in specialized fields. To see the complete list, visit http://www.opportunityzone.com/magazine.

“We are excited to recognize the best of the best in the Opportunity Zone industry with our Top 25 OZ Influencers award,” said Ali Jahangiri, CEO of OpportunityZone.com.

RANKED OVERALL WINNERS:

1. Daniel Kowalski, Treasury
2. Tim Scott, U.S. Senator (R-SC)
3. Scott Turner, White House Opportunity and Revitalization Council
4. Margaret Anadu, Goldman Sachs
5. Barry Sternlicht, Starwood Capital
6. Joseph Scalio, KPMG
7. Craig Bernstein, OPZ Capital
8. Michael Novogradac, Novogradac & Company
9. Jessica Millett, Duval & Stachenfeld, LLP

10. Alfonso Costa Jr, Housing and Urban Development
11. James Lang, Greenberg Traurig
12. Steve Case, Revolution
13. Brad Molotsky, Duane Morris
14. Steve Glickman, Develop
15. Avy Stein, Cresset Capital Management
16. David Coelho, Bridge Investment Group
17. Daniel Cullen, Baker McKenzie
18. Andrew Comiter, Comiter, Singer, Baseman & Braun, LLP
19. Shafron "Shay" Hawkins, Opportunity Funds Association
20. Kevin Shields, Griffin Capital
21. Olivia Byrne, K&L Gates
22. Reid Thomas, NES Financial
23. John Lettieri, Economic Innovation Group
24. Ira Weinstein, CohnReznick
25. Blake Christian, Holthouse, Carlin, Van Trigt, LLP

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Single-Family Rental Investment Strategies in Opportunity Zones, with Jeff Pintar.

How can built-to-own single family rentals be incorporated into an Opportunity Zone investment portfolio? Jeff Pintar is founder and CEO…

CONTINUE READING »

Opportunity Db

July 8, 2020

TAX - MISSOURI

Kansas City Chiefs Football Club, Inc. v. Director of Revenue

Supreme Court of Missouri, en banc - June 2, 2020 - S.W.3d - 2020 WL 2845762

Taxpayer, which operated a professional football team, sought review of decision of Administrative Hearing Commission, finding that taxpayer was “purchaser” of specified items used in renovation of football stadium, and was thus liable for sales tax and use tax with respect to such items.

The Supreme Court held that:

- That taxpayer made advance payments to vendors, as contemplated by project funding agreement, did not make taxpayer the “purchaser” of items provided by vendors within the meaning of statutes governing sales tax and use tax;
- Taxpayer had no legal right to use tax credits it received after it made donation to state finance board, having sold the credits and donated the proceeds;
- Funds donated by taxpayer no longer belonged to taxpayer after it made donation, and thus taxpayer was not “purchaser” of items bought with those funds; and
- That taxpayer stood to receive incidental benefit from project did not render it the “purchaser” of items bought with project funds.

That taxpayer, which operated a professional football team, paid money directly to vendors involved in stadium improvement project in advance, even though agreement to fund project required taxpayer to make donations to state finance board for use in project, did not demonstrate that taxpayer was purchaser of items provided by vendors, for purposes of sales and use tax statutes; taxpayer made advance payments to only three of nine vendors, governing agreements contemplated that taxpayer might make such advance payments, but that it would have been reimbursed by project fund after completing requisite paperwork, and there was no indication taxpayer failed to follow procedure for reimbursement.

Taxpayer, which operated a professional football team, had no legal right to use tax credits that it received and then sold after making donation to state finance board, as part of funding plan for project to improve football stadium, and thus to the extent money from sale of those credits spent from project fund to buy items for project, taxpayer was not the purchaser of those items within the meaning of the sales and use tax statutes; tax credits were briefly held in project fund, but were quickly sold to unrelated third parties, so taxpayer had no right to use or carryover such tax credits any longer, and proceeds from sale were donated by taxpayer to project fund, and were thus beyond taxpayer’s ownership and control.

Funds donated by taxpayer, which operated a professional football team, to state finance board as part of funding plan for improvements to stadium, no longer belonged to taxpayer after donation was made, even though taxpayer received tax credits as a result of donation, and thus taxpayer was not purchaser of items purchased with donated funds, for purposes of sales tax and use tax statutes; mechanism used by taxpayer was explicitly contemplated by statutes governing financing of projects of economic benefit to state through state finance board, and there was no dispute that donations from taxpayer to finance board were placed into project fund.

That taxpayer, which operated a professional football team, stood to receive incidental benefit from publicly-financed stadium improvement project, did not render taxpayer the purchaser of items purchased by state finance board, even though such purchases were at least partially funded by donations made by taxpayer to board for purposes of project, and thus taxpayer was not liable for sales tax or use tax with respect to items purchased with those funds; finance board determined that statewide economic benefits of project exceeded benefits provided to taxpayer under agreement for project funding, as contemplated by statute governing tax credit financing of public projects.

TAX - OKLAHOMA

[Miller v. Ellis]

Supreme Court of Oklahoma - June 15, 2020 - P.3d - 2020 WL 3171335 - 2020 OK 52

Objectors brought action challenging legal sufficiency of referendum petition on city ordinance amending tax increment financing district.

The Supreme Court held that gist of referendum petition was legally insufficient.

Gist of referendum petition on city ordinance amending tax increment financing district was legally insufficient, where gist did not provide even an outline, it failed to provide any explanation of what amendments were, effect they had on existing law, and effect on law if ordinance they were contained in was rejected by voters at polls, it failed to mention ordinance that was target of petition by name, and it did not contain even summary of considerably more detailed description in petition itself.

[Why Mobile Home Parks May Be the Perfect OZ Investment, with Sam Hales.]

Could mobile home parks be the perfect (recession-resistant) Opportunity Zone investment? Sam Hales is CEO of Saratoga Group, a real estate investment firm focused on investing in affordable housing, specifically through mobile home communities located in Opportunity Zones. On May 27, he presented his MHP investment thesis to the OpportunityDb network. Click the play button below to listen to the condensed audio recording of the…

[Read More »]

Opportunity Db

July 1, 2020

[Opportunity Alabama From OZs To Covid-19 Recovery.]

We're spotlighting the impact of each of the [Forbes OZ 20 Grand Prize winners]. Two communities and two funds were honored at the 2020 Winter Innovation Summit for bringing transformative capital to long-overlooked areas across the U.S.

Opportunity Alabama's singular skill for connecting capital, community leaders and developers earned the nonprofit a Forbes OZ 20 Grand Prize. Now that knack for coalition and capacity-building work is being leveraged to help Alabama communities bounce back from Covid-19's economic blows.

Next week, Opportunity Alabama (OPAL) will be announcing the first cohort of a new initiative called the Rural Recovery Accelerator, aimed at providing economic-development training and resources to counties with populations under 175,000 across the state.

Covid-19 has reminded the country how existing inequities are easily compounded by the unexpected. Small and low-income communities that were struggling before the pandemic are also less likely to have the resources and infrastructure necessary to take surefooted economic steps in the months ahead. To make the outlook even worse, shrinking economies mean shrinking tax bases, muddling hopes for local government intervention.

OPAL wants to use its expertise to help communities think beyond immediate concerns about “reopening,” instead focusing on the next six to twenty-four months. Over the course of an intensive six-to-eight week program, OPAL’s recovery accelerator will lead participating communities through the process of putting together a recovery roadmap, a data profile, a pipeline of potential deals, a community recovery website, and outlining their community’s broader recovery ecosystem.

Members of the OPAL team will continue to provide resources after the course to make sure each community’s deal pipeline sees investment.

Communities—at the city, town, or business district level—can designate between one and five local coordinators to participate, committing in-kind time and effort. OPAL then helps local coordinators to map trajectories, connect the dots and take first steps. Thanks to funding from the Appalachian Regional Commission and Delta Regional Authority, the accelerator will be free for communities in 54 Alabama counties.

Seeing where a few missing pieces make all the difference is OPAL’s raison d’être. If OPAL’s work in opportunity zones (OZs) is any indication, communities will see the Rural Recovery Accelerator’s returns continue to multiply.

OPAL’s investment ecosystem-building track record started when founder and CEO Alex Flachsbart was working as an attorney in Birmingham.

A partner at the firm where Flachsbart worked came to him with an offer to help a group in Selma. Flachsbart would need to help the Selma group figure out how to get their project off the ground, including everything from the project’s legal framework to whether grants or other incentives were available.

“You never get to do that as a lawyer,” says Flachsbart, “so it was a lot of fun.”

For that project and others, part of Flachsbart’s work became turning rocks, looking for money wherever he could to “help move the needle in low-income places.” Flachsbart went deep into the weeds researching everything he could find: social impact bonds, CDFIs, New Markets Tax Credit. It was on Twitter, during a sleepless night caring for his infant daughter, that Flachsbart’s research into economic development incentives finally led him to OZs.

Flachsbart recalls the moment of realization, thinking “this is the missing equity solution we’ve been looking for.”

One of the lessons Flachsbart learned as a lawyer was that “using law and finance as tools only gets you so far.” To get projects off the ground, says Flachsbart, you depend on “that third leg of community—community engagement and community support.”

With the tax incentive at the heart of the OZ framework, Flachsbart finally saw how to “connect all these disparate stakeholders who believe in low-income community revitalization.”

Before final guidance on OZs came from the Treasury Department in early 2019, OPAL was already laying a foundation for one of the nation’s most creative information hubs to connect capital, communities, institutional partners and leaders. Instead of focusing on just a few areas, OPAL developed a data-driven, scalable strategy for all 158 of Alabama’s census tracts that were designated as OZs.

It was “almost a no brainer,” as Flachsbart describes it. “This opportunity zone incentive gave us a vehicle for having a conversation that we needed to have for 20, 25 years.”

Those conversations are happening now. “We have more collaboration than we’ve had—I know— in my adult life,” says Anthony C. Hood, Ph.D., Director of Civic Engagement University of Alabama’s president’s office and part of the Opportunity Alabama team.

Conversations and collaboration mean it’s now a lot easier for wealthier Alabamans to invest in Alabama. “A guy in rural west Alabama sells his company and makes $5 million,” Flachsbart explains. “There’s now infrastructure in place where he knows to call the local mayor because the local mayor had a conversation with him about opportunity zones, who then goes and calls the local economic developer who’s got five easy shovel-ready projects teed up.”

OZs are already making a difference for local investment in Alabama. For Tanya Maloney, Director of Economic Development in Helfin, OZs opened the door for a new senior care facility in her city that wouldn’t have seen investment otherwise. In Maloney’s words, “it’s just a shining example of what opportunity zones can do for a rural community.”

The Opportunity Alabama team hopes there will be shining examples for years to come. “Hope means that we have quality of life for the next generation,” Flachsbart reflects when asked what it means to his work. “It means that we’re able to confront the challenges that we have today, have open conversations about the past, have open conversations about the still-open wounds that exist in parts of our society”

Forbes

Jun 22, 2020

TAX - WASHINGTON

Lakehaven Water and Sewer District v. City of Federal Way

Supreme Court of Washington - June 18, 2020 - P.3d - 2020 WL 3278869

Water and sewer districts brought action against noncharter code city, seeking declaratory judgment that city lacked authority to impose an excise tax on water and sewer utilities, and alleging that tax was unconstitutional.

The Superior Court granted city’s motion for summary judgment. Districts’ motion for direct review was granted.

The Supreme Court held that:

- City had legislative authority to impose tax on districts;
- Legislature does not need to delegate taxing authority to code cities in “express” terms, abrogating *King County v. City of Algona*, 101 Wash.2d 789, 681 P.2d 1281, *Hillis Homes, Inc. v. Snohomish County*, 97 Wash.2d 804, 650 P.2d 193, and *Carkonen v. Williams*, 76 Wash.2d 617, 458 P.2d 280;
- A municipal corporation providing water-sewer services to ratepayers is a proprietary function not subject to governmental immunity from taxation;
- Districts lacked personal standing to assert due process vagueness challenge;

- Districts lacked representational standing to assert due process vagueness challenge; and
- The state constitution's privileges and immunities clause does not apply to municipal corporations.

Code city had legislative authority to impose excise tax on water and sewer districts, despite contention that express statutory authorization was needed to allow one municipality to impose tax on other municipalities; tax provision of municipal code gave cities broad authority to impose taxes on "all" places and kinds of business, without distinguishing between public and private business entities, and statute governing municipal business and occupation taxes did not apply to services traditionally taxed as a utility business.

The legislature does not need to delegate taxing authority to code cities in "express" terms; general articulations of municipal taxing authority are sufficient as long as the legislature's intent is plain; abrogating *King County v. City of Algona*, 101 Wash.2d 789, 681 P.2d 1281, *Hillis Homes, Inc. v. Snohomish County*, 97 Wash.2d 804, 650 P.2d 193, and *Carkonen v. Williams*, 76 Wash.2d 617, 458 P.2d 280.

A municipal corporation providing water-sewer services to ratepayers is a proprietary function, rather than a governmental function, and thus not subject to governmental immunity from taxation.

Pelosi's Infrastructure Bill Takes The Wrong Road On Tax Subsidies.

House Speaker Nancy Pelosi (D-CA) has rolled up many different committee bills into a single, massive 2,300-page, $1.5 trillion infrastructure package that the Democratic-controlled House likely will pass next week. But the bill is more than the usual collection of road, bridge, and water projects. It also is a Christmas tree of tax breaks. I counted roughly two dozen new, restored, or expanded tax credits for everything from renewable energy, economic development, supportive services, investments in low-income housing and historic properties, and environmental justice.

And that doesn't include the fistful of expanded tax-exempt bond financing mechanisms for both public and private projects, including subsidies for first-time farmers and a seemingly unlimited variety of businesses, including "facilities used for the creation or production of intangible property." The bill, called the Moving Forward Act, is so big that the legislative summary is 96 pages long.

Still no way to pay for infrastructure

For all the revenue measures in this package, there is one thing it doesn't include: Some way to pay for all this spending. Financing has been the missing element in nearly all of the major infrastructure plans floating around Congress and the White House for the past three years.

There is widespread desire for a big infrastructure bill on the part of most Democrats and Republicans. President Trump has been promoting one since his 2016 election campaign. And the COVID-19 economic slowdown makes the idea of a big new federal spending bill even more attractive as a tool for stimulus and job creation. But neither party is willing to take the lead when it comes to tax increases to finance the new projects. So nothing happens.

Pelosi's measure will not pass the Senate. It is a classic message bill that gives House Democrats the opportunity to crow about their ambitious plan, and gives Democratic challengers to Senate Republicans the opportunity to blast incumbents for blocking the measure. Which they almost certainly will.

So many tax subsidies

But those tax subsidies. So many subsidies. There are two main problems with them: Many have only the remotest connection to infrastructure. And few would achieve the policy goals their sponsors intend.

How, for instance, do tax credits for residential solar hot water heaters (30 percent through 2025) fit the definition of public infrastructure?

Then there is the tax credit of up to $2,500 for buyers of used all-electric vehicles. What does it have to do with infrastructure? Well, the vehicles would travel on roads. But that seems like a stretch.

More importantly, what policy goal would it achieve? True, you might get some old gas-guzzlers off the street. But if you want to encourage production of all-electric vehicles—and thus create new green jobs and increase access to capital— you want to subsidize new cars, not used ones.

Maybe you could make an equity claim: Low-income people can't afford new all-electrics so government should help them buy used cars. But the tax credit isn't refundable, so it won't do many low-income people any good. And it phases out at income between $30,000 and $40,000, so it won't help many middle-income people either.

Besides, maybe government would be better off spending taxpayer dollars on improving public transit and getting people out of cars entirely. Or, it could impose a carbon tax, rebate the revenue to taxpayers, and let them decide what they want to do with the money.

Private activity bonds

And those private activity bonds for farmers and firms that create intangible property? For four decades these tax-exempt municipal bonds have made it possible for politicians to finance well-connected local businesses on the taxpayer's dime. This probably is why they never seem to go away.

With interest rates so low and the Federal Reserve pumping out money for commercial loans as fast as it can, do state and local governments need to use subsidized muni-bonds to help businesses. Besides, the real winners in the private activity muni-bond game are the bond lawyers and investment bankers who put the deals together in return for sweet fees.

And even worse initiative is the bill's proposal to restore the tax-exemption for so-called advance refunding bonds. This bit of financial legerdemain lets state and local governments sell new low-interest tax-free bonds and reinvest the proceeds before eventually buying back older higher-yielding paper. The game often ends up costing governments more, but the bond lawyers and bankers get a nice cut off the top.

After decades of scandal (see here too), the 2017 Tax Cuts and Jobs Act banned the use of tax-exempt bonds for advance refundings. Now, House Democrats want to bring them back.

There is no doubt that the US desperately needs to improve its public infrastructure. And with interest rates low and unemployment high, this would be a nice time to do it. But House Democrats would be better off sticking to that important goal, and ditching the pile of tax subsidies that have found their way into the bill.

Forbes

Howard Gleckman

Jun 26, 2020

NABL: IRS Resumes Form 8038-CP Processing

The Internal Revenue Service (IRS) has made an announcement that the functions supporting the processing of Form 8038-CP Return for Credit Payments to Issuers of Qualified Bonds have started to resume.

On June 1, 2020, the functions responsible for the processing of Form 8038-CP started to resume operations and will be processing Forms 8038-CP in order of receipt and as a high priority. If your client has already filed a Form 8038-CP, they are asked not to file a duplicate return.

As NABL understands it based on the information posted on the IRS website, direct pay subsidy payments were delayed because the forms on which they are processed (i.e., the 8038-CP) are paper returns with no electronic alternative and the IRS was unable to process individual paper tax returns due to safety concerns related to the COVID-19 pandemic. As a result, requests from issuers with direct payments were delayed until processing centers began to reopen.

For more information, click here.

Opportunity Zone Expansion Ideas to Aid in COVID-19 Recovery, with Blake Christian.

Opportunity Zones may just be the perfect vehicle to deliver economic relief to the areas hardest hit by the coronavirus pandemic. How can the incentive be expanded to further catalyze the recovery effort? Blake Christian is a tax CPA for Holthouse Carlin & Van Trigt (HCVT), a regional accounting firm with offices across the western United States. Click the play button below to listen to …

Read More »

Opportunity Db

June 24, 2020

Taxes May Rise Next Year, But That Is Good News For Muni Investors.

Summary

- With budget deficits soaring, Americans should expect higher tax burdens to be forthcoming, on both a national and local level.
- Democratic candidate Joe Biden is rising in the polls, and his platform includes higher taxes on high-income earners and corporations.
- While nobody likes taxes, investing in municipal bonds is a way to mitigate an individual’s tax

obligations.

[Continue reading.](#)

Seeking Alpha

Jun. 28, 2020

TAX - RHODE ISLAND

ACP Land, LLC v. Rhode Island Public Utilities Commission

Supreme Court of Rhode Island - June 1, 2020 - A.3d - 2020 WL 2829552

Owners and operators of solar energy systems and wind turbines petitioned for review of Public Utilities Commission (PUC) order that approved interconnection tax which electric and gas utility charged owners and operators to interconnect to utility's power distribution system and then paid to IRS as contributions in aid of construction.

The Supreme Court held that:

- Utility was reasonable in believing that it owed an interconnection tax to IRS, and
- PUC order comported with parties' settlement with respect to escrow or refund of tax funds.

As reasonably determined by Public Utilities Commission (PUC), electric and gas utility was reasonable in believing that it owed interconnection tax to IRS as contributions in aid of construction, which utility passed along to owners and operators of solar energy systems and wind turbines to interconnect to utility's power distribution system, where IRS notice relating to possible safe harbor from interconnection tax for power generators connecting to a distribution system was not clear when read as a whole, utility hired nationally-recognized accounting firm to analyze IRS notice, accounting firm produced opinion that IRS notice was not clear, and, in a private letter ruling six months before release of notice, IRS had reached a conclusion opposite to that claimed by owners and operators.

Public Utilities Commission (PUC) order approving interconnection tax that electric and gas utility reasonably charged wind and solar power generators and paid to the IRS comported with parties' settlement with respect to escrow or refund of tax funds, where, under settlement agreement, utility agreed to hold tax funds in escrow until a decision was made by PUC and not by IRS, PUC determined that utility was reasonable in continuing to charge an interconnection tax, and PUC order did not provide for a refund of collected taxes to generators.

The Opportunity Zone Incentive Isn't Living Up to Its Equitable Development Goals. Here Are Four Ways to Improve It.

COVID-19's disproportionate impact on Black communities and the recent killings of George Floyd, Breonna Taylor, and other Black Americans have shone a spotlight on the US's ongoing legacy of state-sanctioned violence, segregation, discrimination, and racially driven disinvestment. Nationwide protests have lifted up the need for government to invest in Black neighborhoods and remedy the poor economic conditions it purposefully created for these communities in decades and centuries past.

The Opportunity Zone (OZ) incentive, created by the Tax Cuts and Jobs of Act of 2017, aimed to establish an economic development tool that would foster equitable development outcomes—such as quality job creation and business growth—in undercapitalized communities, many of which are majority Black. Two years after OZs were designated, is the incentive living up to its goals?

Without the federal government requiring detailed reporting on OZ investments, answering that question has been challenging. But through nearly 70 interviews with a range of stakeholders working on mission-oriented OZ projects across the US, we assessed how the program is working in practice.

Continue reading.

The Urban Institute

June 17, 2020

Economics in Brief: Opportunity Zones Aren’t Creating Jobs.

Opportunity Zones Aren’t Creating Jobs, Study Says

A new report from the Urban Institute finds that the Trump administration-touted Opportunity Zones have enriched real estate developers rather than the small businesses the program was allegedly designed to help.

The New York Times reports that the tax break, which as Next City readers already know, gives investors a break on capital gains taxes — or eliminates them entirely — if they invest the money into a designated geographical area known as an Opportunity Zone.

But the report finds that developers who took advantage of Opportunity Zone tax breaks would have proceeded with their projects even without the tax incentive, and that investors in the program are mainly interested in putting their money into luxury developments that have the opportunity to bring high returns, rather than affordable housing or small businesses.

Continue reading.

NEXT CITY JUNE 19, 2020

Updates from the White House Council on Opportunity Zones, with Scott Turner.

What is the state of Opportunity Zones from the perspective of the White House Opportunity and Revitalization Council, now one year into its mission? Scott Turner is executive director of the Council — a collaboration of 17 Federal agencies and Federal-State partnerships with a mandate to identify and disseminate best practices for utilizing the Opportunity Zones tax incentive and existing Federal resources to stimulate economic

[Read More »]

June 17, 2020

[White House OZ Council Issues Opportunity Zones Best Practices Report.]

The White House Opportunity and Revitalization Council (WHORC) has delivered their Opportunity Zones Best Practices Report to the President. Listen to WHORC executive director Scott Turner on the Opportunity Zones Podcast. The Council's report includes Opportunity Zones case studies and best practices observed around the country. The report highlights several inspiring stories that involve public-private partnership between state and local governments, Qualified Opportunity Funds, and …

[Read More »]

June 18, 2020

[Pandemic Makes Municipal Stadiums an Even Worse Deal for Taxpayers.]

Cities across the country are struggling to make their debt payments on municipal stadiums in an era of canceled events, report Sebastian Pellejero and Heather Gillers in the [Wall Street Journal]:

> Public officials have borrowed billions of dollars to build stadiums for major teams. Since 2000, more than 40% of almost $17 billion in tax-exempt municipal bonds sold to finance major-league stadiums were backed by levies on hotels and rental cars—making tourism taxes the predominant means of public stadium finance, according to the Brookings Institution.
>
> The borrowers envisioned the sports facilities as a form of economic development that would attract fans from near and far, raising cities' national profile and boosting their revenue beyond what was needed to pay back the bonds. The pandemic has turned that calculus on its head, crushing tourism proceeds and turning stadiums into a strain on city budgets.

But that calculus was never very sound, as I've written here before. Academic studies have consistently found few if any economic benefits of subsidies for stadiums, arenas, convention centers, and the like.

Several Cato studies over the years have looked at the absurd economic claims of stadium advocates. In "[Sports Pork: The Costly Relationship between Major League Sports and Government]," Raymond Keating finds:

> The lone beneficiaries of sports subsidies are team owners and players. The existence of what economists call the "substitution effect" (in terms of the stadium game, leisure dollars will be spent one way or another whether a stadium exists or not), the

> dubiousness of the Keynesian multiplier, the offsetting impact of a negative multiplier, the inefficiency of government, and the negatives of higher taxes all argue against government sports subsidies. Indeed, the results of studies on changes in the economy resulting from the presence of stadiums, arenas, and sports teams show no positive economic impact from professional sports – or a possible negative effect.

In Regulation magazine (.pdf), Dennis Coates and Brad Humphreys found that the economic literature on stadium subsidies comes to consistent conclusions:

> The evidence suggests that attracting a professional sports franchise to a city and building that franchise a new stadium or arena will have no effect on the growth rate of real per capita income and may reduce the level of real per capita income in that city.

And in "Caught Stealing: Debunking the Economic Case for D.C. Baseball," Coates and Humphreys looked specifically at the economics of the new baseball stadium in Washington, D.C., and found similar results:

> Our conclusion, and that of nearly all academic economists studying this issue, is that professional sports generally have little, if any, positive effect on a city's economy. The net economic impact of professional sports in Washington, D.C., and the 36 other cities that hosted professional sports teams over nearly 30 years, was a reduction in real per capita income over the entire metropolitan area.

In an updated study from the Mercatus Center at George Mason University, Coates finds similar results:

- *Professional sports can have some impact on the economy.* Looking at all the sports variables, including presence of franchises, arrival and departure of clubs in a metropolitan area, and stadium and arena construction, the study finds that the presence of a franchise is a statistically significant factor in explaining personal income per capita, wage and salary disbursements, and wages per job.
- *But this impact tends to be negative.* Individual coefficients, such as stadium or arena construction, sometimes have no impact, but frequently indicate harmful effects of sports on per capita income, wage and salary disbursements, and wages per job.

Michael Farren of Mercatus summed up, "Furthermore, peer-reviewed academic research consistently shows that public financing for professional sports stadiums is a poor way to spur economic development or accomplish 'downtown revitalization.' "

The pandemic and the event cancellations it has generated have seriously disrupted the financial calculations that cities made in building stadiums at taxpayers' expense. But they were never a good bargain.

The Cato Institute

by David Boaz

June 11, 2020

No Written Plan Relief May Stymie Opportunity Zone Projects.

The IRS recently extended opportunity zone deadlines to provide relief to projects facing delays due to the COVID-19 pandemic, but the agency's silence on amendments to written plans may jeopardize ventures that unexpectedly need to change course.

The Internal Revenue Service recently issued guidance providing automatic deadline relief to qualified opportunity funds, allowing opportunity zone businesses an extra 24 months to move cash into projects. Normally if a fund operates a qualified opportunity zone business, then no more than 5% of a qualified opportunity zone's assets can be held as cash or other financial property.

Final regulations provided a working capital safe harbor so QOZ businesses can hold more money for up to 31 months if they create and are "substantially consistent" in following a written plan, including a schedule of how money will be used in future development. The rules allow the government to extend that period by another 24 months if there is a federally declared disaster.

However, the IRS did not explicitly say whether a company can amend its written plan if a project has to make substantial changes due to the novel coronavirus, which causes the respiratory disease COVID-19, according to Steven R. Meier, a tax partner at Seyfarth Shaw LLP.

This is especially problematic for investors in hotels, restaurants and entertainment facilities that may want to develop multifamily units or distribution centers instead because the economic landscape has drastically changed since projects were originally put in place, Meier said.

"With projects that are underway and invested into the business, there remains a quandary as to how to deal with possibly having to radically adjust a business plan," Meier said. "It would have been nice for the IRS to acknowledge that plans that went into place in the middle of March this year are probably about as good as the paper they're written on."

Joseph B. Darby III, a tax partner at Sullivan & Worcester LLP, told Law360 that he has many clients who want to change their written plans, since the coronavirus pandemic has put a damper on opportunity zone projects currently in the works.

"Many people are just not sure what to do and whether they'll be able to proceed," he told Law360.

In many instances, the projects are not following a written plan or schedule due to construction delays or unavailability of workers, so many are considering whether to make adjustments or whether changing the plan will result in disqualification from the opportunity zone program's tax benefits, he said.

The final rules require a QOZ business to have a written plan that identifies the financial property that will be held to acquire, construct or substantially improve property in the zone. The plan must have a written schedule that is consistent with ordinary business operations, under which the property is used within 31 months, but that deadline has been extended by another 24 months because of COVID-19. The regulations also require that the business must be "substantially consistent" with the written plan and schedule.

Uncertainty remains in how the government will decide how a project can be "substantially consistent" with a written plan and its schedule, Darby said. If investors want to be successful as they figure out how to navigate business challenges created by the pandemic, it would be helpful to know what changes, if any, to a written plan are acceptable and what cannot be changed, he said.

Organizations such as the Opportunity Zones Working Group of Novogradac & Co. LLP have asked the government for temporary relief that would allow businesses to modify such plans. Many entities have had to change their plans dramatically in response to the COVID-19 crisis “so they can prosper in the post-pandemic world,” the Novogradac group said in May.

A taxpayer-friendly position could say that if a plan was already written and was affected by COVID-19, modifications should be allowed, Darby said. This approach would be consistent with the final rules because they already allow a safe harbor extension by 24 months if there is a disaster, so it would also make sense to allow necessary plan and schedule modifications due to COVID-19, he said.

Until more is known, Darby said, many of his clients are taking a wait-and-see approach, since they do not know what the IRS will decide or what the business climate may be like six months from now.

Meier said he had also seen many investors in hospitality projects that want to pivot, but they are worried about what will happen to their potential tax benefits if the project is not substantially consistent with the pre-COVID-19 written plan and schedule requirements.

While some projects located near a hospital or university will likely wait it out, since such businesses will likely go forward with construction, other projects that are more leisure-oriented may want to make fundamental changes to their plans to better adjust to dramatic changes in consumer behavior, he said.

If amendments are not allowed, then the purpose of the opportunity zone program — to encourage investment in economically depressed areas — is undermined, since without that flexibility, investors would face the choice of either going forward with a potentially noncompliant project or pulling out of the project entirely, he said.

People do not invest money in funds expecting the money to do nothing, so investors’ interests in creating successful projects are aligned with the desire to create businesses that bring long-term value to low-income areas, Meier told Law360.

“If the IRS can write a regulation” on the working capital safe harbor, he said, “they can certainly write a modification to that regulation.”

Edward A. Renn, a tax partner at Withers Worldwide, told Law360 that there might already be some leeway in making changes, because he had seen some opportunity zone projects change their plans before the novel coronavirus pandemic began.

“I think in the real world, those [written plans] are not as carved in stone as they’re made out to be,” he said. “I think people have amended those if their projects have gone faster or slower than they intended.”

Given the intention behind the postponement guidance, it would be hard to imagine the government penalizing an opportunity zone project for not, for example, having the foundation of a building in New York set because Gov. Andrew Cuomo shut down the construction site for three months, Renn said.

“I really don’t think you’ll lose your qualification or tax-free rollout simply because you’re behind on your schedule and this notice didn’t give you this specific right to amend it,” he said.

Law 360

By Amy Lee Rosen · June 10, 2020, 6:59 PM EDT

–Additional reporting by David van den Berg, Joshua Rosenberg and Jaqueline McCool. Editing by Robert Rudinger and Neil Cohen.

Building Cities With Online Platforms And Opportunity Zones.

If recent headlines have taught us anything, it is that economic support and investments can go a long way toward helping cities, businesses and individuals navigate any number of challenges (the pandemic is only among the most recent challenges).

Unemployment is at historic levels. Small businesses (and not a few large ones) are at risk of going under. Across urban and rural settings, communities are in need of investment.

To that end, according to Valla Vakili, managing director and head of the studio at Citi Ventures, data can make all the difference in helping funds get where they need to go to revitalize those communities.

His conversation with Karen Webster took place after Citi Ventures added new features to the City Builder online platform — a digital offering launched at the end of last year that connects investors with "opportunity zones."

Continue reading.

ByPYMNTS

Posted on June 5, 2020

Pros and Cons of the 180-Day Opportunity Zone Deadline Extension.

On June 4, the IRS issued a new notice that provides a lot of additional coronavirus relief for Opportunity Zone investors and Opportunity Zone funds. Will this relief pose short-term challenges for Opportunity Zone capital raising? And might it cause a tsunami wave of investment toward the end of this year? Click the play button below to listen to this special episode. Episode Highlights How …

Read More »

June 8, 2020

Why Attend the Opportunity Zone Expo, with Rich Zhang.

Last year, the Opportunity Zone Expo hosted six live, in-person events. But due to the ongoing coronavirus pandemic, their 2020 conference will be entirely online. Learn how you can still benefit from attending, who you will meet, and how you can save 20 percent on last-minute tickets. Rich

Zhang is brand manager for the Opportunity Zone Expo. Click the play button below to listen to …

Read More »

June 10, 2020

Novogradac 2020 Opportunity Zones Virtual Conference.

Virtual | July 15, 2020 – 12:00pm to 5:30pm

As the nation rallies together to control the spread of COVID-19, Novogradac has decided to pivot our Opportunity Zones Conference that was to be held in Long Beach, Calif. on July 15-16 to a virtual conference on July 15. This new virtual experience will include valuable and insightful sessions that will address how current events affect the opportunity zones incentive, and how OZ investment can contribute to recovery efforts.

Each session will feature:

- a live Q&A with esteemed OZ experts to answer your questions.
- attendees will also be able to enter a networking hub to participate in chat rooms covering important topics
- the Novogradac Nexus exhibit hall to meet with our valued sponsors.

Novogradac is designing this new experience to be as informative as our live events. The Events Desk is available to answer any questions by email or by calling us at 415-356-7970. We look forward to seeing you at our premiere Novogradac Virtual Opportunity Zones Conference!

Click here to learn more and to register.

IRS Provides More Deadline Relief for Opportunity Zone Funds and Investors.

Investors looking to roll capital gains into qualified opportunity funds will now have until the end of the year to make those investments in some cases.

The IRS said in Notice 2020-39, 2020-26 IRB 1, released June 4, that taxpayers looking to take advantage of Opportunity Zone benefits and whose deadline to invest was between April 1 and December 31 will have until the end of the year to invest in QOFs.

Investors normally have 180 days from the time they recognize an eligible gain to invest that gain in a QOF. In response to the economic slowdown caused by the coronavirus pandemic, the IRS initially provided broad relief in Notice 2020-23, 2020-18 IRB 742, that allowed investors whose 180-day deadline was set to expire between April 1 and July 15 to have until July 15 to make the investment.

The Opportunity Zone program, created by the Tax Cuts and Jobs Act, allows for the deferral, reduction, and in some cases elimination of capital gains tax by investing in qualified funds or businesses. The final Opportunity Zone regulations (T.D. 9889) include a 31-month working capital safe harbor under which an Opportunity Zone business can hold cash as long as it has a written plan in place.

Under reg. section 1.1400Z2(d)-1(d)(3)(v)(D), a business could get an additional 24 months if it's located within a federally declared disaster area as defined in section 165(i)(5). However, it wasn't clear whether all Opportunity Zone businesses were operating in disaster areas because of the pandemic.

The IRS said that as a result of President Trump's emergency declaration, "all qualified opportunity zone businesses holding working capital assets intended to be covered by the working capital safe harbor before December 31, 2020, receive not more than an additional 24 months to expend the working capital assets of the qualified opportunity zone business," as long as the regulatory requirements are met.

The guidance also extends relief for testing qualified assets of QOFs, along with extending the so-called 12-month reinvestment period for QOFs.

Michael J. Novogradac of Novogradac & Co. LLP said the IRS has addressed the three big issues that the Novogradac Opportunity Zones Working Group had asked it to address, including the 180-day time period to invest and the 30-month substantial improvement test. Some nuanced issues are still open, but several of those were indirectly addressed by the guidance, he added.

TAX ANALYSTS

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3 Lingering Opportunity Zone Questions Amid The Pandemic.

The COVID-19 pandemic has severely slowed the commercial real estate market as investors are skittish and banks are reluctant to loan, and while the IRS on Thursday provided important relief for investors in opportunity zone projects, questions and hurdles for such deals still remain.

One of the lingering questions about the opportunity zone program created as part of President Donald Trump's late 2017 tax overhaul is how to satisfy a requirement that at least half of employment at opportunity zone businesses take place within the zone, which at the moment is tricky given that so many people are working remotely amid the pandemic.

And while changes earlier this week from the IRS will help current investors and projects, challenging timeline requirements still exist for would-be investors. The program allows investors to defer payment of capital gains if those gains are put into an opportunity zone, and gains on the opportunity zone investment are also tax-free if the position is held for 10 years.

Here, Law360 looks at three lingering questions about opportunity zones amid the COVID-19 pandemic.

Will tax and employment concerns weigh on investors?

The IRS on Thursday granted several timeline extensions for opportunity zone investors, and lawyers say that while the changes are important for current projects, tax and employment issues remain.

Investors using the program must put capital gains into an opportunity zone fund within 180 days of a sale, and the IRS on Thursday said if that 180-day point occurs or occurred between April 1 and Dec. 31, the deadline to invest in a fund is now Dec. 31.

Likewise, if projects between April and the end of year had hit the law's requirement that 90% of assets in a fund be in an opportunity zone project, projects get an exemption from that requirement until the end of the year. And the months between April and December also will not count toward the required 30-month timeline during which developers have to add improvements to properties, the IRS said Thursday.

Michael Krueger, a partner at Newmeyer & Dillion LLP, said that 90% rule has been challenging for companies to meet during the pandemic, given construction and government approval delays.

But one lingering issue, according to John Gahan, a partner at Sullivan & Worcester LLP, is the question of where employees at opportunity zone projects work. As the law is written, at least half of employees' hours at an opportunity zone business need to occur within the opportunity zone, and that's still a big unknown given that so many employees are working from home amid the pandemic.

"If there is one [thing] missing in the relief, it is how to incorporate where people work," Gahan said. "Anything more probably needs to come from Congress."

And tax questions also remain. As the program stands, deferred gains are to be taxed in 2026, and there's concern in the investor community about what tax rates may be in 2026, said Kate Kraus, a partner at Allen Matkins Leck Gamble Mallory & Natsis LLP.

"That could be much higher than 2019-2020 tax rates. This is something that the Treasury and IRS can't address. Congress would need to enact new legislation," Kraus said.

And while the new guidance from the IRS helps those who are already in the midst of projects, it doesn't necessarily make it any easier for investors who are on the sidelines and hoping to dive into opportunity zones.

"If you have not already harvested your gain, doing so now, your 180 days would have been in December anyway," Gahan said. "So it helps those who already have gain. Maybe those who sold stock during the early days of pandemic."

How will investors approach the substantial improvement requirement?

Lawyers say the relief on the question of the 30-month clock for substantial improvements is helpful for current projects or projects that are in the works, although for would-be projects, that 30-month requirement still could pose timing problems, particularly in jurisdictions where entitlement is slow to come by.

The law requires developers to invest an amount in improvements equal to the value of the purchased building — but not the land — and to do so within 30 months.

While it's possible Congress could, say, lower that requirement to 50% of the building value, which would likely bring more investors to projects, Gahan said he doesn't expect to see calls for additional guidance at this point.

But there's another way investors could get around that tricky 100% requirement.

If investors purchase opportunity zone properties from the government through a bankruptcy sale, they can bypass that substantial improvement requirement altogether. And Krueger expects more of such opportunities in the near term.

"In 12 to 18 months, when all of the moratoriums on foreclosures are expired and people stop kicking the can down the road, [real estate] is going to crash," Krueger said. "It's a very unique situation where you can acquire something from the government."

And since struggling malls are already Americans with Disabilities Act compliant and on transportation lines, those could be the kinds of properties that end up changing hands, and if opportunity zone investors pick them up, substantial improvements may not be required, Krueger said.

"What I envision, and what I recommend to the politicians, is take these malls back that are vacant, and turn them into what is needed. … All of these malls are perfect locations for that," Krueger said. "The J.C. Penneys may now become Kaiser Permanente dialysis centers."

Will investors shift more focus away from real estate?

While much of the focus of opportunity zones has been real estate, the law also allows for investment in companies, and that option may become more attractive as construction and the real estate market writ large continue to be major unknowns.

"Whether credit is available or whether there's labor, restrictions on labor, all of these things can have … an impact on an opportunity zone project," said Matt Ertman, a partner at Allen Matkins. "It you can't get entitlements done within the timelines, you're going to have a tough time getting a project completed."

And as Silicon Valley investors and entrepreneurs find themselves with capital gains from sale of stock — the Nasdaq on Friday hit a record high — those investors may look to opportunity zone investments in other companies, as opposed to brick-and-mortar real estate, as a tax strategy.

Krueger said he even thinks company human resources departments should help employees find options for such investments.

"Property itself may not be the most attractive investment now. [Capital] may go back into the startup companies. It doesn't have to be real estate that you invest in in an opportunity zone," Kreuger said. "What I am seeing is a large draw to disruptive technology. More fintech. More remote work, remote access. Those are more attractive."

"Commercial real estate for a large tenant that's going to put all of their employees in that one space, that's no longer a sure thing," he added.

By Andrew McIntyre · June 5, 2020, 5:34 PM EDT

–Additional reporting by David van den Berg. Editing by Rebecca Flanagan and Alanna Weissman.

Law 360 Tax Authority

IRS Grants Pandemic Deadline Relief On Opportunity Funds.

The novel coronavirus pandemic has prompted the Internal Revenue Service to grant automatic deadline relief to qualified opportunity funds and investors, including an extension of the 180-day investment period for some investors to Dec. 31 in a notice released Thursday.

Taxpayers for whom the last day of the period in which investments must be made in qualified opportunity funds, or QOFs, to satisfy the 180-day requirement falls on or after April 1 automatically get the extension to Dec. 31, according to Notice 2020-39. Taxpayers don’t have to contact the IRS or send letters or other documents to get the relief, the notice said.

However, they must make a valid deferral election and file needed forms with a timely filed federal income tax return or amended return for the taxable year in which the gain would be recognized if [Internal Revenue Code Section 1400Z-2(a)(1)] didn’t apply to defer recognition of the gain, according to Thursday’s notice.

The opportunity zone program, established by the 2017 Tax Cuts and Jobs Act , is meant to bring monetary investments into lower-income communities to help spur economic development in them. Opportunity zones allow investors to reinvest capital gains within a 180-day window into designated low-income areas in return for certain tax benefits that grow the longer the money is invested in a QOF through Dec. 31, 2026.

Final regulations on opportunity zones came out in December that allowed for two methods of investing in the program. Under a one-tiered structure, a QOF directly holds qualified zone property. Investors in one-tiered structures must invest gains into a QOF within 180 days of the sale or exchange that gave rise to the gain, under the final rules. If investors have already successfully invested in a QOF, it must generally hold 90% of its assets in qualified property, as measured every six months, or face penalty, the rules said.

For QOFs whose last day of the first six-month period of the taxable year or last day of the taxable year falls between April 1 and Dec. 31, any failure by the QOF to satisfy the 90% investment standard is due to reasonable cause under [IRC Section 1400Z-2(f)(3)], the IRS said in Thursday’s notice. Those failures will also be disregarded for purposes of determining whether the QOF or any otherwise qualifying investments in it satisfy requirements of IRC Section 1400Z-2 and its regulations for any taxable year of the QOF, the notice said.

The relief is automatic, but QOFs must accurately complete all lines on Form 8996, Qualified Opportunity Fund, filed for each taxable year except that the QOF should indicate “zero” where penalties are supposed to be recorded, the IRS said Thursday. The form must be filed with the QOF’s timely filed federal income tax return, according to the notice.

Richard LaFalce, partner at Morgan Lewis & Bockius LLP, said the notice should give opportunity zone investors the certainty they need to move forward.

“While the COVID 19 pandemic may cause investors and sponsors to reevaluate their plans for opportunity zone investments, any delay should not be driven by concerns regarding the ability to satisfy the OZ tax rules during the pandemic,” LaFalce told Law360.

The breaks the IRS provided in Thursday’s notice follow Sen. Tim Scott’s renewing his push for giving investors three additional months to put capital gains into qualified opportunity funds to encourage participation in the program during a Tuesday webcast hosted by Politico. In early May, Scott, R-S.C., also asked the IRS and the U.S. Department of the Treasury to ease the program’s requirement that QOFs have to invest at least 90% of assets in qualified opportunity zone property, at least through the end of the year.

The IRS didn’t immediately respond to a request for comment.

Tax Analysts

–Additional reporting by Amy Lee Rosen, Joshua Rosenberg and Stephen Cooper. Editing by Neil Cohen.

Updated IRS Opportunity Zones FAQs.

The following questions and answers (Q&As) were prepared in response to inquiries that have been proposed to the IRS. They are intended to provide a basic understanding and awareness of Opportunity Zones.

These Q&As do not constitute legal authority and may not be relied upon as such. They do not amend, modify or add to the Income Tax Regulations or any other legal authority.

Access the FAQs.

TAX - GEORGIA

Hojeij Branded Foods, LLC v. Clayton County

Court of Appeals of Georgia - May 28, 2020 - S.E.2d - 2020 WL 2763498

Operator of fast food concession stand at international airport brought action against city, county, and various city and county officials seeking a refund of ad valorem property taxes paid in two particular years based on precedent establishing that airport retail spaces were usufructs, rather than estates in real property.

The Superior Court granted defendants' motions to dismiss for failure to state a claim, based on sovereign immunity. Concession stand operator appealed.

The Court of Appeals held that statute governing tax refund claims against a county or city waived sovereign immunity for five years after payment of the tax, rather than three years.

Statute governing tax refund claims against a county or city waived sovereign immunity for five years after payment of the tax, rather than three years; statute allowed a taxpayer to file a claim directly with the county or city within three years after payment of the tax and barred commencement of a lawsuit thereafter until the earlier of 90 days or denial of the claim, but did not make filing such a claim a prerequisite to filing a lawsuit and did not otherwise indicate that the three-year period applied to such a lawsuit, and statute expressly provided that any lawsuit seeking a refund had to be commenced within five years after payment.

TAX - MICHIGAN

Honigman Miller Schwartz and Cohn LLP v. City of Detroit

Supreme Court of Michigan - May 18, 2020 - N.W.2d - 2020 WL 2530162

Law firm operating offices within and outside of city appealed the ruling of the Tax Tribunal, which upheld city's imposition of an additional tax assessment under the Uniform City Income Tax Ordinance (UCITO).

The Court of Appeals reversed. City's application for leave to appeal was granted.

The Supreme Court held that calculation of revenue from services encompasses all services performed within the city without regard to where those services are delivered.

For purposes of the Uniform City Income Tax Ordinance (UCITO), “performed,” under the payroll factor for calculating the taxable net profit of a business for activities that are not exclusively conducted within a city, means to carry out an action, and accordingly, compensation for “services performed within the city” is calculated on the basis of the location at which the employee has carried out the service for compensation.

City income tax statutes establish the framework upon which city taxes of a business are to be calculated under the business allocation percentage method where the net profits of a business derive from activities conducted both inside and outside of the city; only that portion of net profits from business activities conducted within the city is subject to the city tax.

For purposes of the Uniform City Income Tax Ordinance (UCITO), “rendered” means to do a service for another, and not to transmit to another or deliver; thus, the calculation of revenue from services under the revenue factor, for determining the taxable net profit of a business, encompasses all services performed, i.e., done or carried out, within the city without regard to where those services are delivered.

IRS Extends Safe Harbor for Renewable Energy Projects.

Companies facing delays in putting their renewable energy projects into service will get an additional year of safe harbor time from the IRS.

In Notice 2020-41, the IRS said it is providing an extra year to the four-year “Continuity Safe Harbor” offered in existing guidance related to the production tax credit for renewable energy facilities under section 45 and the investment tax credit for energy property under section 48 because some companies are facing supply chain delays related to the COVID-19 pandemic.

If projects are placed in service in five years, construction will be deemed continuous.

The IRS also said it is providing assurance for taxpayers who already started construction by incurring 5 percent of project costs, and made payments for services or property and reasonably expected to receive such services or property within 3 ½ months. The notice provides that if the services or property are received by October 15 the taxpayer’s expectations at the time of the 2019 payment are deemed reasonable.

The guidance is useful to companies developing renewable energy projects and producing electricity from sources such as wind, biomass, geothermal, landfill gas, trash, and hydropower. The safe harbor is also available for taxpayers using technologies such as solar panels, fuel cells, microturbines, and combined heat and power systems, the IRS said.

IRS PLR: Investment in Opportunity Opportunity Fund Deemed Timely.

The IRS ruled that a taxpayer’s investment in a qualified opportunity fund was deemed timely filed because the taxpayer reasonably relied on a qualified tax professional and the government’s interests would not be prejudiced by granting the relief.

Read the IRS Private Letter Ruling.

NABL: Delay in Direct Pay Bond Payments

NABL members are receiving inquiries from their clients regarding delays in timely payment of refundable tax credit payments for direct pay bonds, including build America bonds.

As we understand it based on the information posted on the Internal Revenue Service (IRS) website, direct pay subsidy payments are delayed because the forms on which they are processed (i.e., the 8038-CP) are paper returns with no electronic alternative and the IRS is currently unable to process individual paper tax returns. As a result, requests from issuers with direct payments will be delayed until processing centers are able to reopen and in some cases direct payments may not be received until after the corresponding interest payment date.

You can find updated information on the IRS website at the following location: IRS Operations During COVID-19: Mission-critical functions continue, under Paper Tax Returns.

Opportunity Zone Fundraising Trends, with Nick Parrish.

What Opportunity Zone fundraising trends can be gleaned after raising $465 million? And what's next for Opportunity Zones in the midst of the coronavirus pandemic? Nick Parrish is managing director and head of business development at Cresset Partners, a multifamily office that specializes in alternative investments in real estate, private capital, and Opportunity Zones. Their first QOZ fund closed earlier this year after raising $465

Read More »

Opportunity Db

May 27, 2020

HUD Releases Toolkit to Guide Local Leaders in Developing Strategic Plans for Opportunity Zones.

The U.S. Department of Housing and Urban Development (HUD) published a toolkit guide Thursday to provide local leaders with strategies for promoting economic development in federal opportunity zones (OZs). "Opportunity Zones Toolkit Volume 2: A Guide to Local Best Practices and Case Studies," includes background on the incentive, strategies and case studies of successful examples.

Novogradac

Friday, May 29, 2020

IRS Notice Extends Continuity Safe Harbor to Five Years for PTC, ITC

Properties Affected by COVID-19-Related Delays.

The Internal Revenue Service today issued a notice to extend the continuity safe harbor for renewable energy production tax credit (PTC) and investment tax credit (ITC) properties that began construction in 2016 or 2017. Notice 2020-41 adds an extra year to the four-year continuity safe harbor in existing guidance, stating that those projects placed in service within five years will be deemed continuous. The extension is due to industry-wide delays in the supply chain caused by the COVID-19 pandemic. The notice also extends the 3½-month continuity safe harbor for taxpayers to satisfy the beginning-of-construction requirements to include any services or property received by Oct. 15, 2020. The notice will be discussed **June 25** in an upcoming Novogradac webinar. Stay tuned for details.

For community development, affordable housing and renewable energy updates related to COVID-19, see Novogradac's dedicated page.

Novogradac

May 27, 2020

States Grappling With Hit to Tax Collections.

COVID-19 has triggered a severe state budget crisis. While the full magnitude of this crisis is not yet clear, state revenues are declining precipitously and costs are rising sharply with many businesses closed and tens of millions of people newly unemployed. Due to the economy's rapid decline, official state revenue projections generally do not yet fully reflect the unprecedented fiscal impact of the coronavirus pandemic. In many cases, states do not even know how much their revenues have already fallen, in part because they've extended deadlines for filing sales and income tax payments that otherwise would have been due in recent weeks. Executive and legislative fiscal offices in many states are analyzing new economic projections and producing initial estimates of the damage before state legislatures meet in regular or special sessions to address shortfalls. Some states have released initial or preliminary estimates. (See Table 1.)

Continue reading.

Center on Budget and Policy Priorities

April Tax Collections Plummet from Tax Deadline Shifts and Fallout of COVID-19.

As expected, April tax collections fell sharply with many states experiencing year-over-year declines of at least 50 percent, as highlighted in the below state-by-state press articles. The precipitous drops were brought on by a combination of states shifting their tax deadlines to July 15, and the economic impact of the coronavirus.

Tax Deadline Shifts
On March 21, the U.S. Treasury Department and Internal Revenue Service (IRS) announced that the federal income tax filing deadline would be extended from April 15, 2020, to July 15, 2020. Following

this federal action, 40 states also chose to extend their state tax deadline to July 15, 2020, while seven states chose other deadlines, according to the American Institute of Certified Public Accountants (AICPA). The tax deadline shift led many taxpayers to postpone filing their tax returns, causing a sharp drop in personal income tax payments in April.

Personal Income Taxes
Within the personal income tax category, states saw the largest declines within the non-withholding component which includes estimated and final payments. States are hopeful that they will receive most of the delayed payments in July. However, some of the deferred taxes may not be collected in July as taxpayers' financial outlooks worsen. Most states also noted a decline in the withholding category of personal income taxes (or the amount withheld from an employee's paycheck and paid directly to the government) in April. The declines were perhaps not as much as many had expected with the unemployment rate reaching 14.7 percent in April. This may be partly explained due to many states taxing unemployment benefits.

Continue reading.

NASBO

By Brian Sigritz

Opportunity Zone Deals Suddenly Accelerate As Program Starts To Look More Attractive.

In the first month after the coronavirus ground the U.S. economy to a halt, the opportunity zone marketplace had slowed along with the rest of the commercial real estate industry.

The opportunity zones program has been described by the Trump administration as a tool to inject hundreds of billions of dollars into underserved communities. In its first two years, the program had yet to live up to the buzz it generated throughout the industry.

But over the past month, opportunity zone investors have been some of the most active players in the real estate market, closing deals and starting new projects as most traditional sources of capital stay on the sidelines.

Continue reading.

BisNow

by Joseph Pimentel and Jon Bannister

May 19, 2020

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3 Biggest Changes in the IRS Correcting Amendments to OZ Regs, with Jessica Millett and Ashley Tison.

In April, the IRS published correcting amendments to the final regulations on Qualified Opportunity

Funds. What are the key changes that Opportunity Zone participants need to be aware of? Jessica Millett is partner and chair of Duval & Stachenfeld’s tax practice group. Ashley Tison is co-founder at OZ Pros. Click the play button below to listen to my conversation with Jessica and Ashley. Episode Highlights

Read More »

Opportunity Db

May 20, 2020

Opportunity Zone Stakeholders are Invited to Respond to this EIG Survey.

Your response is requested for a national survey of Opportunity Zones stakeholders. The Economic Innovation Group is conducting the survey to gain insights on current market activity, investor behavior, and factors that may shape the OZ ecosystem in 2020 and beyond. The survey targets individuals and organizations engaged in the following activities: Opportunity Zone Investors and Wealth Managers Financing Partners Qualified Opportunity Fund (QOF) Managers

Read More »

Opportunity Db

May 20, 2020

Reps. Kind, Kelly Urge Treasury, IRS to Provide Regulatory Relief for Opportunity Zones Investments Affected by COVID-19 Pandemic.

Reps. Ron Kind, D-Wis., and Mike Kelly, R-Pa., today submitted a letter to the Department of the Treasury and the Internal Revenue Service, seeking regulatory relief for opportunity zones (OZ) investments affected by the COVID-19 pandemic. The letter makes six specific requests, including an extension until the end of 2020 for the 180-day period to invest capital gains in qualified opportunity funds; to deem a failure to meet the 90 percent asset test from March 13-July 15 to be due to reasonable cause; and to extend the 30-month substantial-improvement period by one year for those periods that end in 2020.

Novogradac

Tuesday, May 19, 2020

Opportunity Zone Bill May Help Cos. That Missed PPP Funds.

A proposal to allow small businesses affected by COVID-19 to qualify for opportunity zone investments could shore up the finances of companies that missed Paycheck Protection Program funds, but securing those investments may not be easy.

Reps. John Curtis, R-Utah, and Henry Cuellar, D-Texas, introduced the Small Business Opportunity Zone Act in April, which would allow small businesses affected by the novel coronavirus pandemic to be classified qualifying businesses in which investors can receive favorable opportunity zone tax benefits. The legislation is meant to create a new incentive to encourage investments in smaller companies that have been impacted by COVID-19 through supply chain disruptions, staffing changes, decreases in sales or customers, or a partial or full suspension of business.

The measure may dovetail well with the Paycheck Protection Program, which provided $350 billion in loans to small businesses, but for which money has quickly run out, resulting in many companies not receiving financial assistance, said Joseph B. Darby III, a tax partner at Sullivan & Worcester LLP.

Continue reading.

law360.com

By Amy Lee Rosen · May 20, 2020, 6:59 PM EDT

IRS Aids State and Local Governments With Tax-Exempt Tender Bonds and Commercial Paper: McGuire Woods

State and local governments frequently finance capital projects such as airports and utility systems by issuing tax-exempt qualified tender bonds (also commonly called variable rate demand obligations or "lower-floaters") and commercial paper. These obligations give the issuer the benefits of long-term financing with short-term interest rates.

However, tender bonds and commercial paper are variable-rate obligations. This exposes issuers to higher interest rates in times of market dislocation.

During the week of March 9, 2020, the extent of the COVID-19 outbreak was becoming apparent. The World Health Organization declared the outbreak a pandemic, President Trump declared a national emergency and many state governors declared states of emergency. Investors fled tender bonds and commercial paper. Over the course of the following week, the rates on these obligations increased fourfold.

State and local governmental issuers often seek to lessen the budgetary blow from spiking interest rates by purchasing their own tender bonds and commercial paper and holding them until the markets return to normal.

An issuer with sufficient liquidity may find a temporary purchase and hold strategy to be attractive. However, it is fraught with federal tax issues. A debt obligation generally is treated as retired or extinguished when an issuer purchases it because the interests of the issuer and the holder merge. The ability to resell the obligation on a tax-exempt basis requires the retesting of all the various program requirements for new issues of tax-exempt bonds. The reissuance of the debt obligation may result in various negative consequences to the issuer, including changes in yield for purposes of the arbitrage investment restrictions, acceleration of arbitrage rebate payment obligations, deemed terminations of integrated interest rate swaps under the qualified hedge arbitrage rules, new public approval requirements for qualified private activity bonds, and change in law risk. The obligation may lose its tax-exempt status.

Fortunately, the IRS has provided administrative relief to promote liquidity and stability in the tax-exempt tender bond and commercial paper markets in response to the COVID-19 pandemic.

On May 4, 2020, the IRS published Revenue Procedure 2020-25 to expand existing authority for state and local governmental issuers to purchase their own tender bonds and commercial paper on a temporary basis without causing a reissuance or retirement. To qualify, the issuer must purchase the bonds or paper during calendar year 2020 and not hold the debt after Dec. 31, 2020. The revenue procedure affords additional relief for purchases of tender bonds pursuant to qualified tender rights. The issuer may hold such a bond for 180 days after the purchase (instead of the usual 90 days) so long as the purchase occurs before Dec. 31, 2020.

Revenue Procedure 2020-25 allows the issuer to refund its purchased obligation with a tax-exempt refunding bond, to tender the purchased obligation for purchase pursuant to a qualified tender right the same as any other bondholder, or otherwise to sell the purchased obligation during the permitted holding period without jeopardizing its tax-exempt status.

Note: State and local governments often issue tender bonds and commercial paper to finance projects for non-governmental conduit borrowers. Examples include an economic development authority issuing tax-exempt tender bonds and lending the proceeds to the private operator of a solid waste disposal facility or the 501(c)(3) owner of a hospital. Also, tender bonds are often secured by a third-party credit and/or liquidity provider, such as a commercial bank. Conduit borrowers and credit and liquidity providers are generally allowed to purchase, hold and resell the tax-exempt tender bonds and commercial paper from which they benefit or secure without regard to any permitted holding period.

McGuireWoods has established a COVID-19 Response Team to help clients navigate urgent and evolving legal and business issues arising from the novel coronavirus pandemic. Lawyers in the firm's 21 offices are ready to assist quickly on questions involving healthcare, labor and employment, education, real estate and more. For assistance, contact a team member or email covid-19@mcguirewoods.com.

McGuireWoods has published additional thought leadership analyzing how companies across industries can address crucial business and legal issues related to COVID-19.

May 12, 2020

Urban Core Development in Opportunity Zones, with Alex Bhathal.

The Sacramento Kings ownership group successfully spearheaded downtown Sacramento's revitalization, which by the end of 2018 had resulted in a hugely positive community impact and a downtown job increase of 38 percent. Now, can they leverage the Opportunity Zone incentive to replicate this success in similar markets across the country? Alex Bhathal and his family are principal co-owners of the Sacramento Kings NBA franchise and…

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Opportunity Db

May 13, 2020

Tax-Averse Nashville Goes Where Few Other Cash-Poor Cities Dare.

- **Virus lockdown has blown wide holes in city budgets nationwide**
- **Music City's mayor sees property-tax hike as way to bridge gap**

Nashville's Music Row has gone quiet, its teeming hotels have emptied and its bustling restaurants, like the Capitol Grille, a fixture since 1910, are open for take-out only.

In a matter of weeks, the coronavirus pandemic has frozen the tourist-powered economy of one of the hottest cities in America. Nashville, Tennessee, finds itself staring into what Mayor John Cooper is calling its worst financial situation ever.

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Cooper did what few mayors have dared. Last month, he proposed a 32% property-tax increase to help Nashville's city-county government weather an estimated $470 million revenue loss over the next 16 months.

"This is the last thing anybody in my job would want to be doing," Cooper said in an interview.

Nashville's crisis is echoing across America. Just about every big city in the U.S. is facing revenue declines from weeks of stay-at-home orders, according to a National League of Cities survey. Congress has earmarked $150 billion for states and local governments — Nashville is slated to receive $122 million — but the money must be spent on public health and can't be used to fill budget holes.

State and local governments are in "uncharted territory" and will have to start making serious cuts if they don't get more help, said Richard Auxier, a senior policy associate in the Urban-Brookings Tax Policy Center.

"Their revenue was literally turned off," he said.

Millions Jobless

Few city officials around the country are following Nashville's lead. With the pandemic comes the concern that tax hikes may dampen economic recovery at a time when millions of Americans are suddenly jobless.

Leaders of New York, Chicago, San Diego, Memphis and Charlotte, North Carolina, have all grappled with virus-related deficits without plans to increase taxes.

Seattle officials have talked about a new payroll tax to help close a budget gap that could grow to $300 million, but they had to delay discussions because of restrictions on government meetings during the pandemic. Philadelphia, with a $650 million deficit, is opting to cut services "down to the most essential," Mayor Jim Kenney said. He would, however, raise taxes on businesses and commuters.

Extra Expenses

Nashville restaurateur Howard Greenstone said Cooper's proposal comes as retailers are preoccupied trying to navigate new social-distancing restrictions and a bleak outlook for tourism.

Greenwood said he pays about $75,000 in property taxes for one of his restaurants, Adele's, a popular brunch spot, and the tax bill could rise by $24,000 as a result.

"These extra expenses are going to be crippling," he said.

Nashville, like many other cities, has fiscal troubles that predate the pandemic. Taxes are political poison in Tennessee, a legacy of the Tea Party movement, and officials have engaged in financial engineering to keep them low.

It restructured some of its municipal bonds in 2010, putting off payments to avoid higher taxes, according to the state comptroller's office. Since then, outstanding debt ballooned to $4.4 billion in fiscal 2019.

Even as the local economy boomed, Nashville, with a population of about 670,000, resisted raising taxes. A 2017 property reassessment in the county showed a median increase of 37% in property values over the previous four years, which could have bolstered an argument for adding revenue to pay for expanded services. But a state law that mandated reassessments be "revenue neutral" resulted in some residents paying less. Nashville officials didn't work around the rule.

"We dug some of our own hole," said Freddie O'Connell, a city-council member.

In November, State Comptroller Justin Wilson warned Nashville that it was cash-poor.

"Would you want to take a flight, a 3,000-mile flight, if the pilot says, 'Well, I expect we have enough gasoline to get us 3,002 miles?'" Wilson said. "That's how you're operating."

Cooper's fiscal 2021 budget would avoid layoffs, but they loom.

"If this is not passed, my ability to finance next year will demand immediate and sharp layoffs, which would also be unprecedented," Cooper said.

Even with the proposed hike, he said, property taxes would remain lower than other cities in the state and below the city's historic norm.

Effects of the virus may have persuaded at least one reluctant lawmaker. With the metro area projected to lose at least 24,000 jobs this year, the timing of the hike "couldn't be worse," said city-council member Jeff Syracuse. And though he's voted against hikes before, he said this time it may be necessary.

"A third of the county got a tax break in 2017," Syracuse said. "That's indicative of the unsustainability that we face."

Bloomberg Markets

By Amanda Albright

May 11, 2020, 6:00 AM PDT

IRS Offers Tax-Exempt Bond Issuers More Flexibility.

The IRS is offering expanded periods in which state and local governments may purchase and hold their own exempt qualified tender bonds and tax-exempt commercial paper.

In Notice 2020-25, 2020-22 IRB 1, the IRS said May 4 that it is providing the added flexibility to help government bond issuers adapt to changing financing needs during the coronavirus pandemic.

The change applies for purposes of sections 103 and 141 through 150, and the notice says an exempt qualified tender bond or exempt commercial paper purchased by its governmental issuer on a temporary basis will be treated as continuing in effect without resulting in a reissuance or retirement of the bond if the issuer buys it during the permitted holding period and holds the bond no later than the end of the holding period.

"The governmental issuer may refund the purchased bond with a refunding bond, tender the purchased bond for purchase in a qualified tender right in its capacity as a bondholder, or otherwise resell the purchased bond" during the permitted holding period, the IRS said.

Regarding the purchase of a particular obligation of exempt commercial paper, including a purchase at maturity, "a refinancing of that purchased tax-exempt commercial paper with tax-exempt commercial paper during the permitted holding period will be treated as part of the same issue as the issue of which the purchased tax-exempt commercial paper was a part," the IRS said.

The notice is effective May 4, 2020, and issuers may apply it retroactively to purchases on or after January 1, 2020.

Emily Swenson Brock of the Government Finance Officers Association said the group's members are glad to see the IRS relief.

"States and local governments across the country have had to rethink public processes as a result of this pandemic, and we are happy that the IRS/Treasury is thinking outside the box as well," Brock said. "Additionally, relief as it pertains to a potentially costly and burdensome reissuance process due to self-liquidity is a meaningful acknowledgement by the IRS."

Phone It In

The IRS also announced May 4 that it is temporarily allowing public approval hearings on qualified private activity bonds to take place by telephone.

Between now and December 31, 2020, a public hearing on qualified private activity bonds held via teleconference (toll free) will satisfy the requirement that the conference be convenient for residents of the approving governmental unit, the IRS said in Rev. Proc. 2020-21, 2020-22 IRB 1.

The IRS added that governmental units may also offer greater access to hearings by providing other telephone numbers or through internet-based meeting technology.

The guidance received high marks from the National Association of Bond Lawyers (NABL) and other public finance organizations.

"NABL applauds the IRS responding to the COVID-19 crisis by providing clarity regarding the ability to hold telephone public hearings and providing relief regarding issuers' ability to provide self-liquidity," NABL President Richard J. Moore said in a statement to Tax Notes.

Moore, a partner at Orrick Herrington & Sutcliffe LLP, also praised "the retroactive nature of this guidance, given that some issuers have been adapting to the COVID-19 crisis for almost two months now."

NABL is studying the guidance and may have further suggestions, Moore said, adding that if conditions warrant, it may request extensions of the relief periods.

TAX ANALYSTS

by FRED STOKELD

POSTED ON MAY 5, 2020

IRS Issues Revenue Procedure, Notice Providing Guidance for Private Activity Bonds During COVID-19-Related Economic Disruption.

The Internal Revenue Service (IRS) today issued two types of guidance concerning tax-exempt private activity bonds (PABs), which are used with 4 percent low-income housing tax credits (LIHTCs) to finance affordable housing. In Revenue Procedure 2020-21, the IRS provides temporary guidance to allow hearings held by teleconference due to the COVID-19 pandemic to meet the statutory public approval requirement for PABs. Notice 2020-25 temporarily expands the circumstances and period for which a PAB is treated as "continuing in effect" without requiring the reissuance or retirement. There also is relief regarding a holding period and qualified hedge. The IRS said the allowances are being made in recognition of the need for liquidity and stability in the market during the current period of economic disruption. Notice 2020-25 is in effect retroactive to Jan. 1.

For community development, affordable housing and renewable energy updates related to COVID-19, see Novogradac's dedicated page.

May 4, 2020

Hawkins Advisory: Recently Released Regulatory Relief for Issuers of Certain Tax-Exempt Bonds

Treasury and the Internal Revenue Service released welcome temporary guidance addressing two of the many issues provoked by the COVID 19 pandemic.

Rev. Proc. 2020-21 permits issuers of private activity bonds to hold the public hearings required by the TEFRA rules by teleconference, expanding existing guidance requiring such hearings to be conducted in person.

Notice 2020-25 generally allows issuers of governmental bonds to purchase and hold their own tax-exempt qualified tender bonds and commercial paper during calendar year 2020, without causing such obligations to be considered extinguished for federal tax purposes.

It should be noted that the provisions set forth in both these measures apply to events taking place in calendar year 2020.

Read the Advisory.

IRS Expands Ability of Issuers to Purchase Their Own Tax-Exempt Bonds: Holland & Knight

The COVID-19 crisis has caused many disruptions in the municipal bond market. Over the course of the crisis, many issuers of tender bonds or tax-exempt commercial paper have been unable to remarket their tender bonds or roll-over their commercial paper either at all or at commercially advantageous interest rates. There have been instances where even issuers with strong credits have been forced to remarket their short-term bonds at rates in excess of 10 percent.

In such circumstances, some issuers have considered holding their bonds during the crisis period rather than remarket or roll them over at high interest rates. However, the problem is that under federal tax rules, there are situations where the debt is treated as either exchanged for new debt (reissued) or retired when it is purchased by the issuer. While the municipal bond market has stabilized lately, there is still concern regarding this.

In light of this situation, the IRS has released guidance in Notice 2020-25 (the Guidance), a temporary rule that provides:

1. Issuers of tax-exempt qualified tender bonds can purchase and hold their own bonds during calendar year 2020 without the bonds being treated as reissued or retired. During this period, the issuer also may refund the purchased bond with a refunding bond, tender the purchased bond for purchase in a qualified tender right as a bondholder or otherwise resell the purchased bonds.
2. Tax-exempt bonds purchased during calendar year 2020 pursuant to a qualified tender right can be held for up to 180 days by the issuer or on behalf of the issuer without the bonds treated as being retired (the prior law's period was 90 days). For example, bonds purchased on Dec. 31, 2020, pursuant to a tender right can be held by the issuer until June 2021 without the bonds being treated as retired. However, a tender bond purchased by an issuer on Jan. 1, 2021, would revert to the prior 90-day holding period.
3. Issuers of tax-exempt commercial paper may purchase and hold this debt during calendar year 2020 without the debt being treated as reissued or retired. During this period, the issuer also may refinance the purchased commercial paper (even if purchased at maturity) with more commercial paper that will be treated as part of the same issue as the purchased commercial paper.
4. Qualified hedges of tax-exempt bonds will not be treated as terminated as a result of the governmental issuer holding the hedged bonds during the periods described in Nos. 1, 2 and 3 above.

Prior Law Issues

Under prior law, issuers were allowed to hold their own tender bonds when they were unable to remarket them for up to 90 days without the bonds being treated as retired. However, those provisions applied only when issuers were unable to remarket their bonds at par following reasonable best efforts, and it was unclear whether it would apply in cases where remarketing was possible but at unfavorable interest rates. Also, many considered the 90-day period to be too short under the COVID-19 crisis and it did not cover commercial paper. The Guidance provides comfort to issuers in these areas.

The Guidance took effect on May 4, 2020, and may be applied retroactively to purchases on and after Jan. 1, 2020.

May 8, 2020

Holland & Knight LLP

Holland & Knight attorneys are assisting a number of issuers in analyzing the impact of COVID-19 legislation and proposals on future tax-exempt bond financings. For questions about a specific situation and its impact on your organization, contact the author or another member of Holland & Knight's Public Finance Team.

The IRS Comes Through: New Guidance Allows Phone TEFRA Hearings and Helps Issuers Repurchase their VRDOs Without Extinguishing Them

As described in our previous post, NABL hasn't been binge watching Tiger King and binge eating like the rest of us during this time at home during the COVID-19 pandemic. Instead, on March 25, 2020, NABL asked the IRS to adopt a proposed notice that would address two municipal bond concerns caused by the pandemic: (1) the requirement of in-person TEFRA hearings for tax-exempt private activity bonds; and (2) the extinguishment of qualified tender bonds and commercial paper if the issuer of such debt repurchases it without meeting certain requirements.

The IRS responded on Star Wars Day[1] with Rev. Proc. 2020-21 and Notice 2020-25, which should help alleviate these two concerns through the end of 2020.

Continue Reading

By Taylor Klavan on May 4, 2020

The Public Finance Tax Blog

Squire Patton Boggs

NABL: Treasury Issues Immediate Relief

The U.S. Department of the Treasury (Treasury) has issued guidance providing immediate relief to issuers in certain circumstances:

- Provides temporary guidance regarding the public approval requirement under § 147(f) of the Internal Revenue Code (Code) for tax-exempt qualified private activity bonds, available here.

- Expands the temporary rule allowing governmental issuers to purchase certain of their own tax-exempt bonds, available here.

Temporary guidance regarding the public approval requirement:

A hearing conducted between May 4, 2020 and December 31, 2020 that is held by teleconference accessible to the residents of the approving governmental unit by calling a toll-free telephone number will be treated as held in a location that, based on the facts and circumstances, is convenient for residents of the approving governmental unit for the purpose of § 1.147(f)-1(d)(2). Provided the requirements of the preceding sentence are satisfied, governmental units are not precluded from offering additional access to the hearing by other telephone numbers or by internet-based meeting technology. Issuers may apply this revenue procedure retroactively to public hearings held telephonically before May 4, 2020 in response to the COVID-19 pandemic.

Expanded temporary rule allowing governmental issuers to purchase certain of their own tax-exempt bonds:

Solely for purposes of § 103 and §§ 141 through 150, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) will treat a tax-exempt qualified tender bond or tax-exempt commercial paper that is purchased by its governmental issuer on a temporary basis as continuing in effect without resulting in a reissuance or retirement of the purchased tax-exempt bond if the governmental issuer purchases the tax-exempt qualified tender bond or tax-exempt commercial paper during the permitted holding period and holds the bond or paper no later than the end of the permitted holding period.

NABL Letter:

On March 25, in response to the COVID-19 pandemic, NABL sent a letter to the U.S. Treasury asking it to address certain tax issues that may affect the functioning of the tax-exempt bond markets during the current outbreak of the novel coronavirus disease.

In the letter, NABL asked for the following:

(1) Clarity that, at least for a temporary period, TEFRA hearings are not required to be held in person; and

(2) Relief as it relates to the impact of self-liquidity on extinguishment and reissuance analysis.

You can find NABL's letter here.

For any questions, please contact Jessica Giroux, Director of Governmental Affairs at jgiroux@nabl.org, (518) 469-1565.

Tax Revolts Aren't Out of the Question.

When states and cities tried to raise revenues during the Great Depression, they sparked a furious backlash.

Thanks to coronavirus-induced declines in tax revenue – and record filings for unemployment benefits – state and local governments are in crisis. Many have underfunded pension systems and few have significant reserves. None can run deficits as readily as the federal government.

Like so much of the economic news as of late, the closest precedent is the Great Depression. In the early 1930s, state and city governments confronted massive budget shortfalls. Attempts to close the gap ended up sparking a movement that was largely forgotten: a massive taxpayer revolt across the nation.

In the early 1920s, the federal government cut taxes, but state and local governments actually raised them. "For every penny saved in taxes in Washington, five cents were added to taxes at the City Hall and State House," as a critic described it in 1932. Property taxes faced some of the steepest increases.

But the additional revenue hardly paved the way to fiscal stability. Instead, state and municipal governments were overwhelmed with debt by the end of the 1920s. The whole system was predicated on never-ending prosperity: Rising property values yielded more taxes, which allowed more spending. Sound familiar?

And then the economy collapsed. The historian David Beito ably chronicled the grueling aftermath. In communities across the country, real estate development collapsed at a mind-boggling rate. In the northeast, for example, residential construction fell 97.3% from 1929 to 1933.

As the value of real estate collapsed, tax rates held steady or even increased as local governments struggled to balance budgets. Deflation only intensified the economic pain, devastating the average taxpayer's ability to pay up. It didn't take long for the shame of tax delinquency to begin to fade.

In 1930s, 10% of taxpayers in cities larger than 50,000 were delinquent in their tax payments. By 1933, the number had soared to 26.3%. In rural areas, where falling prices had effectively doubled the tax burden of farmers, it was even worse. In Iowa, for example, nearly half the state's farm properties were delinquent in 1932.

But there was more to this dire picture than the inability to pay taxes, even if this was a huge part of the problem. Instead, these conditions gave rise to a highly visible, if long underestimated, tax resistance movement that spread throughout both urban and rural areas of the country.

The principal organizations behind these movements were so-called "taxpayer leagues," local associations that took their case to state legislatures, county boards and city councils. In 1927, only 43 such organizations existed in the entire country. At the height of the crisis, their numbers had swelled to well over 4,000. Thomas Reed, a municipal reformer, likened them to mushrooms: "Every time you go out in the morning, you find more of them."

These groups began waging a battle against taxes on several fronts. Most obviously, they lobbied for tax cuts, electing politicians who promised to deliver them. They also pressed for draconian cuts to public services.

The more extreme members would make the modern-day Tea Party look pretty tame by comparison. Indeed, many of the most vocal and visible tax resisters argued for the ultimate act of defiance: a strike on paying taxes. In most places, politicians and bondholders managed to keep activists from acting on these threats. Not so in Chicago.

It was not surprising that this city, infamous for its municipal corruption and high taxes, would give rise to the most radical of the tax resistance campaigns. Their best-known slogan left absolutely no room for compromise: "1930 taxes cannot and will not be paid!"

As some of the activists argued for closing the schools as a way of saving money, teachers and municipal employees staged rallies. Their allies in the national press, alarmed at the scale of the movement, cast the resisters as anarchists. “This is not only a tax strike, it is a revolt against government,” declared Mauritz Hallgren of the Nation.

In the end, Chicago’s government won, but at considerable cost. State courts ultimately sanctioned the seizure of delinquent taxpayers’ property, and the movement ultimately fell prey to internal rivalries.

Elsewhere, the anti-tax revolt faced a blunt campaign spearheaded by bondholders and their allies. “Pay your taxes,” they cried. Many citizens reluctantly decided to fall in line when confronted with the prospect of closed schools and furloughed police officers.

There may have been another reason for the movement’s downfall: the repeal of Prohibition in 1933. This act, as a team of economists has noted, enabled state and local governments to raise much-needed revenue from sales taxes on alcohol as well as licensing fees. Some states also experimented with state liquor monopolies as a way of raising revenue.

At the same time, the federal government taxed alcohol as well, raising significant amounts of revenue. Under the New Deal, much of that revenue went toward supplying unemployment benefits and other aid that individual states and municipalities once provided, lessening that particular burden.

As today’s leaders of cities and states grapple with brutal budget shortfalls, history could very well repeat itself. Absent a quick turnaround – and an unexpected tax windfall like the one that legalizing booze provided — the next few years may witness tax revolts on a scale last seen in the Great Depression.

Bloomberg Opinion

By Stephen Mihm

May 4, 2020, 8:00 AM PDT

[Sales Tax Revenue Forecast and Federal CARES Act in the Current Economic Downturn.]

With a “shelter-in-place” directive, rising unemployment figures and Coronavirus fears, the biggest component of the US GDP – consumer spending – has taken an unexpected tumble. This is particularly worrisome for local and state governments that heavily rely on sales tax revenues.

For instance, in California the sales tax forecast is expected to decline by 36% in the second quarter of 2020 with only a moderate regrowth in the following quarters.

In this article, we will take a closer look at sales tax forecasts for local and state economies and how they’re likely to affect local and state revenue and expenditure budgets.

[Continue reading.]

municipalbonds.com

by Jayden Sangha

May 06, 2020

[MUNIRevs Offers Free Tax Collection Software to Cities Hit by Tax Revenue Losses.]

DURANGO, Colo., May 6, 2020 /PRNewswire/ — As cities and towns across the country struggle with the pandemic-related loss of business tax revenue, MUNIRevs, a provider of automated tax collection software, is offering municipalities a free, limited version of its trusted solution.

The limited version, made available through the MUNIRevs Cares initiative, gives municipalities that use paper-based, manual business tax collection processes rapid access to an automated, web-based tax collection system that can be accessed by staff working remotely. The benefits of the system include reduced staff time, faster revenue recognition, faster collections, greater efficiency, and increased total collections.

“As a former town finance director, I understand the challenges cities are facing with sharp drops in revenue and budget cuts. We created the MUNIRevs Cares initiative because we want to help cities capture much-needed revenue as quickly as possible. We’re offering free, simple setup, free online tax collection, and free support for municipal staff by our expert account management team,” said MUNIRevs CEO Erin Neer. “Business owners will also benefit by being able to pay their business taxes online from home or wherever they may be working,” she added.

Before starting MUNIRevs in 2011, Neer was the finance director for the mountain town of Mountain Village, near Telluride. Neer brings more than 19 years of experience in municipal finance to every facet of her company.

Access to the system will be available at no cost to municipalities for three months. Those who wish to continue using the system after that will be charged a monthly subscription fee. Those who wish to transition back to manual processes can do so easily while retaining all their data from the MUNIRevs system.

MUNIRevs automates business revenue collection for towns, cities, and states across the U.S. With extensive experience in municipal finance, the MUNIRevs team has revolutionized business tax and licensing processes. It is the trusted source for secure, paperless payment processing, helping cities and states eliminate approximately 95 percent of the manual data entry tasks. Since it was founded in 2011, MUNIRevs has processed more than $1 billion in tax revenues for its clients and more than 50,000 businesses trust MUNIRevs for tax remittance. For more information, visit [www.munirevs.com].

[Scott, Senate Colleagues Ask Treasury to Modify OZ Rules Due to Impact of COVID-19.]

Sen. Tim Scott, R-S.C., and eight colleagues [sent a letter today] to the Department of the Treasury and the Internal Revenue Service, making 10 requests for modification of rules concerning the opportunity zones (OZ) incentive due to the COVID-19 pandemic. Among the requests are a further extension of the 180-day window to invest in a qualified opportunity fund (QOF) following a capital gains event, the addition of COVID-19 as a reasonable cause exception under QOF regulations, a 12-month extension to the 30-month substantial improvement period for qualified OZ property and more. The Opportunity Zones Working Group made similar requests April 7.

For community development, affordable housing and renewable energy updates related to COVID-19, see Novogradac's dedicated page.

May 4, 2020

Social Impact in L.A.'s Opportunity Zones, with Martin Muoto and Reid Thomas.

Why is social impact crucial to the long-term success of the Opportunity Zone initiative? Hear from the top urban Opportunity Zone fund, as awarded by the Forbes OZ 20, and the positive story of the impact that they are delivering in South Central Los Angeles. Martin Muoto is founder and managing partner of SoLa Impact, a $115 million Opportunity Zone real estate impact investment fund…

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Opportunity Db

May 6, 2020

Opportunity Zone Funds Have Raised More than $10 billion, Exceeding Expectations.

Opportunity Zone funds have raised $10.09 billion as of the end of April, according to a survey conducted by accounting firm Novogradac. This total represents a 50 percent increase over the $6.72 billion that the firm reported near the beginning of the year. The total invested in Opportunity Zones is likely significantly more than that reported number, as survey participation is voluntary and does not…

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Opportunity Db

May 5, 2020

How to Raise Capital for Opportunity Zone Deals, an OZ Pros Webinar.

Are you ready to attract investors for your Opportunity Zone deals? On April 29, OZ Pros and

Crowdcreate hosted a webinar about how to form an Opportunity Zone fund and raise capital for OZ deals. Over 200 people attended the live webinar to learn about fund formation, legal structuring, compiling a pitchbook, and crafting the perfect pitch email. Click the play button below to listen…

Read More »

Opportunity Db

May 11, 2020

IRS Opportunity-Zone Letter Ruling Grants Relief on Certification.

The IRS allowed a qualified opportunity fund to file a late self-certification because it saw no prejudice to the government's interests.

In what appears to be the first publicly issued letter ruling of its kind on the Opportunity Zone program, the IRS found that the taxpayer had "acted reasonably and in good faith, and that the granting of relief would not prejudice the interests of the government."

The program, which was created by the Tax Cuts and Jobs Act, allows investors to defer, reduce, and in some cases eliminate tax on capital gains by investing in QOFs. In order to self-certify as a QOF, the fund must file a Form 8996, "Qualified Opportunity Fund."

As the ruling released May 8 noted, the form must be filed by the due date of the tax return, including any applicable extensions.

In this case, the IRS said that the taxpayer and its adviser were aware of the requirement to file Form 8996 along with the federal income tax return. The adviser was expected to file a request for an automatic extension of time to file the tax return but failed to do so because of an administrative error. Neither the tax return nor the Form 8996 was filed by the applicable due date.

The taxpayer filed the tax return and the QOF form by the date that would have applied if the extension had been sought and submitted a request for relief under reg. sections 301.9100-1 and 301.9100-3.

The election to self-certify as a QOF is a regulatory election as defined in reg. section 301.9100-1(b), the IRS said.

"According to Treasury Regulation section 301.9100-3(a), requests for extensions of time for regulatory elections that do not meet the requirements of Treasury Regulation section 301.9100-2 (automatic extensions) must be made under the rules of Treasury Regulation section 301.9100-3," the ruling said. "Additionally, requests for relief subject to section 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government."

The IRS concluded that the taxpayer had met those requirements — although it didn't specifically elaborate on this point — and deemed that the form certifying the taxpayer as a QOF as of the month it was formed was timely filed.

Final regulations (T.D. 9889) on the Opportunity Zone program were released at the end of 2019.

The IRS issued guidance in the wake of the coronavirus pandemic that provided some relief to Opportunity Zone investors, but some practitioners say more relief may be needed.

TAX NOTES

by STEPHANIE CUMINGS

POSTED ON MAY 11, 2020

Now May Be Good Time To Pull Opportunity Zone Investments.

As some investors reevaluate their commitments to qualified opportunity zones in light of the novel coronavirus pandemic, they may enjoy some level of favorable tax treatment in 2020 if they decide to liquidate their capital from the funds.

While investors would likely consider multiple variables before deciding to take money out of QOZs — including the extent to which discrete funds allow for withdrawals, the stability of the market writ large and their ability to write off losses — the tax code has some advantages for those seeking to opt out of funds.

That's because the opportunity zone legislation, included in the 2017 Tax Cuts and Jobs Act and designed to offer tax relief for investments in low-income communities, doesn't levy interest-laden penalties on investors who choose to withdraw capital gains from funds. It even restarts the clock on the 180-day window for reinvesting in other funds without losing out on the program's favorable tax treatment.

And as investors brace for what may be prolonged economic instability, the tax treatment surrounding qualified opportunity funds is likely to play a role in their decisions to stick with current commitments or move capital gains into different areas.

"The risk of any investment is now higher" given the pandemic, Kate Kraus, partner at Allen Matkins, told Law360.

"People are definitely reevaluating whether they want to be invested in opportunity funds, and there are investors who are interested in pulling money out," Kraus said.

The opportunity zone program allows an investor who sells an asset and reinvests the gains in a QOZ fund to defer taxes on the gains until Dec. 31, 2026. It also forgives taxes on gains from investments held in opportunity funds for at least 10 years.

As of December, 8,764 census tracts had been designated as opportunity zones by state and local officials.

For individuals who sustain capital losses in 2020, liquidating their investments in opportunity funds would likely yield an advantageous tax position, Kraus said.

That's because whatever capital gains individuals had deferred by virtue of committing them to qualified opportunity funds in previous tax years would be recognized in 2020 if those investors decided to liquidate them this year, she said.

By doing so, those investors would be able to offset their capital gains and losses in 2020, she said, thereby reducing their tax liabilities.

While that “may not be the tax benefit people were looking for when they invested in opportunity funds,” Kraus said, it’s still better than sustaining a capital loss in 2020 because those losses can’t be carried back.

That calculus is made more advantageous given that final QOZ regulations issued by the Internal Revenue Service in December made clear that individuals wouldn’t be slapped with interest penalties, or any other kinds of penalties, if they chose to liquidate their investments early, David Shapiro, tax partner at Saul Ewing Arnstein & Lehr LLP, told Law360.

“For those who come into 2020 looking to liquidate, there’s no penalty and there’s no interest charge,” he said.

A key driving force for some investors is that they are simply “too nervous about what the state of the market is” to stick with their opportunity zone investments, James Null, partner at Eversheds Sutherland, told Law360. For those investors, “cash is king,” and they’d even be willing to take a tax hit on their capital gains in order to retain more control over their assets, he said.

Clients who are actively reevaluating their investments given the market’s current volatility are similarly looking for losses in 2020 — or even in 2019 — to offset previously deferred gains, Null said.

Still, the IRS may look askance at attempts to offset gains and losses by liquidating investments if the agency determines that those individuals lacked bona fide, good-faith intentions to follow through on those commitments, Null said, noting that the final rules also contained an anti-abuse provision.

In an example provided in the final regulations, the IRS said that individuals who direct their capital gains into opportunity funds they’ve established yet have no intention of actually investing in the projects would not be eligible to participate in the opportunity zone program.

Individuals interested in pulling their investments in QOZs in 2020 may also benefit from the ability to reinvest in other qualified opportunity funds within a 180-day window, Shapiro said. That’s because they’d effectively be recognizing a capital gain in 2020, and the 180-day window in which investors can place gains into QOZs begins whenever a capital gain is recognized, he said.

That may be an attractive option for individuals who have become dissatisfied with the funds they’ve invested in, Saul Ewing’s Shapiro said.

But there would also be diminishing returns if investors repeatedly liquidated gains that are parked in QOFs only to redeploy them into other funds later, Shapiro said, since investors may miss out on the increased levels of stepped-up basis.

One provision of the original opportunity zone legislation provides a 15% step-up in basis for investments made before Dec. 31, 2019, if those investments are held for seven years. After that window closes, investments can qualify for a 10% step-up in basis if they’re held for five years.

The ability to defer capital gains by investing in opportunity funds is set to expire in 2026, so the deadline for claiming a 10% step-up in basis is Dec. 31, 2021.

Investors who are evaluating the risks of sticking with various projects should also consider any limitations individual funds impose on withdrawals, Shapiro said.

Some funds may impose a penalty on individuals who opt out early, while others may prevent withdrawals altogether for certain periods of time, he said.

The incentives for individual investors, who may be able to secure positive tax treatment if they choose to liquidate in 2020, are much different from those involved for the funds themselves, said Kraus at Allen Matkins. For the funds, there's little to no such upside to investors pulling out early, she said.

While that may be unfortunate for different funds, individuals may be looking at their investment portfolios anew in light of the pandemic.

"The tax benefit of a project is only as good as the project itself," Shapiro said.

Law 360 Tax Authority

By Joshua Rosenberg · May 1, 2020, 4:00 PM EDT

–Editing by John Oudens and Neil Cohen.

IRS PLR: IRS Rules on Utility Company's Accounting Method Change

The IRS ruled that some of a utility company's excess annual deferred income tax amounts were not subject to the normalization method of accounting and further ruled on various aspects of the deferred tax normalization requirements in connection with a consent agreement related to an application for a change in method of accounting.

Read LTR 202017015

State And Local Tax Considerations In Light Of COVID-19: Skadden

The first order of business for many state tax authorities in response to COVID-19 was deciding whether to extend their respective income tax filing and payment deadlines for the 2019 tax year, either automatically by following the Internal Revenue Service's extended deadlines or through separate action. Now that many states have reached a decision on that matter, they face a range of additional tax concerns arising out of the pandemic.

State Conformity With the CARES Act

The federal government enacted the Coronavirus Aid, Relief, and Economic Security, or CARES, Act on March 27 in response to the pandemic. The act included numerous key tax relief provisions intended to ease the financial burden on many companies affected by COVID-19. However, the act raises questions regarding whether states will conform to federal changes that could impact state tax liability and reporting.

Of particular importance are the CARES Act provisions related to net operating loss, or NOL, carrybacks and interest deductibility limitations under Section 163(j).[1]

Under the new law, taxpayers are generally permitted to carry back NOLs arising in taxable years beginning after Dec. 31, 2017, and before Jan. 1, 2021, for up to five years. As of today, a majority of states do not permit taxpayers to carry back NOLs. For those states that do, conformity with the new federal NOL provisions will generally require an act of a state's legislature since most states do not automatically conform with the federal NOL provisions.

Section 163(j), which was put into place through the Tax Cuts and Jobs Act of 2017, sharply limits the ability of businesses to deduct interest payments when calculating their taxable income. Under the limitation, a taxpayer's allowable deduction for interest expense in a particular tax year generally is limited to the sum of 30% of adjusted taxable income plus its business interest income, with any excess carried forward to future years.

The CARES Act temporarily increases, for tax years beginning in 2019 or 2020, the threshold from 30% to 50%. Whether those states that conform to Section 163(j) will adopt the changes made by the CARES Act remains to be seen, though. Because federal taxable income is the starting point for most states in the calculation of state income tax, many states likely will automatically adopt the modifications to Section 163(j), unless a state legislature enacts legislation expressly decoupling from the CARES Act modifications.

New York is the first, and currently the only, state to decouple from this CARES Act provision. On April 3, the New York Legislature amended the New York tax law and administrative code to limit the deduction for business interest expenses to 30% of the adjusted taxable income on state and New York City returns. The law requires taxpayers to do so even if they elect the more generous 50% limit allowed for federal income taxes for 2019 and 2020 tax years.

Relatedly, at the time the TCJA was enacted, some states, such as Connecticut[2], Indiana[3] and Georgia[4], enacted legislation expressly decoupling from the TCJA Section 163(j) provisions. Therefore, in those jurisdictions, the CARES Act modifications to Section 163(j) are not likely to have any effect.

State Tax Impact of Telecommuting

In response to COVID-19, states across the country have issued stay-at-home or shelter-in-place orders requiring the closure of nonessential businesses, encouraging many businesses to ask employees to work remotely. These work-from-home recommendations, although strongly encouraged by state and local governments, could potentially result in additional state tax exposure and withholding obligations for those businesses.

Nexus

State policymakers should consider whether the presence of remote workers will continue to qualify as a nexus creating activity for businesses during this time. To date, six taxing jurisdictions — New Jersey,[5] Mississippi,[6] Indiana,[7] North Dakota,[8] Minnesota[9] and the District of Columbia[10] — have issued formal guidance on this matter stating that remote work in response to COVID-19 will not be cited to trigger nexus. In addition, officials from Pennsylvania have informally indicated that remote workers will not create nexus for companies responding to COVID-19.

Apportionment

State policymakers should consider whether a change in employee location or company property in response to COVID-19 stay-at-home orders will be considered in state apportionment formulas. For those states that rely on property or payroll factors in their apportionment formula, an employee's change in location due to remote work or movement of company property could result in a change to the apportionment of business income. In addition, for those states that use the cost-of-performance method to determine sales sourcing, a change in the location of an employee's activities could similarly impact apportionment for those states.

Individual Residency

Not all individuals complying with stay-at-home orders are doing so in their state of tax residency. State policymakers should consider whether an individual's physical location for the duration of government stay-at-home orders should affect the individual's state residency status. The ability to work remotely means that some employees will choose or be forced to work from a location different than their existing tax residency. Those individuals should be mindful of the state's residency requirements and whether their time in the state will trigger any additional filing obligations.

Payroll Withholding

State policymakers should consider whether an individual's personal change in domicile for the duration of stay-at-home orders will affect employers' payroll tax withholding obligations. Because employees may choose to work from locations outside their home state, employers may be required to withhold additional payroll taxes in those states.

Credits and Incentives

Federal and state governments are rapidly working to establish programs or policies to assist businesses impacted by COVID-19.

Some struggling businesses already may have been participants in existing credit or incentive programs administered by state or local governments before the onset of COVID-19. In most cases, when a business opts to participate in a tax credit or incentive program, the business agrees to satisfy certain employment, investment or growth thresholds in exchange for tax credits or other tax incentives. When a business is unable to satisfy those requirements, it may become ineligible for future credits, and any prior credits may be subject to clawback claims.

State and local policymakers will need to consider whether they will strictly enforce program requirements and, if they do not, the appropriate criteria and process for amending them.

On April 15, the New Jersey Economic Development Authority granted some relief to businesses by extending the annual reporting deadlines for participants that received tax credits through the Grow New Jersey, Economic Redevelopment and Growth, and Urban Transit Hub programs.[11] The press release did not indicate whether participants would otherwise be relieved of satisfying program requirements.

Conclusion

The unprecedented and swift nature of the COVID-19 pandemic has created substantial uncertainty for taxpayers and businesses. Although some states have worked to quickly announce and implement guidance to aid taxpayers, and continue to do so, many have yet to act.

In some states, new tax guidance will require legislative action. To date, 22 states have postponed their legislative sessions, meaning for some taxpayers, any guidance will be delayed until lawmakers reconvene. Nonetheless, we expect that states will continue to provide relief, formally or informally, as states and taxpayers adapt to changing business conditions.

Skadden Arps Slate Meagher & Flom LLP

By Jessica Hough, Carl Erdmann and Paige Braddy · April 24, 2020, 1:38 PM EDT

IRS Guidance Allows Electronic Requests for Letter Rulings.

The IRS has issued guidance (Rev. Proc. 2020-29) modifying the procedures in Rev. Proc. 2020-1 to temporarily allow taxpayers to electronically submit specified letter rulings, closing agreements, determination letters, and information letters.

Until Rev. Proc. 2020-29 is modified or superseded, both paper and electronic requests for advice from the associate chief counsel offices and the IRS Large Business and International Division will be accepted. The guidance doesn't modify the procedures for determination letters issued by the IRS's Small Business/Self Employed Division, Wage and Investment Division, or Tax Exempt and Government Entities Division.

Taxpayers may electronically submit requests by fax or compressed and encrypted email attachments using the electronic submission procedures described in Rev. Proc. 2020-29. Those requests must be signed using the electronic signature procedures described in the guidance. The processing of paper requests will likely be delayed due to limited availability of IRS personnel.

Opportunity Zone Success Strategies During COVID-19, with Jill Homan.

How has the Opportunity Zone marketplace matured over the past 12 months? What has the investor response been? And is the current pandemic-instigated economic downturn threatening to change everything? Jill Homan is founder and president of Javelin 19 Investments, a Washington DC-based commercial real estate investor, developer, and Opportunity Zones advisor. Click the play button below to listen to my conversation with Jill. Episode Highlights…

Read More »

Opportunity Db

April 29, 2020

Pandemic Dos And Don'ts Of State Tax Policy: SALT In Review

Law360 (May 1, 2020, 1:41 PM EDT) — The novel coronavirus pandemic presents state and local governments with a conundrum like no other. They face significant revenue shortfalls and massive budget deficits. States will have to raise taxes, reduce spending or some combination of the two. On the spending side, states are unlikely to cut spending on health care during a pandemic. They may reduce or delay spending on education and transportation. They will attack waste, fraud and abuse, but there is not a lot of money there. Most states will not be able to resolve this financial crisis by cutting spending.

Most public finance experts I have spoken to think states will have to raise taxes. Part of the quandary is in determining how to do that. This public financial crisis may be different. The fundamentals of the economy before the pandemic were strong. There is a strong possibility that the economy will rebound once the public health risks dissipate. Some types of taxes will deter the economic recovery, but others will have a less deleterious effect. Here is what states should and should not do to deal with likely shortfalls in 2020 and 2021.

Policies to Avoid

Many politicians in states needing money are instinctively drawn to bad tax policy. Certain taxes will curb the recovery. Those policies should be avoided.

First, wherever possible, states should refrain from taxing business entities to close the budget gaps. Business taxation takes many forms, but the two most harmful in the current environment are corporate income and gross receipts taxes. Corporate income taxes are generally ineffective and inefficient ways to raise revenue. They have never raised much revenue, even in years with booming economies. The tax has never raised more than 5% of state tax revenue, and it has raised a much lower percentage of total revenue. Interstate and international competition and a plethora of planning opportunities keep corporate tax revenue in check.

Moreover, research shows that the state corporate income tax falls to an extent on labor in the form of higher wages and on consumers as higher prices. To be sure, the tax falls on shareholders in the form of lower returns. But taxing labor and consumption at a time of high unemployment and dismal retail sales is an unattractive option.

Some states will be tempted to join a handful of states and adopt a gross receipts tax. Virtually all public finance experts consider gross receipts taxes unsound policy choices. Such a tax is inevitably passed on to the consumers as higher prices. The ultimate result is lower consumption. Furthermore, the tax is not tied to profits. Struggling companies, and there will be many in the wake of the crisis, will be subject to tax.

The gross receipts tax falls hardest on businesses with high volume and low margins. The retail industry, along with many other consumer facing-businesses, has thin margins. Thus this tax will likely hit the segments of the economy that have been affected most during the economic downturn. Gross receipts taxes are unsound policy choices; they are particularly unsound during a recession.

Second, states should avoid calls to levy state-level wealth taxes to pay for public COVID-19 costs. The argument is that the very wealthy have weathered the economic downturn better than the rest of the country. That is true, of course. But placing a tax on the value of assets cannot be effectively accomplished at the state level. Few countries place taxes on wealth, and subnational governments cannot impose such taxes. They are simply too difficult to administer and enforce. Most assets held by the wealthy are intangible. Identifying assets and calculating wealth is difficult. Furthermore, there are too many opportunities for people to avoid the tax. The wealthy will move assets or just move.

Third, states should avoid general sales tax increases. During past recessions, states have often raised sales tax rates to close budget gaps. Because the sales tax falls broadly on consumption, states should resist pursuing such policies. As malls and stores closed across the country, personal consumption fell significantly. The economy will need people to shop again. Broad-based sales taxes are generally sound ways to raise revenue, but they curb consumption. States should not impose taxes that will effectively lower buying. A sales tax rate increase could raise substantial amounts of revenue, but the cost of curtailing consumer spending – a prolonged economic downturn – is not worth that revenue.

Here Is What to Do

States will quickly exhaust their nontax options for balancing their budgets. States will spend rainy day funds. They will make short-term budget cuts: hiring freezes, furloughs and delayed spending. State and local governments may or may not get additional federal aid. Most states, though, will need to raise additional revenue over the next two years to balance their budgets.

The first thing states needing money should do is temporarily increase the top tax rates on high-income residents. In the 41 states with broad-based personal income taxes, this would be the fairest and most effective way to raise revenue. The personal income tax has many advantages. Two of the most important, for purposes of this discussion, are fairness and the ability to raise large amounts of revenue quickly in an improving economy.

Those earning high incomes have largely escaped the harshest economic impacts of the pandemic. Higher-income taxpayers have been more likely to keep their jobs and to work remotely. It is the lower-income taxpayers who have suffered the brunt of the economic duress – those who work in restaurants, hotels, retail. A strong argument, a politically salable argument, can be made that those who have survived the economic downtown should be asked to contribute to the recovery.

The personal income tax can raise large amounts of revenue efficiently and effectively. Once the health risks abate, the economy will presumably rebound. The personal income tax is elastic, far more than any other state tax. A personal income tax increase on high-income taxpayers will raise substantial revenue in relatively short time.

The design of such a tax increase, which will vary from state to state, depends on many factors but mostly on actual revenue needs. The increase should fall only on the top earners. Some states may decide to impose a higher rate on annual income over $100,000; other states may choose a greater income threshold, say, $250,000.

It is crucial that the tax increase be temporary. Permanently raising taxes on the wealthy will not work practically or, in many states, politically. There must be an automatic sunset provision after one or two years. I am generally not in favor of high personal income taxes, but a temporary rate increase on those who have weathered this crisis the best is fair.

Raising income taxes is not an option in Texas, Florida, Nevada or other states with no levy on income. Yet these states, heavily dependent on sales taxes, also face large deficits. In oil- and gas-producing states, the crisis is aggravated by falling energy prices.

There are ways that sales-tax states can raise revenue without significantly curtailing the recovery. As noted, a general sales tax increase is not a good idea. The one area of consumption that has actually increased during the pandemic, however, is digital goods and services. Currently, 29 states tax digital goods and services in some manner. But definitions of what is taxed vary significantly. Some states tax these goods narrowly, some states have broad bases.

Sales taxation of digital goods and services is consistent with sound tax policy. The sales tax should fall on all final consumption. There is no tax or economic reason to tax a sweater or a toaster but exempt an e-book. Exempting digital goods results in greater sales tax burdens on other consumption, creating economic distortions. Most important, exempting digital goods and services results in a lot of lost revenue.

Although expanding the sales tax base to include digital goods is sound policy, states should be aware of legal and policy issues presented by such expansion. From a policy perspective, to the extent possible, business purchases of digital goods and services should be exempt because business inputs should never be subject to sales tax. Thus states should avoid policies such as those proposed in Maryland, Nebraska and New York, to target digital advertising services – purchases made exclusively by business. Legally, states should be careful not to run afoul of the Internet Tax Freedom Act , which prevents the taxing of digital goods when nondigital goods are not taxed.

Sales-tax states needing revenue should consider expanding the base to include more services. This is more difficult politically, particularly with respect to professional services. But like digital goods, personal consumption of services should be subject to sales tax. We are a service economy; exempting services from the tax base makes no sense. This is an issue long debated. We know the obstacles to taxing services. States should expand the sales tax to apply to all services, professional and nonprofessional, but should expressly limit those taxes to personal consumption. Most professional services are purchased by business entities; those services should be explicitly exempt from tax. This will raise less revenue, obviously. But it will also blunt some of the intense political opposition to sales taxes on professional services. Most states do not subject most services to sales tax. The current budget crisis should be a catalyst for changing that.

Finally, states should consider raising gas taxes. Since most states earmark gas taxes for transportation, an increase will not affect the overall budget. But there has never been a better time to increase the tax. Lower demand has caused oil prices and consequently gas prices to plummet. States are raising significantly less gas tax revenue. And while Americans are driving less, many transportation costs remain constant. With low gas prices, there is unlikely to be significant political opposition to fuel tax increases.

Conclusion

These proposals have the best chance to raise revenue without severely curbing an economic recovery. Political leaders, for now, should resist the temptation to use the tax laws to advance other goals. There will be proposals to give tax breaks to some industries. There will be attempts to address income inequality. There will be attempts to tax products that some think should not be consumed. The political focus, though, should be on balancing budgets while fostering economic recovery.

by David Brunori

David Brunori is a senior director at RSM US LLP in Washington, D.C., a research professor at The George Washington University and a regular contributor to Law360 Tax Authority.

TAX - NEW HAMPSHIRE

Polonsky v. Town of Bedford

Supreme Court of New Hampshire - April 24, 2020 - A.3d - 2020 WL 1974144

Taxpayer brought suit against town, when it refused to pay him excess proceeds generated by its resale of real property that it had acquired by tax deed.

The Superior Court held that New Hampshire tax scheme regarding town's obligation for payment of excess proceeds violated "takings" provision of the New Hampshire Constitution and ordered equitable relief in favor of taxpayer, and town appealed.

The Supreme Court, Donovan, J., held that:

- New Hampshire statute that relieves municipality, three years after entry of tax deed by which it acquires taxpayer's property, of any obligation to pay to taxpayer the excess proceeds generated by its resale of property resulted in unconstitutional taking, and
- Taxpayer was not barred from obtaining equitable relief based on his purported "unclean hands."

Bring Back Tax-Exempt Advance Refundings.

Over at our Restructuring GlobalView blog, our public finance colleagues Pedro Miranda and Pedro Hernandez make the case for bringing back tax-exempt advance refundings.

The general shutdown of the economy in response to COVID-19 threatens businesses in most sectors of the economy, and the revenues that those businesses will lose cannot be taxed by state and local governments, threatening their budgets as well. Lawmakers at all levels are searching for grand gestures and bold new ideas to relieve the extraordinary burdens that COVID-19 is imposing. However, the old and tried – the low-hanging fruit – may be even more useful than the new and untried. Tax-exempt advance refunding bonds were a well-established tool that state and local governments formerly used to save money. They allowed state and local governments to reap the benefits of comparatively low prevailing interest rates even when their outstanding debt could not be redeemed until more than 90 days in the future. Citing concerns (even if only as fig leaf for the real objective of raising revenue) about having two sets of bonds (the original new money bonds and the advance refunding bonds) outstanding concurrently for more than 90 days with but a single project to support them, Congress eliminated most tax-exempt advance refunding bonds in the Tax Cuts and Jobs Act of 2017. What better time than a once-in-a-hundred-years pandemic to restore tax-exempt advance refunding bonds to their rightful place?

If Congress restores them, before the ink on President Trump's signature is dry, tax-exempt advance refunding transactions will begin to take shape. The municipal bond market is completely familiar with the regulatory rules and business considerations involved. There are no new rules to learn or unintended consequences to consider. Working groups will convene, tax lawyers will be roused from their parents' basement, and state and local governments can obtain significant cash flow relief using a well-established financing technique.

By Johnny Hutchinson on April 22, 2020

The Public Finance Tax Blog

Squire Patton Boggs

Bill Would Give Opportunity Zone Treatment to Small Businesses Hit by Virus.

Legislation introduced in the House would temporarily classify some small businesses harmed by the coronavirus pandemic as qualified Opportunity Zone businesses.

The COVID-19-Impacted Small Business Opportunity Zone Act, introduced April 16 by Reps. John R. Curtis, R-Utah, and Henry Cuellar, D-Texas, would extend the Opportunity Zones deferment of taxes on capital gains to investments in small businesses that have been negatively affected by the crisis.

The classification as qualified Opportunity Zone businesses would encourage private investment in those entities "by providing their investors with similar tax incentives to Opportunity Zones," said Curtis in a release.

The bill is aimed at small businesses that have experienced supply chain disruptions, staffing challenges, a decrease in sales or customers, or full or partial suspension of business as a result of the spread of COVID-19 or the public and government response to it.

The Opportunity Zone program, created by the Tax Cuts and Jobs Act, allows investors to defer tax on prior gains invested in a qualified opportunity fund until the earlier of the date on which the investment is sold or exchanged or until December 31, 2026.

Rep. Denver Riggleman, R-Va., introduced a bill (H.R. 6513) April 14 that would extend the Opportunity Zone program through 2030.

Even without federal legislation, states may be delaying some deadlines related to Opportunity Zone investments as a result of declaring emergencies as a response to the pandemic.

TAX ANALYSTS

by FREDERIC LEE

POSTED ON APR. 22, 2020

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8 Opportunity Zone Gain Rules That May Aid Investors.

The qualified opportunity zone program is arguably the most flexible and most impactful tax program passed by Congress in the last 50 years.[1] In this article we explain eight new rules you should know about gain recognition and reinvestment, and how these benefits may be more attractive in light of the COVID-19 crisis.

Taxpayers can elect to invest either short-term or long-term capital gains from virtually any type of asset into a qualified opportunity fund, or QOF, within 180 days of recognizing their qualified gain. But, knowing exactly when the recognition date occurs and when the 180-day reinvestment period starts requires a deep dive into the proposed and final regulations — as well as into each taxpayer's specific facts.

In light of the unprecedented economic challenges presented by the COVID-19 outbreak, taxpayers with short-term or long-term capital gain income generated in 2019, or in early 2020 can use the opportunity zone program to park the qualified gains in a QOF for a period of time, allowing the investors adequate time to perform due diligence on various investments and make qualified opportunity zone business, or QOZB, or QOZB-property investments.

Once the capital gains have been reinvested into a QOF and then dropped into a QOZB, taxpayers have up to 62 months to reinvest the proceeds into various qualified opportunity zone projects. With the tremendous uncertainty in the current market, taxpayers will generally view this extended reinvestment period as a godsend.

The opportunity zone final regulations issued on Dec. 18, 2019, became effective March 16. The new rules give taxpayers tremendous flexibility and extension of time when it comes to determining when the 180-day capital gain reinvestment countdown begins for purposes of meeting the QOF deadline.

Taxpayers can elect to adopt the much more liberal final regulations earlier than their effective date for filing 2019 tax returns. However, this requires that electing taxpayers adopt all aspects of the final regulations — not just the 180-day rule. In most cases, this strategy should not negatively impact a taxpayer, but we highly recommend doing a full evaluation before making an early adoption election.

Below we discuss eight key aspects of the 180-day deadline rules under the proposed and final opportunity zone regulations. Let's take them one at a time.

1. Direct Capital Gains Generated From the Sale of an Asset Held by an Individual, Grantor Trust or C Corporation

There are no changes here between the final regulations and the proposed regulations. The 180-day period starts on the date of sale. Therefore, a taxpayer effectively has 179 days after the date of a sale to contribute all (or a portion) of their capital gains into a QOF.

For example, if an individual, grantor trust or C Corporation sold stock on June 1, 2019, the 180-day deadline would fall on Nov. 27, 2019 — exactly 179 days after June 1. The deadline is not six calendar months from the date of sale (i.e. Dec. 1), as is often misunderstood. There is also no extension of the 180-day period if the last day falls on a weekend.

2. Capital Gains Flowing Through on a Schedule K-1 With No Entity-Level Election

Under the proposed regulations, taxpayers generally needed to wait until the pass-through entity's year-end to begin their 180-day period. For example, an owner of a calendar year pass-through entity has 180 days starting on Dec. 31, 2019 and ending on June 27 to contribute their 2019 share of Schedule K-1 capital gains into a QOF.

Under the proposed regulations, if the flow-through entity notified the taxpayer of their share of Schedule K-1 capital gain and the date of the actual sale, then the equity owner was able to choose to start the 180-day period earlier than year end, i.e. on the date of the actual sale. Interestingly, neither the proposed nor final regulations provide a specific time requirement or form for notification.

Remember, this option will help taxpayers that had identified qualified opportunity zone business property before year-end and that wanted to purchase replacement property early. However, to do that, the pass-through entity should not have made an election to defer the capital gains or have made a QOF investment at the entity level — as further discussed below.

Note that if the entity-level reinvestment election is made, the qualified opportunity zone business property must be purchased and titled under a QOZB, via a two-tier parent-subsidiary QOF-QOZ--property structure. It should not be purchased by the QOF directly and then dropped into a qualified opportunity zone business property, as this may disqualify the qualified opportunity zone business property and ultimately the QOF.

The rationale for this ruling is that the U.S. Department of the Treasury and the Internal Revenue Service wanted to give taxpayers the maximum amount of flexibility and time to invest in the opportunity zone program. Regulators also wanted to ensure that taxpayers did not miss a potential deferral election if they ended up receiving their final Schedule K-1s later than the aforementioned deadline laid out in the proposed regulations.

Under the final regulations, taxpayers can elect to start the 180 days on the pass-through entity's year-end, or on the due date of the pass-through's income tax return (not including any extensions — generally March 15 for partnerships and S Corps, and March 31 for trusts).

For example, if a pass-through entity reports on a calendar year-end, the owner can start the 180-day countdown on either Dec. 31, 2019, or on March 16, for their share of 2019 pass-through capital gains.

If owners choose to start their 180 days on March 15, 2020, then they have until Sept. 10, to contribute their share of 2019 Schedule K-1 capital gains into a QOF. If owners choose Dec. 31, 2019 then they have until June 27, to contribute 2019 capital gains into a QOF. NOTE: Taxpayers with a 2019 gain need to elect to apply the final regulations early if they prefer to extend the reinvestment period to Sept. 10.

The same rules apply if the pass-through entity is on a fiscal year-end basis. For example, if a pass-through entity's year-end is Nov. 30, 2019, then the 180 days would start on Nov. 30, 2019 or Feb. 15, at the election of the equity holder.

Note that limited liability company and partnership managers, and S Corp management should adopt clear guidelines about the process required to make an entity-level reinvestment and the procedure needed for notifying equity holders about capital gains and Internal Revenue Code Section 1231 gain details during the year. This is an area that may generate future litigation for entities that do not take proactive steps.

3. Capital Gains Flowing Through on a Schedule K-1 With Entity-Level Election

Alternatively, the pass-through entity can elect to defer the capital gains at the entity level, which means the 180-days would start on the date of the actual sale.

Under the proposed and final regulations, pass-through entities that make a deferral election are required to notify all of their owners of that deferral election in writing, including the amount of the eligible gain deferral (again — no specific reporting timing is mentioned).

4. IRC Section 1231 Gross vs. Net Gains

One of the most controversial provisions in the proposed regulations pertains to the somewhat complex IRC Section 1231 rules. In general, the Section 1231 rules are as follows:

- Gains from the sale of trade or business property that's held for more than one year — excluding inventory, or IRC Section 1245 or 1250 amounts claimed — are treated as capital gains (federal capital gains are taxed at 0%, 15%, 20% or 23.8% tax rates depending on the individual taxpayer's taxable income and filing status),
- Losses from the sale of trade or business property can be used to offset ordinary income (federal ordinary marginal tax rates range from 10% to 37% depending on the individual taxpayer's taxable income and filing status), and
- Section 1231(c) generally requires taxpayers that had Section 1231 losses claimed during the preceding five years to track those losses and treat them as unrecaptured to the extent that those losses have not yet been applied against any current year Section 1231 gains. The amount of recaptured Section 1231 losses applied to current year Section 1231 gains is treated as ordinary income.

Under the proposed regulations, taxpayers were required to net all of their Section 1231 losses and Section 1231 gains. Further, only the net Section 1231 gains were allowed to be contributed into a

QOF under the proposed regulation — after the net amount of gains and losses was determined. Calendar year taxpayers were also required to wait until Dec. 31 to begin the 180-day period under the proposed regulations and were precluded from investing their 1231 gains prior to year-end.

However, as a result of extensive written and public comments to Treasury, the final regulations allow taxpayers to defer their gross 1231 gains via QOF investments. Treasury also changed the beginning of the investment period from the end of the taxpayer's year to the date on which each asset was sold. Or, taxpayers can apply the rules mentioned above for pass-through K-1 capital gains, including Section 1231 gains.

The opportunity zone final regulations do not explicitly suspend Section 1231(c) losses. Therefore, electing opportunity zone treatment for current year Section 1231 gains is even more valuable for taxpayer's with Section 1231(c) losses since the recapture amount is treated as ordinary income.

5. Regulated Investment Company and Real Estate Investment Trust Dividends

Taxpayers who receive dividend distributions from a regulated investment company, or RIC, or from a real estate investment trust, or REIT, can start their 180-day period at the end of their tax year. The final regulations added that taxpayers can elect to start the 180-day period on the date their dividends are actually received. The 180-day period for undistributed dividends starts on the taxpayer's year-end or the RIC/ REIT's year-end, at the election of the taxpayer.

6. Capital Gains From Installment Sales

The proposed regulations required taxpayers that had capital gains from installment sales to start their 180-day countdown period on the date of sale, provided the assets were owned directly, or to apply the pass-through rules (starting at year-end) if the gains were coming from a K-1. However, this method proved unfair to taxpayers that had to start their 180-day countdown before they actually had the cash in hand to invest into a QOF. Under the final regulations, taxpayers can delay starting their 180-day countdown until the date on which they receive their installment money.

Somewhat surprisingly, the final regulations also clarified that capital gains resulting from pre-2018 installment sales that involve post-2018 payouts now qualify for opportunity zone participation. This ruling allows taxpayers to start a new 180-day period each time an installment payment is received. The 180-day period for pass-through capital gains and Section 1231 installment gains is now treated as though it starts either on the date that the installment money is received, or on the date of the pass-through' s year-end, or on the original due date of the pass-through entity's tax.

7. No 180-Day Safe Harbor

Unfortunately, neither Treasury nor the IRS has provided any relief for a missed 180-day deadline, but they may do so in the future.

8. Further Election Issues

A taxpayer can elect to use either the proposed regulations, or the final regulations. However, once a method is chosen, taxpayers must apply the rules consistently throughout. For example, under the proposed regulations, net Section 1231 gains that were recognized in early 2019 by an individual taxpayer could be invested into a qualified opportunity fund on or after Dec. 31, 2019, and by no later than June 27.

If a taxpayer invested gross Section 1231 gains prior to Dec. 31, they would want to elect early application of the final regulations. Otherwise, they would have an ineligible qualified opportunity fund investment. Making this election means that all final opportunity zone regulation rules apply to them. Individual investors and the qualified opportunity fund and QOZB can make independent elections on the regulatory effective dates. Therefore, careful analysis is required for the initial filings.

Note that each taxpayer's facts and circumstances need to be analyzed carefully in order to identify the 180-day deadline. Missing the deadline could be detrimental. As noted above there is currently no extension or safe-harbor available if you miss the 180-day qualified opportunity fund funding deadline. Therefore, all tax advisers need to be aware of these rules and discuss them with their clients as soon as possible. However, the final regulations are generally much more taxpayer-friendly than the proposed regulations, and they can serve as very helpful tax-savings or tax planning tools.

By Alejandra Lopez · April 21, 2020, 6:24 PM EDT

Alejandra Lopez is a tax manager at Holthouse Carlin & Van Trigt LLP.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the firm, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] See our comprehensive overview of the opportunity zone program here: https://www.hcvt.com/services-Federal-Qualified-Opportunity-Zone.html.

The Book on Opportunity Zone Investing, with Jim White.

What insights can be gleaned from the newest book on Opportunity Zone investing? Jim White, PhD is chairman and CEO of Post Harvest Technologies and founder of the PHT Opportunity Fund. He is also a best-selling author; his latest book is Opportunity Investing: How To Revitalize Urban And Rural Communities With Opportunity Funds. Click the play button below to listen to my conversation with Jim.

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Opportunity Db

April 22, 2020

NABL: IRS Extends Deadlines for Certain Time-Sensitive Actions

The IRS has issued Notice 2020-23 (linked here), which extends to July 15, 2020, the deadline for taking certain "time-sensitive actions" that were required to be taken on or after April 1, 2020, and before July 15, 2020.

These "time-sensitive actions" include filing Form 8038 or 8038-G (thus extending the deadline to July 15 for 8038s for bonds issued in the first quarter of 2020) and making any rebate or yield reduction payments that would have been due during that window and filing Form 8038-T.

The full list of time-sensitive actions is included in Section III.A of the Notice, and includes the time-sensitive actions relating to tax-exempt bonds described in Section 16 of Revenue Procedure 2018-58 (linked here).

COVID-19: How OZ Funds and Investors Are Responding, with Chris Loeffler

How are Opportunity Zone funds responding to the ongoing coronavirus pandemic? Find out why one Opportunity Zone fund walked away from $500 million worth of real estate deals last month. And could the current economic climate present some unique opportunities for investors? Chris Loeffler is co-founder and CEO of Caliber, a private equity real estate investment firm whose Opportunity Zone fund has thus far raised …

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Opportunity Db

April 15, 2020

IRS Deadline Extended for Some Opportunity Zone Investors.

The IRS has extended the investment deadline for Qualified Opportunity Fund investors whose 180-day deadline falls between April 1 and July 15. The investment deadline for these individuals has been automatically extended to July 15, 2020. In general, this relief may apply to investors who recognized capital gains between October 4, 2019 and January 17, 2020. Here is the section of the IRS notice that …

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Opportunity Db

April 15, 2020

House Republicans Introduce Bill to Extend Opportunity Zone Program.

Representative Denver Riggleman (R-VA) and five cosponsors have introduced a bill dubbed The Opportunity Zone Extension Act (H.R. 6513) that would extend the opportunity zone program from 2026 to 2030, allowing investors additional time to invest in qualifying communities.

The bill is cosponsored by Rep. Guy Reschenthaler (R-PA), Rep. Scott Tipton (R-CO), Rep. Tim Burchett (R-TN), Rep. Bryan Steil (R-WI), and Rep. Drew Ferguson (R-GA).

The opportunity zones program, part of the 2017 Tax Cuts and Jobs Act, designates certain economically distressed communities and encourages private investment in those areas in exchange for potentially significant tax breaks, if the investment is held for an extended period.

The proposed legislation would extend the inclusion date for capital gains to be invested in opportunity zones from December 31, 2026 to December 31, 2030. The amendments apply to taxable years beginning after the date of the legislation.

“Opportunity zones encourage investment and promote job creation in our most challenged communities. Now more than ever, we need to ensure the opportunity zone program is extended for the next 10 years,” said Rep Steil. “This unprecedented economic situation requires quick action so we can help the areas that need it most and prepare for the future.”

In related news, due to the coronavirus pandemic, the Internal Revenue Service recently extended the deadline for taxpayers who incurred a capital gain and had to make an investment into a qualified opportunity fund within 180 days. If that 180-day period ends between April 1 and July 15, 2020, the notice now extends the deadline to July 15, 2020.

DI Wire

April 16, 2020

What COVID-19 Means For Opportunity Zone Projects.

The past few weeks have been dramatic as the country and the rest of the world have reacted to the coronavirus pandemic. Businesses are shuttered, residents in some states are under a lockdown (or close to it), schools and universities are closed, and everyone is watching nervously as the stock market tumbles downward while the number of coronavirus cases ticks upward.

While we all try as much as possible to keep our heads together, and protect our investments and our livelihood, here is our advice to those quarantined in the land of opportunity zones.

In-Process Opportunity Zone Projects

Undoubtedly anyone with a project already underway in an opportunity zone is likely nervous about upcoming qualified opportunity fund, or QOF, and qualified opportunity zone business, or QOZB, deadlines. Keep calm and consult the regulations. The final Treasury regulations released in December 2019 contain some explicit relief and some general relief that can likely be of use under these circumstances. We may also get additional relief out of the U.S. Department of the Treasury and the IRS, but this is what we can rely on at the moment.

Additional Time to Get Your Business Up and Running — Disaster Declarations and Tolling for Delays

Any QOZB with a 31-month working capital safe harbor, or WCSH, in place should remember a few important relief provisions.

First, the final Treasury regulations automatically extend the 31-month WCSH for up to an additional 24 months if the QOZB is located in an opportunity zone within a federally declared disaster area.

As of March 31, a number of states and territories have been declared federal disaster areas, including Alabama, California, Colorado, Connecticut, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Washington, D.C., Puerto Rico and Guam.

Projects located in those states or territories can benefit from this 24-month extension as a result of the disaster declarations.

If additional states hardest hit by COVID-19 end up also being declared disaster areas, then any projects located in opportunity zones in those states would get up to an extra 24 months added on to their 31-month WCSHs. There is also an interpretation of the regulations which would treat the declaration of a national emergency as also triggering a 24-month extension nationwide, but it is not clear yet whether the Treasury will explicitly approve this interpretation.

Second, under the general tolling rule, a QOZB can toll its 31-month WCSH for delays caused by waiting for government approval on an application. If you are waiting for any type of approval from a government agency or municipality (building permit, zoning change, etc.), and waiting for that approval causes an actual delay in your project, you can toll the time of the delay for purposes of the 31-month WCSH.

Delays are certain to start kicking in given how many nonessential employees are being told to stay home, but remember that there must be an actual delay on your project as a result of waiting on an application. If you are able to progress the project in other ways while waiting for a particular approval, then you cannot toll for the time waiting.

Even so, given the unprecedented circumstances, it is advisable to document everything. Keep track not only of when various applications were submitted, but also of: (1) when you had to shut down your office, (2) when various government offices where you submitted applications were closed, (3) when you got notice that your architect, contractor or consultant had to close their offices or stop working, and (4) when shelter in place or lockdown orders that affect your project were issued.

If the Treasury expands the tolling rule to pick up COVID-19-related delays, you will want all of this information collected so you can count up the days.

QOF Penalty Relief for COVID-19 Delays — the Reasonable Cause Exception

The existing relief for QOFs at the moment is the reasonable cause exception to the penalty that would otherwise be imposed on a QOF for failing to meet its 90% asset test. This monetary penalty is imposed on a QOF to the extent that its qualifying assets are less than 90%.

The reasonable cause exception was included in the original statutory language in the Internal Revenue Code, and the final Treasury regulations did not expand upon or further define “reasonable cause” for purposes of the exception. In fact, in the preamble to the final Treasury regulations, the Treasury declined to include even a nonexhaustive list of circumstances that would constitute reasonable cause because a determination of reasonable cause is inherently factual.

This is hugely important because if a QOZB fails to be a QOZB for some reason, then the QOF invested in that QOZB could fail to meet its 90% asset test. Remember that for most QOFs, equity in one or more QOZBs will constitute the majority of the QOF’s qualifying assets.

Again, it is crucial right now is to document everything.

If your QOZB fails the 70% tangible property standard because of construction delays, then you want to be able to show that your materials were delayed arriving from overseas.

If your QOZB fails its 50% gross income test because of lockdowns in one of its key markets or because employees were working remotely outside of an opportunity zone, then you want to be able to show that businesses in that area were forced to close down.

If your QOF fails to meet its 90% asset test on a semiannual testing date because the project it was supposed to invest into was put on hold as a result of the pandemic, you should be collecting correspondence showing when and how that deal fell apart.

The inherently factual nature of reasonable cause means that you should be collecting as many facts as possible if you think your QOZB or QOF requirements are at risk.

Capital Raising

On the one hand, capital raising just got a lot harder. Who wants to invest in a 10-year project no less, with so much uncertainty?

On the other hand, anyone who exited the stock market in the past few weeks who realized a capital gain (either long-term or short-term) now has eligible gain to invest in a QOF. The potential universe of investors just got that much bigger. Also, the grim reality is that many small businesses will not survive the forced partial or total closure of their businesses during this time. Remember that a QOF can invest in an operating business QOZB, so any new businesses started in opportunity zones post-pandemic may be prime candidates for QOF investments.

Absent any potential new incentives or guidance (see below), think carefully and strategically about new fundraising right now. Some markets may bounce back as soon as the pandemic is over, and some markets may take a bit longer.

Opportunity zones will need new investment just as much, if not more, than other areas, and with the extra tax incentives, an opportunity zone investment may be especially attractive in just a few months' time. Gains triggered in March could expire as soon as September. Hopefully some of the market uncertainty will have abated by then, so consider gearing up your fundraising efforts so they are ready to go by mid-summer.

Possible Future Relief

In addition to any tax-related relief passed by Congress, the Treasury and the IRS may put forward their own guidance or tax-related relief to the extent possible. Here are some possible opportunity zone related proposals that we hope will be considered. To be clear, these are all right now pie-i--the-sky wish list items and to our knowledge none of these have been proposed or are being actively considered by Congress, the Treasury or the IRS.

Still, if you are in self-isolation and dreaming big, any of these would be a silver lining to the current dreary news cycle:

- Explicit guidance on relaxing certain QOF requirements, such as a free pass on the June 30 testing date for QOFs;
- Explicit guidance on relaxing certain QOZB requirements, such as a free pass on the June 30 testing date for QOZBs. Alternatively, an automatic extension for all 31-month WCSHs in effect during the first half of 2020, or relaxing specific requirements for 2020 such as the 50% gross income requirement which would be helpful for operating businesses;
- An extension on the 180-day reinvestment period for eligible gains triggered in the last quarter of 2019 or the first two quarters of 2020, and 2019 K-1 gains;
- Extra incentives for QOF investments, such as an increase of the 10% basis step-up for investments made prior to Dec. 31, 2021, to 15% or higher;
- Locking in the current capital gains rates for purposes of the Dec. 31, 2026, inclusion in income of eligible gains invested in QOFs;

- Expanding the definition of eligible gains to include certain categories of ordinary income;
- Excluding interim gains from taxation, meaning that any gain from the sale of property by a QOF or QOZB, even before the 10-year holding period, would be excluded from income; or
- Expanding opportunity zones to include all low-income census tracts in each state, rather than the current limitation of 25% of a state's eligible low income census tracts.

Until we hear anything definitive from Congress, the Treasury or the IRS, your best bet on relief from the rigid timing requirements applicable to QOFs or QOZBs is to document everything so you are in good shape to take advantage of whatever guidance or relief we get.

Law360

By Jessica Millett

April 9, 2020, 6:36 PM EDT

Jessica Millett is a partner at Duval & Stachenfeld LLP, and co-chair of the firm's tax practice group.

Federal Gov't Grants $1.1 Million for Disaster Recovery in Puerto Rico Opportunity Zones.

The U.S. Economic Development Administration (EDA) is awarding a $1.1 million grant to the University of Puerto Rico to hire three Disaster Recovery Coordinators to execute disaster recovery efforts throughout the entire Commonwealth.

The project, to be located in a Tax Cuts and Jobs Act designated Opportunity Zone, will be matched with $266,400 in local investment.

"The disaster recovery coordinators hired at the University of Puerto Rico will serve as liaisons between local, state, and federal partners to further advance recovery efforts and rebuild the local economy back stronger than ever before," said U.S. Secretary of Commerce Wilbur Ross.

In 2018, EDA made $587 million available to eligible grantees in communities impacted by natural disasters in 2017, such as Hurricane Maria, which devastated Puerto Rico.

Opportunity Zones have become the buzzwords in Puerto Rico in recent months, but they have not generated the hoped for $600 million in investments that the central government was projecting.

The federal program provides tax benefits for those investing in distressed, low-income communities nationwide. Puerto Rico has also enacted its own Opportunity Zone law; hence, investors can benefit from the tax incentive at both the federal and commonwealth levels. About 98 percent of Puerto Rico has been designated by the federal government as eligible for Opportunity Zone investments.

Eligible projects include multi-family housing, including student dorms; tourism-related businesses; educational and health facilities; tech incubators; and other types of commerce.

Rosario Fajardo, The Weekly Journal Apr 10, 2020

Tax-Exempt Debt Payment Deferrals For Municipal Securities: Dinsmore

The COVID-19 pandemic has delayed and lowered revenues, creating an unprecedented period of fiscal uncertainty for borrowers of tax-exempt debt. Borrowers forced to navigate these conditions may request lenders defer scheduled debt payments to help weather the storm.

Borrowers and lenders of tax-exempt debt must be mindful that a deferral of scheduled payments may endanger the debt's tax-exempt status. A deferral could be considered a modification causing the debt's "reissuance," which is treated as a new issuance for tax purposes and a refinancing of the original bond issue. When a reissuance occurs, the debt will lose its tax-exempt status unless appropriate legal steps are taken.

Not all deferred payments will adversely impact the tax exemption. First, a failure of a borrower to pay is not a modification, because there is no alteration of the rights or obligations of the lender or borrower. Furthermore, a forbearance by the lender will not be treated as a modification until the forbearance remains in effect for more than two years following the borrower's initial nonpayment, plus any additional period during which the parties conduct good-faith negotiations (or during which the borrower is in bankruptcy proceedings or a similar case, e.g., receivership, foreclosure).

A modification altering an instrument's payment schedule will be deemed significant if it materially defers payment. Whether a deferral is material depends on the facts and circumstances of each case. There is a safe harbor allowing a payment to be deferred up to five years (or 50 percent of the original term of the instrument, if shorter) but only from the original due date of the first scheduled payment that is deferred. Yet a finding that a deferred payment satisfies the safe harbor is not the end of the analysis, because a deferral resulting in a change of yield in excess of the greater of 0.25 percent or five percent of the pre-modification yield would still result in a significant modification under the regulations, which would trigger a reissuance of the bonds.

Deferrals of scheduled payments may be undertaken under the right circumstances. Borrowers and lenders of tax-exempt debt who are considering such a delay must be mindful of the reissuance rules to avoid adverse tax consequences.

Tuesday, April 7, 2020

Federal Tax Law Considerations for Financings COVID-19 Costs on a Tax-Exempt Basis: What Issuers Need to Know - Orrick

States, municipalities and 501(c)(3) organizations (Issuers) likely will have to incur significant expenses in their fight against COVID-19. Even if Issuers have reserves available for these costs, there are a few different avenues to financing these expenses on a tax-exempt basis. The federal tax limitations relating to capital and working capital financing are discussed in the FAQs below, including using long-term, tax-exempt debt to finance short lived capital assets or working capital expenditures.[1]

CAPITAL EXPENDITURES

When financing capital expenditures made to fight COVID-19, are there any special considerations to take into account?
Issuers likely will incur significant capital costs during their fight against COVID-19. These expenses may include the purchase of equipment and construction of improvements. All such costs may be financed on a tax-exempt basis, but the federal tax law generally limits the maximum term of the borrowing to only a few years for short-lived assets or assets that will only be owned and used by the Issuer for a short period of time before being decommissioned or sold. Note that supplies, such as hospital personal protective equipment, are treated differently, as discussed below. Construction costs for temporary facilities need to be addressed on a case by case basis.

What if an Issuer is buying a lot of short-lived assets?
It is likely that Issuers will be buying large quantities of COVID-19 fighting equipment at the same time revenues will be drastically reduced. Accordingly, there may be a benefit to such entities to be able to finance their purchases on a long-term basis. There are a few strategies that allow for longer term financing of short useful life assets. One strategy is to combine short and long-life assets in the same tax-exempt financing, because the tax law maturity limitation compares the average maturity of bonds to the average useful life of the financed assets. See the Reimbursement Resolutions and Lines of Credit discussions immediately below. Another strategy is to treat the transaction as a long-term working capital financing, discussed further below, but that strategy only works for governmental purpose bonds.

Reimbursement Resolutions –All Issuers with these expenditures should adopt reimbursement resolutions as soon as possible. This will allow the Issuer to finance the expenditures at a later date. One strategy for extending the average maturity of bonds is to combine the reimbursement for expenditures for short-lived assets with expenditures for long-lived assets. Reimbursement resolutions do not obligate an Issuer to issue bonds, but reimbursement resolutions will preserve the ability of the Issuer to do so if later desired. Without a reimbursement resolution, an Issuer may not be able to finance prior expenditures on a tax-exempt basis.

Lines of Credit – Issuers may consider short-term lines of credit, or increasing capacity under existing lines of credit, in an effort to better manage cash flow in the coming months. Issuers that use lines of credit (whether taxable or tax-exempt) may allocate draws under the line to capital expenditures and refinance such draws on a tax-exempt basis in the future. However, the Issuer will have to allocate draws on the line to capital expenditures no later than 60 days after the expenditure. See more information on this topic here. By preserving the ability to finance these costs at a later date, the refinancing of short-lived assets can be combined with a financing for long-lived assets.

What if an Issuer will only need to use the financed assets for a short period of time?
It is reasonable to assume that many of the assets being purchased to fight COVID-19 will be decommissioned from use at some point and will be put into reserves so that they may be recommissioned during the next emergency. These assets may be financed with tax-exempt bonds on the same basis as if the Issuer expected to use the assets for their intended purpose continuously. Assets stored in a strategic reserve are considered to be used appropriately for federal tax law purposes.

What if an Issuer wants to sell the financed assets after the crisis is over?
Tax-exempt financed capital assets purchased for use for a short period of time with the expectation that the assets will be sold are subject to a different analysis depending if the assets were financed with governmental purpose bonds or qualified 501(c)(3) bonds.

Governmental Purpose Bonds

Generally, such assets may be financed with governmental purpose bonds if on the date the bonds are issued the Issuer reasonably expects it will sell few enough assets to fit within certain de minimis limitations or the Issuer meets a specialized rule. The rule requires that:

1. The municipality reasonably expects, as of the issue date, that the financed property will be used appropriately for a substantial period before the sale;
2. The municipality is required to redeem all the related bonds within 6 months of the sale;
3. The municipality has not arranged for the sale of the assets as of the issue date; and
4. The sale is for a fair market value price (and certain other technical and minor requirements).

Issuers should consult their Orrick tax counsel early in the financing process so that the specific tax requirements that apply to each situation may be determined.

Qualified 501(c)(3) Bonds

Unlike governmental purpose bonds, all property financed with the proceeds of qualified 501(c)(3) bonds must be owned by a state or local governmental entity or a 501(c)(3) entity for the entire time the bonds are outstanding. Accordingly, tax-exempt qualified 501(c)(3) bonds generally should not be used to finance the purchase of capital assets that are intended to be used for a short period of time and sold unless the final maturity of the bonds is at the same time as, or occurs before, the sale of the asset.

May personal protection equipment (PPE) be financed on a tax-exempt basis?
Given the current urgent need for personal protective equipment (PPE) that is being experienced by our healthcare providers, it is important to talk about PPE. PPE includes gloves, masks, gowns and other such equipment that is used up quickly and does not have an expected useful life of more than one year. In fact, much of the PPE is considered single use only. Accordingly, PPE is considered a supply item rather than a capital asset and therefore expenditures made for PPE are considered working capital expenditures, which are discussed in more detail below.

WORKING CAPITAL EXPENDITURES

May working capital expenditures be financed on a tax-exempt basis?
The ability to issue tax-exempt bonds for working capital expenditures is limited. Generally, these financings fall into one of three categories:

1. Capital financings that include a de minimis amount of working capital (no more than 5% of the bond proceeds) that are directly related to the capital expenditures being financed;
2. Financing cash flow deficits (short-term or long-term); and
3. Financing extraordinary, nonrecurring working capital expenditures.

We will limit this discussion to deficit financings and financings for extraordinary working capital expenditures. Note that the discussion below applies to 501(c)(3) organizations as well as state and local government entities.

What options are available to finance a short-term cash flow deficit?
Short-term deficits that are not expected to persist for more than a fiscal year may be financed on a tax-exempt basis with short-term notes that have a maturity not in excess of 13 months. This is the typical tax revenue anticipation note (TRAN) or revenue anticipation note (RAN) transaction. Generally, the maximum size of these financings is limited by the size of the deficit plus a reasonable working capital reserve that is not in excess of 5% of expenditures paid out of current revenues during the preceding year.

What options are available to finance a long-term cash flow deficit?
Current deficits that are projected to recur in future years may be financed on a longer-term basis, subject to an annual re-testing requirement:

1. On the first day of each fiscal year after the debt is issued, the Issuer must determine whether its "available amounts" of unrestricted funds are more than 5% of its operating expenditures during the prior fiscal year. This annual testing can be delayed up to five years depending on deficit projections.
2. Except as required below, within the first 90 days of that fiscal year, the Issuer must apply the available amounts in excess of the 5% amount (or if less, the available amount on the date of the required redemption or investment) to redeem or to invest in eligible tax-exempt bonds (as defined below). For this purpose, available amounts in a debt service fund for other bonds generally are not treated as available amounts.
3. With two exceptions, amounts invested in eligible tax-exempt bonds (instead of being used to redeem bonds) must be invested continuously in such tax-exempt bonds. The first exception allows amounts to be uninvested for no more than 30 days each fiscal period pending reinvestment in eligible tax-exempt bonds. The second exception allows Issuers to spend amounts previously invested in eligible tax-exempt bonds to cover expenses during future deficit periods, essentially to use the tax-exempt investments as a cash deficit line of credit, or to redeem the Issuer's tax-exempt bonds.
4. An eligible tax-exempt bond is (i) a tax-exempt, non-AMT bond; (ii) an interest in a tax-exempt, non-AMT money market fund; or (iii) a Demand Deposit State and Local Government Series (SLGS) investment.

What are the ways to finance working capital expenditures long term without worrying about cash flow deficits?
Long-term tax-exempt bonds may be used to finance "extraordinary, nonrecurring items that are not customarily payable from current revenues." Said another way, an Issuer can use tax-exempt bonds to finance extraordinary expenses without regard to an actual cash flow deficit! The regulations use casualty losses and extraordinary legal judgments in excess of reasonable insurance coverage as example of such expenditures. However, it seems reasonable to assume that working capital expenditures made to finance the fight against COVID-19 also will qualify.

If an Issuer maintains a reserve or has otherwise set aside funds for items of the same nature as the extraordinary expenditures (e.g., a self-insurance fund or a pandemic relief fund), those funds must be used before the bond proceeds may be allocated to the extraordinary expenditures.

One of the most common issues that arises with respect to these financings is how long the bonds may be outstanding before running into certain anti-abuse rules. However, the answer can't be worse than requiring the Issuer to comply with the requirements in the immediately preceding section, and therefore we believe that this type of working capital financing may be quite useful for Issuers to help finance their fight against COVID-19. The IRS has been asked to give guidance on this and other issues on an emergency basis in order to help Orrick bond counsel help their clients structure bonds issued under this provision. We will update this discussion after this guidance is received.

OTHER ISSUES

What if Issuers expect to receive reimbursements from FEMA that will be used to pay the tax-exempt bonds?
FEMA reimbursements may impact tax-exempt financings of both capital and working capital expenditures made to fight COVID-19. Generally, bonds may not be issued on a tax-exempt basis if

the payment of such bonds is directly or indirectly guaranteed by the federal government. Reimbursements to Issuers by FEMA, even if expect to be used to pay debt service, do not automatically cause a direct or indirect federal guarantee, but Issuers should let their Orrick bond and tax counsel know about the reimbursements early in the financing so that the bonds may be carefully structured to not run afoul of this prohibition.

May Issuers use tax-exempt bond proceeds to make grants to individuals and businesses?
Yes, subject to state law constraints, Issuers may use tax-exempt bond proceeds to make grants to individuals and business if the grants further a governmental purpose for governmental purpose bonds or further the exempt purpose of the 501(c)(3) entity for qualified 501(c)(3) bonds. Well-designed grant programs can help Issuers prove compliance with a number of tax requirements and reduce record-keeping requirements for Issuers. For long-term bonds issued to finance grants for working capital purposes, the tax requirements described above for working capital financing generally apply. Orrick bond and tax counsel should be consulted to help design a grant program that will allow the Issuer to make grants with the least administrative burden possible.

Public Finance Alert | April.03.2020

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[1] To address any questions about the difference between a capital expenditure and a working capital expenditure, a capital expenditure is capitalized into the assets on the Issuer's balance sheet and a working capital expenditure is treated as an operating expense on the Issuer's income statement.

[Telework Due To COVID-19 Spawns Employer Nexus Worries.]

Whether states can and will assert nexus on businesses whose employees are working remotely at home has emerged as a top concern among state tax professionals amid the COVID-19 pandemic.

In the last few weeks, the mass shift to working from home as governments, businesses and individuals seek to comply with "stay at home" orders to avoid spreading the novel coronavirus has created a situation in which businesses now have presence in states that they didn't have before. This turn of events has created confusion and worry about how states will respond, especially since COVID-19 is causing a collapse of state tax revenues at the same time as this opportunity for states to reach new business taxpayers by asserting nexus.

In response, state tax professionals are pleading with states to issue guidance declaring that they will not assert nexus to impose tax reporting and payment obligations on previously untaxed businesses if an employee is working remotely only because of safety considerations. That would be an effective form of relief for businesses and employees in what for many continues to be the most uncertain time in their histories, state tax professionals are saying.

[Continue reading.]

law360.com

By Maria Koklanaris · April 7, 2020, 2:15 PM EDT

[COVID-19 Pandemic May Imperil Opportunity Zone Projects.]

Qualified opportunity zone investors face difficulty in meeting project deadlines amid the novel coronavirus pandemic and may face losing tax benefits or being forced to pull the plug on some projects if deadlines are not extended.

The Internal Revenue Service has responded to the pandemic of COVID-19, the respiratory disease caused by the novel coronavirus, by postponing tax filing and payment deadlines to July 15 from April 15. But the IRS has not overtly provided any deadline relief for opportunity zones, which allow an investor to reinvest capital gains within a 180-day window into designated low-income areas in exchange for certain tax benefits that grow the longer the money is invested in a qualified opportunity fund, up until Dec. 31, 2026.

If investments in the opportunity zone funds are held for five years, then 10% of capital gains on the prior investment will be forgiven, while 15% of capital gains will be forgiven if the investments are held for seven years. Thus an investor had until Dec. 31, 2019, to receive the higher 15% tax benefit.

Continue reading.

law360.com

By Amy Lee Rosen · April 6, 2020, 8:00 PM EDT

Opportunity Zone Strategies for Community Development, with Jeanne Bonds.

How can investors, financial institutions, and other local stakeholders leverage the Opportunity Zone incentive to improve community development results? Jeanne Bonds is a professor of the Practice of Impact Investment and Sustainable Finance at UNC’s Kenan-Flagler Business School in Chapel Hill. She was formerly director of community economic development for the Federal Reserve Bank of Richmond. Click the play button below to listen to my

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Opportunity Db

April 8, 2020

Opportunity Zone Deadlines Extended By Covid-19 Disaster Declarations.

INTRODUCTION

The COVID-19 pandemic has led Governors of many states to request that their states be declared federal disaster areas. As of this writing, President Trump has declared numerous states to be federal disaster areas, including New York, Washington, California, New Jersey, Iowa, Florida, Texas, North Carolina and Louisiana. It is likely that more, and perhaps even all, states will be declared disaster areas.

These declarations will extend two important deadlines in the rules relating to investments in qualified opportunity zones. First, the 31-month deadline for spending cash or other financial assets held by a qualified opportunity zone business under a working capital safe harbor plan can be extended by as much as 24 additional months. Second, where an opportunity fund receives capital or proceeds from the sale of qualified property, it has 12 months to reinvest the funds before they will be counted in the fund's 90% asset test. The fund can get an additional 12 months to reinvest the funds if the fund's ability to reinvest is delayed by a federally declared disaster.

EXPLANATION OF THE PROVISION

Working Capital Safe Harbor. Generally, a qualified opportunity zone business may hold cash and short term debt if it is subject to a plan that calls for the expenditure of the funds within 31 months. Final Treasury Regulation Section 1.1400Z2(d)-1(d)(3)(v)(D) provides that the 31 months can be extended for an additional 24 months if the working capital plan relates to a project within a qualified opportunity zone which is part of a Federally declared disaster area, so long as the business otherwise meets the requirements for the working capital safe harbor.

Reinvestments by an Opportunity Fund. Second, a qualified opportunity fund must hold 90% of its assets in qualified opportunity zone property. Cash, debt instruments and securities are not qualified property. If a qualified opportunity fund receives cash from the sale of qualified opportunity zone property or gets a return of capital from a qualified opportunity zone business, the opportunity fund generally has 12 months to reinvest the funds before those funds will count in a 90% test. However, the Final Opportunity Zone Regulations provide that if an opportunity fund is delayed in reinvesting the funds by a federal disaster, it can receive an additional 12 months to reinvest the funds, provided that it eventually reinvests as originally intended. For example, if an opportunity fund is unable to invest in certain property because the property is located in a federally declared disaster area, the opportunity fund must invest the proceeds in similar property located in that QOZ

POLSINELLLI PRACTICE TIP

These extended deadlines do not extend to the period investors have to invest qualified capital gains in an opportunity fund, or the time an opportunity fund has to invest its funds. Polsinelli therefore recommends that qualified gains be invested in an opportunity fund to defer the gain, and then to a qualified opportunity zone business within necessary time frames. By doing so, an opportunity zone investor can maximize the time it has to invest the funds in good opportunity zone projects. With respect to the reinvestment of capital received by an opportunity fund, Polsinelli recommends documenting any plans for the reinvestment of the funds so that it can establish that it has complied with the rule if necessary. Polsinelli also notes penalties which may be asserted in connection with opportunity zone investments can generally be avoided upon a showing of "reasonable cause." The COVID-19 clause may well provide a general reasonable cause defense to many penalties. Finally, at some point Treasury (or Congress) may well issue some form of blanket extension on all of the deadlines as the crisis continues.

Polsinelli

March 30, 2020

[COVID-19 Relief for Opportunity Zone Businesses, a Zoom Meeting with OZ

Pros.

Congress has passed three phases of coronavirus relief packages, with a fourth potentially on the way soon. How can Opportunity Zone businesses seek relief? And how can Opportunity Zones assist with economic recovery? OZ Pros hosted a Zoom meeting with 80 of the most engaged Opportunity Zones participants in our network. The Zoom meeting included presentations from Ashley Tison (OZ Pros), Howard Matalon (OlenderFeldman), and

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Opportunity Db

April 1, 2020

TAX - MISSOURI

DI Supply I, LLC v. Director of Revenue

Supreme Court of Missouri, en banc - March 17, 2020 - S.W.3d - 2020 WL 1270752

Limited liability company (LLC) taxpayer and its members petitioned for review of decision from administrative hearing commission, which determined that taxpayer's room furnishing sales to hotels were not exempt from sales tax under resale exemption.

The Supreme Court held that:

- Use tax definition of "sale" cannot be used sales tax resale exemption cases, abrogating *Brambles Industries, Inc. v. Director of Revenue*, 981 S.W.2d 568, *Kansas City Power & Light Co. v. Director of Revenue*, 83 S.W.3d 548, and *Ronnoco Coffee Co., Inc. v. Director Of Revenue*, 185 S.W.3d 676, and
- Room furnishing sales to hotels were not exempt from sales tax under resale exemption.

Sales tax and use tax definitions of "sale," though similar, have different requirements, and as such, employment of the use tax definition of "sale" cannot be used in sales tax resale exemption cases; abrogating *Brambles Industries, Inc. v. Director of Revenue*, 981 S.W.2d 568, *Kansas City Power & Light Co. v. Director of Revenue*, 83 S.W.3d 548, and *Ronnoco Coffee Co., Inc. v. Director of Revenue*, 185 S.W.3d 676. Mo. Ann. Stat. § 144.010.1(13).

Room furnishing sales to hotels managed by hospitality company were not exempt from sales tax under resale exemption, since the room furnishings that taxpayer sold to hotels were not resold to hotel guests, and consequently, there was no transfer of title or ownership of the room furnishings.

TAX - VERMONT

Zlotoff Foundation, Inc. v. Town of South Hero

Supreme Court of Vermont - March 20, 2020 - A.3d - 2020 WL 1325417 - 2020 VT 25

Taxpayer, a nonprofit charitable organization, appealed board of listers' denial of its request for tax exemption for land and property used to store classic automobiles for its museum.

The Board of Civil Authority (BCA) denied the appeal, and taxpayer appealed. The Superior Court entered summary judgment for taxpayer in part, holding that property was exempt from taxation, and entered summary judgment for town in part, holding that taxpayer was not entitled to refund of property taxes already paid or owing. Taxpayer and town both appealed.

The Supreme Court held that:

- Taxpayer's land and garage qualified for public use property tax exemption, and
- Taxpayer was not entitled to refund of property taxes paid or owed before it obtained certificate of authority.

Land and garage owned and used by nonprofit charitable organization for purpose of storing and maintaining collection of classic automobiles displayed at nearby museum qualified for public use property tax exemption, since garage served essential function that was directly connected to the running of the museum and furthered the museum's charitable purposes.

Nonprofit charitable organization, a foreign corporation whose property was determined to be exempt from property taxes under the public use exemption, was not entitled to refund of property taxes paid or owed before it obtained certificate of authority allowing it to transact business in the state; exemption was based on business that organization transacted, and certificate was required for it to conduct that business.

NJ Reps. Ask Pelosi For SALT Cap Relief In Next Virus Bill.

Any additional legislation Congress prepares to mitigate the health and economic consequences of the novel coronavirus pandemic should include relief from the $10,000 cap on state and local tax deductions, House lawmakers representing New Jersey said Friday.

Lifting the $10,000 cap would help local businesses, families and first responders deal with COVID-19, the illness caused by the coronavirus, according to a letter sent to House Speaker Nancy Pelosi, D-Calif., by New Jersey lawmakers, including senior House Ways and Means Committee member Rep. Bill Pascrell Jr.

The SALT deduction limits, passed in the 2017 federal tax overhaul, have been especially burdensome for high-tax states such as New Jersey, and the negative effects are exacerbated by the coronavirus outbreak, the lawmakers said.

Continue reading.

Law360.com

By Dylan Moroses · April 3, 2020, 2:44 PM EDT

NABL Asks IRS to Help with TEFRA, Debt Repurchase Problems: Squire Patton Boggs

NABL has asked the IRS to issue a Notice that would allow issuers to hold TEFRA public hearings for private activity bonds by phone and that would allow issuers to purchase and sit on their own debt through the end of the COVID-19 crisis without extinguishing the debt, even if the issuer doesn't use its best efforts to remarket it.

The text of the proposed Notice is available here. It remains to be seen whether the IRS will make significant changes to the Notice before adopting it or some other form of relief, but some highlights of the request are as follows.

Continue Reading

By Johnny Hutchinson on March 25, 2020

The Public Finance Tax Blog

Squire Patton Boggs

Fitch Ratings Updates U.S. Public Finance Tax-Supported Rating Criteria

Link to Fitch Ratings' Report(s): U.S. Public Finance Tax-Supported Rating Criteria

Fitch Ratings-New York-27 March 2020: Fitch Ratings has published the following report: "U.S. Public Finance Tax-Supported Rating Criteria." This report updates and replaces the prior report published on January 10, 2020. The key criteria elements remain consistent with those of the prior report, and there is no impact on outstanding ratings. Previous versions of the criteria have been retired.

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Additional information is available on www.fitchratings.com

TAX - TEXAS

Hegar v. J.D. Fields & Company, Inc.

Court of Appeals of Texas, Austin - March 19, 2020 - S.W.3d - 2020 WL 1294917

After Comptroller of Public Accounts denied corporate taxpayer's request for relief from assessment with respect to delinquent sales taxes, taxpayer filed action seeking recovery of taxes and interest paid under protest.

Comptroller made plea to the jurisdiction through summary judgment motion. The District Court denied the motion. Comptroller appealed.

The Court of Appeals held that sovereign immunity did not bar taxpayer's suit.

Corporate taxpayer's lawsuit against Comptroller of Public Accounts, seeking recovery of delinquent sales taxes paid under protest, fell within language of tax protest statute providing waiver of sovereign immunity for claims alleging that public official charged with duty of collecting the tax or fee could not legally demand or collect the tax or fee, where taxpayer alleged Comptroller failed to follow its own rules requiring it to take equitable considerations into account when deciding claims for relief when it refused to grant taxpayer's request for relief from assessment on grounds that it failed to collect the taxes in reliance on representations made by Comptroller's employee during an audit.

COVID-19: Impact on Financial Markets and Opportunity Zones, with Craig Bernstein

How will the ongoing coronavirus pandemic affect financial markets and Opportunity Zones? Craig Bernstein is principal of OPZ Capital, which launched the OPZ Capital Opportunity Zone Fund in 2018. Craig has over 20 years of real estate experience, and is a prominent thought leader in the Opportunity Zones industry. Click the play button below to listen to my conversation with Craig. Episode Highlights How the …

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Opportunity Db

March 23, 2020

Creating Catalytic Impact in Rural Opportunity Zones, with Chris Montgomery.

What is an OZ fund on Colorado's western slope doing to spark catalytic impact and serve the long-term needs of rural communities? Chris Montgomery is partner at Four Points Funding, whose Opportunity Zone fund was recently awarded the Grand Prize as the Forbes OZ 20's Top Rural Opportunity Zone Fund Catalyst by Forbes and the Sorenson Impact Foundation. Click the play button below to listen …

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Opportunity Db

March 25, 2020

Talking about The Thing: Squire Patton Boggs

Yes, The Thing touches everything.

COVID-19 affects the muni bond world in some fairly obvious ways. The general mandate is "everybody do less." Decreasing activity in general translates to decreased business revenues and decreased tax revenues, which means less money available to repay bonds. This has set the disclosure world ablaze, as securities lawyers ponder what to say to the market about the pandemic. That very practical question is far beyond the bounds of this blog and will be dealt with ad nauseum elsewhere, such as this piece in *The Bond Buyer*.

There are a few less obvious ways that the disease will affect the tax requirements for tax-advantaged bonds. We'll look at them in a series of posts. Click through for a teaser. (I guess that makes the previous sentence a meta-teaser?)

Continue reading.

The Public Finance Tax Blog

By Johnny Hutchinson on March 16, 2020

Squire Patton Boggs

TAX - CALIFORNIA

Los Angeles Leadership Academy, Inc. v. Prang

Court of Appeal, Second District, Division 8, California - March 10, 2020 - Cal.Rptr.3d - 2020 WL 1149697 - 20 Cal. Daily Op. Serv. 2122

Nonprofit charter school and two related nonprofit public benefit corporations brought action against county assessor, seeking refund of property taxes and special assessments, and declaratory relief that they had no obligation to pay such taxes and assessments as long as property was held for benefit of the school at time of its operation.

The Superior Court entered judgment for assessor. Charter school and public benefit corporations appealed.

The Court of Appeal held that charter school's property was not exempt from property taxation, nor was it impliedly exempt from special assessments.

Charter school could not be treated as a school district for taxation purposes, and thus, its property was not exempt from property taxation under the constitutional exemption for property owned by the state or a local government, nor was such property impliedly exempt from special assessments; although Charter Schools Act (CSA) provided equal eligibility with public schools for share of state and local education funding, CSA assigned no sovereign authority and exempted it from laws governing school districts.

[The First OZ Fund to Deploy Capital to Businesses, with Len Mills & Natalie Elder.]

What is the capital raising and investment portfolio strategy for the first Opportunity Zone Fund to deploy capital to business ventures? Len Mills is CEO of Verte OZ, a venture capital Opportunity Zone fund launched in September 2019 that invests in high-growth disruptive businesses. Natalie Elder is Verte's head of investor relations. Click the play button below to listen to my conversation with Len and …

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March 18, 2020

NABL Submits Supplemental Letter to IRS on PLR User Fees.

On Thursday, March 4, 2020, NABL submitted a supplemental letter for consideration by the Internal Revenue Service (IRS) with respect to user fee charges to state and local governments for private letter rulings related to tax-advantaged bonds.

You can read that letter here. The original letter dated November 4, 2019, can be found here and a Bond Buyer article on the topic can be found here (subscription required).

NABL Requests Full-Time Replacement at Treasury's Office of Tax Policy.

On March 5, 2020, NABL sent a letter to the U.S. Department of the Treasury encouraging the Office of Tax Legislative Counsel to appoint a full-time attorney with expertise in issues affecting the municipal market to fill the role vacated by John Cross at the Office of Tax Policy.

You can read the letter on our website here and a Bond Buyer article on the topic can be found here (subscription required).

Congressional Research Service Report on SALT Deduction Cap.

In a March 2 report, the Congressional Research Service provided an overview and analysis of the state and local tax deduction cap, including summarizing revenue effects and how it affects state and local governments, distributional effects, how states have responded, and legislation to modify it in various ways.

[Read the Report.]

[Treasury Inspector General for Tax Administration Report on Exempt Bond Promoter Oversight.]

Abusive tax shelter promoter penalties the IRS imposes on those who make fraudulent claims to investors on the benefits of tax-exempt bonds aren't always warranted, the Treasury Inspector General for Tax Administration said in a March 6 report.

[Read the Report.]

[Takeaways from Our First 100 Opportunity Zone Strategy Calls.]

What are the biggest Opportunity Zone lessons we've discovered and Qualified Opportunity Fund best practices we've formed after our first 100 Opportunity Strategy Calls at OZ Pros? And how can they apply to you? Opportunity Zones Podcast host Jimmy Atkinson and OZ Consultants CEO Ashley Tison are co-founders of OZ Pros — Qualified Opportunity Fund and Qualified Opportunity Zone Business entity formation made easy. Click

[Read More »]

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March 11, 2020

TAX - WYOMING

[Eisele v. Town of Pine Bluffs]

Supreme Court of Wyoming - February 19, 2020 - P.3d - 2020 WL 813651 - 2020 WY 22

Town, which owned and operated daycare facility, filed complaint against county treasurer and county assessor, seeking to enjoin them from assessing and collecting property taxes on daycare facility.

The District Court granted treasurer's and assessor's motion to dismiss for town's failure to exhaust administrative remedies, and town appealed. The Supreme Court affirmed. Town subsequently appealed to county board of equalization after county assessor denied town's requests for exemption from taxation for daycare facility. The county board affirmed assessor's denial, and town appealed. The State Board of Equalization affirmed, and town appealed. The District Court reversed. County treasurer and assessor appealed.

The Supreme Court held that daycare, owned and operated by town, was not an obligatory municipal function, and thus, daycare was not exempt from taxation.

Daycare, owned and operated by town, was not an obligatory municipal function, and thus, daycare was not exempt from taxation; daycares were typically and frequently carried on by private enterprise, statutory list of governmental facilities that were tax exempt did not include daycares, and town's daycare charged fees.

[Democratic Presidential Candidates Positions on Opportunity Zones.]

On the eve of Super Tuesday, where does each Democratic Presidential candidate stand on Opportunity Zones? Federal Opportunity Zones legislation initially had broad bipartisan, bicameral support. Eventually, it was packaged as part of President Trump's landmark tax legislation. The Tax Cuts and Jobs Act (TCJA) passed along partisan lines in December 2017. And in the two-plus years since, the Opportunity Zones provision has become highly

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March 2, 2020

[Novogradac's OZ Working Group and Conference, with John Sciarretti.]

What Opportunity Zones regulatory issues does the Novogradac Working Group address in their recent comment letter to the IRS? And what can you expect at the upcoming Novogradac OZ conference? John Sciarretti is a partner at Novogradac, a top 50 accounting firm and national thought leader in the Opportunity Zone industry. Click the play button below to listen to my conversation with John. Episode Highlights

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March 4, 2020

TAX - FLORIDA

[Miami-Dade County v. Eastern Partners, LLC]

District Court of Appeal of Florida, Third District - February 5, 2020 - So.3d - 2020 WL 559175

Property owner brought putative class action against county challenging county's authority to enforce special assessment liens as tax liens that survived foreclosure.

The Circuit Court denied county's motion for protective order and granted property owner's motion to compel discovery. County filed petition for certiorari relief.

The District Court of Appeal held that a trial court departs from the essential requirements of law, warranting certiorari relief, when the trial court compels merits discovery without first determining that a putative class representative has adequate standing.

TAX - WASHINGTON

Black v. Central Puget Sound Regional Transit Authority

Supreme Court of Washington - February 13, 2020 - P.3d - 2020 WL 719101

Taxpayers brought declaratory judgment action against regional transit authority and State, asserting that motor vehicle excise tax statute was unconstitutional.

The Superior Court granted transit authority's motion for summary judgment. Taxpayers appealed.

The Supreme Court held that:

- Second stage of analysis of whether a statute violates constitutional provision prohibiting enactment of legislation that revises or amends other acts without setting them forth at full length, requiring court to answer question of whether a straightforward determination of scope of rights or duties under existing statutes would be rendered erroneous by the new enactment, is required to be undertaken even if court determines in first stage of analysis that statute is a complete act;
- Statute properly adopted former and current depreciation schedules by reference, supporting finding that statute was a complete act and thus that it did not violate constitutional provision prohibiting enactment of legislation that revises or amends other acts without setting them forth at full length;
- Statute, which authorized use of former depreciation schedule to calculate excise tax depending on applicable dates and whether revenue from taxes was pledged to pay bond contract, was not required to list out every bond issued by transit authority prior to statutory date trigger in order to be a complete act; and
- Statute did not require research into unreferenced statutes, supporting finding it did not violate constitutional provision prohibiting enactment of legislation that revises or amends other acts without setting them forth at full length.

IRS Publishes Population Figures for Housing Credit, Private Bonds.

The IRS has published (Notice 2020-10, 2020-10 IRB 456) the 2020 resident population figures for the 50 states, the District of Columbia, Puerto Rico, and the insular areas for use in determining the state housing credit ceiling under section 42(h) and the private activity bond volume cap under section 146.

Fund Custody and Opportunity Zones, with Jeremy Christensen.

What level of transparency does your Opportunity Zone fund provide? Is it verified by a third-party fund custodian? Jeremy Christensen is director of fund custody at Millennium Trust Company, a custody firm that manages investment accounts, retirement funds, and alternative assets like Opportunity Zone funds. Click the play button below to listen to my conversation with Jeremy. Episode Highlights The role of a fund custodian…

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Opportunity Db

February 26, 2020

[The 2 Hidden Benefits of Opportunity Zone Investing.]

Opportunity Zone investing offers two little-known hidden benefits that almost no one talks about. First, let's review the three main tax benefits: When you roll over capital gains into a Qualified Opportunity Fund within 180 days, you are able to defer recognition of that gain until December 31, 2026. (The tax bill on this initial gain would be due in April 2027 for most taxpayers.)…

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Opportunity Db

February 25, 2020

Connecticut Legislation Would Double Cap for Workforce Housing Credit, Make OZ Properties Eligible.

Legislation introduced in the Connecticut General Assembly would expand the state's workforce housing tax credit program to include properties in opportunity zones (OZs) and would change definitions for workforce housing in other parts of the state. S.B. 184 would add properties in OZs to the definition of "eligible workforce housing development projects." The bill would also redefine workforce housing as a property where 10 percent of units are for low-income renters, 40 percent are available at 20 percent of the area's prevailing rent and the remainder are available at market rate. The legislation would double the statewide annual cap for the workforce housing tax credit to $20 million.

Novogradac

Thursday, February 20, 2020

Wisconsin Bill to Double Capital Gains Exclusion for OZs Goes to Governor.

A bill to conform Wisconsin's tax code to the federal Internal Revenue Code concerning opportunity zones (OZs) and to double the exclusion for capital gains invested in Wisconsin-based OZs passed the state Senate and is on the desk of Gov. Tony Evers. A.B. 532 would allow an additional 10 percent capital gains tax reduction for investors who hold investments in a Wisconsin-centered qualified opportunity fund (QOF)–defined as a QOF that holds at least 90 percent of its assets in Wisconsin OZ projects–for five years and an additional 15 percent reduction for investors who hold their investment for seven years.

Novogradac

Thursday, February 20, 2020

TAX - MISSISSIPPI

G4, LLC v. Pearl River County Board of Supervisors

Supreme Court of Mississippi - February 6, 2020 - So.3d - 2020 WL 581905

Taxpayer appealed decision of county board of supervisors denying his petition for refund of ad valorem taxes paid for land it leased on airport property and for lots in subdivision it was developing.

The Circuit Court affirmed. Taxpayer appealed.

The Supreme Court held that:

- Taxpayer was automatically exempted from paying ad valorem tax on land leased at city airport;
- County board of supervisors did not overvalue subdivision lots for ad valorem tax assessment; and
- Taxpayer was not entitled to ad valorem tax refund for not receiving unconstitutional developer's discount.

Tenant was automatically exempted from paying ad valorem taxes on land it leased at city's airport, since lease was entered under municipal airport law provision governing contracts and leases for airports owned by municipalities, and during period of lease, property was being used for commercial purposes.

County board of supervisors' method for assessing ad valorem tax on lots in subdivision being developed by taxpayer, based on actual market price, was not flawed, and thus, taxpayer was not entitled to refund of ad valorem taxes it believed it had overpaid as result of board's allegedly incorrect valuation of lots because lots were not held for sale, as subdivision plat was not yet approved, where board reasonably could have found that tax assessor determined that taxpayer intended to place the lots for sale, and there was no record of taxpayer having objected to assessment until years after such assessments were finalized, or that taxpayer had contested county tax roll equalization.

Taxpayer was not entitled to ad valorem tax refund on lots in subdivision it was developing for not receiving a developer's discount that county had provided to others for tax assessments on unsold lots within a subdivision, since discount scheme violated state constitution requirement that all taxable property be assessed under uniform rules and in proportion to its true value by class, and fact that others had received the unconstitutional discount did not support finding that taxpayer's equal protection rights were violated and that it now had be included in the discount.

Real Estate Technology and Opportunity Zones, with Steve Nson.

How can real estate technology, or property technology, benefit Opportunity Zone marketplace participants? Steve Nson is founder of AnySizeDeals, a matchmaking platform for real estate investors that also organizes live events. Their upcoming AnySizeDeals Week event will focus on how real estate interacts with AI and robotics, innovation, Opportunity Zones, and blockchain. Click the play button below to listen to my conversation with Steve.

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Opportunity Db

February 19, 2020

[Final Tax Regulations Offer More Certainty to Opportunity Zone Fund Managers and Investors: Orrick]

Opportunity Zone (or "OZ") investment was hailed in 2018 and 2019 as the hottest and most innovative way of attracting significant private capital to distressed communities in the United States and its territories by offering significant tax deferrals, reductions and exclusions to investors with capital gains willing to make these investments. Despite its promise, OZ investment stalled in 2018 and 2019 due to significant uncertainty over how the generous tax incentives enacted by Congress under the December 2017 Tax Cuts and Jobs Act would be implemented by the U.S. Internal Revenue Service ("IRS"). The Final Regulations issued by the IRS on December 18, 2019 (the "Final Regulations"), have addressed many areas of major concern for managers of a "qualified opportunity fund" ("QOF") and investors in those QOFs, opening the door for many more opportunities for these tax-advantaged investments. The Final Regulations are effective for tax years beginning after March 13, 2020 (but an election may be made to apply the Final Regulations retroactively, which likely will be applied in most cases). Where early application of the Final Regulations is not elected and prior to effectiveness of the Final Regulations, the rules applicable to OZ investment continue to be those under the regulations proposed by Treasury and the IRS on October 29, 2018 and May 1, 2019 (the "Proposed Regulations").

Orrick's November 2018 client alert on Opportunity Zones and Qualified Opportunity Funds Accelerating U.S. Community Impact Financing sets forth the key elements of the tax benefits provided by investment in Opportunity Zones. In large part, these key elements remain unchanged:

- WHAT ARE OPPORTUNITY ZONES: Qualified Opportunity Zones ("QOZ") are approximately 8,700 low-income census tracts, and areas contiguous to such tracts, throughout the United States and its territories that were selected by the chief executive (e.g., governor) of each state or territory and confirmed by the IRS. These will not change without an act of Congress.
- WHO IS ELIGIBLE TO RECEIVE TAX BENEFITS: Any U.S. taxpayer who invests capital gains in a QOF and elects to receive OZ tax benefits with respect to its investment.
- WHAT ARE THE TAX BENEFITS: Three types are offered by the OZ program: (1) the deferral of tax on capital gain being contributed as equity to a QOF, until 2026; (2) increase in basis related to a QOF interest, resulting in exclusion of a portion of capital gain from deferred tax; and (3) a further increase in basis related to a QOF interest, so as to exclude gain on a QOF interest if held for at least 10 years.
- WHAT IS A QOF REQUIRED TO DO: A QOF, organized as a corporation or a partnership, must meet a test (the "QOF 90% Test") each six months that requires the QOF to hold 90% of its assets in equity of a Qualified Opportunity Zone Business ("QOZB") or a Qualified Opportunity Zone Property ("QOZP"); QOZBs in turn must hold substantially all of their tangible property (i.e., 70%) as Qualified Opportunity Zone Business Property ("QOZB Property"). The QOF 90% Test has many technical aspects that led to confusion and uncertainty and resulted in hundreds of comments to the October 2018 and May 2019 Proposed Regulations that preceded the Final Regulations, and much of the 500 pages of the Final Regulations appear to be aimed at allowing for more flexible application of the QOF 90% Test. Failure to meet the QOF 90% Test for any six-month period can lead to a penalty being assessed on the QOF (and each partner in a QOF where the QOF is organized as a partnership) equal to the deficiency multiplied by the IRS's underpayment penalty

rate, unless the QOF can show the failure was due to reasonable cause (i.e., factors beyond its control, such as delays in required government approvals).

The Final Regulations

The Final Regulations are divided into six parts, corresponding with operative sections of the Internal Revenue Code: (1) Regulation Section 1.1400Z2(a)-1 deals with the procedure for deferring gains and sets forth the operative definitions; (2) Regulation Section 1.1400Z2(b)-1 deals with the inclusion of gains that have been deferred; (3) Regulation Section 1.1400Z2(c)-1 deals with issues associated with QOF investments that have been held for at least 10 years and that are eligible for the tax exemption; (4) Regulation Section 1.1400Z2(c)-1 sets forth the requirements for QOZP; (5) Regulation Section 1.1400Z2(d)-2 sets forth the QOZB Property requirements; and (6) Regulation Section 1.1400Z2f)-1 deals with the reinvestment of proceeds and establishes a number of anti-abuse rules.

The focus of this Client Alert is certain of the changes introduced by the Final Regulations, which serve to encourage investment in operating businesses and commingled funds, arguably the areas which hold the most promise for positively impacting existing communities in the Opportunity Zones.

Changes and Clarifications Introduced by the Final Regulations

Better Rules for Operating Businesses

More Flexible Qualifying Rules for QOZBs: QOF investment in operating businesses are expected to be through QOZBs. By way of review, a QOZB is a trade or business that meets each of the following requirements:

- Substantially all (i.e., at least 70%) of the tangible property owned or leased in connection with the trade or business must be QOZB Property (this 70% requirement provides an incentive for QOFs to invest in QOZBs rather than directly into QOZP, because all of a QOF's investment in QOZP must otherwise qualify (not just 70%)). Under the Final Regulations, leased property can now qualify as QOZB Property if entered into at market rental rates (unless the lessor is a state, city or tribal nation where market rates are not required) and valued as set forth in the Final Regulations.
- Tangible property held in connection with a QOZB must either be "original use" or if not original use, "substantially improved" (i.e., improvements equal in value to the tax basis of the tangible property must be made by the QOZB). Under the Final Regulations, (i) this "substantial improvement" test can now be satisfied on an aggregate basis rather than on an asset-by-asset basis if the assets are in the same QOZ, are used in the same trade or business and they improve the functionality of the property to be improved, and (ii) brownfields and vacant land (i.e., land vacant for at least one year) are generally exempted from the "substantial improvement" test and treated as original use, except property that becomes vacant in a designated QOZ must be vacant for three years in order to be treated as original-use property. This loosening of the substantial improvement rules provides greater certainty to a wider variety of operating businesses, both as to how to measure substantial improvement and how to manage abandoned lots.
- The QOZB must satisfy certain operating tests, set forth below, all of which were loosened under the Final Regulations.

(i) First, at least 50% of the total gross income of the QOZB must be derived from the active conduct of the trade or business in the QOZ. Under the Final Regulations, (i) this test can be satisfied based on where employees (which now includes independent contractors) are located (based on hours worked or compensation), based on the location of management and key tangible assets used in the business or based on facts and circumstances, all of which invite a wider range of businesses (operating business, start-up businesses, manufacturing businesses, tech businesses and others) to be able to be capitalized with OZ investment.

(ii) Second, a substantial portion (i.e., at least 40%) of the intangible property of the QOZB must be used in the active conduct of the trade or business in the QOZ. According to the Final Regulations, intangible property is treated as used in an active trade or business if the use is normal, usual or customary in the conduct of the trade or business and the intangible property is used in the OZ in the business to contribute to the generation of gross income for the business. There may be uncertainty about the application of these principles in specific situations.

(iii) Third, less than 5% of the average of the aggregate unadjusted bases of the property of the QOZB must be attributable to nonqualified financial property (e.g., cash and cash equivalents). The Proposed Regulations provided a safe-harbor to allowing capital contributed to the QOZB to be spent to develop a property over a period of 31 months, as long as there is a written plan and schedule in place for deploying the capital and the capital is actually used in a manner substantially consistent with the plan and schedule. The Final Regulations clarify that the 31-month spending period can be applied to a start-up operating business and provide that this period can be extended to 62 months if there are multiple tranches of capital contributions to the QOZB.

- The QOZB cannot be a so-called “sin business,” such as massage parlors, tanning salons, tattoo parlors, liquor stores and golf courses, except that the Final Regulations permit a QOZB to have a small portion of its assets (i.e., less than 5%) in such businesses as part of a larger development, such as a liquor store that is part of a larger shopping mall or a tanning salon that is part of a hotel’s spa facilities.

Better Rules for Commingled Funds and Multi-Tiered Investment

Sales of Property by Individual QOZBs. Under the Proposed Regulations, a QOF investor could only elect after a 10-year holding period to exclude gains from the sale of qualifying investments or capital gain property sold by a QOF operating in partnership or S corporation form, but not property sold by its QOZB. This approach had a chilling effect on the formation of commingled funds that are invested in multiple properties or businesses, because it was very hard to plan a tax-free exit by the QOF for multiple assets at the same time in the future. The Final Regulations provide that capital gains from the sale of property by a QOZB that is held by such a QOF may also be excluded from income as long as the investor’s qualifying investment in the QOF has been held for 10 years. In such event, the amount of gain from such QOFs or its QOZB’s asset sales that an investor in the QOF may elect to exclude each year will reduce the amount of the investor’s interest in the QOF that remains a qualifying QOF investment eligible for further QOF tax benefits.

Disposition by QOF Investors of Stakes in Multi-Asset Funds. As noted above, the rule of the Proposed Regulations made the tax exemption available only upon disposition by a QOF after the 10-year holding period. However, in a typical sale by a QOF, a portion of the gain would not be capital gain and thereby would potentially reduce the QOZ tax benefits as compared to a sale by the QOF investor of its interests in the QOF which often led to structuring issues for a QOF with multiple properties or QOZBs. The Final Regulations significantly expand the proposed rules by providing for gain exclusion for asset sales. In particular, the Final Regulations permit a taxpayer that invests in a QOF partnership or S corporation to make an election for each taxable year to exclude a QOF’s gains and losses from all sales or exchanges in the taxable year, rather than just capital gains or losses. Thus, the Final Regulations more closely align the QOZ tax benefits on a sale by a QOF with the benefits on a sale by the QOF investor of its interests in the QOF, thereby providing more flexibility for multi-asset QOFs to sell underlying assets, businesses and real estate projects.

Distributions. The Final Regulations also clarify that certain distributions by a QOF to its investors may qualify for the exemption, and certain interim distributions offered prior to the end of the 10-year holding period may be made tax free to the extent an investor's basis has been stepped-up in an amount sufficient to cover the distribution (whether due to partnership tax allocations of profit and loss, an allocation of leverage incurred by the QOF, upon payment of deferred tax in 2026, or otherwise).

Multi-Tier Investment; Investment by Members of a Consolidated Group. Any U.S. taxpayer seeking to obtain the tax benefits offered by the OZ program must invest directly into a QOF rather than through an intermediary such as a fund-of-funds that might act to aggregate investors' capital gains for purpose of investment in QOFs. The Final Regulations have not changed these rules but have loosened the rules relating to consolidated groups. Under the Proposed Regulations, if a consolidated group wished to invest in a QOF, it had to do so through its parent but could not do so through other members of the consolidated group. The Final Regulations have eliminated this restriction. Now, any member of a corporate consolidated group can make the investment.

Continuing Questions and Uncertainty

Although the Final Regulations have provided a great deal of useful guidance that is generally favorable to promoting OZ investment, many issues remain uncertain and will require further clarification by the IRS or through the development of practices. The preamble to the Final Regulations specifies certain areas for future guidance. Among the areas where practical issues continue are the manner for integrating partnership tax accounting rules with OZ accounting, FIRPTA withholding tax, the consequences of failing to comply with the 31-month plan for spending capital and other violations of tax requirements (e.g., the 70%, 40% and 50% tests, and more).

Conclusion

The issuance of Final Regulations represents another significant step toward providing diverse place-based investment and community development for the benefit of low-income communities throughout the United States and the investors in those communities. With added rules providing flexibility to operating businesses and commingled funds, many in the industry expect a growth in QOFs attracting private capital to a variety of businesses that go well beyond the OZ real estate developments seen in 2018 and 2019.

February 7, 2020

Orrick, Herrington & Sutcliffe LLP

TAX - MARYLAND

Clear Channel Outdoor, Inc. v. Director, Department of Finance of Baltimore City

Court of Special Appeals of Maryland - January 29, 2020 - A.3d - 2020 WL 465762

Billboard owner appealed city's denial of its request for refund of excise taxes paid pursuant to city ordinance which imposed excise tax on privilege of exhibiting outdoor advertising displays, including the privilege of charging third parties a fee for their use of its billboard space.

The Tax Court affirmed, and billboard owner sought judicial review. The Circuit Court affirmed. Billboard owner appealed.

The Court of Special Appeals held that:

- Ordinance did not impermissibly burden billboard owner's right to freedom of speech, and
- Ordinance was constitutionally valid under rational basis review.

City outdoor advertising ordinance imposing excise tax on billboard owner's privilege to charge others a fee to use billboard space did not impermissibly burden owner's right to freedom of speech under the First Amendment and Maryland Constitution; billboard owner's economic activity was not expressive or communicative, and ordinance was content neutral, applicable whenever an outdoor advertiser such as billboard owner charged third parties to use its space, regardless of the content displayed on the billboards or who paid billboard owner to display it.

City outdoor advertising ordinance, imposing excise tax on billboard owner's privilege to charge others a fee to use billboard space, was constitutionally valid under rational basis review, where city had legitimate governmental interest in raising revenue, particularly for purpose of alleviating burden on city taxpayers, and ordinance was rationally related to that interest because tax imposed by the ordinance actually raised revenue, which was placed directly into city's general fund.

TAX - OHIO

Columbus City Schools Board of Education v. Franklin County Board of Revision

Supreme Court of Ohio - February 6, 2020 - N.E.3d - 2020 WL 573459 - 2020 -Ohio- 353

Limited liability company (LLC) appealed determination of the Board of Tax Appeals (BTA), No. 2016-2365, that sale price paid for transfer of LLC's ownership constituted the tax value of real estate owned by LLC.

The Supreme Court granted LLC's petition to transfer appeal.

The Supreme Court held that:

- Purchase and sale agreement were sufficiently authenticated;
- Conveyance-fee-exemption form and deed obtained from the public record were sufficiently authentic;
- Hearsay rule did not bar admissibility of documents; and
- Sale price paid for transfer of LLC's ownership was presumed to constitute value of real estate owned by LLC.

Limited liability company's production of purchase and sale agreement, documenting its transfer of ownership to purchaser, in discovery with school board was sufficient to regard the document was what it facially purported to be, and thus, document was sufficiently authenticated for admission in proceedings before the Board of Tax Appeals (BTA) concerning school board's complaint seeking increase in the tax value of real estate owned by LLC based on sale price for transfer of LLC's ownership.

Conveyance-fee-exemption form and deed obtained by school board from the public record were sufficiently authentic, for admissibility in proceedings before the Board of Tax Appeals (BTA) concerning school board's complaint seeking increase in the tax value of real estate owned by LLC based on sale price for transfer of LLC's ownership, where conveyance-fee-exemption from had notarized affidavit attached, and accompanying deed bore stamps showing the auditor's acceptance of fee-exempt status and receipt of deed by the county recorder.

Purchase and sale agreement, documenting transfer of ownership of taxpayer, a limited liability company (LLC) did not constitute inadmissible hearsay, in proceedings before the Board of Tax Appeals (BTA) concerning school board's complaint seeking increase in the tax value of real estate owned by LLC based on sale price of transfer of LLC's ownership, because agreement was documentary evidence of contract between the parties.

Board of Tax Appeals' (BTA) decision that sale price paid for transfer of limited liability company's (LLC) ownership constituted the tax value of real estate owned by that entity did not permit taxation of personal property in violation of state constitution provision providing that real property tax be based on value of land and improvements thereon, where BTA deducted an amount from the sale price relating to personal property based on appraisal evidence, and by law, BTA was justified in presuming the rest constituted real estate value.

A Graduate Tax Course in Opportunity Zones, with Jay Darby.

What are students learning in the nation's first LLM-level tax course on Opportunity Zones? Joseph "Jay" Darby is a partner in Sullivan & Worcester's tax group in Boston and has been a member of the adjunct faculty at Boston University School of Law since 2003. This semester, he is teaching an LLM course at BU Law titled, "No Gain No Pain? Opportunity Zones, Like Kind

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Opportunity Db

February 12, 2020

Jim Sorenson & Patrick McKenna: Investing for Impact in Opportunity Zones.

Can Catalyst Opportunity Funds serve as both a counterexample to the wave of negative OZ publicity and a model for OZ fund investing? Impact investing pioneer Jim Sorenson and tech entrepreneur Patrick McKenna are co-founders of Catalyst. Jim is also founder of the Sorenson Impact Foundation, and funding partner at the University of Utah's Sorenson Impact Center. Click the play button below to listen to…

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Opportunity Db

February 5, 2020

Erie, OPAL, SoLa, Four Points Win Forbes OZ 20 Grand Prizes.

The Opportunity Zone Catalyst Grand Prize Winners of the Forbes OZ 20 were announced earlier today at Sorenson Impact Center's Winter Innovation Summit in Salt Lake City, UT. The City of Erie and Opportunity Alabama emerged as the top two Community Organizations. The SoLa Impact Fund and Four Points Funding were named the top two Opportunity Zone Funds. Last year, Forbes partnered with the Sorenson…

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February 5, 2020

TAX - OHIO

Willacy v. Cleveland Board of Income Tax Review

Supreme Court of Ohio - February 4, 2020 - N.E.3d - 2020 WL 535714 - 2020 -Ohio- 314

Taxpayer appealed determination of the Board of Tax Appeals affirming city board of income tax review's denial of her claim for refunds of income tax on value of stock options she exercised as a nonresident but received as compensation during her prior employment in city.

The Supreme Court granted taxpayer's petition to transfer appeal.

The Supreme Court held that:

- Taxpayer's exercise of stock options generated taxable "qualifying wages" under municipal law, and
- City's taxation of income from exercise of stock options did not violate due process.

Nonresident taxpayer's exercise of stock options generated taxable "qualifying wages," within the meaning of the municipal ordinances defining "qualifying wages" to include "compensation arising from the…exercise of a stock option," and levying municipal income tax on "all qualifying wages, earned and/or received…by nonresidents of the City for work done or services performed or rendered within the City," and was not nontaxable "intangible income" exempt from taxation under state and municipal law, notwithstanding fact that taxpayer was nonresident retiree at time she exercised stock options, where taxpayer received the stock options as compensation for employment services she provided to former employer in city.

City's taxation of nonresident taxpayer's income from exercise of stock options earned during prior employment in city did not violate due process, though there was time gap between income-producing activity and imposition of tax on compensation for that activity, and taxpayer exercised options as nonresident; income came from worked she performed in city, and thus satisfied minimum-connection requirement, and because all the stock-option income was compensation for that work, all the stock-option income was fairly attributable to her activity in city, and while income was not received until some period after income-producing work was performed, and exercise of stock options occurred after taxpayer became nonresident, that income arose from income-producing work in city.

New Form 8038-CP Just Released: Hawkins Advisory

The Internal Revenue Service just released an updated Form 8038-CP to be used by issuers claiming interest subsidy payments in respect of their outstanding tax-advantaged bonds; please see the attached Hawkins Advisory.

Indoor Vertical Farming in Opportunity Zones, with Zale Tabakman.

Why might indoor vertical farming be ideally suited for Opportunity Zones? Zale Tabakman is founder and president of Baltimore-based Local Grown Salads, an indoor vertical farming company that has its own Opportunity Zone fund. Click the play button below to listen to my conversation with Zale. Episode Highlights The benefits of locally grown indoor vertical farming versus traditional farming. Why Local Grown Salads believes Baltimore…

Read More »

January 29, 2020

Senator Mulls Bill Giving States A Mulligan On Choosing Opportunity Zones.

One of the opportunity zone bill's original sponsors is coming around to revising the program.

Sen. Tim Scott (R-SC) said at the United States Conference of Mayors on Wednesday that he is considering a bill that would allow local and state governments to revisit a small percentage of the census tracts that were, or were not, designated opportunity zones in 2018, Bloomberg Tax reports.

Scott said he is in discussions with Sen. Cory Booker (D-NJ), his fellow co-sponsor on the original legislation, and the Senate Finance Committee's ranking Democrat, Ron Wyden (D-OR), on a new bill.

Continue reading.

Bisnow

Matthew Rothstein

January 29, 2020

Federal Tax Bulletin: Final Qualified Opportunity Zone Regulations Adopt Many Changes

Read the Bulletin.

Vorys | Jan. 30

TAX - LOUISIANA

Herman E. v. Robinson

Court of Appeal of Louisiana, First Circuit - December 27, 2019 - So.3d - 2019 WL 7206881 - 2019-0213 (La.App. 1 Cir. 12/27/19)

Taxpayers sought review of decision of Board of Tax Appeals finding that their claim for refund of state income taxes from Department of Revenue was prescribed.

The Court of Appeal held that:

- Burden was on Department prove claim was prescribed, and
- Department failed to prove claim was prescribed.

The burden of proving that a cause of action has prescribed rests with the party pleading prescription; however, when the face of the plaintiff's petition shows that the prescriptive period has run, and the plaintiff is contending there is a suspension or interruption of prescription, the burden is on the plaintiff to prove suspension or interruption.

Burden was on Department of Revenue to prove taxpayers' claim for refund of state income taxes was prescribed due to untimely filing, where taxpayers' appeal of decision of Board of Tax Appeals alleged they filed tax return seeking refund within proper time frame.

Department of Revenue failed to prove taxpayers' claim for refund of state income taxes was prescribed due to untimely filing, despite argument that certified mail receipt showed tax return seeking refund was received after deadline for filing, where mailing date, not date of receipt, constituted filing date, and certified mail receipt did not show when return was mailed.

TAX - NEW YORK

In re Brookdale Physicians' Dialysis Associates, Inc.

Supreme Court, Appellate Division, First Department, New York - December 3, 2019 - 178 A.D.3d 443 - 113 N.Y.S.3d 691 - 2019 N.Y. Slip Op. 08636

Building owner, which was a not-for-profit healthcare fund, and for-profit healthcare provider brought article 78 petition to annul determination by city department of finance denying application for exemption from real property taxation.

The Supreme Court, New York County, found building qualified for tax-exempt status and granted petition, denying finance department's cross-motion to dismiss petition. Finance department appealed.

The Supreme Court, Appellate Division, held that use of nonprofit healthcare fund's building by for-profit lessee for dialysis was reasonably incident to fund's purpose.

Use of building owned by not-for-profit healthcare fund and leased to for-profit healthcare provider was reasonably incident to fund's purpose of funding its affiliated hospital and nursing institute, and, thus, building qualified for tax-exempt status, where for-profit provider provided dialysis services in building to patients of hospital and nursing institute at little to no direct cost to not-for-profit healthcare affiliates, dialysis provider was staffed exclusively by employees of hospital, majority of dialysis patients were referred by hospital and nursing institute, and fund placed profits from rent receipts back into healthcare affiliates.

TAX - INDIANA

Square 74 Associates LLC v. Marion County Assessor

Tax Court of Indiana - December 3, 2019 - N.E.3d - 2019 WL 6696247

Tenant of five commercial spaces appealed from determination by Indiana Board of Tax Review granting county assessor's motion to dismiss tenant's petitions for correction of errors in tax assessments, based on finding that purported errors in determination of leasehold interest were not objective errors that could be corrected in such proceeding.

The Tax Court held that:

- Lease did not objectively exclude land underneath ground-floor commercial spaces from leasehold;
- Statute governing assessment of leased, tax-exempt real property did not require exclusion of underlying land from assessment of leasehold; and
- Regulation governing assessment of improvements on leased ground did not require assessment of leasehold estates to exclude underlying land.

Lease defining tenant spaces, real estate taxes, and respective responsibilities of lessee and lessor did not objectively exclude land underneath ground-floor commercial spaces from leasehold, and, thus, county assessor's purported errors in assessing taxes against tenant based on land underneath commercial spaces could not be fixed by means of administrative process for correction of objective errors; lease did not directly state land was excluded or clarify whether land was among those "structural components" of overhead parking garage that were excluded from tenant's responsibilities.

Tax statute providing that when real property that is exempt from property taxation is leased to an entity that is not entitled to a property tax exemption, the leasehold estate is to be assessed and taxed as if the lessee owns the real property did not dictate conditions of lease creating leasehold estate, and, thus, did not require assessment of commercial leasehold of ground-floor spaces, which were owned by city, to exclude land beneath spaces; statute treated leasehold estate as synonymous with term "real property," such that it could include assessed value of land itself, building or fixture on land, appurtenance, or certain mining rights or mineral interests.

Regulation providing procedures for assessing improvements located on leased ground did not create per se rule that assessment of leasehold estates excludes the underlying land.

The OZ Regulatory Process: Behind the Scenes at Treasury, with Dan Kowalski.

What are the five most impactful changes in the final IRS regulations on Opportunity Zones? And what's the true story behind the Opportunity Zone designation in Storey County, NV? Daniel Kowalski is counselor to Treasury Secretary Steven Mnuchin and led the Treasury Department's efforts in issuing regulations on Qualified Opportunity Funds. Click the play button below to listen to my conversation with Dan.

Continue reading.

Opportunity Db

January 22, 2020

New Law Repeals Parking Tax for Tax-Exempt Organizations.

Good news for tax-exempt organizations! The “Further Consolidated Appropriations Act, 2020” (H.R. 1865 — 116th Congress (2019-2020)) (the “Act”) signed into law on December 20, 2019, retroactively repealed Section 512(a)(7) of the Internal Revenue Code of 1986, often referred to as the “parking tax.”

Section 512(a)(7) was enacted under the Tax Cuts and Jobs Act of 2017 and generally required tax-exempt organizations to include as unrelated business taxable income amounts paid for employee parking and/or qualified transportation fringe benefits (e.g., transit passes). Section 512(a)(7) was widely criticized not only for the tax and administrative burden it imposed on tax-exempt organizations, but also for its lack of clarity and uncertain application.

Because the Act retroactively repealed Section 512(a)(7), tax-exempt organizations may be entitled to file an amended Internal Revenue Service Form 990-T to claim a refund for any parking taxes paid.

Thursday, January 16, 2020

Low Bond Yields Are Killing Muni Tax Breaks.

Don’t expect to reap much of a tax break from municipal bonds anymore.

Investors have flooded into muni bond funds, expecting to reap savings by owning nontaxable bonds issued by states, municipalities and other local-government entities. But bond prices have risen so much, pushing yields down, that the savings are getting tougher to find.

“For most taxpayers, there’s no longer a significant yield advantage for muni funds after you take taxes into account,” Amy Arnott, a portfolio strategist at Morningstar, writes in an article posted Tuesday on Morningstar.com.

Continue reading.

Barron’s

By Daren Fonda

Updated Jan. 15, 2020

Financing Affordable Housing and Small Businesses through Opportunity Zones.

Abstract

The Opportunity Zones tax incentive, created by the Tax Cuts and Jobs Act of 2017, was designed to spur investment in low-income and undercapitalized communities. How can stakeholders use the program to support affordable housing, finance small businesses, and boost job creation? The experiences of investors, developers, government officials, and business representatives show how the incentive is playing out nationally and locally in Cuyahoga County, Ohio.

Download pdf.

The Urban Institute

by Jorge González & Brett Theodos

January 14, 2020

The Obscure Reason Banks Will Finally Embrace Opportunity Zones.

Looming changes to 1970s-era law could open the lending floodgates

Banks may soon have the incentive they need to sink huge amounts of money into Opportunity Zones, the controversial Trump administration tax abatement program that has seen tepid investment levels to date.

The federal government plans to give commercial banks credit for issuing loans in low-income communities as part of a larger reform to a 1970s-era law called the Community Reinvestment Act. This is the first direct regulatory incentive for banks to lend in Opportunity Zones and could be a game-changer for the program, according to some experts.

"CRA is a big motivator for inter-activities at banks," said Steve Glickman, one of the architects of the Opportunity Zone initiative, which gives massive tax deferments and tax breaks to those who invest in projects in designated low-income neighborhoods across the country. "They are going to have institutional interest in all of this."

Glickman, who founded and runs Opportunity Zone consultancy firm Develop LLC, said that the reformation of the CRA and the recent finalization of the program's rules should spur banks to direct investor money into qualifying projects. Banks' own asset management arms could begin to deploy more money into Opportunity Zones as well, he said.

For banks, lending in Opportunity Zones would allow them to fulfill elements of a government mandate that they lend in poor communities.

Although many bankers and developers believe the combination of expected CRA reforms and finalized Opportunity Zone regulations could lead to substantial investment in poor communities, finance watchdogs are wary about the types of projects that qualify.

What the CRA is and why it matters

The CRA was crafted in 1977 under President Jimmy Carter and was designed to incentivize banks to lend in low income communities and prevent redlining, or the practice of not lending to minority communities.

A poor rating on the CRA can prevent a bank from opening new branches or completing a merger. It also invites heavier scrutiny from regulators if a bank has a bad rating.

But some bankers argue the law is out of date, especially in the age of digital banking and the lack of brick and mortar branches. Under a more banker-friendly Trump administration, two regulators, the Office of the Comptroller of the Currency and the FDIC, are now looking to revamp the rule and change how the CRA looks at geographic areas where the banks take in deposits. The regulators are also looking to combine Opportunity Zones into the CRA rules under a proposal released by the OCC and the FDIC.

This inclusion of Opportunity Zones in the revamp, however, has also drawn the most criticism from those who are skeptical of the proposed CRA changes.

One section of the proposed regulation mentions that banks can receive credit for lending to athletic facilities in Opportunity Zones. In other words, a bank could potentially receive credit on their CRA exam for financing the proposal to build the Tampa Bay Rays stadium in Ybor City, Florida, that was estimated to cost nearly $900 million.

“The Baltimore Ravens Stadium would qualify as a credit. We have got to look at the large scale projects that might not have localized community impact,” said Nikitra Bailey, the executive vice president of the Center for Responsible Lending.

Giving credit to sports stadiums in Opportunity Zone projects amplifies the argument of critics who claim that the program is effectively a tax break for wealthy developers masquerading as a benefit for the poor. Critics have pointed to Richard LeFrak’s $4 billion mixed-use project Sole Mia in an Opportunity Zone in North Miami as well as Kushner Companies plans to build a 1,100 unit-luxury apartment building in Miami’s Edgewater neighborhood.

Opportunity Zones developers have largely focused on building projects in gentrifying areas and in projects that were already planned before the Opportunity Zone legislation was released. The Department of Housing and Urban Development under Sec. Ben Carson said the agency is giving preferences on certain credits for developers who build affordable housing in Opportunity Zones. But so far, large-scale investment in affordable development in these areas has yet to materialize.

Lending in the land of OZ

The Opportunity Zone program became the arguably most talked about program in the real estate world over the last two years. Tucked away in President Trump’s tax plan, it offers developers and investors the ability to defer or forgo paying capital gains taxes for investment in one of the more than 8,700 federal Opportunity Zones across the country. Treasury Secretary Steven Mnuchin even said it could result in $100 billion in private investment.

Despite the hype, investor interest in hasn’t quite materialized.

Many funds have had trouble raising capital. Of a sampling of 103 Opportunity Zone funds that sought to raise $22.7 billion, only $3 billion was raised, according to an October report by accounting firm Novogradac & Co. One notable pullback is Anthony Scaramucci’s SkyBridge Capital, which first sought to raise $3 billion, but is now seeking just $300 million.

But there are signs that the finalization of program rules has already contributed to an uptick in investment. At least $2.3 billion was put into Opportunity Zone Funds between early December through early January, according to a survey from Novogradac, a 51 percent increase over the prior month. (It should be noted that investors had to commit their capital by the end of 2019 to receive the full benefit of the program, which is likely a bigger reason for the increase in investment.)

Brett Forman of Trez Forman, a nonbank lender based out of Boynton Beach, said he is skeptical of some of the proposed projects in Opportunity Zones. So far, some of the borrowers that have approached him are less experienced in real estate development and are sometimes ones that wouldn't be able to land bank financing.

"They think that a nonbank lender will jump on it," said Forman.

Avra Jain, a Miami-based Opportunity Zone developer, however, has previously told The Real Deal that the program makes financing for certain projects more accessible, such as her group's 15-story office building in Miami's Midtown neighborhood.

Shane Neman, who purchased a cold-storage facility in an Opportunity Zone in Miami's Allapattah neighborhood, said he is now considering refinancing the property. Neman said the property's position in an Opportunity Zone makes it more attractive for getting financing from lenders.

"I even have private lenders and funds that are coming to me with loans that are beating the terms of regional banks, which usually give the best deals," said Neman.

Some banks have already started investing in Opportunity Zones themselves, such as PNC Bank which has established an Opportunity Zone fund to invest in affordable housing, economic development and revitalization projects. In July, the bank provided $15 million in funding to repurpose a vacant, nearly century-old office building into workforce housing in downtown Birmingham, Alabama.

There's also Woodforest National Bank, of Woodlands, Texas, partnered with a Community Development Financial Institution (CDFI) and a commercial real estate group to create a $20 million Opportunity Zone fund.

John Hope Bryant, an entrepreneur and the founder of the economic empowerment nonprofit Operation HOPE has been pushing for CRA reform. He recently went on a five-city tour over the summer with Comptroller of the Currency Joseph Otting to discuss potential changes. Bryant said that adding Opportunity Zones to the CRA modernization can only help encourage lending in low-income communities.

"You are creating a magnet and pointing capital and equity there and saying, 'Go and invest there.'"

The Real Deal

By Keith Larsen

January 13, 2020

How Foreign Taxpayers Can Invest in Opportunity Zones, with Steve

[Christiano.]

What types of foreign investors may be ideal candidates for Opportunity Zone investing? And is there an opportunity for OZ fund sponsors to raise capital overseas? Stephen Christiano is an associate tax director of Frank Hirth's business tax group, specializing in U.S. business taxation and Opportunity Zones. Click the play button below to listen to my conversation with Steve. Note: This podcast interview was recorded…

[Read More »]

Opportunity Db

January 15, 2020

TAX - NEW JERSEY

[City of Plainfield v. Borough of Middlesex]

Tax Court of New Jersey - December 24, 2019 - N.J.Tax - 2019 WL 7421958

City brought action against borough, seeking order declaring that real property owned by city and located in borough was exempt from local property tax.

The Superior Court transferred the case to the Tax Court, and city moved for summary judgment.

The Tax Court held that city's land was tax-exempt.

Property owned by city and located within borough's taxing district was used actually and exclusively for public purposes, and thus, was subject to local property tax exemption for government-owned lands used for a public purpose, even though a portion of the land was retained in its natural, heavily wooded state; there was public, and only public use of the property, as other portions of the land were used to store borough's construction equipment and vehicles, as a public walking path, and for a sewer line and sewer equipment.

TAX - NEW HAMPSHIRE

[Ventas Realty Limited Partnership v. City of Dover]

Supreme Court of New Hampshire - January 10, 2020 - A.3d - 2020 WL 122713

Taxpayer sought abatement of real property taxes regarding parcel that contained skilled nursing facility, two garages, and parking lot, alleging that city had unlawfully taxed property in excess of its fair market value.

Following a bench trial, the Superior Court denied abatement request. Taxpayer appealed.

The Supreme Court held that:

- Evidence supported trial court's determination that appraisal of taxpayer's expert did not result in credible opinion of fair market value, and
- Trial court was entitled to rely on taxpayer's use of city's property tax assessment for transfer tax purposes when assessing taxpayer's credibility.

Evidence supported trial court’s determination that appraisal of taxpayer’s expert using income capitalization method did not result in credible opinion of fair market value of taxpayer’s property, which contained skilled nursing facility, two garages, and parking lot, in proceeding seeking abatement of property taxes; evidence indicated that expert failed to analyze how property would perform on open market during relevant tax year, expert failed to utilize comparable properties as evidence of market projections, and expert’s analysis of income compared two figures from roughly the same period of time rather than figures from separate consecutive years.

Trial court was entitled to rely on taxpayer’s use of city’s property tax assessment for purposes of transfer tax arising from transfer of ownership of property in subsequent year when assessing credibility of taxpayer in proceeding to abate property tax; use of city’s assessment for transfer tax purposes cast doubt on taxpayer’s position that it was paying disproportionate amount of property taxes.

TAX - ARKANSAS

Blakely v. Arkansas Children's Hospital

Court of Appeals of Arkansas - December 4, 2019 - S.W.3d - 2019 Ark. App. 568 - 2019 WL 6520026

Financial records requestor brought action against hospital, seeking declaration that public children’s hospital was subject to the Freedom of Information Act (FOIA) and order directing compliance with FOIA requests, as well as claim against county for illegal exaction.

The Circuit Court dismissed requestor’s claims. Requestor appealed.

The Court of Appeals held that:

- Requestor’s argument on appeal that hospital was subject to FOIA was too conclusory for consideration, and
- County ordinance providing for tax for the maintenance, operation, and support of hospital in county did not restrict use of tax to treatment of residents within county and so did not prohibit hospital’s treatment of children from outside county; and
- Evidence was sufficient to support finding that no illegal exaction occurred when county treasurer sent funds from hospital, raised by county’s maintenance tax, to the state to be used to obtain matching Medicaid funds from federal government, even though constitution provided for proceeds of a hospital tax to be paid directly to hospital treasurer.

Lawmaker Sees State Rainy Day Fund as Lifeline For Localities Battling Big-Box Stores Over Taxes.

The Indiana legislation could assist local governments dealing with “dark-store theory” property tax appeals.

Big-box retailers and other businesses around the U.S. in recent years have been battling with local governments to get the assessed value of their stores lowered so that they can pay less in property taxes.

In some cases, where their appeals are successful, cities and counties can end up owing the companies sizable tax refunds. The localities are also forced to grapple with the long-term effects of the lost revenue, which can mean shifting tax burdens onto others or service cuts.

Earlier this week, an Indiana lawmaker filed a bill intended to provide short-term relief for some places in situations like this. Rep. Lisa Beck's legislation would allow cities and school districts access to loans from the state rainy day fund to pay these sorts of property tax refunds.

An important caveat with the bill is that, as it's now written, it would only apply to local governments that meet certain criteria in Lake County, which is located in Beck's district. But it's easy to see how the legislation could be amended so its framework applies more broadly.

The loans would be zero- or low-interest (up to 1%) and could be up to $8 million. Borrowers would have 12 years to pay them back, with no payments required in the first two years.

Indiana has in the past offered low-interest loans to local governments in other types of difficult financial situations, so Beck's bill is to some extent a variation on an existing practice. The state's current rainy day fund balance is fairly robust at around $519 million.

"Indiana's not unique in being one of the states that have had multiple ongoing lawsuits related to the big-box stores," Beck noted during an interview on Friday. She said she hopes her bill will spark further discussion about how to assist places affected by the tax appeals.

"We hope it's not the final help that we're going to give to these communities," she added.

The issues that the legislation seeks to address arise from a tax-avoidance strategy that some people refer to as "dark-store theory."

In a nutshell, this involves retailers and others appealing property tax assessments on the grounds that their active stores should be valued in line with similar property that is vacant.

The thinking goes that even though a big-box store may be valuable to its current owner, it's worth far less on the resale market.

Among the reasons that this argument can gain traction is that the stores are often built for a business' specific needs and aren't easily repurposed, and because there's a growing abundance of empty retail space available around the country.

In other words, a Home Depot, Best Buy or Walmart shouldn't be taxed based on it's value as an operational store, but instead by factoring in what it would be worth as a vacant hulk.

Clashes over assessed value have played out in Lake County with a large mall and a nearby Kohl's building. The current draft of Beck's bill appears geared toward these specific circumstances.

For a locality to access a loan under the bill, it would need to have an estimated drop in tax revenue of at least $1 million—one that stems from a court judgement requiring Lake County to refund property taxes to a taxpayer whose property in the county is worth $100 million or more. So, for now at least, the bill is narrowly tailored.

"We're not looking at making anybody the bad guy here," Beck said. "We're not out against any of these box stores." But she also said that she thinks the strategy that retailers are pursuing to lower their local property tax bills is unfair to the communities where they're located.

“We cannot run our communities, with the police service, fire service and all the other amenities that we’ve been able to provide, with the proposed amount of tax assessments,” she added.

If a local government in Indiana takes a hit to its revenues when a retail property owner wins a tax appeal, state property tax caps make it difficult to simply offset the loss by raising taxes on other taxpayers. This ups the odds that cuts will be needed to balance the budget.

While rainy day fund loans do not promise a permanent way to backfill the losses from the appeals, they would at least provide localities with some breathing room to rework their finances.

A different bill dealing with retail store tax assessments passed out of Indiana’s state Senate last year, but later stalled.

That legislation would have created a way for local governments to ask the state to assess the value of retail properties in certain cases, and outlined guidelines for those appraisals that factor in a building’s costs. Beck said Friday that she’d heard the sponsor of that Senate bill was planning to introduce legislation on the topic again this year.

But even if the state, instead of local governments, conducts the assessments, businesses could still choose to challenge them.

Route Fifty

By Bill Lucia,

JANUARY 10, 2020

TAX - MAINE

Bolton v. Town of Scarborough

Supreme Judicial Court of Maine - December 23, 2019 - A.3d - 2019 WL 7044988 - 2019 ME 172

Taxpayers brought action challenging town board of assessment review’s denial of their abatement requests based on claim that abutting lot program caused inequitable tax treatment.

The Business and Consumer Court denied appeal. The Supreme Judicial Court vacated and remanded to board. Following remand, the Superior Court vacated board’s remedial abatement and remanded to board. Following remand, the Superior Court affirmed board’s second abatement calculation. Taxpayers appealed and town filed cross-appeal.

The Supreme Judicial Court held that:

- Court would not require board to extend benefit of abutting lot program to appealing taxpayers, and
- Taxpayers would be made whole by abatements that refunded the difference between what they paid in taxes and what they would have paid had properties in the abutting lot program been assessed at just value.

Court would not require town board of assessment review to extend benefit of abutting lot program, in which it permitted any owner of two separate but abutting parcels to request that those parcels be valued as a single lot to attain a lower overall assessment, to taxpayers who requested an abatement due to discriminatory nature of abutting lot program; appealing taxpayers suffered no greater harm than every other taxpayer in town given that all taxpayers paid slightly higher taxes as a result of improper discounts provided by program, and extending benefit to appealing taxpayers would have increased the negative effect of program on nonappealing taxpayers by several magnitudes and magnified the discriminatory effect.

Taxpayers seeking an abatement due to discriminatory nature of town's abutting lot program, in which it permitted any owner of two separate but abutting parcels to request that those parcels be valued as a single lot to attain a lower overall assessment, would be made whole by abatements that refunded the difference between what they paid in taxes and what they would have paid had properties in the abutting lot program been assessed at just value; such remedy would correct equal protection violation by putting appealing taxpayers in position they would have occupied had all taxpayers been treated equally.

Opportunity Zones Explained: A Helpful Solar Incentive

Federal opportunity zones, which offer tax benefits to qualifying businesses, are little known and not always well understood. But they can offer important advantages to solar companies, adding to solar tax benefits such as the federal Investment Tax Credit (ITC).

Opportunity zones were created to promote economic development in low-income communities by allowing companies to defer capital gains taxes, said Roman Petra, attorney for Nelson Mullins who specializes in commercial real estate transactions.

"The zones offer tremendous value for solar," said Jim Spano, a managing partner of Spano Partner Holdings, who has been involved in the development of more than 300 MW of solar. "Having a tax break in areas where economics don't support solar can provide lower cost of capital and opportunities for projects to pencil out."

Continue reading.

Solar Power World

By Lisa Cohn | January 8, 2020

Is Your Real Estate Wholesaling Business Embracing Opportunity Zones?

Despite temporary setbacks, wholesalers and investors shouldn't be so quick to overlook opportunity zone properties. Investors, specifically, can make use of any assets they've been sitting on, getting more bang for their buck without shouldering a tax burden or penalty. And being open to canvassing these zones for potential deals creates a palpable ripple effect.

The Tax Cuts and Jobs Act of 2017 opened up real estate wholesaling and investment opportunities more than two years ago, but it remains relatively unknown. The legislation establishes opportunity zones where investors can put investment returns from outside investments into properties instead of paying capital gains taxes on them — as long as they do so within 180 days of cashing in the outside investment.

According to researchers from the Economic Innovation Group, more than $6 trillion could be freed up to purchase real estate in these zones because of the act. But even wholesalers and investors who learn more about their choices with opportunity zones can be reluctant to jump in headfirst. What are their main concerns? For some, finding properties in designated zones seems tough. And even those who know of properties may worry that the risks will outweigh the potential benefits.

Continue reading.

Born2Invest

By David Lecko

January 7, 2020

U.S. Department of Transportation Releases New Interactive Opportunity Zones Map.

This interactive map provides information about the location and characteristics of significant transportation related facilities that are located in or near Opportunity Zones.

U.S. Department of Transportation | Jan. 8

How One Opportunity Zone Fund Hopes to Set an Example for Others.

As a managing partner at Catalyst Opportunity Funds, Jeremy Keele is rejecting around a dozen deals a week that come across his inbox, from developers looking to use the Opportunity Zone tax break to find investors for their projects.

“We’re not going to do luxury condos with a rooftop pool,” Keele says. “We’re just not gonna do that.”

Specific projects, developers and investors have drawn scrutiny around Opportunity Zones for taking advantage of the tax break to support projects that don’t need extra help, or for projects in neighborhoods that are already seeing a lot of investment. But there are also hundreds of Opportunity Zone funds that have formed over the past two years specifically to pool dollars from wealthy investors and make multiple investments on their behalf using the Opportunity Zone tax break.

Continue reading.

NEXT CITY

by OSCAR PERRY ABELLO | JANUARY 9, 2020

How CDFIs Can Help Raise Opportunity Zone Capital.

What is a Community Development Financial Institution, or CDFI? And how can Opportunity Zone fund sponsors, real estate developers, and QOZB business owners leverage their local CDFIs as a capital raising resource? Ruben Alonso is president of AltCap, a CDFI headquartered in Kansas City. Emily Lecuyer is managing director of Equity^2, an affiliate of AltCap. Click the play button below to listen to my conversation

Read More »

Opportunity Db

January 8, 2020

A New Tool Can Help Assess Opportunity Zone Investments' Social Impacts.

The Opportunity Zone (OZ) tax incentive is intended to encourage private investment in real estate and businesses in high-poverty or low-to-moderate-income neighborhoods. The Urban Institute's early research on Opportunity Zones revealed the promise of the incentive, as well as the risk that it could fail to make a difference in many regions and cities.

Opportunity Zones are disproportionately located in communities of color and tend to have higher poverty rates than the national average. There is also a tremendous diversity in OZs, and thus, there is a risk that investors will invest only in the most economically robust zones. The federal regulations governing the incentive allow for a broad range of uses and do not require that investments actually benefit residents.

Recognizing these shortcomings, some cities are enacting policies to help align investments with existing neighborhood plans and mitigate the potential harms of investments in Opportunity Zones, and federal legislators are considering imposing new reporting requirements.

Whether the incentive helps or harms OZ communities depends on where investments occur and the types of investments made. In response, we created a new tool to assess the potential social impacts of Opportunity Zone investments.

How the tool works
The tool begins with a "community goals and priorities" section, where users answer questions about how they engaged the community in project design and decisionmaking.

Next, users rank six impact areas (accessible and high-quality jobs; community wealth building; affordable and accessible housing; environment and open spaces; health, social services, and cultural amenities; and transportation and connectivity) based on their understanding of community priorities. This ranking determines the weight each impact area receives in the final scoring and is meant to underscore that investments should respond to community needs. For example, as valuable as it is, a project which creates affordable housing in a zone where job creation is ranked as the first priority will likely not achieve a top score.

After completing questions about the project in each of the six impact areas, users receive a scorecard that assigns a score scaled from 0 to 100. Projects receiving a high score are expected to provide strong social benefits aligned with community priorities, whereas those that receive a low score are unlikely to provide social benefits and may conflict with or undermine community priorities.

We developed and refined the questions in the tool through an iterative process that included a scan of existing impact tools, interviews with local stakeholders, a workshop with national experts working on Opportunity Zones, and testing with local leaders in five markets across the country.

The tool is currently in beta. Although we tried to account for a wide variety of community priorities and community types, it's possible that some communities may have priorities that aren't included in this version or that the tool's questions don't adequately reflect all community types. As such, we will use this version to collect information from users to improve the tool.

Who might use the tool

We designed the tool for a wide variety of stakeholders, including project sponsors, investors, community-based organizations, policymakers, local community advocates, and others interested in assessing the community impact of a local project. The tool can serve several purposes:

- Project scores can help direct incentives, support, and funding to projects with potential to advance community priorities, positively affect local residents, and promote inclusive growth in their communities.
- The tool can inform local debate about the best use of public subsidies and other support for projects, especially if stakeholders with different perspectives (e.g., neighborhood advocates, project sponsors, and public leaders) assess the same project and get differing results. Identifying disagreement about community impacts could be the basis for useful dialogue.
- Project sponsors can determine how their project might positively affect the community and where there may be room for improvement.

We hope the tool will spark conversations about how Opportunity Zone investments can support community goals and priorities and increase the ability of residents to shape their communities. Though it should not be the final word on what a good project is, our desire is that, together with other community-led decisionmaking processes, it can be a source for discussion and accountability as communities seek to attract investment to the places that need it most.