
TAX - LOUISIANA

[University of New Orleans Research and Technology Foundation, Inc. v. White](#)

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

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

The Court of Appeal held that:

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

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

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

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

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

View the NASBO article.

TAX - MICHIGAN

Sixarp, LLC v. Township of Byron

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

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

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

The Supreme Court held that:

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

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

[Kutak Rock: Capitol Connection Preserving Tax-Exempt Bonds]

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

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

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

What You Need to Know

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

At Kutak Rock

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

Kutak Rock Advocacy

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

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

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

Publications – Client Alert | April 7, 2025

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

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

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

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

Continue reading.

Bloomberg Markets

By Shruti Singh

March 25, 2025

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

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

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

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

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

Continue reading.

Bloomberg Opinion

By Liam Denning

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

March 28, 2025

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

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

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

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

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

Continue reading.

vaneck.com

March 25, 2025

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

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

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

Curious? Read on after the break.

[Continue reading.](#)

The Public Finance Tax Blog

By Michael Cullers on March 27, 2025

Squire Patton Boggs

[How Do States Tax Exempt-Interest Dividends?](#)

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

What Are Exempt-Interest Dividends?

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

[Continue reading.](#)

SmartAsset Team

Wed, March 26, 2025

[Is the Exemption for Interest on Municipal Bonds on Congress' Chopping Block?](#)

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

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

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

Continue reading.

by Arthur Anderson

March 26, 2025

Spilman Thomas & Battle, PLLC

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

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

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

The webpage includes:

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

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

The webpage can be found here.

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

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

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

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

American Public Power Association

by Paul Ciampoli

March 19, 2025

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

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

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

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

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

Continue reading.

Bloomberg Markets

By Zach C Cohen and Amanda Albright

March 21, 2025

TAX - ILLINOIS

Village of Arlington Heights v. City of Rolling Meadows

Supreme Court of Illinois - March 20, 2025 - N.E.3d - 2025 IL 130461 - 2025 WL 865177

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Barron's

By Amey Stone

March 21, 2025

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

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

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

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

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

Continue reading.

by William Conard II & Price Finley

March 12, 2025

Bricker Graydon LLP

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

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

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

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

How might the Muni bond market change?

Continue reading.

Tax Policy Center

by Thomas Brosy

March 13, 2025

TAX - MINNESOTA

County of Hennepin v. Hollydale Land LLC

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

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

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

The Supreme Court held that:

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

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

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

TAX - OHIO

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

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

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

The Supreme Court held that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The cap is modified

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

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

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

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

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

2. The cap expires

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

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

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

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

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

3. The cap is made permanent

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

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

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

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

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

The Wall Street Journal

By Debbie Carlson

March 4, 2025 10:00 am ET

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

AASHTO Supports Municipal Bonds, Raising PAB Cap.

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

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

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

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

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

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

March 7, 2025

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

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

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

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

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

Continue reading.

Andy Raun araun@hastingstribune.com

Feb 24, 2025 Updated Feb 25, 2025

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

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

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

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

Continue reading.

Bloomberg Politics

By Anna J Kaiser

February 27, 2025

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

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

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

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

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

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

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

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

Roughly $11 billion in municipal bonds are currently outstanding in Yakym’s district, which includes

South Bend. Without tax exemption, the cost of that debt could be at least $150 million higher a year, he said, based on estimates.

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

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

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

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

Bloomberg Politics

By Shruti Singh

February 27, 2025

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

Sector View: Stable

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

[Continue reading.]

24 Feb, 2025

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

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

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

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

By Robert Radigan on February 18, 2025

The Public Finance Tax Blog

Squire Patton Boggs

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

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

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

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

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

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

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

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

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

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

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

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

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

Bloomberg Markets

By Michelle Kaske

February 24, 2025

US Lawmakers Seek to Revive Early Refinancing for State, Local Governments.

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

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

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

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

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

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

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

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

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

Bloomberg Markets

By Amanda Albright and Shruti Singh

February 13, 2025

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

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

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

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

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

American Public Power Association

by Paul Ciampoli

February 13, 2025

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

I. Introduction

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

II. Individuals

(a) SALT Reform Options

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

- Repeal SALT Deduction: The SALT deduction would be repealed for individual and business tax filers. This would raise $1 trillion over ten years, as compared to extending the current TCJA deduction cap.
- Make $10,000 SALT Cap Permanent but Double for Married Couples: The current TCJA deduction cap for individual and business tax filers would remain, but the cap would be raised for married couples to $20,000 at an estimated cost of $100-200 billion over 10 years, as compared to extending the current TCJA deduction cap.
- $15,000/$30,000 SALT Cap: The current SALT deduction cap would be increased to $15,000 for individual taxpayers and $30,000 for married couples, with an estimated cost of $500 billion over 10 years, as compared to extending the current TCJA deduction cap.
- Eliminate Income/Sales Tax Deduction Portion of SALT: Only property taxes would be eligible for the SALT deduction, and the deduction would not be capped. This proposal would cost $300 billion over 10 years, as compared to extending the current TCJA deduction cap.
- Eliminate Business SALT Deduction: This policy option would eliminate the SALT deduction for business filers only, while maintaining the TCJA deduction cap for individuals. It would raise $310 billion over 10 years.

Continue reading.

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

February 12 2025

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

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

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

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

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

Continue reading.

Bloomberg Markets

By Amanda Albright and Shruti Singh

February 6, 2025

TAX - MICHIGAN

Heos v. City of East Lansing

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

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

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

The Supreme Court held that:

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

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

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

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

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

TAX - CALIFORNIA

Howard Jarvis Taxpayers Association v. Coachella Valley Water District

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

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

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

The Court of Appeal held that:

- Customers sustained economic injury, as required for standing of association as customers' representative;
- District failed to demonstrate that charge did not exceed proportional cost of providing non-agricultural customers water, thus, constitutional provision excluding proportional fees from definition of tax did not apply;
- Constitutional provision excluding from definition of tax charges imposed for government service

provided directly to payor that did not exceed costs did not apply to charge;
- Water charge was not excluded from definition of tax on basis charge was used to pay some expense of providing water;
- Provision of the Health and Safety Code permitting actions against city or county did not apply, thus, association's claims were governed by the Government Claims Act;
- Customers were entitled to refund of payments made pursuant to charge; and
- Injunction requiring district to comply with state Constitution's provision defining types of property taxes allowed and excluded was overbroad.

TAX - CALIFORNIA

Alameda County Taxpayers' Association v. County of Alameda

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

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

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

The Court of Appeal held that:

- Court would grant request for judicial notice as to reporter's transcript of hearing and deny it as to video recording and transcript of meeting;
- Measure was not special tax;
- Association and taxpayers failed to demonstrate trial court abused discretion in denying them leave to amend complaint;
- Association and taxpayers failed to demonstrate ballot materials profoundly misled electorate;
- Measure did not raise aggregate sales tax above statutory limit, even if exemption did not apply to measure; and
- Bills that enacted sales tax cap exemptions were not unconstitutional special legislation.

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

Summary

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

The Upshot

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

Continue reading.

by Benjamin Johnson, Marybeth Orsini, Andrew Wang

February 4, 2025

Ballard Spahr LLP

Debate Heats Up Around Munis Tax Exempt Status.

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

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

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

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

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

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

fi-desk.com

By Etienne Mercuriali -January 30, 2025

TAX - CONNECTICUT

[7 Germantown Road, LLC v. City of Danbury]

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

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

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

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

The Supreme Court held that:

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

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

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

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

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

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

Under the statute providing that a taxpayer in a tax appeal concerning real property assessed at $1,000,000 or more "shall file" an independent appraisal with the court "not later than one hundred twenty days after" commencing such an appeal, that the "court may extend the one-hundred-twen-y-day period for good cause," and that if the "appraisal is not timely filed, the court may dismiss" the appeal, the court has discretion to extend the deadline for filing the appraisal, provided there is good cause after the filing deadline has lapsed.

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

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

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

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

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

Listen to the podcast.

Bloomberg Business

By Joel Weber and Eric Balchunas

January 30, 2025

TAX - ALABAMA

Russell County v. City of Phenix City

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

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

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

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

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

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

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

TAX - NEW JERSEY

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

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

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

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

The Supreme Court held that:

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

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

Appeal of state trial court's vacatur of final judgment of foreclosure by purchaser of tax sale certificates against owner of mixed residential and commercial use property rendered case pending and not final so that, pursuant to the Supremacy Clause, intervening United States Supreme Court precedent, holding that a homeowner faced with forfeiture of surplus equity in her home under Minnesota's tax foreclosure law had plausibly alleged a taking in violation of the Fifth Amendment, applied to purchaser's pending appeal in state court, and therefore New Jersey Supreme Court was required to assess parties' arguments and determine whether the taking of owner's property under Tax Sale Law (TSL) was without just compensation contrary to the Fifth Amendment.

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

[Final Reissuance Regulations Released (Finally): Squire Patton Boggs]

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

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

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

(3) the bond is otherwise redeemed.

Continue reading.

By Robert Radigan on January 10, 2025

The Public Finance Tax Blog

Squire Patton Boggs

TAX - PENNSYLVANIA

In re Prospect Crozer LLC

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TAX - CALIFORNIA

Hovannisian v. City of Fresno

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

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

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

The Court of Appeal held that:

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

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

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

TAX - TEXAS

Herrera v. Mata

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

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

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

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

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

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

TAX - OHIO

State ex rel. Rittman v. Spitler

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Barron’s

By Amey Stone

Dec. 5, 2024

TAX - MARYLAND

Matter of Comptroller of Maryland

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

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

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

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

The Appellate Court held that:

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

Thirty-day time limit for submitting sales and use tax refund request after mailing of notice of assessment was exception to four-year limitations period for refund claims, and, thus, public utility timely filed refund request, even though it was filed one week before mailing of assessment notice; utility attached request to redetermination petition, filed within the 30-day period.

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

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

TAX - FLORIDA

City of Gulf Breeze v. Brown

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

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

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

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

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

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

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

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

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

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

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

Continue reading.

Bloomberg Markets

By Amanda Albright and Nic Querolo

November 25, 2024

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

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

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

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

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

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

Wholesale Elimination Would Erase Vital Infrastructure Investment

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

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

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

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

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

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

Infrastructure Funding Alternatives Are Limited

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

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

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

One Potential Tax-Exemption Target: Private Activity Bonds

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

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

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

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

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

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

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

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

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

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

AllianceBerstein

.
Matthew Norton| Chief Investment Officer—Municipal Bonds

Daryl Clements| Municipal Bond Portfolio Manager—Municipal Fixed Income

Nov 26, 2024

TAX - ILLINOIS

First American Bank v. Poplar Creek, LLC

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

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

The Circuit Court denied the petition. Guarantors appealed.

The Appellate Court held that:

- Language of pledge and security agreement memorializing assignment of security interest in note

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

The Hidden Costs of Property Tax Escrow Delays.

Delays in property tax payments—whether due to inefficiency, operational shortcomings, or misaligned priorities—can create financial headaches for homeowners and disrupt the revenue flow for municipalities that depend on these funds to provide essential services.

In recent years, as property values have soared, property taxes have risen in tandem, leading to increased homeowner frustration nationwide. This dissatisfaction reached a peak on Election Day this year, where voters in eight states passed initiatives aimed at providing property tax relief.

From Georgia’s cap on tax assessments to Florida’s inflation-tied exemptions, homeowners are pushing for limits on taxes that reflect unprecedented increases in home values. However, amidst this property tax “revolt,” there’s another growing issue that garners less attention but has equally significant consequences: the impact of delayed property tax payments in mortgage servicing, often caused by working with the wrong tax escrow payment processor.

When mortgage lenders handle property taxes on behalf of homeowners, they typically set up escrow accounts to collect monthly payments, then remit the taxes to local governments in one lump sum. In theory, this process benefits both homeowners and tax offices by ensuring timely payments.

Continue reading.

American City & County

by Niko Spyridonos

November 22, 2024

Election Impact: Will Municipal Bonds Lose Their Tax-Exempt Status?

U.S. election cycles are often fraught with volatility and big changes. Nearly every sector and industry is affected in one way or another. Under that framework, investors are forced to grapple with the potential of policy changes, and what they may mean for their portfolio. And for one area of the fixed-income market, the changes could be big.

One clear advantage of municipal bonds could be on the chopping block.

As the incoming Trump administration looks to raise revenues to offset other ambitious tax plans, municipal bonds' key tax-exempt status could change, which warrants caution from investors.

TCJA Expansion & Potential Deficits

The 2017 Tax Cuts and Jobs Act (TCJA) was the largest tax code overhaul in over three decades and created massive changes for individual and business taxpayers.

[Continue reading.](#)

dividend.com

by Aaron Levitt

November 26, 2024

[Trump Victory Threatens Key Muni Tax Break in Hunt for Revenue.](#)

- **Muni bonds pay interest to investors exempt from income taxes**
- **Eliminating the tax break seen as option to pay for tax cuts**

The tax break offered to municipal bond investors is coming under threat as Republicans are closer to taking control of both the White House and Congress.

President-elect Donald Trump has promised to further cut corporate taxes and even eliminating the federal income tax. If he goes through with those plans, lawmakers will need to find additional revenue to offset the cuts' trillion-dollar price tag. The muni tax-exemption — estimated to cost the US government less than $40 billion each year — has long been seen as a possible source of funding.

"The likelihood that the tax exemption is materially altered remains low, but the risk is probably at as high a level as it has been in the recent past given the size of projected deficits," said Adam Stern, co-head of research at Breckinridge Capital Advisors.

With the Tax Cuts and Jobs Act of 2017 set to expire at the end of next year, Republicans will "decide how much they want to spend to extend, expand or make the TCJA permanent," Andrew Silverman, an analyst at Bloomberg Intelligence, wrote in a note.

If they extend the tax cuts for a limited period, they'll have more flexibility on whether to fund it by raising taxes or cutting costs, he added.

Back in 2017, the Trump tax cuts eliminated the exemption on bonds sold for a debt refinancing technique, crimping municipal bond sales in the years after that. And earlier this year, the American Enterprise Institute, a conservative think tank, floated repealing the tax-exemption on muni bonds, calling it an inefficient subsidy for local governments.

The tax exemption of muni bonds, established in 1913, is the defining feature of the US public finance market in which states, cities, towns, school districts, hospitals and other borrowers raise money to finance the bulk of the bridges, roads and tunnels. According to Emily Brock, director of the Government Finance Officers Association's federal liaison center, 75% of infrastructure is built with muni bonds. Investors in such debt generally don't pay taxes on the interest they earn, allowing governments to borrow at lower rates.

State and local governments would need to turn to the taxable-bond market if the exemption is completely eradicated. That could “slow the pace of debt issuance and make the cost of capital more expensive for current tax-exempt borrowers,” said S&P Global Ratings analysts in a Nov. 7 report.

Brock said the burden to make up for any shortfall in public financing projects will fall on taxpayers, adding that “we haven’t seen evidence that the federal government is capable of meeting local infrastructure needs.”

To be sure, there is bipartisan support for the muni tax-break. The House Municipal Finance Caucus includes members of both parties.

“We believe that there’s strong political support and justification for the muni tax exemption,” said Margot Kleinman, director of research for Nuveen’s municipal fixed income team.

As part of the tax overhaul in 2017, Congressional Republicans proposed restricting the sale of tax-exempt muni bonds for private-sector projects. That provision ultimately wasn’t included in the legislation.

Mikhail Foux, a strategist at Barclays Plc, said he’s not “overly concerned” about the repeal of the tax exemption because the cost of the subsidy is relatively low. But he said it’s possible that certain sectors, like education, may see their use of the financing tool curtailed.

“Some parts of the muni market might end up on the chopping block, despite not generating sizable revenues for policymakers,” he wrote in a report Friday.

Bloomberg Markets

By Maxwell Adler and Amanda Albright

November 11, 2024

— With assistance from Lily Meier

TAX - GEORGIA

Jones v. City of Atlanta

Supreme Court of Georgia - October 31, 2024 - S.E.2d - 2024 WL 4633416

Property owner filed action against city, alleging that ordinances authorizing the city department of watershed management to impose a franchise fee and a payment in lieu of taxes (PILOT) for water and sewer services constituted unlawful taxes under state and federal law and seeking, inter alia, a tax refund.

The Superior Court granted city’s motion for judgment on the pleadings, and denied customer’s motions for summary judgment. Property owner appealed.

The Supreme Court held that:

- On city’s motion for judgment on the pleadings, trial court was required to accept as true property owner’s allegations that he paid the disputed charges and that they grossly exceeded the costs of providing the services;
- Genuine issues of material fact precluded summary judgment on property owner’s claim that the

disputed water and sewer fees were an illegal revenue-producing tax rather than fees for providing services; and
- Property owner's allegations did not establish as a matter of law that the disputed franchise fee was a tax based on the payor's gross revenue.

In property owner's challenge to the legality of city ordinances establishing a franchise fee and payment in lieu of taxes (PILOT) to be collected by city department of watershed management for water and sewer services, trial court was required to accept as true property owner's allegation that he paid the disputed charges for purposes of city's motion for judgment on the pleadings, where there was no conflict between the text of the ordinances and property owner's allegation that his water and sewer bill contained hidden taxes on water and sewer customers, and property owner's payment of the disputed charges to the department of watershed management was payment to the city.

On city's motion for judgment on the pleadings in property owner's challenge to ordinances establishing a franchise fee and payment in lieu of taxes (PILOT) to be collected by city department of watershed management for water and sewer services, trial court was required to accept as true property owner's allegations that the disputed fees grossly exceeded the associated costs of providing the services, and that the city was compensated for the associated costs through other means; recitals in ordinances that expressed city council's intention that the fees be used to compensate the city for costs associated with providing water and sewer services did not restrict the city from using the fees for other purposes or being compensated from other sources.

Property owner's allegations in action challenging city ordinance imposing a franchise fee for water and sewer services did not establish as a matter of law that the disputed fee was a tax based on the payor's gross revenue, where the ordinance imposed a charge based on the gross revenues of city's department of watershed management, which was passed on to property owner as a percentage of his water and sewer bill, which was comprised of a flat base charge and a variable portion based on the services he used and not on his income.

What Does the Expiration of Washington's Tax Cuts Mean for Munis?

Nicholos Venditti, senior portfolio manager at Allspring Global Investments, sits down with InvestmentNews anchor Gregg Greenberg to offer his outlook for municipal bonds and the sunsetting of the Tax Cuts and Jobs Act (TCJA).

Watch podcast

investmentnews.com

October 30, 2024

Wealth Managers Eyeing Municipal Bonds Ahead of Tax Cut Sunsets.

Some advisors are waiting for the election before adding more muni-bonds. Others are getting a head start.

The Tax Cut and Jobs Act (TCJA) enacted by President Trump in 2017 increased the standard deduction and eliminated personal exemptions. It lowered marginal income tax rates across the scale. It imposed a $10,000 cap on the deductibility of state and local taxes (SALT). It increased the tax credit for each child under 17 from $1,000 to $2,000. It provided a 20 percent deduction for small businesses and also hiked the AMT exemption.

It’s also sunsetting in 2025 leaving financial advisors with some big portfolio decisions to make. One of the bigger ones being whether to raise their clients’ municipal bond allocations and, if so, by how much.

Munis are tax free, you know.

Continue reading.

investmentnews.com

By Gregg Greenberg

OCT 31, 2024

Election-Related Tax Concerns Looming? Look to Muni Bond ETF TAXF.

With U.S. elections just under a week from now, many investors may be tuning in with questions about taxes. Overlapping with a time of year when many advisors look to mitigate tax impacts for clients, it may be worth considering ETFs to help. A muni bond ETF, for example, can provide a way to move assets into more tax-efficient holdings. The American Century Diversified Municipal Bond ETF (TAXF) provides an option therein that can particularly intrigue.

TAXF charges 29 basis points for its active investing approach. The fund combines investment-grade and high-yield muni bonds to offer both income and tax benefits. The active muni bond ETF invests up to 35% of its portfolio to “riskier” municipal bonds.

That active approach can help the fund parse the sometimes-complicated world of bonds. Where passive ETFs must track a list of bonds and can’t adapt, active funds can scrutinize bonds more closely. That fundamental analysis can make a big difference especially when diving into riskier muni bond areas.

The muni bond ETF has returned 10.8% over the last year, per American Century Investments data, outperforming the S&P National AMT-Free Municipal Bond Index. Having launched in 2018, the strategy’s AUM is very close to half a billion, per YCharts data. It offers a weighted average coupon of 4.8% as of Sept.30, with a 3.89% yield to maturity, as well.

Should U.S. elections project higher taxes, adding muni bonds could provide a helpful countermeasure. A strategy like TAXF, with its active muni bond approach, may provide performance, income, and yield on top of its tax advantages. Especially for those moving out of fixed income mutual funds or looking to tax loss harvest, TAXF can appeal.

etftrends.com

by Nick Peters-Golden

October 30, 2024

[IRS Increases LIHTC, Bond Caps for 2025.]

The amount used to determine the state housing credit ceiling hits $3 multiplied by the state population.

The amount used to determine the low-income housing tax credit ceiling will increase to $3 multiplied by the state population in 2025, announced the Internal Revenue Service (IRS).

That's a 10-cent hike over this year's figure and marks the first time the per-capita multiplier hits $3. The state minimum is set to rise to $3,455,000 in 2025, up from $3,360,000 this year.

On the private-activity bond side, the amounts used to calculate the state ceiling will be the greater of $130 multiplied by the state population or $388,780,000. That's an increase from this year's $125 per capita multiplier and the $378,230,000 state minimum.

The IRS reported the volume caps were reported in Rev. Proc. 2024-40.

Affordable Housing Finance

By AHF Staff

Oct 22, 2024

TAX - TEXAS

South Texas Independent School District v. Busse

Court of Appeals of Texas, Corpus Christi-Edinburg - August 1, 2024 - 696 S.W.3d 773

Taxpayers and consolidated independent school district that overlapped with another independent school district that primarily served persons with disabilities brought action for declaratory and injunctive relief against the independent school district that primarily served persons without disabilities, seeking declarations that its levy and expenditure of annual ad valorem taxes collected in the county for its maintenance and operation violated the contract with the voters doctrine and constituted ultra vires conduct.

The 197th District Court denied school district's plea to the jurisdiction. School district filed interlocutory appeal.

The Court of Appeals held that:

- Taxpayers lacked standing to bring action for declaratory and injunctive relief against independent school district that primarily served persons with disabilities, and
- Consolidated independent school district lacked standing to bring action for declaratory and injunctive relief against independent school district that primarily served persons with disabilities.

Taxpayers lacked standing to bring action for declaratory and injunctive relief against independent school district that primarily served persons with disabilities, alleging that it unlawfully levied and expended public funds because voters only agreed to be taxed for the limited purpose of maintaining and operating a rehabilitation district for persons with disabilities, not an independent school district that primarily served persons without disabilities; school district had been operating for 40 years, had made countless maintenance and operational decisions with expectation that it would collect ad valorem taxes to partially fund its short- and long-term obligations, and expectations of other taxpayers who were served by school district took root several decades ago and had become firmly fixed over multiple generations.

Consolidated independent school district that overlapped with another independent school district that primarily served persons with disabilities lacked standing to bring action for declaratory and injunctive relief against the independent school district that primarily served persons with disabilities, alleging that the property tax of the independent school district that primarily served persons with disabilities impaired its own ability to raise its own taxes; tax rate of independent school district that primarily served persons with disabilities had no legal impact on consolidated independent school district's ability to set its own tax rate, and consolidated independent school district was already levying the highest possible maintenance and operation tax rate allowed under law without seeking voter approval.

TAX - WYOMING

State v. Uinta County Assessor

Supreme Court of Wyoming - October 9, 2024 - P.3d - 2024 WL 4448731 - 2024 WY 106

State petitioned for review of State Board of Equalization's decision upholding county board of equalization's determination that state land that Board of Land Commissioners managed for benefit of state hospital and that Board leased to private corporation for operation of truck stop was not exempt from taxation.

The District Court affirmed. State appealed.

The Supreme Court held that:

- Land was not used primarily for a government purpose under tax exemption criteria, and
- No implied exemption existed based on statute precluding tax-exempt status for private or commercial improvements on leased state land.

State land that Board of Land Commissioners managed for benefit of state hospital and that Board leased to private corporation for operation of truck stop was not used primarily for a government purpose, and thus the land was not exempt from taxation, even though Board leased the land to generate revenue.

Board of Land Commissioners' statutory obligation to manage land for the benefit of state hospital did not trigger tax-exempt status for land that Board leased to private corporation for non-governmental purpose of operation of truck stop; nothing in statutory mandate required Board to manage the land in a manner that maintained its tax-exempt status.

Statute precluding tax-exempt status for improvements placed on state lands by lessees for private or commercial use did not impliedly give tax-exempt status to state land that Board of Land Commissioners managed for benefit of state hospital and that Board leased to private corporation for non-governmental purpose of operation of truck stop; allowing an implied exemption would have been directly contrary to statutory directive that all property in state was subject to taxation except as prohibited by Federal or State Constitutions or expressly exempted.

TAX - MONTANA

Solem v. Department of Revenue

Supreme Court of Montana - September 24, 2024 - P.3d - 2024 WL 4274187 - 2024 MT 217

Property taxpayers brought class action seeking to challenge mass appraisals of their lakefront properties.

The District Court entered judgment as to liability that Department of Revenue’s mass appraisal methodology was unfair and unconstitutional. Following a stipulated final judgment, Department of Revenue appealed.

The Supreme Court held that Department of Revenue’s method for appraising properties in lakefront development, which included a 29-property sample size, was adequate and not arbitrary.

Department of Revenue’s method for appraising properties in lakefront development, which included a 29-property sample size, was adequate and not arbitrary, although Department removed 17 “outlier” verified sales; mass appraisal approach, the sales comparison method, and the base lot model employed were appropriate, widely accepted methodologies, and while other appraisers may have made different decisions regarding particular variables included in the methodology, the Department employed a consistent, accepted process for arriving at market value.

TAX - PENNSYLVANIA

Circle of Seasons Charter School v. Northwestern Lehigh School District

Supreme Court of Pennsylvania - September 26, 2024 - A.3d - 2024 WL 4293601

Charter school brought action against school district, seeking refund of real estate taxes that school alleged were erroneously collected on charter school’s tax-exempt property.

The Court of Common Pleas sustained school district’s preliminary objections asserting a lack of subject matter jurisdiction and dismissed the complaint with prejudice. Charter school appealed. The Commonwealth Court reversed and remanded, and school district appealed.

The Supreme Court held that:

- Charter school, which had purchased properties from state university and had full opportunity to challenge reassessments of properties, was not entitled to another hearing simply because mailing date on tax assessment change notices was omitted, and
- Commonwealth Court abused its discretion when it granted nunc pro tunc relief to charter school.

Charter school, which had purchased tax exempt properties from state university and had full opportunity to challenge reassessments of properties before county board of assessment appeals in its annual appeal, was not entitled to another hearing simply because the mailing date on tax assessment change notices was omitted.

Commonwealth Court abused its discretion when it granted nunc pro tunc relief to charter school, which had purchased properties from state university, due to county's failure to include mailing date on tax assessment change notices; charter school did not request county board of assessment appeals refund the taxes it had paid before the properties were granted tax exempt status or challenge effective date of that exemption, and thus, it was not entitled to revisit these waived claims in a nunc pro tunc appeal.

Taxpayers Shoulder a Heavy Burden for Sports Stadium Subsidies.

State and local governments spend significant sums for the construction, operation, and continued maintenance of sports stadiums and arenas. According to recent estimates by sports economists, "between 1970 and 2020 state and local governments devoted $33 billion in public funds to construct major-league sports stadiums and arenas in the United States and Canada, with the median public contribution covering 73 percent of venue construction costs." In other words, taxpayers were on the hook for nearly three-quarters of the costs of each new sports venue that received public funding in the past 50 years.

Public interest in funding sports stadiums is at a fever pitch. A non-exhaustive list of publicly discussed future sports stadium subsidies can be found below. These do not include any public spending on new construction related to the US hosting the Summer Olympics in Los Angeles in 2028 or the Winter Olympics in Salt Lake City in 2034.

Continue reading.

Tax Foundation

By: Adam Hoffer, Joseph Johns, Craig Depken

October 3, 2024

Bank Holdings of Muni Debt Fall to Nine-Year Low on Tax Changes.

- **Institutions held $498.5 billion of muni securities as of June**
- **Banks pull back as taxable state and local issuance declines**

US banks' investment in state and local debt is at the lowest level in nearly nine years, as sales of taxable municipal securities have dropped and lending institutions continue to reap the benefits of a lower corporate tax rate.
Banks held a combined $498.5 billion of municipal debt, as of June 30, the least amount of exposure for the banks since September 2015, and down 21% from a record high of $631.3 billion held at the end of 2021, according to data from the Federal Reserve.

Banks have traditionally served as a reliable and sizable buyer of state and city debt, alongside individual investors, mutual funds and insurance companies. Though the firms pulled back from tax-exempt securities after former President Donald Trump cut the corporate tax rate to 21% from 35% in 2018, banks returned to the product in 2020 and 2021 to take advantage of a boost in issuance of taxable municipals.

That volume has died down since the Fed hiked rates in 2022. States and local governments have sold $23.3 billion of taxable bonds so far this year, about a third of the $74.4 billion sold during the same period in 2021, according to data compiled by Bloomberg.

“That’s been a challenge for the banks, not enough taxable supply,” said Matt Fabian, a partner at research firm Municipal Markets Analytics.

Banks generally like municipal debt for their longer maturities and lower risk compared to other investments. But with a 21% corporate tax rate, the banks don’t need to rely as much on tax-exempt securities. Some are also scarred by losses endured in 2022, when the broader municipal market declined 8.5%, Fabian said.

“They took large losses on munis, so they fear them now,” Fabian said about the banks.

A bank pullback could affect prices on municipal securities if the tax-exempt market needs to rely more on individual buyers who may shy away from lower yields, according to Fabian.

“We have more exposure to changes in retail behavior,” Fabian said. “If the Fed cuts rates and interest rates fall and then retail becomes less interested in buying lower yielding bonds, it’s going to be a drag on muni performance because you don’t have corporations or others to help chase muni-bond prices higher.”

Bloomberg Markets

By Michelle Kaske

September 13, 2024

Empty Downtowns Are Still Depleting Local Coffers.

In much of the country, downtowns remain relatively empty. The implications for property values, mortgage debt and property tax collections have not yet fully played out, says a Columbia University economist.

A few weeks ago, a building on West 50th Street in Midtown Manhattan sold at a steep discount. The 23-story office building had sold for $332 million as recently as 2006, but at an auction in July, it fetched only $8.5 million.

This was not a fluke or even an isolated incident. With office workers staying away from their offices in droves, downtown office buildings have sold at fire-sale prices, with defaults on office loans reaching near-record levels.

To get a sense of how shaky the downtown office market remains, Governing spoke with Stijn Van Nieuwerburgh, a professor of finance and real estate at Columbia University who coined the term “urban doom loop” back in 2022.

Continue reading.

governing.com

by Alan Greenblatt

Sep. 13, 2024

Some Solutions for State and Local Tax Deductibility.

When the 2017 tax law expires next year, Congress will revisit the limits on SALT deductions on federal returns. With elections approaching, it's time for governors and mayors to offer some viable new policy options — and ways to pay for them.

To help pay for middle-class tax cuts in 2017, Congress put a $10,000 limit on itemized deductions for state and local taxes, known as the "SALT" deduction. Although only some 10 percent of federal income tax returns included itemized deductions last year, fewer yet exceed the SALT ceiling — mostly a subset of taxpayers with six-figure incomes.

Yet when it was enacted, this move prompted more vocal complaints than almost any other tax law provision. Its impact is felt mostly by homeowners in jurisdictions where a combination of above-average state income taxes and hefty local property taxes puts them over the deduction limit.

Along with other provisions of the 2017 tax law, the SALT cap is set to expire next year, guaranteeing that it will become a political football. Even though this is a non-issue to 90 percent of the tax-paying population, it's a heated topic along partisan lines, with anti-tax conservatives claiming that an uncapped SALT deduction rewards spendthrift state and local politicians while others argue that the cap penalizes too many middle-class households. Public officials in the most affected states and localities have a clear interest in finding a way to provide some extra tax relief to households that pay out more than the $10,000 deduction limit. The problem is how to pay for it.

Continue reading.

governing.com

by Girard Miller

Sept. 10, 2024

TAX - CALIFORNIA

Sutter's Place, Inc. v. City of San Jose

Court of Appeal, Sixth District, California - August 30, 2024 - Cal.Rptr.3d - 2024 WL 4002415

Cardroom operator brought action against city and Division of Gaming Control, alleging city's cardroom regulation fee was an unconstitutional tax imposed without the required voter approval and that its imposition violated due process.

Following bench trial, the Superior Court entered judgment for defendants, granted them $44,349.42 in costs, and denied their request for attorney fees. Operator appealed.

The Court of Appeal held that:

- Trial court applied incorrect legal standard in making decision that cardroom regulation fee was

not an unconstitutional tax;
- Trial court's error was prejudicial to operator;
- Substantial evidence supported trial court's finding that equally allocating cardroom regulation fee between two cardrooms bore fair or reasonable relationships to their respective burdens on, or benefits received from city's regulatory activity;
- Trial court did not abuse its discretion by limiting scope of expert's testimony;
- There was no cumulative prejudice warranting a new trial; and
- City was not required to refund entire cardroom regulation fee based on inclusion of certain unpermitted costs.

TAX - NEBRASKA

Continental Resources v. Fair

Supreme Court of Nebraska - August 23, 2024 - N.W.3d - 317 Neb. 391 - 2024 WL 3908797

Tax-certificate holder, which obtained tax deed from county treasurer, brought quiet-title action against property owner. Property owner filed counterclaim and also filed third-party complaint against county and county treasurer in her official capacity, alleging that tax certificate sale process violated property owner's constitutional rights.

Attorney General exercised right to be heard on constitutional claims.

The District Court granted purchaser's motion for summary judgment. Property owner appealed, and the Supreme Court moved case to its own docket. The Supreme Court affirmed.

Property owner petitioned for writ of certiorari to United States Supreme Court. The Supreme Court granted petition, vacated judgment, and remanded to Supreme Court of Nebraska.

On remand, the Supreme Court held that:

- County's issuance of tax deed to purchaser of tax-sale certificate to collect delinquent real property taxes did not constitute taking for private use;
- Property owner had protected interest in property to extent value of property exceeded his tax debt, thereby potentially entitling him to just compensation under Takings Clauses;
- Holder was potentially liable to pay just compensation to property owner; and
- Factual issues precluded summary judgment for holder on owner's claim seeking compensation due to taking.

County's issuance of tax deed to purchaser of tax-sale certificate to collect delinquent real property taxes did not constitute taking for private use violative of either Federal or Nebraska Constitutions, as Nebraska's tax sale certificate process served undoubtedly public purpose of tax collection.

Property owner had protected interest in property to extent that value of the property exceeded his tax debt, thereby potentially entitling him to just compensation under Takings Clauses of Federal and Nebraska Constitutions upon issuance of tax deed to property and certificate holder's pursuit of strict foreclosure option that resulted in owner's loss of equitable title.

Tax certificate holder, rather than county, was potentially liable to pay just compensation to property owner, under Taking Clauses of Federal and Nebraska Constitution, to extent that value of the property exceeded owner's tax debt; holder pursued strict foreclosure option that resulted in owner's loss of equitable title.

Tax certificate holder was potentially liable to pay just compensation to property owner, under Taking Clauses of Federal and Nebraska Constitution, to extent that value of the property exceeded owner's tax debt, despite contention that county took owner's interest in property, and holder merely purchased it via the sale of tax certificate; holder did not purchase a property the county had already taken, as county did not have authority to take property when it sold certificate but, instead, merely had lien on property in amount of tax debt, such that it lacked power to take "absolute title" to property, and as result of state statutes pertaining to tax deeds, holder obtained right to obtain such a deed and, with it, owner's equitable interest in property.

Tax certificate holder was potentially liable to pay just compensation to property owner, under Taking Clauses of Federal and Nebraska Constitution, to extent that value of the property exceeded owner's tax debt, despite contention that county was also potentially liable for because its issuance of tax deed was also essential to loss of protected property interest; county never obtained title to property, and county treasurer was obligated by statute to issue deed to holder.

Genuine issues of material fact as to amount of compensation property owner was owed by tax certificate holder due to issuance of tax deed on property, as well as the amount of equity that existed in property in excess of tax debt, precluded summary judgment for holder on owner's claim seeking compensation due to taking in violation of Federal and Nebraska Constitutions.

TAX - MINNESOTA

Vasko v. County of McLeod

Supreme Court of Minnesota - August 21, 2024 - N.W.3d - 2024 WL 3882574

Taxpayer brought action against county, challenging its decision to revoke homestead classification for property for tax year at issue, as well as property's assessed value.

The Tax Court entered judgment after bench trial for county. Taxpayer filed petition for writ of certiorari, which was issued by Supreme Court.

The Supreme Court held that:

- Tax court properly placed on taxpayer the ultimate burden of proving that county's revocation of homestead classification was unlawful, and that the assessed value of the property was incorrect;
- Tax court's finding of fact that taxpayer and her son did not occupy and use property as primary residence during tax year was not clearly erroneous; and
- Tax court's findings of fact as to market value of property were not clearly erroneous.

Tax court properly placed on taxpayer the ultimate burden of proving that county's revocation of a homestead classification was unlawful, and that the assessed value of the property was incorrect; although taxpayer overcame prima facie validity of county's non-homestead classification, and court then considered evidence presented by both parties as if presumption did not exist, taxpayer continued to bear burden of proof by preponderance of evidence.

Sufficient evidence supported Tax Court's finding of fact, when determining county properly revoked homestead classification for taxpayer's property for tax year at issue, that taxpayer and her son did not occupy and use property as primary residence during tax year; county produced water bills that showed no measurable water use at property during six-year period that included tax year at issue, letters sent by taxpayer's attorneys to county and city were entitled to no weight because they originated from her attorneys and simply reiterated her litigation position, and pieces of mail, mostly addressed to property, did not establish occupancy or use of property because taxpayer admitted the property did not have mailbox, and that mail with property's address was actually routed to her post office box.

Taxpayer did not overcome the presumption that county's assessed market value of property was accurate; even assuming tax-assessed value of properties submitted by taxpayer when challenging assessed value of her property could be used as proxy for their market value, taxpayer did not show properties were comparable to her property at issue, and she never explained how only property for which she provided a sale price was in any way comparable to property at issue.

Expanding User Fees for Transportation: Roads and Beyond

Key Findings

- Thanks to elevated deficits and interest rates, fiscal restraint is back in Washington.
- While substantially reversing America's fiscal situation requires structural reforms to entitlements and taxes broadly, reforming transportation funding would also help.
- The user-pays principle is a sound way to fund major infrastructure projects.
- Unfortunately, the US has moved away from the user-pays model, primarily due to the gas tax declining in real terms, but also due to excise taxes becoming weaker approximations of true user fees.
- By 2034, the gas tax and other car-related excise taxes are projected to raise less than half of the Highway Trust Fund's outlays.
- The ideal solution would be to replace existing excise taxes with true user fees, but raising existing excise taxes would be a better solution than continuing a growing reliance on general revenue.
- Fully paying for federal highway spending with user fees could reduce the federal deficit by over $200 billion over the course of the next decade.

Introduction

The United States faces several fiscal challenges. In 2025, the individual tax cuts passed in the Tax Cuts and Jobs Act are scheduled to expire.[1] Meanwhile, long-run deficits are projected to remain at an elevated level in coming years and decades, even with the tax cuts expiring. The long-term increases in the debt come from growing entitlement obligations to programs such as Social Security and Medicare.[2] To bring deficits under control, policymakers will have to consider substantial reforms to growing entitlement programs, and, likely, broad-based tax increases, ideally focused on consumption.[3]

To actually address long-term deficits, lawmakers will have to make difficult trade-offs. But in addition to structural changes to entitlement spending and major tax reforms, some deficit-reducing reforms can bring efficiency gains as well. One particularly salient example is transportation.

Continue reading.

Tax Foundation

By: Alex Muresianu, Adam Hoffer, Jacob Macumber-Rosin, Alex Durante

August 7, 2024

TAX - SOUTH CAROLINA

City of Hardeeville v. Jasper County

Court of Appeals of South Carolina - July 17, 2024 - S.E.2d - 2024 WL 3434583

In 1999, Jasper and Beaufort counties drafted an agreement (the Park Agreement) to jointly develop the Nickel Plate Multi-County Business Park (MCBP).

The Park Agreement provided that property located in the MCBP was exempt from ad valorem taxes for the duration of the agreement and instead of ad valorem taxes, owners or lessees of park property would pay fee in lieu of tax (FILOT) payments.

In 2001, the Jasper County Council authorized the issuance of $14M in special source revenue bonds and authorized payment of the bonds secured by earmarking 40% of net fee payments under the Park Agreement.

In 2006, Hardeeville – a city located in Jasper County – annexed part of the MCBP property into its jurisdictional limits.

In 2020, Jasper County sent a letter to Hardeeville stating that it had discovered Hardeeville's collection and retention of the total millage levy, with no portion going to Beaufort County or payment of the special source revenue bonds pursuant to the Park Agreement.

Hardeeville then commenced an action against Jasper County, seeking (1) a declaratory judgment with respect to its authority to levy and collect taxes and retain tax revenue without regard to the Park Agreement and (2) injunctive relief preventing Jasper County from collecting the alleged overpayment or negatively impacting Hardeeville's ability to impose a tax levy on the annexed property.

Jasper County answered and filed a cross-complaint seeking a declaratory judgment that all park property was subject to the Park Agreement and alleging unjust enrichment from Hardeeville's collection and retention of the total millage levy.

The Circuit Court held that: (1) the Park Agreement between Beaufort and Jasper counties was valid and in compliance with constitutional and statutory law; (2) Hardeeville's consent to the agreement was not required; and (4) all property in the MCBP, including the annexed property, was exempt from all ad valorem taxation.

Hardeeville appealed and the Court of Appeals affirmed.

Wyden Vows to Protect Tax-Exempt Financing in 2025 Tax Debate.

Senate Finance Committee Chairman Ron Wyden (D-OR) recently vowed to strongly defend tax-exempt financing in 2025, when Congress is expected to debate nearly $8 trillion in tax policy decisions.

Wyden noted that the 2017 Tax Cuts and Jobs Act repealed the ability to issue tax-exempt advance refunding bonds "making it harder for state and local governments to reduce their debt."

Now, with much of the 2017 act expiring at the end of 2025, "there are fresh concerns that

Republicans will want to go after these key financing tools." Wyden said doing so "would be a huge setback for our infrastructure needs and for local communities across the country" and vowed to "strongly oppose that effort."

Wyden's comments came at the committee's hearing yesterday titled "Tax Tools for Economic Development."

C. LaShea Lofton, Deputy City Manager of the City of Dayton, OH, asked the committee to defend and modernize tax-exempt municipal bonds.

"I would like to share two points…: the tax exemption of municipal bonds should be fully maintained as they enable state and local governments to invest in the vital infrastructure that supports local community needs; and enacting federal bond modernization provisions will further enhance this financial tool and unlock additional infrastructure investment in urban, suburban, and rural communities," Lofton testified.

Lofton noted that tax-exempt financing saves Dayton millions of dollars in financing of infrastructure investments. However, she said, it is the combination of local control and local responsibility that makes municipal bonds an effective and efficient tool.

She said that voters throughout the country overwhelmingly support tax-exempt municipal bonds, which are either approved by locally-elected officials or directly through bond referenda. And it is residents and businesses in these communities who pay the interest and principal on this debt, she said. This important link between citizen and public finance fosters prudent decision-making, she said.

In terms of improving tax-exempt financing, Lofton asked the Committee to restore the ability to issue tax-exempt advance refunding bonds, increase the small issuer exception from $10 million to $30 million, and end the sequestration of direct payment bonds.

Senate Sherrod Brown (D-OH) said he supports reinstating the ability to issue tax-exempt advance refunding bonds and that he is "preparing legislation" to end the sequestration of direct payment bonds. "Both will help our municipalities save money that they can reinvest," Brown said.

publicpower.org

August 1, 2024

TAX - CONNECTICUT

[FuelCell Energy, Inc. v. Town of Groton]

Supreme Court of Connecticut - July 24, 2024 - A.3d - 2024 WL 3529177

Taxpayer sought review of town's denial of property tax exemption for its fuel cell modules and retroactive tax assessment to which a 25% penalty was added based on taxpayer's failure to file a declaration for the property.

The Superior Court, in accordance with prior decision granting summary judgment to taxpayer, entered judgment for taxpayer. Town appealed.

The Supreme Court held that:

- Canon of statutory construction providing that a specific statute prevails over a general statute does not constitute extratextual evidence of legislative intent that can be considered only when a statute is deemed ambiguous, abrogating *Miller's Pond Co., LLC v. New London*, 273 Conn. 786, 873 A.2d 965;
- Fuel cell modules were exempt from taxation under statute that exempted renewable energy sources;
- Fuel cell modules constituted “goods in the process of manufacture” under tax exemption for manufacturers’ inventories; and
- Taxpayer was not required to file a personal property declaration.

Fuel cell modules that could be deemed exempt from property taxation under two statutory provisions, one generally covering cogeneration systems including renewable sources and nonrenewable energy sources, and another specifically covering “renewable energy sources,” expressly defined to include fuel cells, were properly covered by statute that specifically exempted renewable energy sources; applying specific exemption for renewable energy sources was consistent with legislative intent to specifically exempt renewable energy sources, and fuel cells in particular, that generate energy and cut down on environmental emissions.

TAX - ARIZONA

[Pima County v. State]()

Supreme Court of Arizona - July 22, 2024 - P.3d - 2024 WL 3492043

County and school district sued the State and Department of Revenue, seeking reimbursement of school district’s desegregation expenses through payment of disputed tax funds as additional state aid for education.

Parties cross-moved for summary judgment.

The Arizona Tax Court granted motion in favor of county and school district, denied State’s motion, and ordered the State to pay disputed amount. State appealed. The Court of Appeals reversed and remanded, holding that funding allocations for desegregation expenses were secondary, and not primary, property taxes. County and school district petitioned for review.

The Supreme Court held that State was not obligated to reimburse, as additional state aid for education, desegregation expenses paid by county that exceeded constitutional 1% limit on residential property taxes.

School district’s desegregation expenses were secondary and not primary property taxes under amended statutory scheme, and thus State was not obligated to reimburse, as additional state aid for education, desegregation expenses paid by county that exceeded constitutional 1% limit on residential property taxes; statute allowed district to budget for desegregation expenses outside revenue control limit only if revenues from secondary property taxes were used, credit for additional state aid for education could only be applied against primary property taxes, statutes reflected legislature’s intent to end state funding of desegregation expenses with primary taxes, and statutes were not unworkable, rather, districts needed to reduce overall expenditures so that tax levy complied with 1% limit.

TAX - CONNECTICUT

William W. Backus Hospital v. Town of Stonington

Supreme Court of Connecticut - July 12, 2024 - A.3d - 2024 WL 3405653

Taxpayer, a general hospital and wholly owned subsidiary of healthcare delivery system formed for charitable purposes, appealed decision of town's Board of Assessment Appeals, which denied taxpayer's application for tax exemption for certain personal property it used to provide outpatient medical rehabilitation services at subleased facility for two taxable years at issue.

The Superior Court granted taxpayer's motion for summary judgment. Town appealed.

The Supreme Court held that:

- Term "acquire," as used in statute governing taxation by municipality of real and personal property acquired, held by or on behalf of health system, did not exclude property obtained via lease from taxation, and
- Taxpayer was not entitled to tax exemption for personal property.

Term "acquire," as used in statute governing taxation by municipality of real and personal property acquired, held by or on behalf of health system, broadly referred to both possession and control as well as ownership, and did not exclude property obtained via lease from taxation.

Taxpayer, a general hospital and wholly owned subsidiary of healthcare delivery system formed for charitable purposes, was "acquired" by entity and, thus, was not entitled to tax exemption for certain personal property it used to provide outpatient medical rehabilitation services at facility it subleased from entity for two taxable years at issue, despite contention it was not "health system" under statute governing taxation by municipality of real and personal property acquired, held by or on behalf of health system but was, instead, a singular hospital affiliated with a health system; statute's definition of "health system" included health system itself as well as any affiliated hospitals or entities, and facility was located in suite, subleased to taxpayer, of building system acquired by lease.

Wells Fargo Says Muni Tax Break at Risk No Matter Who Wins US Elections.

Wells Fargo & Co.'s head muni strategist Vikram Rai says the tax-exempt status of bonds sold by state and local governments could be in jeopardy regardless of who wins the US elections in November.

Municipal bonds pay interest to investors that's exempt from income taxes. Proposals to change that feature could emerge from either Democrats or Republicans, he said in a Monday report. The Obama administration, for example, proposed limiting the interest from municipal bonds that top earners can exclude from their taxable income.

"The possibility of such proposals being put forward again in the future in light of a worsening fiscal picture cannot be ignored as deficit reduction and/or tax reform moves forward," according to Rai.

The silver lining is that limiting access to tax-exempt bonds boosts the value of existing muni debt, he said.

“At present, there is no threat whatsoever to the tax exemption of outstanding bonds,” Rai said in the report.

Rai also examined muni-bond yields versus Treasuries, which is used to assess valuations in the market. He said these ratios haven’t exhibited any clear patterns around the elections.

Bloomberg Markets

By Amanda Albright

July 22, 2024

— With assistance from Skylar Woodhouse

[Governments, Get Your Refundable Tax Credits Here.]

COMMENTARY | The Inflation Reduction Act includes green tax credits that state and local agencies can use on clean energy vehicles, infrastructure and renewable energy projects.

From deficit and pollution reduction to creating a fairer tax code, the stated goals of the climate law, the Inflation Reduction Act, have been well-publicized. With this far-reaching piece of legislation also comes a slew of financial operations, tweaks and opportunities that organizations can embrace. Arguably the most notable—yet often overlooked—feature of the IRA is what it means for state and local governments … and their tax returns.

Until the implementation of the IRA, states and localities generally had not had the distinct pleasure of filing tax returns. However, under the IRA, certain costs that many governments regularly incur as they transition from traditional to “greener” infrastructure qualify for refundable tax credits if they file a tax return.

With that in mind, here are a few of the key opportunities that state and local governments should look for ahead of next year’s filing deadline, as well as best practices for taking advantage of them.

Continue reading.

Route Fifty

By Jack Reagan,
UHY Advisors

JULY 25, 2024

[Montana Looks to Become Latest State to Boost Nonprofit Hospital Oversight.]

Montana’s proposal to increase oversight is part of a national trend by states to ensure nonprofit hospitals act as charitable organizations as they claim tax-exempt status.

Montana is poised to become the latest state to increase scrutiny of how its nonprofit hospitals deliver community benefits in exchange for their tax-exempt status.

Under [proposed rules](), the Montana Department of Public Health and Human Services plans to collect data on nonprofit hospitals' charitable acts, such as discounting prices, providing health education, or conducting free screenings. Montana officials expect to adopt the new rules in August, but state officials have yet to set standards for exactly what constitutes acceptable giving or how much hospitals must do.

The proposal comes some four years after a state audit found shortcomings in the health department's oversight. The rules largely mirror federal requirements that national health policy analysts said have yet to lead to any meaningful enforcement.

[Continue reading.]()

Route Fifty

By Katheryn Houghton,
KFF Health News

JULY 26, 2024

[What Happens If Munis Lose Their Tax Exemption? Advisors Weigh In.]()

Uncle Sam is sitting on a mountain of debt and needs to find revenue wherever it can.

Tax-free municipal bonds have traditionally been the cornerstones of high-net-worth investor portfolios.

So what happens if those tax-free benefits go away?

Wells Fargo & Co.'s head municipal bond strategist Vikram Rai said this week the tax-exempt status of bonds sold by state and local governments could be in jeopardy no matter which candidate wins the Presidential election in November. Rai stated that the potentially drastic measure would be made to combat the national debt which now sits at $34.95 trillion – and climbing.

Municipal bonds, which pay interest to investors that's exempt from income taxes, have been viewed as a vehicle to raise revenue for the Federal government before. The Obama administration, for instance, proposed limiting the interest from municipal bonds that top earners can exclude from their taxable income, but the plan was never put into action.

"The possibility of such proposals being put forward again in the future in light of a worsening fiscal picture cannot be ignored as deficit reduction and/or tax reform moves forward," according to Rai.

Rai added that at present there is currently "no threat whatsoever" to the tax exemption of outstanding bonds. Nevertheless, Christopher Davis, partner at Hudson Value Partners, says it is not inconceivable for such a plan to be enacted considering the country's dire financial outlook.

"Altering the tax status of municipal bonds would be an out of the box way for either party to find revenue and likely be politically palatable as it primarily hits higher earners," said Davis.

Added Davis: “Losing their tax status would make us much more inclined to buy corporate bonds over municipals given their better liquidity and greater transparency in public company financials. Corporate boards see default as the death of the business and not a negotiating tool the way some legislators unfortunately do.”

Michael Cordano, investment advisor at Jackson Square Capital, meanwhile, believes the price of current munis with tax-exempt covenants should increase if tax exempt status were rescinded for future municipal bond issuance.

“Government bodies issuing new bonds will have to offer higher yields to compete with the overall taxable bond market,” said Cordano.

Eric Lutton, chief investment officer at Sound Income Strategies, highly doubts local governments will lose their tax-exempt status anytime soon. In his view, it would pose too great a risk to ultra-high-net-worth investors and wealth management firms that employ a more traditional defensive fixed income investment strategy that relies heavily upon tax-exempt municipals.

“We focus on more of a non-traditional offensive fixed income strategy for clients in or near retirement, so our investment strategy would not change too much if municipals lost their tax-advantage,” said Lutton, adding that the vast majority of Americans are in lower tax brackets after retirement, so “municipals don’t pack as much of a punch as they do for ultra-high-net-worth portfolios.”

K. Brad Tedrick, director of wealth management at Wright Ford Young & Co. Wealth Management, says alternative considerations should the tax-exempt status of municipal bonds fall into jeopardy include “options that would provide cash flows that include depreciation or principal while always considering the impact of risk management.”

Another idea, according to Tedrick, would be to “pair a portfolio with direct indexing options that can provide other tax benefits.”

Like Rai, Sean Carney, head of municipal strategy at BlackRock, does not believe the tax-exempt status of municipal bonds is at risk even as discussions around it tend to intensify during election cycles. In his view, the positive outcomes that municipal bonds provide to state and local governments, as well as to the investors who hold these investments, are “widely understood.”

Carney is bullish on muni bonds heading into the second half of 2024, partially because of the widespread belief that taxes will inevitably rise due to the massive deficits being run up in Washington.

“I think it also comes from people looking for an allocation to higher quality, less volatile assets like you get in municipal bonds. And then municipals also help you keep a little bit more of what you earn, which is always important,” said Carney.

And while the federal government is sitting on a mountain of debt, Carney says state and local government debt is at record lows while revenues are at record highs.

“As we look at the state and local governments, we know that as they came out of the Covid era and all of the fiscal stimulus they received, they were very strong. We’ve been keeping a very close eye on how the states are spending coming out. But pension fund ratios are elevated. Rainy day funds are at record highs,” said Carney. “So on the fundamental side, things are very good.”

investmentnews.com

By Gregg Greenberg

July 23, 2024

TAX - MARYLAND

[Ben Porto & Son, Ltd. v. Montgomery County]

Appellate Court of Maryland - July 9, 2024 - A.3d - 2024 WL 3338200

Taxpayers, which were companies that owned or operated a quarry, appealed decision of county finance director to affirm decision of county's department of environmental protection to deny taxpayers' applications and appeals for an exemption from or credit against county's stormwater-remediation charge on impervious surfaces on taxpayers' property, against which charge property owners could obtain a credit if they treated their stormwater on-site.

The Tax Court denied taxpayers' request for an exemption but awarded taxpayer a 100% credit against the charge due to taxpayers' on-site treatment of stormwater. The parties then sought judicial review.

After consolidation, the Circuit Court affirmed the Tax Court's decision as it related to exemption and entitlement to credit but remanded the matter to the Tax Court because neither the record nor the Tax Court's order reflected how the credit award was calculated. The parties cross-appealed.

The Appellate Court held that:

- Stormwater-remediation charge was an excise tax within the county's taxing authority, and thus it was not preempted by state and federal regulation of mines;
- Charge was required to comply with statute that required that such a charge be set in an amount that was based on the share of stormwater-management services related to the property and provided by the county;
- County's lack of provision of stormwater-management services to taxpayers' property did not establish that charge failed to comply with that statute;
- Taxpayers' National Pollutant Discharge Elimination System (NPDES) permit did not preclude the charge;
- Neither county code not State regulations required absolute compliance with the Maryland Stormwater Design Manual in order for a taxpayer to be eligible for a credit against the charge;
- Sufficient evidence supported Tax Court's conclusion that stormwater treatment undertaken by taxpayers made them eligible under the county code for a credit against the charge;
- Tax Court lacked an adequate factual basis to support awarding taxpayers a 100% credit; and
- Tax Court is without statutory authority to award attorney fees to prevailing party.

County's stormwater remediation charge was a "tax" rather than a regulatory "fee," as would support finding that it was within taxing authority of county, which was a charter county with home-rule powers, and not preempted by state and federal regulation of mines insofar as it applied to taxpayers' quarry; fee's purpose was to raise revenue and benefit the general public rather than regulate stormwater, and fee did not require a property owner to do anything with their property other than pay the charge.

Stormwater-remediation charge was an "excise tax," rather than a "property tax," within taxing authority of charter county with home-rule powers, and thus charge was not preempted by state and federal regulation of mines insofar as it applied to taxpayers' quarry; county council labeled the charge as an excise tax, charge was not imposed upon taxpayers solely because they owned land but rather because of taxpayers' use of the land, and fee did not require any assessment of the value or nature of the property being taxed.

Taxpayers, which were companies that owned or operated a quarry, did not preserve for appellate review their argument that county's stormwater-remediation charge was an invalid retroactive tax on a vested right because, so the argument went, it taxed impervious surfaces that were on taxpayers' property before the county imposed the charge; although the record was clear that taxpayers raised a retroactivity challenge to the county in their credit applications and appeals, their filings and arguments before the Tax Court did not clearly demonstrate that they were continuing to challenge the charge on the grounds that it retroactively taxed existing impervious surfaces.

Although it was a valid excise tax, county's stormwater-remediation charge was required to comply with statute that required that such a charge be set in an amount that was based on the share of stormwater-management services related to the property and provided by the county; both county code and state statutes governing such a charge indicated that county still had to comply with state-law requirements for such a charge.

County's lack of provision of stormwater-management services to taxpayers' property, on which a quarry operated, did not establish that county's stormwater-remediation charge, which applied to impervious surfaces on the property, failed to comply with statute requiring a stormwater-remediation charge to be set in an amount that was based on the share of stormwater-management services related to the property and provided by the county; charge operated under the valid assumption that a property's impervious surface related to the stormwater services provided by the county.

Fact that taxpayers, which were companies that owned or operated quarry, had a National Pollutant Discharge Elimination System (NPDES) permit that was covered under State's General 15MM permit did not preclude county from charging them its stormwater-remediation fee for impervious surfaces on the property, despite argument that statute governing when a property owned by the State or a unit of State government could be charged such a fee prohibited a county from charging the fee to property covered by such a permit; statute clearly referred to NPDES Phase I permits, and it seemed clear that the General Assembly's intent with the statute was to provide an exemption for State entities that already held a NPDES permit, not for private entities with a NPDES permit.

Taxpayers, which were companies that owned or operated a quarry, did not show that the Water Management Administration had either found mining to be subject to any State law that regulated stormwater-management runoff or determined that mining would be regulated under specific State laws that provided for managing stormwater runoff, and thus neither county code provision nor state regulation that provided that land-development activity that was subject to such findings was exempt from stormwater-management requirements precluded county from charging stormwater-remediation fee to taxpayer for the impervious surfaces on its property; although taxpayers argued that mines were among the most regulated entities in the State, that did not inherently mean that the Water Management Administration had found the quarry's stormwater to be regulated.

County code did not require absolute compliance with the Maryland Stormwater Design Manual in order for a taxpayer to be eligible for a credit against county's stormwater-remediation charge, which credit was available to taxpayers who treated stormwater on-site; despite code's repeated references to the Manual, the code's provision governing the credit did not provide any requirements that practices eligible for the credit had to conform to that Manual.

State regulations on stormwater management did not require compliance with the Maryland

Stormwater Design Manual in order for taxpayers' on-site stormwater treatment to allow them a credit against county's stormwater-remediation charge; the various references to the Manual in the regulations referred to complying with minimum control requirements, not to potential eligibility for credit against a stormwater-remediation charge.

Sufficient evidence supported Tax Court's conclusion that stormwater treatment undertaken by taxpayers, which were companies that owned or operated a quarry, made them eligible under the county code for a credit against county's stormwater-remediation charge on impervious surfaces on their property; based upon uncontroverted testimony of taxpayers' engineering expert, taxpayers demonstrated both onsite treatment of all of property's stormwater and additional treatment of offsite stormwater, and each of taxpayers' applications and appeals to the county for the credit explained the stormwater management and treatment present on the property.

Although sufficient evidence supported Tax Court's conclusion that stormwater treatment undertaken by taxpayers, which were companies that owned or operated a quarry, made them eligible under the county code for a credit against county's stormwater-remediation charge on impervious surfaces on their property, Tax Court lacked an adequate factual basis to support awarding taxpayers a 100% credit; pursuant to county regulation, the credit could only be awarded according to specific calculations and guidance, and Tax Court did not engage in any calculation or demonstration of how it reached the determination that taxpayers were entitled to a 100% credit.

Remand to Tax Court, rather than to county's department of environmental protection, was appropriate following Appellate Court's finding that Tax Court lacked an adequate factual basis to support awarding taxpayers, which were companies that owned or operated a quarry and that had appealed to the Tax Court from county's decisions, a 100% credit against county's stormwater-remediation charge on impervious surfaces on their property, which credit, as provided by the county code, stemmed from taxpayers' own stormwater treatment; the Administrative Procedure Act's judicial-review provisions allowed a final order from the Tax Court to be remanded for further proceedings before the Tax Court.

Tax Court, which, despite its name, is an adjudicatory administrative agency in the executive branch of state government, is without statutory authority to award attorney fees to prevailing party.

Circuit court would not have had authority to award attorney fees itself on judicial review following Tax Court's decision that denied request by taxpayers, which were companies that owned or operated a quarry, for an exemption from county's stormwater-remediation charge on impervious surfaces on taxpayers' property but that awarded taxpayers, pursuant to the county code, a 100% credit against the charge due to taxpayers' treatment of stormwater; such an award of fees was not available for administrative appeals brought pursuant to the Administrative Procedure Act.

Statute providing that a county or municipality may not charge a stormwater remediation fee to property specifically covered by a current National Pollutant Discharge Elimination System (NPDES) Phase I municipal separate storm sewer system permit or industrial stormwater permit held by the State or a unit of State government does not exempt any entity with a NPDES permit from stormwater remediation charges, only State government entities with NPDES permits.

TAX - WASHINGTON

Wiklem v. City of Camas

Court of Appeals of Washington, Division 2 - July 9, 2024 - P.3d - 2024 WL 3335985

Petitioner brought action against city and county, alleging that county's conclusion that petitions for referendum vote on city ordinance imposing a new utility tax lacked sufficient valid signatures, and seeking a writ of mandamus, a writ of review, and declaratory relief.

The Superior Court granted county's motion to dismiss for failure to state a claim, which was converted into one for summary judgment, and denied petitioner's motion for reconsideration. Petitioner appealed.

The Court of Appeals held that:

- Writ of mandamus was not warranted to order county to validate signatures which had already occurred;
- Process of verification of sufficiency of signatures involved discretionary acts for which a writ of mandamus was not appropriate;
- County was not exercising a judicial function in certifying signatures, thus precluding statutory writ of review.
- Declaration of elections director was sufficient for trial court to determine whether county's process in verifying signatures was performed illegally or in an arbitrary and capricious manner, at summary judgment stage, thus precluding constitutional writ of review; and
- Trial court did not abuse its discretion in denying motion for reconsideration.

TAX - CALIFORNIA

Loeber v. Lakeside Joint School District

Court of Appeal, Sixth District, California - June 24, 2024 - Cal.Rptr.3d - 2024 WL 3353457

Petitioner, a trustor of an irrevocable trust that owned two undeveloped properties within school district but who did not live in school district or personally own any property within school district, petitioned for writ of mandate seeking a court order to mandate an election on proposed citizen's initiative petition, for which petitioner had secured enough qualifying signatures, to add a new parcel tax exemption for taxpayers who were owners of unimproved parcels and who were over the age of 65, and seeking declaratory relief.

The Superior Court, Santa Clara County, dismissed petition for lack of standing. Petitioner appealed.

The Court of Appeal held that:

- Petitioner did not have a beneficial interest in writ that was direct and substantial;
- Petitioner's role as drafter, sponsor, and official or authorized executive of successful initiative campaign did not establish that petitioner had a sufficient beneficial interest in writ;
- Petitioner articulated a sufficiently weighty public need and public duty to apply public interest exception to beneficial interest requirement to have standing to seek writ of mandate;
- Petitioner's delay in filing citizen's initiative petition until several days after deadline did not provide a persuasive basis to deny application of public interest exception;
- Cost to school district of calling a general or special election on citizen's initiative petition did not outweigh school district's duty to act on an arguably valid ballot petition; and
- Initiative fell outside constitutional authority for initiative power in matters to reduce or repeal local fees.

[Trump’s Rise Poses Threat to Tax Break That Underpins Muni Bonds.]

- **Muni tax-exemption is defining feature of local debt market**
- **Policymakers expected to hunt for revenue to offset tax cuts**

The momentum behind Donald Trump’s campaign for a second term as president is rekindling concerns that the long-cherished municipal bond tax-break may be scrapped to help pay for permanent tax cuts.

The Tax Cuts and Jobs Act — which lowered levies for corporations and individuals — marked a major Trump policy achievement during his first stint in the White House. Those breaks for individuals are set to expire in 2025. If elected this November, he’s promised across-the-board tax cuts, likely raising deficits and pushing lawmakers to hunt for additional revenue. The muni tax-exemption — estimated to cost the US government roughly $40 billion each year — has been mentioned as a target.

“The most extreme impact to the market would be if the tax exemption goes away, if there’s massive deficits maybe that comes into play,” Chad Farrington, co-head of municipal bond strategy at DWS Investment Management, said in an interview. “That would of course cause intense pushback from states and local governments.”

Trump’s policies have been thrust into even greater focus after an assassination attempt on the former president over the weekend at a campaign rally. The incident has further rallied the GOP party as it prepares to nominate him at the Republican National Convention in Wisconsin this week.

Established in 1913, the municipal-bond tax exemption is the defining feature of the $4 trillion state and local government debt market where cities, towns, school districts, hospitals and other borrowers raise money to finance the bulk of US infrastructure. Investors in muni debt generally don’t pay taxes on the interest they earn, allowing governments to borrow at lower rates.

Repealing that exemption was floated by a conservative think tank earlier this year as a way to keep the Trump tax cuts. Matt Fabian, a partner at Municipal Market Analytics, said that Democratic President Joe Biden’s “poor” debate performance has raised the potential for Republican electoral victories in November, risking damage to the tax-exemption.

After the inauguration, next year will be focused on tax reform, Fabian said in an interview. “We worry that munis would be caught up in paying for that as collateral damage,” he said.

To be sure, a Trump presidency is not a foregone conclusion. In swing states, Trump led Biden by just 2 percentage points, 47% to 45%, according a Bloomberg News/Morning Consult poll conducted before the shooting. And regardless of who wins the election, investors at MacKay Shields said in a Monday research note that demand for state and local government debt should increase.

Tax-Exemption Rollback

The muni tax exemption has been scaled back before. In 2017, during Trump’s first administration, lawmakers eliminated a key refinancing tactic that allowed governments to call back their bonds and replace it with tax-free debt before they were able to be repurchased. The policy initially reduced new issue sales.

An earlier iteration of that legislation also proposed ending the exemption for so-called private-activity bonds which allow companies to issue tax-free debt under certain circumstances like privately run infrastructure projects such as toll roads and airports. That provision was eventually scrapped.

In a red-wave scenario, where Republicans win the presidency and both chambers of Congress, lawmakers would likely focus on extending Trump's tax-cut provisions, strategists at Barclays Plc led by Mikhail Foux and Clare Pickering wrote in a July 10 research note.

"Not only would the focus be on keeping top tax brackets low, but policymakers might also need to find additional pay-fors, and some parts of the tax-exempt muni market might be looked at for additional revenue," the analysts said.

Bloomberg Markets

By Skylar Woodhouse

July 15, 2024

— With assistance from Nic Querolo

[Tax Hikes Seen No Matter Who's President, Making Muni Bonds Attractive.]

- **Muni bonds appeal grows from tax-exempt status: MacKay Shields**
- **Says even Republican sweep may not stop tax bills from growing**

No matter who wins November's US presidential election, there's a growing risk that Americans will be paying higher taxes next year, according to MacKay Shields LLC. That makes muni bonds an attractive shield.

Thanks to higher interest rates, savers that piled a record amount of cash into money market funds and grew their earnings will be facing steeper tax bills. On top of that, key individual tax cuts are due to expire just as the US's swelling deficit may prompt lawmakers to consider raising taxes, according to a mid-year report by the fixed-income boutique firm published Monday.

Buying municipal bonds offers investors — especially those in higher tax brackets — a way to cut their tax bill, since the income they generate is tax-exempt, according to the investment firm owned by New York Life Insurance Co.

Continue reading.

Bloomberg Markets

By Nic Querolo

July 15, 2024

[States, Cities Consider 'Mansion Taxes' to Fund Affordable Housing.]

From sales taxes to real estate transfer taxes, governments are desperately trying to identify dedicated funding tracts for homelessness and housing initiatives.

States and cities have been throwing darts at the wall, trying to find dedicated funding to tackle affordable housing needs.

Nationwide, tens of millions of families are struggling amid a housing shortage with rent and housing costs. Home prices are up about 60% over the past decade, adjusted for inflation. And about a quarter of renters—some 12 million households—spend more than half their income on housing, which is far above the recommended 30%.

To support affordable housing development and other initiatives in the rapidly growing Denver area, Mayor Mike Johnston on Monday unveiled a proposed new tax that would add 0.5% atop Denver's current effective 8.81% sales tax rate. The tax is estimated to bring in $100 million a year in proceeds for the efforts.

Continue reading.

Route Fifty

By Elizabeth Daigneau,
Executive Editor, Route Fifty

JULY 12, 2024

Your 2024 Election Guide – Separate Issue Election and/or Multipurpose Issue Allocation (an Election of Sorts)? - Squire Patton Boggs

While probably not the most consequential election in 2024, a bond issuer might need to decide whether to make a separate issue election under Reg. §1.150-1(c)(3) and/or a multipurpose issue allocation under Reg. §§1.148-9(h) and 1.141-13(d).[1] To ensure that issuers (and conduit borrowers)[2] are a fully informed electorate, this 2024 Election Guide will explain the who, what and why of each type of election or allocation (but not necessarily in that order).

Separate Issue Election

Who qualifies? An issuer issuing tax-exempt bonds that have more than one purpose (e.g., new money and refunding) – but only if the proceeds, investments and bonds of the aggregate issue are allocated between each of the separate purposes using a reasonable, consistently applied method. It should be noted, however, that if a refunding is one of the separate purposes, certain multipurpose issue allocation criteria (discussed below) must also be met.

Why make a separate issue election? An issuer will frequently make the separate issue election when governmental use bonds and tax-exempt qualified private activity bonds would otherwise be part of a single issue for federal income tax purposes (because the governmental use bonds and qualified private activity bonds will be payable from the same source of funds and will be sold at substantially the same time (i.e., within 14 days of each other) pursuant to the same plan of financing). For example, a state university may be selling governmental use bonds and qualified 501(c)(3) bonds at substantially the same time pursuant to the same plan of financing, and these bonds are payable from the same source of funds. Also, some airport financings involve both governmental use bonds and exempt facility bonds. Both qualified 501(c)(3) bonds and exempt facility bonds are subject to more stringent rules than governmental use bonds. Thus, it is often beneficial for the issuer to separate the governmental use bonds from the other more highly regulated qualified private activity bonds.

Continue reading.

The Public Finance Tax Blog

By Cynthia Mog on July 10, 2024

Squire Patton Boggs

Soon Gas Taxes Won't Pay for Roads. But Amazon Deliveries Might.

As cars become more fuel efficient and EVs become more prominent, states will not be able to rely on gas taxes for much longer. But some states are considering fees on Amazon deliveries as part of their road-funding solution.

For decades, states have relied on gas taxes to provide much of the money to maintain roads and bridges. But as cars become more fuel efficient, and some Americans switch to electric vehicles, state leaders say the gas tax won't pay the bills for much longer.

At the same time, many cities have seen their streets crowded with delivery trucks from Amazon and other companies, as consumers increasingly opt to have products delivered to their homes. In a few states, lawmakers think fees on those deliveries could be part of their road-funding solution.

"If you're going to be creating wear and tear on our roads, you should help pay to maintain them," said Colorado state Rep. Cathy Kipp, a Democrat who chairs the Energy and Environment Committee.

Continue reading.

governing.com

July 11, 2024 • Alex Brown, Stateline.org, TNS

TAX - FLORIDA

Pinellas County v. Joiner

Supreme Court of Florida - June 27, 2024 - So.3d - 2024 WL 3190642

First county, which owned property in second county, brought action against second county's appraiser for a judgment declaring that its property was immune from ad valorem taxes and an injunction prohibiting future assessment and collection of such taxes.

After both sides moved for summary judgment, the Circuit Court entered summary judgment for first county. Second county's appraiser appealed. The District Court of Appeal reversed but certified a question as being of great public importance. First county sought discretionary review based on the certified question.

The Supreme Court held that common-law principles of sovereign immunity do not protect county-owned property from ad valorem taxation when that property is located outside the county's jurisdictional boundaries.

TAX - CALIFORNIA

Legislature of the State of California v. Weber

Supreme Court of California - June 20, 2024 - P.3d - 2024 WL 3059632

State Legislature, Governor, and former Senate President Pro Tempore filed an original proceeding to petition for a writ of mandate or prohibition to bar the Secretary of State from placing an initiative measure on the general election ballot.

The Supreme Court held that:

- Preelection review was appropriate for ballot initiative;
- Ballot initiative which sought to require voter approval of tax increases by state or local governmental entities would substantially transform the process for enacting new statewide tax legislation;
- Ballot initiative which sought to require that every nontax government fee or charge be subject to referendum would effect a significant change in how the state government raised revenue;
- Ballot initiative which sought to reassign local fee-setting from administrative to legislative processes and subject such fees to referendum would substantially alter the processes by which local governments raised revenue; and
- Ballot initiative exceeded the scope of the power to amend the California Constitution via citizen initiative.

TAX - TEXAS

Oncor Electric Delivery Company NTU, LLC v. Wilbarger County Appraisal District

Supreme Court of Texas - June 21, 2024 - S.W.3d - 2024 WL 3075706 - 67 Tex. Sup. Ct. J. 1196

Taxpayer, an electricity transmission delivery service provider, sought judicial review in separate county district courts in connection with appraisal districts' and appraisal review boards' (ARB) refusal to correct appraisal roll, claiming that a clerical error overstated value of transmission lines.

The 35th District Court granted appraisal district's plea to the jurisdiction, but did not expressly address ARB's plea. Taxpayer filed interlocutory appeal. The Austin Court of Appeals, sitting by assignment, reversed in part and remanded. Meanwhile, the 46th District Court denied taxing authorities' joint plea to the jurisdiction, and their motion for partial summary judgment. Taxing authorities filed interlocutory appeal. The Amarillo Court of Appeals reversed and rendered judgment granting taxing authorities' plea. Taxing authorities and taxpayer filed petitions for review in the Supreme Court, which were granted.

The Supreme Court held that:

- Assertion of a preclusion defense based on a statutory agreement between a property owner and a chief appraiser is not jurisdictional;
- Trial court's order granting county appraisal district's plea to the jurisdiction was not a final judgment, so that ARB was not a proper party to taxpayer's interlocutory appeal of trial court's order; and
- Record contained no ruling from the trial court on county ARB's plea to the jurisdiction or the extent to which the Tax Code waived its governmental immunity, thereby precluding an interlocutory appeal of issue.

Although the assertion of a preclusion defense based on a statutory agreement between a property owner and a chief appraiser may narrow the trial court's scope of review, this limitation is not jurisdictional; rather, much as the scope of the taxpayer's protest limits the grounds a county appraisal district may assert on appeal, the limitation is procedural.

Trial court's order granting county appraisal district's plea to the jurisdiction, construed as a whole, did not actually dispose of taxpayer's cause of action against county appraisal review board (ARB) in connection with refusal to correct appraisal roll, claiming that a clerical error overstated value of taxpayer's transmission lines, and therefore trial court's order did not actually dispose of every pending claim and party, and did not do so clearly and unequivocally, such that trial court's order was not a final judgment, so that ARB was not a proper party to taxpayer's interlocutory appeal of trial court's order; taxpayer's claim against ARB was still pending in the trial court.

Record contained no ruling from the trial court on county appraisal review board's (ARB) plea to the jurisdiction or the extent to which the Tax Code waived its governmental immunity, thereby precluding an interlocutory appeal of issue.

TAX - NEW HAMPSHIRE

New London Hospital Association, Inc. v. Town of Newport

Supreme Court of New Hampshire - June 26, 2024 - A.3d - 2024 N.H. 33 - 2024 WL 3167414

Property owner, a nonprofit corporation exempt from federal income taxation and a regulated charitable trust registered with the New Hampshire Department of Justice Charitable Trusts Unit, sought judicial review of town's decision denying owner's applications for charitable property tax exemptions for property on which owner operated a rural health clinic.

Appeals were consolidated, and following a bench trial, the Superior Court dismissed appeals, but found that owner had proved two factors supporting exemption. Parties cross-appealed.

The Supreme Court held that:

- Statement of purpose in owner's articles of incorporation sufficiently obligated owner to perform its charitable purpose;
- Owner established that the land it owned was occupied by owner and used directly for a stated charitable purpose;
- Owner's practice of referring patients to its sole member did not impermissibly confer on sole member a pecuniary benefit;
- Owner received services that furthered owner's charitable purposes in exchange for monies it paid to independent contractors; and

- Owner was not required to rule out possibility that rule that owner's officers or members may not derive any pecuniary profit or benefit was not satisfied.

How IRA Elective Pay is Helping Cities Meet Climate Action Plans

The Inflation Reduction Act (IRA) of 2022 continues existing and creating numerous new tax incentives for clean energy today. The most notable change for municipal governments has been the option for elective pay, in which local governments can take advantage of rebates as a non-taxable entity. Through elective pay, cities large and small can receive rebates for projects in clean energy and electric vehicles.

Understanding which projects are eligible for direct pay and how to file with the IRS is important for city staff as due dates are approaching, plus filing depends on how your jurisdiction elects to calculate their tax year (e.g., calendar year or fiscal year). For first-time filers and municipalities electing a calendar tax year — which are likely most local governments — filings for projects that were put into service in 2023 are due November 15, which includes an automatic six-month extension for first-time filers. In subsequent years, for local governments that choose a calendar year calculation, filings would be due on May 15.

Each project must preregister and receive a number before filing. Due to wait times for registration numbers from the IRS lasting upwards of several months, local leaders should act now to be ready by the filing deadline. It is also worth noting that coordination across multiple city departments is likely needed, including legal, financial and sustainability teams and others.

Continue reading.

National League of Cities

by Kelly Aves

JULY 2, 2024

California Supreme Court Removes Anti-Tax Measure From November 2024 Ballot: Kutak Rock

On June 20, 2024, a unanimous California Supreme Court ordered the removal of the self-styled "Taxpayer Protection and Government Accountability Act," an initiative measure backed by business and taxpayer rights groups, from California's November 2024 ballot.

The Court took the rare step of striking the initiative before it appeared on the ballot on the grounds that it would have brought about a fundamental revision of California's Constitution rather than merely amending tax-related provisions within the State's existing Constitutional framework. The Court held that such fundamental changes could only be submitted to voters if approved by two-thirds majorities in both houses of the State Legislature or through a Constitutional convention.

The initiative would have required virtually any tax imposed by any State or local agency to be submitted to voters (with retroactive effect to January 1, 2022), and it would have narrowed the definition of "exempt charges" to fees which do not exceed the actual (as opposed to reasonable) costs to the local government of providing a service or product to taxpayers. Moreover, the initiative would have shifted the burden to the State and local governments to demonstrate by clear and convincing evidence—a very high legal standard—that an exempt charge met the actual costs standard.

Continue reading.

Kutak Rock LLP

by Cyrus Torabi

26 JUNE 2024

Fitch: U.S. States' Credit Not Affected by Weak April Tax Collections

Fitch Ratings-New York-12 June 2024: Weak overall tax collection growth through April 2024 should not result in negative credit implications for U.S. states, given ample reserves and broad budgetary flexibility, Fitch Ratings says.

State reserves remain robust due to large surpluses accumulated in 2021 and 2022, with state rainy day funds averaging 13.8% of prior-year revenues in fiscal 2023 compared with 7.9% in fiscal 2019. However, states that have made large tax cuts and/or may implement additional cuts are more vulnerable to credit pressure if lower revenue growth or revenue declines weaken financial resilience. Recent tax cuts have not yet been tested by a cyclical downturn, which could have a more pronounced effect on collections.

April collections were generally in line with states' expectations. Average state tax collections for fiscal 2024 are on track to be roughly flat over 2023 and close to state forecasts.

Continue reading.

The Great Salt Lake City Tax Tradeoff.

In a few weeks, the city council will be voting on a 0.5% sales tax to support economic development downtown. But it's not the money that is drawing all the attention, it's what the city is giving up.

On June 11, the Salt Lake City Council held the latest in a series of public hearings about a proposed 0.5% sales tax increase within the boundaries of the city. The proceeds are intended to raise about $54 million a year to subsidize the financing of a major reconfiguring of the Delta Center. Currently home to the NBA's Utah Jazz, the center needs substantive updates to accommodate a new hockey team next year. The NHL approved the sale of the Arizona Coyotes to the owner of the Jazz and tech billionaire Ryan Smith in early April. The money will also be used to help build housing, restaurants and other amenities in the area. A final vote will take place this summer.

Despite decades of research that show pro sports franchises often don't boost local economies as much as promised, proponents of the deal still argue it will be a boon to downtown Salt Lake City, particularly in revitalizing several distressed neighborhoods.

But what makes this deal different from all the other stadium financing deals passed this year and in years past is that about 75% of the new revenues would go directly into the hands of a private sector entity, the Smith Entertainment Group.

Continue reading.

Route Fifty

By Katherine Barrett & Richard Greene

JUNE 17, 2024

Municipal Bonds: Planning for the TCJA Sunset

Clients who invest in municipal bonds may require new strategies because of tax changes that lie ahead in 2026.

Since Dec. 31, 2021, when, within the depths of the COVID-19 pandemic, a five-year investment-rated municipal ("muni") bond paid only 0.6%, returns have significantly risen (e.g., the BVAL Muni Benchmark 5-Year yield was 2.55% on April 1, 2024) to levels that may make tax-advantaged municipal bond investing increasingly relevant for a broader segment of the investor community.

Even during the low-interest-rate environment of recent years, there were some potential new municipal bond investing opportunities, such as possible higher after-tax yields from private activity bonds (PABs) (see "Recent Developments for Municipal Bond Investors," JofA, Sept. 1, 2020). Subsequently, municipal bonds have resurged as an asset class, but there is concern about the pending but politically uncertain expiration after Dec. 31, 2025, of many provisions of the law known as the Tax Cuts and Jobs Act (TCJA), P. L. 115-97. Because of these events, now may be an appropriate time for advisers and clients to once again consider and evaluate strategies to optimally employ these tax-advantaged bonds within investment portfolios.

Municipal bonds are used to raise money for local and state projects such as building roads, schools, water systems, and libraries, as well as to fund day-to-day governmental expenses. Generally, interest paid on the bonds is exempt from federal income tax and, in many cases, state and local taxes if the investor resides in the state where the bond is issued. Often, states tax interest derived from out-of-state bonds. In addition, on disposition of the bonds, gain or loss is taxable.

This article focuses on the tax implications applicable to municipal bond investments of expiring provisions of the TCJA. It also briefly addresses other tax and nontax issues of potential concern to municipal bond investors.

Continue reading.

Journal of Accountancy

By Seth Hammer, CPA, Ph.D.

June 1, 2024

Resources to Make Deploying Tax Credits for Clean Energy Projects in Small and Rural Communities Easier.

Deploying tax credits takes expertise, human capacity and the ability to access resources, be that the tax code or regulations. The top challenges small and rural communities face utilizing the State and Local Fiscal Recovery Funds are not having expertise, lack of human capacity, and lack of access to resources.

The federal clean energy tax credits from the Inflation Reduction Act are a game changer for local governments nationally. But they come with their own challenges. To help small and rural communities navigate them, NLC has compiled information on how small and rural communities can access help.

NLC resources

Over the coming months, NLC will produce resources for all cities, towns and villages on how to utilize the elective pay (also known as direct pay) clean energy tax credits, what to know, how to avoid mistakes, and real-life examples, among others.

Continue reading.

National League of Cities

by Carolyn Berndt

MAY 27, 2024

S&P: U.S. Not-For-Profit Health Care Governmental Entities Are Converting To Private 501c3s To Maximize Operating Flexibility

Governmental not-for-profit acute health care entities, usually without significant tax revenue benefits or tax-backed debt, are increasingly converting to private 501c3s. These providers are converting to capture efficiencies and compete more effectively in a challenged operating environment within an evolving health care landscape. Rating implications are specific to each scenario, but S&P Global Ratings generally views conversions as neutral factors with positive credit potential over time should benefits be realized.

Continue reading.

[Free Registration Required.]

3 Jun, 2024

TAX - ARKANSAS

Hotels.com, L.P. v. Pine Bluff Advertising and Promotion Commission

Supreme Court of Arkansas - May 16, 2024 - S.W.3d - 2024 Ark. 8620 - 24 WL 2195663

County and city advertising and promotion commission brought putative class action against online travel companies that facilitated reservations between travelers and lodging establishments that supplied rooms, seeking declaratory judgment that companies were liable for state and local gross receipts tax and state and local tourism tax.

After class certification was granted, numerous advertising and promotion commissions, cities, and counties filed motion to intervene, and companies filed motion to decertify damages class.

The Circuit Court denied both motions. Companies filed interlocutory appeal. The Supreme Court dismissed appeal for lack of a final order. Thereafter, the Circuit Court granted plaintiffs' summary judgment motion, denied companies' cross-motion for summary judgment, and ordered companies to pay previously unpaid taxes, plus penalties, interest, and attorney fees and costs. Companies appealed.

The Supreme Court held that:

- Statutes governing state and local gross receipts tax and state tourism tax were ambiguous;
- Ejusdem generis doctrine supported finding that statutes governing state and local gross receipts tax and state tourism tax did not apply to companies;
- Legislative amendment demonstrated that accommodations intermediaries were newly subject to the taxes;
- Department of Finance and Administration's (DF&A) established position was that prior to amendments accommodations intermediaries were not entities subject to state and local gross receipts tax; and
- Companies were not subject to local tourism tax.

Reasonable minds might have disagreed or been uncertain as to whether online travel companies that facilitated reservations between travelers and lodging establishments that supplied rooms constituted "any other provider of accommodations," within meaning of statutes governing state and local gross receipts tax and state tourism tax, so that statutes were ambiguous requiring interpretation of phrase according to legislative intent; entities subject to taxation plainly included owners and managers of lodging establishments, but it was not clear that accommodations intermediaries such as companies were included, given that those entities were not specifically listed in statutes, and that phrase "any other provider of accommodations" was not statutorily defined.

"Ejusdem generis doctrine," which provides that when general words follow specific words in a statutory enunciation, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words, supported finding that phrase "any other provider of accommodations" in statutes governing state and local gross receipts tax and state tourism tax did not apply to online travel companies that facilitated reservations between travelers and lodging establishments that supplied rooms; preceding specific words in these statutes listed only lodging establishments or entities that managed lodging establishments, did not expressly list such companies as entities subject to those taxed, and companies did not own, operate, or manage lodging establishments, but rather were accommodations intermediaries.

Legislature's addition of "accommodations intermediaries" to list of entities subject to state and local gross receipts tax, its specific definition of that group as a "person other than the owner, operator, or manager," and its decision to title act as one to require accommodations intermediaries to collect and remit sales and tourism taxes, demonstrated that accommodations intermediaries were newly subject to the taxes, such that prior to addition such intermediaries were not subject to taxation; if accommodations intermediaries had previously been subject to taxation, then amendments would have been unnecessary.

Department of Finance and Administration's (DF&A) established position, that prior to legislative amendments accommodations intermediaries such as online travel companies that facilitated reservations between travelers and lodging establishments that supplied rooms were not entities subject to state and local gross receipts tax, supported interpretation of statute to not apply to such companies prior to amendments; internal DF&A memo had concluded law prior to amendments did not require intermediaries to collect and remit hotel taxes, DF&A Revenue Legal Counsel had issued a legal opinion concluding that intermediaries would not be subject to gross receipts and tourism tax levied on service of furnishing rooms to transient guests, and DF&A had issued legislative-impact statement observing that amendments modified existing law to include "accommodations intermediary" as an entity furnishing, making available for, or otherwise arranging for the sale or use of a room.

Online technology companies that facilitated reservations between travelers and lodging establishments that supplied rooms were not subject to local tourism tax, which, prior to amendments, imposed tax on gross receipts from renting, leasing, or otherwise furnishing hotel rooms, motel rooms, or similar accommodations; companies' services did not fit within the plain language of "renting, leasing, or otherwise furnishing" rooms given that contracts between companies and hotels included language that companies did not acquire inventories of rooms and that nothing in contracts constituted a sale or rental of rooms from hotel to companies, and dictionary definition of "furnish" meant "to provide with what is needed," or to "supply" or "give," but companies' services were intermediary, not as actually "providing," "supplying," or "giving" rooms to guests.

TAX - ILLINOIS

Shawnee Community Unit School District No. 84 v. Illinois Property Tax Appeal Board

Supreme Court of Illinois - May 23, 2024 - N.E.3d - 2024 IL 128731 - 2024 WL 2341276

School district filed direct appeal from Property Tax Appeal Board's (PTAB) denial of its motions to dismiss taxpayer's appeals from final property tax assessments imposed by county board of review for taxpayer's power plant and appealed from PTAB's decisions reducing assessments for two tax years, and county board of review joined in the appeal.

The Appellate Court affirmed. School district's petition for leave to appeal was granted.

The Supreme Court held that:

- Statutory requirement that a taxpayer who wishes to file a tax objection complaint in circuit court pay the contested taxes does not apply to initiating and maintaining an administrative appeal filed with PTAB;
- County collector's applications for judgments and orders of sale for the delinquent taxes did not divest PTAB of its jurisdiction to review taxpayer's properly filed appeals; and
- Circuit court's entry of orders for judgment and tax sales with respect to taxpayer's delinquent property taxes did not estop taxpayer from challenging in administrative appeals the correctness of the assessments.

Statutory requirement that a taxpayer who wishes to file a tax objection complaint in circuit court challenging a property tax assessment pay the contested taxes does not apply to a taxpayer's initiation and maintenance of an administrative appeal filed with the Property Tax Appeal Board (PTAB) challenging a property tax assessment.

Property Tax Appeal Board's (PTAB) jurisdiction for taxpayer's appeals from final property tax assessments imposed by county board of review for taxpayer's power plant for two tax years, which jurisdiction PTAB acquired when taxpayer timely filed its petitions for appeal, was not divested when circuit court acquired jurisdiction for county collector's applications for judgments and orders of sale regarding the delinquent taxes for those two tax years.

Circuit court's entry of orders for judgments and tax sales with respect to taxpayer's delinquent property taxes for its power plant for two tax years did not constitute conclusive determinations of the assessments for those two tax years, as purported basis for estopping taxpayer from obtaining relief from Property Tax Appeal Board (PTAB) pursuant to appeals from final property tax assessments imposed by county board of review; circuit court would have lacked statutory authority to review correctness of contested assessments when county collector applied for judgments and orders of sale.

Bill Would Restore Advance Refunding, Create New Direct-Pay Bond.

The municipal finance market is rallying behind legislation that Rep. Terri Sewell, D-Ala., introduced this week that hits all the market's top priorities: restoring tax-exempt advance refunding, creating a new taxable direct-pay tool and lifting the cap for small borrower bank-qualified bonds.

Sewell, a former public finance attorney and senior member of the House Committee on Ways and Means, introduced on Tuesday the Local Infrastructure Financing Tools, or LIFT, Act.

"By restoring and expanding these proven tools, we can lower borrowing costs, bring additional investors to the table, and provide long-term, efficient financing for these critical investments across Alabama and the United States," Sewell said in a press release.

Sewell introduced the same bill in 2021, which failed to gain traction. The provisions were incorporated into an early version of President Joe Biden's Build Back Better bill, but were later stripped out.

Sewell reintroduced the bill now in part because "we know that the summer months are when most infrastructure projects typically occur in many cities and towns," said Sewell's communication director Christopher Kosteva. "We are reminded that often the largest obstacle faced by municipalities is the lack of access to capital that allow for these projects to commence."

Kosteva added that restoration of tax-exempt advance refunding and expanding the small borrower exception are "two of the most discussed policy changes that come up when meeting with constituents and stakeholders on this issue. We know that the same message is being shared with other Democrats and Republicans on the Hill and we are hopeful that it will generate bipartisan momentum and make these policies part of the overall tax dialogue."

The bill will be referred to the House Ways and Means Committee, which oversees all tax-related measures in the House. It comes as Congress is expected next year to take up major tax measures as several provisions in the Tax Cuts and Jobs Act expire.

The bill has “very little chance of enactment but it sets the table for a likely big tax bill next Congress, where we will need to be on defense as well as offense with this type of legislation,” said Charles Samuels of Mintz Levin, who is counsel to the National Association of Health & Educational Facilities Finance Authorities. The measure is an “important symbol of the continuing interest to improve municipal financing for the benefit of government, nonprofits and the citizens they serve,” Samuels said.

In a May 15 blog, Mintz Levin said advocates “will be working to identify a potential pathway for consideration of the bill in the remaining months of the current 118th Congress. Given the increasingly limited number of legislative days and the ramping up of the election season, advocates will also use the introduction of the bill to build support for tax-exempt bonds in the 119th Congress when much of the 2017 Tax Cuts and Jobs Act will sunset, creating an opportunity for a major tax package to advance.”

The bill would restore tax-exempt advance refundings, which were eliminated under the TCJA, and would lift the cap on bank-qualified debt to $30 million from $10 million, a cap that was set in 1986. For non-profit conduit issuances, the cap would be expanded to apply to the borrower-beneficiary rather than the conduit issuer, Mintz noted. The direct-pay provision would create a taxable tool that features a direct-pay interest subsidy from the government.

Top bond advocates like the National Association of Bond Lawyers, Government Finance Officers Association, National Association of Counties, and the Bond Dealers of America all applauded the legislation.

The GFOA said “restoring tax-exempt advanced refunding and expanding the small borrower exception are top priorities for our 24,000 members and with Congresswoman Sewell’s leadership, we look forward to advancing these issues through Congress.”

The bill is “critical legislation” that would make “capital more accessible and affordable for issuers, in turn creating more affordable infrastructure nationwide,” the BDA said. “We look forward to working with Rep. Sewell and her colleagues in Congress to get this legislation across the finish line.”

By Caitlin Devitt

BY SOURCEMEDIA | MUNICIPAL | 05/16/24 11:32 AM EDT

Legislation to Restore Advance Refunding for Tax-Exempt Municipal Bonds Introduced in U.S. House of Representatives.

Key Takeaways

- The Local Infrastructure Financing Tools (LIFT) Act would restore advance refunding of tax-exempt municipal bonds, a critical tool for county municipal finance
- The bill would also reauthorize the use of American infrastructure bonds and increase the small issuer exception on bank-qualified debt from $10 million to $30 million
- Counties strongly support reinstating advance refunding of tax-exempt municipal bonds

On May 14, Rep. Terri Sewell (D-Ala.) introduced the Local Infrastructure Financing Tools (LIFT) Act, that would make several significant adjustments to municipal finance tools for county governments. Specifically, this legislation would restore advance refunding of tax-exempt municipal bonds, which has been unavailable to counties since the enactment of the Tax Cuts and Jobs Act in 2017. It would also increase the small issuer exception on bank-qualified (BQ) debt from $10 million to $30 million, and authorize the use of American Infrastructure Bonds.

Prior to 2017, counties could refinance a municipal bond once over its lifetime and more than 90 days prior to the bond's redemption date at a tax-exempt status. This practice, also referred to as advance refunding, allowed counties to lower borrowing costs and take advantage of more favorable interest rates. Advance refunding bonds allows counties to address problematic bond terms and conditions or restructure debt service payments for budget flexibility. It also frees up county funds to be used for other important capital projects and minimizes costs to taxpayers.

Established as part of the Build America Bonds program, American Infrastructure Bonds allow taxable bond issuers to receive a direct payment from the federal government to cover a percentage of the interest costs associated with the issuance. Expanded access to the taxable bond market through the reauthorization of American Infrastructure Bonds would also incentivize and boost infrastructure investments in local communities.

The small issuer exception on bank-qualified debt currently allows counties issuing less than $10 million in bonds per calendar year to designate this debt as bank-qualified, allowing them to bypass the traditional underwriting process. However, the current cap of $10 million has not been adjusted since its creation in 1986. Increasing the cap to $30 million would allow more counties that issue small, less-frequent bonds to access the lower costs municipal debt needed to provide essential services and projects for residents.

Counties across the country would benefit from all the renewed municipal financing opportunities made available through this legislation. NACo has endorsed the LIFT Act and will continue to work with our federal partners in Congress to advocate for passage of this legislation.

by Maxx Silvan & Paige Mellerio

May 15, 2024

National Association of Counties

New Legislation Would Expand the Use of Municipal Bonds: Mintz

Local Infrastructure Financing Tools (LIFT) Act

Legislation reintroduced by US Rep. Terri Sewell (D-AL) has the potential to significantly expand the use of tax-exempt municipal bonds while creating a new "direct pay" bond. The Local Infrastructure Financing Tools (LIFT) Act calls for policy changes and types of bonds that could be used by governments and nonprofits nationwide for a range of public infrastructure and capital improvement projects, such as libraries, schools (including nonprofit higher education institutions), roads and road improvements, water systems, mass transit, affordable housing, public and nonprofit hospitals, and other government-owned facilities.

Expanding the Use of Bonds

The LIFT Act was first introduced by Rep. Sewell, a senior member of the US House Committee on

Ways and Means and a former bond lawyer, in the previous Congress. The reintroduced legislation would:

- **Restore the ability to advance refund municipal bonds.**
- **Enhance small borrower rules for bank qualified bonds.**
- **Create a new taxable direct pay bond known as the American Infrastructure Bond.**

Continue reading.

By R. Neal Martin, Charles A. Samuels, Matthew O. Page, Christie L. Martin, Meghan B. Burke, Poonam Patidar

May 15, 2024

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo,

TAX - RHODE ISLAND

City of Pawtucket v. Rhode Island Department of Revenue

Supreme Court of Rhode Island - May 2, 2024 - A.3d - 2024 WL 1917355

City appealed decision of Department of Revenue (DOR) denying PILOT funds for properties owned by hospital.

The Superior Court granted judgment for DOR. City filed petition for writ of certiorari.

The Supreme Court held that:

- City's appeal was timely, but
- Hospital did not meet PILOT Act's explicit definition of "nonprofit hospital facility."

City received final, formal notice of decision of Department of Revenue (DOR) to deny city's request for PILOT funds for properties owned by hospital, and appeal period began to run, when Director of DOR formally notified city in letter that properties did not qualify for inclusion in grant program, rather than when there were various communications and actions indicating that eligibility of properties for PILOT funds was in question.

Hospital did not meet PILOT Act's explicit definition of "nonprofit hospital facility," and thus properties owned by hospital were not eligible for receipt of PILOT Act funding, even though medical care and treatment services were being provided at properties through licenses held by other hospitals, where hospital-owner was not a licensed nonprofit hospital facility at relevant time.

Flood of Property Assessment Appeals Could Wallop U.S. Cities.

'A lot of owners and operators have what they perceive as significant data to support a 40 percent or 50 percent reduction'

For big city landlords and office owners, seeking to shave a few dollars off tax bills might as well be muscle memory. On March 1 of this year, there was a line down the block in front of the Municipal

Building in Lower Manhattan to file property tax appeals.

"In New York City, 99 percent of owners appeal," said Steve Thompson, a commercial property tax expert at tax consulting firm Ryan. "Most commercial owners are acutely aware that this is their largest annual operating expense, and it becomes like spraying for pests. If you don't do it every year, it can snowball and become a huge problem."

This year, the appeals came with a lot more angst. Amid steeply declining office values and open questions about the future of this sector of commercial real estate, tax appeals and efforts to reduce tax burdens have become more frenzied. Thompson's clients, which include Fortune 1000 firms and large real estate investment trusts, have petitioned for significantly lower tax assessments: 40 percent to 50 percent in New York City and San Francisco, and even 75 percent in Washington, D.C. In his two decades of work, he's never seen owners dig in their heels and be so combative.

Continue reading.

COMMERCIAL OBSERVER

BY PATRICK SISSON

MAY 9, 2024

Are Your Traffic-Impact Fees Tied to Your Land-Use Interests and Roughly Proportional to the Development's Impact on Those Interests? If Not, They Should Be.

Developers often bemoan the costs they incur before breaking ground on new residential projects. But the developer isn't the only party that experiences costs. New residential developments require new (or stress existing) municipal services, like water and sewer systems, roads, schools, libraries, parks, and recreation facilities.

To address these costs, municipalities commonly assess reasonable impact fees (sometimes called "exactions") on developments. Some fees are assessed on an *ad hoc* basis by administrators after an individualized review of the development. Others are assessed by legislation through impact schedules.

On April 12, 2024, the U.S. Supreme Court addressed a question about development impact-fee schedules that most municipal officials probably hadn't ever asked themselves: Does the so-called *Nollan/Dolan* exactions test—which applies to ad hoc permit conditions—apply also to permit conditions imposed by legislation? *See Sheetz v. County of El Dorado, California*, 144 S.Ct. 893 (2024) (slip op.).

The Supreme Court held unanimously that it does. Thus, all permit conditions that constitute compensable takings—whether enacted by legislation or adopted by administrators—must have: (1) an "essential nexus" to the government's land-use interest; and (2) "rough proportionality" to the development's impact on the land-use interest, *i.e.*, they must not require a landowner to give up (or pay) more than is necessary to mitigate harms resulting from the new development. *See Nollan v. California Coastal Comm'n,* 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

If the permit does not satisfy these *Nollan/Dolan* elements, then it might be an unconstitutional taking. Why only might? Because the controlling opinion answered only the narrow question stated above. The Supreme Court did not address whether the permit fee at issue was a compensable taking that triggered the *Nollan/Dolan* test in the first place or whether legislative permit conditions must be tailored with the same degree of specificity as a permit condition that targets a particular development. It left these questions for the lower courts, and each affects the takings analysis.

Despite its limited scope, the Supreme Court's *Sheetz* opinion isn't feckless. Rather, it puts on notice municipal officials that impose permit conditions—such as impact fees—on new developments through legislation. It signals that municipalities should carefully consider whether their legislative permit conditions have an essential nexus to their land-use interests and are roughly proportional to the development's impact on those interests. If they are not, then municipal officials would be wise to devise permit conditions that do satisfy those elements.

Frost Brown Todd LLP – Yazan S. Ashrawi, Thaddeus M. Boggs and Anthony R. Severyn

April 30, 2024

TAX - NEW YORK

Brookdale Physicians' Dialysis Associates, Inc. v. Department of Finance of City of New York

Court of Appeals of New York - March 21, 2024 - N.E.3d - 2024 WL 1199333 - 2024 N.Y. Slip Op. 01583

Building owner, which was a not-for-profit healthcare fund, filed, along with its tenant, which was a for-profit corporation that provided dialysis services for a fee, petition commencing hybrid article 78 and declaratory-judgment action to annul city department of finance's revocation of building's status as exempt from real-property taxation.

The Supreme Court, New York County granted petition. Finance department appealed. The Supreme Court, Appellate Division, affirmed. The Court of Appeals granted the finance department leave to appeal.

The Court of Appeals held that:

- Building was not property-tax exempt under statutory provision allowing for a property-tax exemption for property that was owned by certain not-for-profit entities and that was used for certain not-for-profit purposes, and
- Building was not tax exempt under statutory provision governing that same not-for-profit tax exemption for property that was leased for non-exempt purposes.

Building was not property-tax exempt under statutory provision allowing for a property-tax exemption for property that was owned by certain not-for-profit entities and that was used for certain not-for-profit purposes; building owner was a not-for-profit healthcare fund that did not reside on the premises or otherwise itself use the building in whole or in part for its exempt fundraising purpose, and owner's tenant was a for-profit corporation that had sole occupancy and used the building during the lease term exclusively to perform its for-charge dialysis services.

Building that was owned by a not-for-profit healthcare fund that did not reside on the premises or otherwise itself use the building in whole or in part for its exempt fundraising purpose was not property-tax exempt under statutory provision governing the property-tax exemption for property that had a particular kind of not-for-profit owner but was leased for non-exempt purposes; building was leased and used solely for pecuniary gain by a for-profit corporation that performed dialysis services for a fee.

TAX - MINNESOTA

Huizenga v. Independent School District No. 11

United States District Court, D. Minnesota - March 29, 2024 - F.Supp.3d - 2024 WL 1345173

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

The District Court dismissed taxpayers' federal claims for lack of Article III standing and declined to exercise supplemental jurisdiction over state-law claims. On taxpayers' appeal, the United States Court of Appeals for the Eighth Circuit vacated and remanded, holding that taxpayers had sufficiently alleged municipal taxpayer standing as school-district taxpayers. On remand, after discovery, the parties filed cross-motions for summary judgment.

The District Court held that:

- Wife whose husband paid property taxes as a county taxpayer did not establish that she paid municipal taxes relevant to school district, and wife thus lacked municipal taxpayer standing;
- Taxpayers failed to show that school district spent any money providing paid leave under challenged provision of CBA, and taxpayers thus lacked municipal taxpayer standing; and
- Even if school district lost money providing paid leave under challenged provision of CBA, that loss was not clearly tied to municipal tax revenues, and taxpayers thus lacked municipal taxpayer standing.

TAX - HAWAII

Tax Appeal of West Maui Resort Partners LP v. County of Maui

Supreme Court of Hawai'i - April 23, 2024 - P.3d - 2024 WL 1738908

Taxpayers, which were plan managers for nearly 700 time share units, sought judicial review of decision of County Board of Review which upheld county tax assessments on time shares.

The Tax Appeal Court granted county's summary judgment motion, and denied taxpayers' cross-motion for summary judgment. Taxpayers appealed to the Intermediate Court of Appeals (ICA), and the cases were transferred to Supreme Court and were consolidated.

The Supreme Court held that:

- Taxpayer's appeal from Tax Appeal Court was required to be filed within 30 days of orders denying taxpayer's summary judgment motion and granting county's summary judgment motion;
- Application of the equitable doctrine of "unique circumstances" was in the interests of justice and

appropriate in connection with taxpayer's untimely appeal;
- County's time share tax classification and its rate acted as a real property tax based on the assessed property value, rather than as a tax assessed on individual time share unit users and value of their stay;
- Time share units were not required to be assigned to a real property tax classification according to their use;
- State's comprehensive transient accommodation tax (TAT) scheme did not cover the same subject matter as county's time share tax classification;
- County's time share tax classification and rate did not duplicate, contradict, or enter an area fully occupied by state's general law; and
- County's creation of a separate real property tax classification for time share units was reasonably related to legitimate policy purposes.

Supreme Court Rules on Important Impact Fee Case.

This month, the Supreme Court issued a unanimous decision in *Sheetz v. El Dorado County*, which is a case involving government "Takings," specifically ones that involve the government's use of impact fees. Impact fees are typically a one-time payment that local governments levy on a property developer for new development projects. Municipalities use these fees to offset the financial impact that new development places on public infrastructure, such as roads and utilities.

In their ruling, the Court narrowly determined that legislatively enacted impact fees are not exempt from the requirements set forth in two previous property rights cases *(Nollan v. California Coastal Commission and Dolan v. City of Tigard, Oregon)*. As such, **local governments that impose impact fees will now be subjected to a standard requiring them to demonstrate the relationship and relative impact of the development on the community**. Specifically, cities will have to show that conditions (impact fees) to obtain a land-use permit have an "essential nexus" (relationship) to the government's land-use interest and a "rough proportionality" between the weight on the property owner and the development's effects of the proposed land use.

This case involves the County of El Dorado's traffic impact mitigation fee, which it adopted via the General Plan, to require new development to help finance the construction of new roads and widen existing roads. The amount of the fee is set by formula after the County conducted a nexus study and generally, the fee was based on the location of the project and the type of project. In assessing the fee, the County does not make any "individualized determinations" as to the nature and extent of the traffic impacts caused by a particular project on state and local roads.

Continue reading.

National League of Cities

by McKaia Dykema

APRIL 25, 2024

Tax Code Constraints Limit Tribal Tax-Exempt Bonding.

Legal barriers may contribute to tribal governments' lower usage of tax-exempt bonds

Tax-exempt municipal1 bonds play an important role in financing the construction of public purpose projects and supporting private development across the country. For a given level of risk, tax-exempt debt can offer a lower cost of capital than financing the same project using taxable debt.2 Tribal governments, however, face both legal and debt service barriers to using this important financing mechanism available to state and local governments. These barriers can create challenges for tribes seeking to access the half-trillion-dollar annual tax-exempt municipal bond market for low-cost capital financing.

As part of our mission to advance the economic self-determination and prosperity of Native nations and Indigenous communities, the Center for Indian Country Development provides research and analysis on factors influencing access to capital in Native communities. To shed light on the barriers to tribes using tax-exempt bonding, we review the legal framework governing tribal tax-exempt bonding authority. We also provide an analysis of per capita tax-exempt bond financing. Our analysis spans 2003–2010—the most recent years for which both tribal-specific bond data are publicly available from the U.S. Department of the Treasury (Treasury) and annual municipal bond data are available from the Internal Revenue Service (IRS).

After accounting for differences in the target populations of both tribal governments and municipalities, we find that from 2003–2010, tribal governments' use of tax-exempt bonds falls below that of state and local governments. We also explore tribal-specific factors that may explain why we observe this large capital gap. More tribal tax-exempt bond data are needed to extend this analysis to recent years.

Continue reading.

The Federal Reserve Bank of Minneapolis

by Matthew Gregg & John Morseau

April 25, 2024

Final Municipal Tax Credit Regulations Present Opportunities for Clean Energy Projects.

In March, the U.S. Department of the Treasury and Internal Revenue Service (IRS) published final regulations for the Inflation Reduction Act elective pay program, also known as direct pay, that provides tax incentives to municipalities for installing a variety of clean energy projects.

Since the initial guidance was published last year, NLC hosted focus groups with members to inform our comments to Treasury and the IRS on what municipalities need to see in these rules to make them work. We are pleased to see much of our feedback incorporated into the final rule, which will make it easier for local governments to take advantage of the tax credits and clean energy projects in communities that help meet local climate action goals. The final regulations incorporate much of our feedback.

This blog breaks down the final regulations into things municipalities should know, key wins, and remaining challenges for municipalities as they move forward with implementing elective pay programs in their communities.

Continue reading.

National League of Cities

by Michael Gleeson & Carolyn Berndt

APRIL 24, 2024

TAX - ILLINOIS

Village of Shiloh v. County of St. Clair

Appellate Court of Illinois, Fifth District - December 19, 2023 - N.E.3d - 2023 IL App (5th) 220459 - 2023 WL 8722508

Village filed action against county, county clerk, and others, petitioning for a writ of mandamus requiring that alleged incremental taxes owed to village be paid and sought declaratory judgment regarding payments and alleged violations of the Tax Increment Allocation Redevelopment Act.

The Circuit Court granted defendants' motion for involuntary dismissal based upon certain defects or defenses. Village appealed.

The Appellate Court held that:

- Village was entitled to payment for taxes collected from its tax increment finance (TIF) districts, but
- Reversal was not required based on village's failure to join necessary parties.

Village did not forfeit, on appeal in mandamus action, issue of whether county and county clerk were required to collect and then pay village funds from incremental taxes collected from village's tax increment finance (TIF) districts established by ordinance, where village's response in trial court to county and clerk's motion to dismiss argued that while a TIF district's life expectancy was 23 years, the last payment came in the 24th year because the property had to be assessed in the 23rd year as well, which was same argument village presented on appeal.

Village was entitled to a 24th payment from county and county clerk for incremental taxes collected from village's tax increment finance (TIF) districts, even though the life expectancy of a TIF was limited to 23 years under the Tax Increment Allocation Redevelopment Act; in the year after village adopted ordinances establishing TIF districts, county distributed its first payment to village for taxes levied in the prior year, county made 23 yearly distributions of taxes, life of village's TIF districts did not exceed the 23-year limitation, and therefore, the fact that 24 payments were required, rather than 23, did not mean that a violation of the Act occurred.

Absence of school districts and fire protection district in village's mandamus and declaratory judgment action against county and county clerk, which sought payment for incremental taxes collected from village's tax increment finance (TIF) districts, did not require reversal of trial court's order dismissing village's complaint based on failure to join necessary parties, where court's order did not materially affect school districts or fire protection district.

TAX - ALASKA

City of Valdez v. Prince William Sound Oil Spill Response Corporation

Supreme Court of Alaska - April 19, 2024 - P.3d - 2024 WL 1689057

Corporate taxpayer, which owned oil spill prevention and response vessels stationed at a marine terminal that stored oil, appealed State Assessment Review Board's (SARB) orders that were entered in city's long-pending property-tax appeals and that stated SARB's refusal to entertain arguments that certain tax years should not be included in a tax audit that spanned approximately 20 tax years.

The Superior Court reversed the orders related to the limitation on the audit and determined that the three-year statute of limitations applied. City appealed.

The Supreme Court held that:

- Prior superior-court decisions were not the law of the case so as to preclude finding that the three-year statute of limitations for assessments applied, and
- Even when an administrative tribunal or court holds that the Department of Revenue wrongly determined certain property was not taxable, the statute of limitations on assessments bars the Department from assessing a tax on the property more than three years after the tax return was filed.

TAX - MASSACHUSETTS

Outfront Media LLC v. Board of Assessors of Boston

Supreme Judicial Court of Massachusetts, Suffolk - April 22, 2024 - N.E.3d - 2024 WL 1707561

Taxpayer, which contracted with Massachusetts Bay Transportation Authority (MBTA) to use MBTA's outdoor advertising signs, sought abatement of real estate tax assessed by city of Boston for fiscal year at issue.

After City denied claim, taxpayer appealed to Appellate Tax Board, which upheld assessment. Taxpayer appealed, and action was transferred from Appeals Court to Supreme Judicial Court on latter court's own initiative.

The Supreme Judicial Court held that:

- Taxpayer "used" MBTA signs "in connection with a business conducted for profit" and, thus, was not entitled to abatement of real estate taxes, and
- Essential government function doctrine did not bar city of Boston from assessing real estate taxes upon taxpayer.

Taxpayer, which contracted with Massachusetts Bay Transportation Authority (MBTA) to use MBTA's outdoor advertising signs, "used" those signs "in connection with a business conducted for profit" and, thus, was not entitled to abatement of real estate taxes assessed by city of Boston for fiscal year at issue; taxpayer did not just provide services to MBTA but, also, used signs on public property to conduct a for-profit business, as agreement with MBTA gave taxpayer exclusive right to advertise on existing signs and to advertise on new signs designed and installed by taxpayer on MBTA property, to contract with private parties seeking to advertise on those signs, to install, license, operate and maintain telecommunications equipment on MBTA signs, to contract with those telecommunications companies, and taxpayer was compensated through revenue it generated from signs and equipment installed on signs, and could reap significant, uncapped profits from such operations.

Taxpayer, which contracted with Massachusetts Bay Transportation Authority (MBTA) to use MBTA's outdoor advertising signs, "used" those signs "in connection with a business conducted for profit" and, thus, was not entitled to abatement of real estate taxes assessed by city of Boston for fiscal year at issue, despite contention that statute governing MBTA's tax exemption incorporated a specific, restrictive, common-law meaning for term "use and occupancy" requiring greater possessory interest in property than that granted to taxpayer in order to be subject to taxation; statute did not refer to "use and occupation" and, instead, use of property alone was sufficient so long as it was in connection with a business for profit.

"Essential government function doctrine," which prohibited regulation of entities or agencies created by legislature in manner that interfered with their legislatively mandated purpose, did not bar city of Boston from assessing real estate taxes upon taxpayer, which contracted with Massachusetts Bay Transportation Authority (MBTA) to use MBTA's outdoor advertising signs, for fiscal year at issue; although taxing MBTA property when contracted out to private parties to operate businesses for profit could affect MBTA's negotiating power and lower revenues MBTA would be able to receive from private parties to support its provision of mass transportation services, such a possible reduction was understood by Legislature when it passed the specific exception to the MBTA's tax exemption for use of MBTA property "in connection with a business conducted for profit."

TAX - NEW JERSEY

Freda by Acme v. City of Sea Isle City

Tax Court of New Jersey - March 5, 2024 - 33 N.J.Tax 292

Taxpayer that operated a new supermarket filed tax appeal challenging property tax assessment.

City moved to dismiss.

The Tax Court held that:

- Unpaid non-residential development fee was not an unpaid "municipal charge" precluding tax appeal, and
- Unpaid planning board escrow fees were not unpaid "municipal charges."

An unpaid "municipal charge" that would prevent an appeal to the Tax Court challenging a property tax assessment from going forward is not merely a fee or imposition of a municipality; is part of a statutorily-specified class giving rise to a lien and eventual sale of the property

Unpaid non-residential development fee relating to taxpayer's new supermarket was not an unpaid "municipal charge" that would preclude an appeal to the Tax Court challenging property tax assessment, where there was no statutory authorization creating a lien for the development fee.

Unpaid city planning board escrow fees relating to taxpayer's new supermarket were not unpaid "municipal charges" that would preclude an appeal to the Tax Court challenging property tax assessment, where governing statute did not mention that escrow fees were a lien or charge.

[U.S. Supreme Court: Takings Clause Applies to Impact Fees on New Development - Brownstein]

The *Sheetz v. County of El Dorado* decision will create uncertainty in California, Arizona, Nevada, Colorado and many other states as cities, counties, developers and property owners reexamine whether existing impact fee programs could result in an unconstitutional taking.

Many states fund the construction of roads, schools, sewers, libraries and other essential infrastructure by collecting impact fees on new development. The amount of the impact fee may be calculated based on the type of development and its location. This municipal financing structure, however, has been premised on an understanding that the Takings Clause of the U.S. Constitution does not apply to impact fees established by legislative action and applied generally to all classes of development.

On April 12, 2024, the Supreme Court of the United States issued a unanimous opinion in *Sheetz v. County of El Dorado, California*, 601 U.S. ____ (2024) (*Sheetz*), clarifying that the Takings Clause does apply to legislatively established land-use permit conditions, like development impact fees. The Supreme Court's decision resolves a split in how state courts viewed this question but stops short of providing a definitive answer on "whether a permit condition imposed on a class of properties must be tailored with the same degree of specificity as a permit condition that targets a particular development."

Continue reading.

Brownstein Hyatt Farber Schreck

April 18, 2024

TAX. - RHODE ISLAND

Wilmington Savings Fund Society, FSB v. Power Realty, RIGP

Supreme Court of Rhode Island - April 10, 2024 - A.3d - 2024 WL 1545731

Deed holder brought action to challenge decree that foreclosed right of redemption from title to the property following tax sale.

The Superior Court granted summary judgment to tax sale purchasers, and deed holder appealed.

The Supreme Court held that citation which notified interested parties of petition to foreclose right of redemption did not violate deed holder's due process rights, although the citation did not refer to the street address of the subject property.

Citation which notified interested parties of tax sale purchaser's petition to foreclose right of redemption did not violate deed holder's due process rights, although the citation did not refer to the street address of the subject property, where citation contained all other required components as well as the name and address of the attorney for tax sale purchaser, the fact that the property was located in city, a return date, and the location of the proceeding, deed holder received, through certified mail, a citation that contained an accurate metes and bounds description, the property's correct street name, town, and state, and the correct plat and lot number for the property, and deed holder was a sophisticated and publicly traded mortgage company which owned thousands of properties throughout the country.

[Marijuana Tax Revenues Fall Short of Projections in Many States, Including Colorado.]

COMMENTARY | As the market matures both the price of marijuana and tax revenues associated with its sale will likely drop further in the future.

Nearly half of Americans live in a state that allows legal access to recreational marijuana. Eleven more states, including Wisconsin and Florida, are considering legalization in 2024.

One of the most common rationales for legalizing marijuana is increasing state tax revenue. How much revenue comes in depends on decisions states make about regulating the marijuana industry, including how it is taxed.

I'm an economist who specializes in forecasting how various tax regimes affect markets. My expertise spans industries such as legal recreational marijuana, alcohol and tobacco. I've examined various taxes on marijuana in states such as Colorado and Washington to understand how much revenue has been brought in and the role state tax policies have played in that outcome.

Continue reading.

Route Fifty

By Boyoung Seo,
The Conversation

April 15, 2024

TAX - VIRGINIA
City of Richmond v. Property Ventures, Inc.
Court of Appeals of Virginia, Richmond - April 2, 2024 - 80 Va.App. 538 - 899 S.E.2d 82

City filed motion for judicial sale of real property to enforce delinquent taxes after landowner failed to pay special assessments and civil penalties charged for grass cutting and other yard maintenance on the property.

The Richmond Circuit Court dismissed the action, and city appealed.

The Court of Appeals held that:

- Statutes granting localities power to require property owners to cut back weeds "on such property or any part thereof" and authorizing city to cut weeds and charge abatement fees did not grant city power to charge for weeds beyond landowner's property;
- City code and statutes authorized city to abate nuisances, including by removing weeds, on both private property and adjacent public property and to enforce those charges exceeding $200 as a

lien against the property, including by judicial sale; and
- Evidence was sufficient to support finding that city failed to prove that vegetation on landowner's property and any adjacent property violated city code provision prohibiting grass and other vegetation 12 inches high or over "other than trees, shrubbery, agricultural plants, garden vegetables, flowers or ornamental plants."

TAX - MARYLAND

[901, LLC v. Supervisor of Assessments of Baltimore City]

Appellate Court of Maryland - April 3, 2024 - A.3d - 2024 WL 1425420

Taxpayer, a limited liability company (LLC), sought judicial review of decision of Maryland Tax Court affirming city assessment supervisor's denial of its applications for partial exemptions from property tax on real property that taxpayer had leased from Maryland Transit Administration (MTA).

The Circuit Court affirmed, and taxpayer appealed.

The Appellate Court held that taxpayer leased property from government with privilege to use property in connection with for-profit business, precluding tax exemption.

Taxpayer leased real property from Maryland Transit Administration (MTA) with "privilege to use" property in connection with for-profit business, and thus, taxpayer was required to pay property taxes on such property pursuant to statute requiring "the lessee or user of government-owned property" to pay property tax as if such lessee or user were property's owner if property was "leased or otherwise made available to that person" by qualifying government entity and "with the privilege to use the property in connection with a business that is conducted for profit"; no statute, ordinance, or lease-related agreement restricted taxpayer's ability to use property in connection with for-profit business of subleasing property to others or operating its own for-profit business on premises.

[Economist at Top Muni Bank Pitches End of Local Bond Tax Break.]

In March, a conservative think tank floated repealing the tax break that state and local governments use to induce investment in their debt, a move that would wreak havoc on the $4 trillion municipal-bond market.

The report by the American Enterprise Institute had a surprising co-author: Donald Schneider, deputy head of US policy at Piper Sandler Cos., one of the top investment banks for municipalities in the US.

"The current exemption for municipal bonds provides an inefficient subsidy for state and local government infrastructure projects," according to the [report] by Schneider and Kyle Pomerleau, who is a senior fellow at the American Enterprise Institute.

Repealing the tax-exemption was cited as a way to help make former President Donald Trump's 2017 tax cuts permanent. Any call to eliminate the tax break is seen as a major threat within the muni market, where governments finance key infrastructure projects like airports and transit.

[Continue reading.]

Bloomberg Markets

By Amanda Albright and Skylar Woodhouse

April 4, 2024

TAX - NEW YORK

[Tax Equity Now N.Y. LLC v. City of New York]

Court of Appeals of New York - March 19, 2024 - N.E.3d - 2024 WL 1160498 - 2024 N.Y. Slip Op. 01498

Association of owners and renters of real property brought action for declaratory and injunctive relief against State, State Office of Real Property Tax Services, New York City, and New York City's department of finance, alleging that city's property tax system violated the federal Fair Housing Act (FHA) and federal and state constitutional and statutory mandates requiring property taxes to be imposed uniformly within each property class and reflect fair and realistic value of property involved.

The Supreme Court, New York County, denied motion of city and department to dismiss for failure to state a claim, but granted in part, and denied in part, motion of State and Office to dismiss for failure to state a claim. Defendants separately appealed, and association cross-appealed. The Supreme Court, Appellate Division, affirmed as modified. Association successfully moved for leave to appeal.

The Court of Appeals held that:

- Under the Real Property Tax Law (RPTL), city was required to account for increases in market values within the same class by adjusting the fractional assessment rate based on how the statutory caps suppressed the fair market estimate later in the tax process;
- Association stated a claim that, as to city's assessments of condominiums and cooperatives as if they were rentals, city violated RPTL's provision requiring all real property in each assessing unit to be assessed at a uniform percentage of value, i.e., a fractional assessment, and also violated provision that mandated that condominiums and cooperatives be assessed as if they were rental properties;
- Association stated a claim that city's property tax system violated the FHA by disproportionately burdening racial minorities;
- Association stated a claim that city's property tax system perpetuated existing segregation throughout the city in violation of the FHA;
- Article 18 of the RPTL did not violate equal protection;
- Association failed to state a claim that the city's property tax system violated due process;
- Association failed to state a claim that city's property tax system violated New York Constitution's provision that the legislature was to provide for the supervision, review, and equalization of assessments for purposes of taxation; and
- Association failed to state any claims against the State or the State Office of Real Property Tax Services.

[New Jersey Senator Proposes Doubling Casinos' Online Wager Tax Rates.]

Change would more than double revenue streams that brought in $414M last year.

A state senator has proposed more than doubling New Jersey's tax rates on casino wins for online wages and online sports betting, a proposal that would add hundreds of millions of dollars a year to the state's ledger as it faces a revenue crunch.

Sen. John McKeon's (D-Essex) bill would raise both tax rates to 30%, from 15% for online wagering and 13% for online sports betting. The revenue streams brought the state more than $414 million in 2023.

The senator said New Jersey's current tax rates in this area are "just not commensurate with where everybody else is, and we can use the revenues."

Continue reading.

Route Fifty

By Nikita Biryukov,
New Jersey Monitor

APRIL 1, 2024

[Boston Mulls Commercial Tax Hike to Counter Office Market Slump.]

- **Proposal could potentially deepen commercial real estate pain**
- **A quarter of Boston's Class A, Class B office space is vacant**

Boston Mayor Michelle Wu is seeking to raise commercial property tax rates to help protect homeowners from the brunt of the historic slump in office property values.

Wu has submitted a petition for a temporary increase of the city's tax-rate ceiling for commercial properties relative to residential levies. The proposal aims to redistribute the tax burden while continuing to fully fund all city services, according to Ashley Groffenberger, Boston's chief financial officer. The tax adjustment won't raise additional revenue for the city.

"The proposal we put forward is really focused on creating stability and not having an outsize impact on residents," Groffenberger said in an interview.

Continue reading.

Bloomberg Markets

By Brooke Sutherland and Sri Taylor

April 8, 2024

Voters Reject Stadium Tax for Royals and Chiefs, Leaving Future in KC in Question.

KANSAS CITY, Mo. (AP) — The future of the Royals and Chiefs in Kansas City was thrown into question Tuesday night when residents of Jackson County, Missouri, resoundingly voted down a sales tax measure that would have helped to fund a new downtown ballpark along with major renovations to Arrowhead Stadium.

Royals owner John Sherman and Chiefs president Mark Donovan acknowledged long before the final tally that the initiative would fail. More than 58% of voters ultimately rejected the plan, which would have replaced an existing three-eighths of a cent sales tax that has been paying for the upkeep of Truman Sports Complex — the home for more than 50 years to Kauffman and Arrowhead Stadiums — with a similar tax that would have been in place for the next 40 years.

The Royals, who had pledged at least $1 billion from ownership for their project, wanted to use their share of the tax revenue to help fund a $2 billion-plus ballpark district. The Super Bowl champion Chiefs, who had committed $300 million in private money, would have used their share as part of an $800 million overhaul of Arrowhead Stadium.

Continue reading.

By Associated Press

April 2, 2024

NYT: How a Pandemic Boom Led to a 'Property Tax Mess' in Colorado

A surge of new residents into Rocky Mountain states drove up home prices. The result was property tax hikes of 40 percent or more for some of those already there.

Marleen Gamble had already taken out a reverse mortgage on her townhouse in 2018 to keep up with the steady increase in expenses eating into the Social Security checks that are her only source of income.

Then this year, Ms. Gamble, a retired X-ray technician, faced a 20 percent spike in her property tax bill. With no other way to pay it, she began to empty her home of 34 years in the Denver suburb of Littleton, one memento at a time. Her dining room set, sold. Her jewelry, now someone else's.

"Every knickknack I have, everything I don't use, I'm selling," said Ms. Gamble, 84, who has asked officials in neighboring Douglas County about applying for subsidized housing. "What I owe now is $962.62. I think I need to use two credit cards to do it. And I'm going to have to pay interest on those."

Continue reading.

The New York Times

By David W. Chen

April 3, 2024

TAX - OREGON

D.E. Shaw Renewable Investments, LLC v. Department of Revenue

Supreme Court of Oregon - October 5, 2023 - 371 Or. 384 - 537 P.3d 529

Taxpayers, which operated wind farms that were centrally assessed by the Department of Revenue and which had persuaded the Department that the valuation methodology that the Department had used to assess that property for a particular tax year had been flawed, appealed from the Department's refusal of their request that the Department use the corrected methodology to also reduce the assessed value of their property for two previous tax years.

The Tax Court entered summary judgment for the Department. Taxpayers appealed.

The Supreme Court held that the statute governing the correction of errors in the certified assessment roll precluded the Department from exercising its general statutory authority to reduce the assessed value of taxpayers' property for the two previous tax years at issue.

Statute governing the correction of errors in the certified assessment roll precluded the Department of Revenue from exercising its general statutory authority to reduce the assessed value of taxpayers' property—which consisted of wind farms that were centrally assessed by the Department—for two prior tax years, even though taxpayers had persuaded the Department that valuation methodology that it had used to assess their property for different, but more recent, prior tax year had been flawed; taxpayers did not request a conference with the Department's director to challenge the Department's valuation opinion before the tentative assessments for those two prior years became final, and statute governing correction of errors prohibited the director from correcting an error in the valuation judgment that was an error in the Department's opinion of the value of property.

TAX - NEW YORK

Brookdale Physicians' Dialysis Associates, Inc. v. Department of Finance of City of New York

Court of Appeals of New York - March 21, 2024 - N.E.3d - 2024 WL 1199333 - 2024 N.Y. Slip Op. 01583

Building owner, which was a not-for-profit healthcare fund, filed, along with its tenant, which was a for-profit corporation that provided dialysis services for a fee, petition commencing hybrid article 78 and declaratory-judgment action to annul city department of finance's revocation of building's status as exempt from real-property taxation.

The Supreme Court, New York County, granted petition. Finance department appealed. The Supreme Court, Appellate Division, affirmed. The Court of Appeals granted the finance department leave to appeal.

The Court of Appeals held that:

- Building was not property-tax exempt under statutory provision allowing for a property-tax exemption for property that was owned by certain not-for-profit entities and that was used for certain not-for-profit purposes, and
- Building was not tax exempt under statutory provision governing that same not-for-profit tax exemption for property that was leased for non-exempt purposes.

Building was not property-tax exempt under statutory provision allowing for a property-tax exemption for property that was owned by certain not-for-profit entities and that was used for certain not-for-profit purposes; building owner was a not-for-profit healthcare fund that did not reside on the premises or otherwise itself use the building in whole or in part for its exempt fundraising purpose, and owner's tenant was a for-profit corporation that had sole occupancy and used the building during the lease term exclusively to perform its for-charge dialysis services.

Building that was owned by a not-for-profit healthcare fund that did not reside on the premises or otherwise itself use the building in whole or in part for its exempt fundraising purpose was not property-tax exempt under statutory provision governing the property-tax exemption for property that had a particular kind of not-for-profit owner but was leased for non-exempt purposes; building was leased and used solely for pecuniary gain by a for-profit corporation that performed dialysis services for a fee.

Rethinking Property Taxes: GFOA Report

Property taxes are the most important local source of revenue for local governments. It is stable, transparent, and highly visible. Plus, the tax base is immobile. Yet it is also an unpopular tax. Rehabilitating the property tax can be done with two broad strategies that center the interest of taxpayers:

- Provide accurate and fair valuation of tax liability.
- Provide stable, predictable costs to taxpayers.
- This report shows how local governments can accomplish these two strategies.

DOWNLOAD FULL REPORT

Upcoming Webinar: *From Burden to Benefit: Transforming Property Tax Challenges into Opportunities*, March 28 | Register

Publication date: March 2024

Authors: Chris Berry and Shayne Kavanagh

How To Protect Against Harmful SLGS This Spring: Squire Patton Boggs

On March 4, 2024, the Treasury Department published a final rule that amends the regulations concerning State and Local Government Series securities (SLGS). Among other changes, the updated regulations notably: (1) require that the maturity lengths of Time Deposit SLGS be no longer than reasonably necessary for the underlying governmental purpose of the investment and that the Issuer certify to such in a new "duration certification"; (2) add to the non-exhaustive list of impermissible transactions; (3) increase to 14 days the minimum holding period for requesting early redemption; (4) require that the Issuer provide a maturity date at the start of a subscription rather than by completion of the subscription; (5) require a new "eligibility certification" by the Issuer as to its eligibility to purchase SLGS; and (6) require notice of five business days for redemptions of Demand Deposit SLGS of $500 million or more. The updated regulations take effect August 26, 2024.

By Robert Radigan on March 19, 2024

The Public Finance Tax Blog

Squire Patton Boggs

[HB 24-1172: Unlocking Tax Increment Finance for CO Counties via County Revitalization Authorities - Brownstein]

Counties in Colorado may soon have a new way to take advantage of tax increment financing (“TIF”). Currently, there are only two ways to leverage TIF in Colorado: establishment of an urban renewal authority (“URA”) or establishment of a downtown development authority (“DDA”). Both URAs and DDAs are governmental entities that can only be created by municipalities, and they are authorized to implement primarily municipal tools. House Bill 24-1172, sponsored by Reps. Rick Taggart (R) and Shannon Bird (D) and Sens. Barbara Kirkmeyer (R) and Kyle Mullica (D), proposes to bring the power of TIF to counties by creating a process for counties to establish a County Revitalization Authority (“CRA”) that can, among other things, leverage TIF and private financing to address underutilized or deteriorating areas within counties that could benefit from strategic economic investment. On March 11, 2024, the House passed the bill on its third reading.

REVITALIZATION PROCESS AND TIF

If HB 24-1172 becomes law in its current form, a CRA could be created after a petition is filed by 25 registered electors of a county, or a resolution is adopted by the board of county commissioners stating that there is a need for the CRA in the county, followed by a public hearing before the board of county commissioners. The CRA could then implement a county revitalization plan adopted by the board of county commissioners at a public hearing, which could authorize the CRA to collect TIF or exercise other powers such as eminent domain within the area established by the county revitalization plan.

Continue reading.

BROWNSTEIN CLIENT ALERT, MARCH 21, 2024

[Wealth Boom Among Ultra-Rich Drives Demand for Municipal Bonds’ Tax Shield: Bloomberg]

- **Adjusted gross income increased $2.2 trillion in 2021**
- **Munis historically serve as a tax-haven for the wealthy**

Americans are getting richer, setting up the municipal bond market for a bounty of opportunity.

New data from the Internal Revenue Service, analyzed by Western Asset Management Company, show adjusted-gross-income in the US increased $2.2 trillion in the 2021 tax year — a 17.5% surge — making it the highest year-over-year jump in the past two decades. The increase comes as many US households bounce back from a pandemic-induced slump where millions faced job cuts.

“Individuals have gotten wealthier and are falling into higher tax brackets and these individuals can benefit more from muni incomes than they could in the past," Western Asset's Samuel Weitzman said.

Continue reading.

Bloomberg Markets

By Skylar Woodhouse

March 20, 2024

Muni Bond Games and the IRS' Lurking Arbitrage Vampires.

Today's interest rates may tempt public financiers to try to play the spread between tax-exempt and taxable bond yields. That invites heightened federal scrutiny, but there are some strategies likely to avoid the bite of the IRS.

America's public finance system is unique in its federalist heritage of allowing states and their localities to issue bonds whose interest is exempt from taxation by the IRS. The result is that interest rates on municipal bond debt are significantly lower than any other yields in the credit markets, which materially reduces the cost of financing essential public works.

Sometimes, though, unusual interest rate spreads invite a bond issuer to try to game the system, particularly by using low-cost proceeds from tax-exempt debt to find higher yields elsewhere in the markets. It's a potentially risky play given longstanding federal rules, but that's not to say there aren't some opportunities for savvy — and cautious — public financiers.

First, though, some relevant historical context: The issuance of tax-exempt bonds was long thought to be a constitutional right under the 10th Amendment and the associated concept of reciprocal immunity — that under the separation of powers, the two levels of government, state and federal, cannot tax each other. In 1988, however, the Supreme Court ruled that the federal tax exemption was not a constitutional right but rather a legislative grant to the states from Congress and thus subject to tinkering on Capitol Hill.

Continue reading.

governing.com

OPINION | March 13, 2024 • Girard Miller

IRS Expands Favorable Tax Treatment to Utility Securitizations That Use a State or Political Subdivision as Issuer: Hunton Andrews Kurth

The Internal Revenue Service ("IRS") issued a new revenue procedure 2024-15 (the "2024 Rev. Proc.") on February 29, 2024, allowing more types of utility securitization transactions to qualify for certain favorable tax treatment. The 2024 Rev. Proc. allows for a utility/sponsor to defer recognition of gross income until the related securitization charges are recognized in accordance with the utility usual method of accounting. The 2024 Rev. Proc. will allow utility securitization transactions using a state entity issuer to qualify for the same tax treatment as has been available to utility securitizations using a wholly owned special purpose entity of the utility. In addition, the 2024 Rev. Proc. modified the existing 2005 Rev. Proc. (as defined below) to provide that debt service payments in a qualifying securitization may be made annually. It also amended the definition of “Public Utility” under the 2005 Rev. Proc. to include any utility company that is subject to regulatory authority of a state public utility commission or other appropriate agency, thereby expanding the definition to include utilities that are not investor owned utilities.

Utility securitization is a form of debt financing secured by the right to bill and collect a dedicated, nonbypassable charge (the “Securitization Charge”) payable by the utility’s customers within the utility’s historic service territory. The Securitization Charge is created as a present property right pursuant to a state statute and financing order (referred to herein as “Securitization Property”) from the state public utilities commission (the “Regulatory Authority”). In the vast majority of transactions completed to date, the utility sells/transfers the Securitization Property to a wholly owned, bankruptcy remote special purpose vehicle (an “SPE”) created for the purpose of issuing securitization bonds secured by the Securitization Property. The utility uses the proceeds from the sale/transfer to recover discrete costs authorized to be recovered pursuant to the state statute and financing order.

In 2005, the IRS adopted revenue procedure 2005-62 (the “2005 Rev. Proc.”) which established that so long as the securitization is structured to meet the requirements outlined in the 2005 Rev. Proc., the utility will not recognize gross income upon (1) the receipt of a financing order from the Regulatory Authority, (2) the receipt of consideration in exchange for the sale/transfer of the Securitization Property to the SPE or (3) the receipt of consideration in exchange for the issuance of the securitization bonds by the SPE. Instead, the securitization bonds are treated as obligations of the utility and the Securitization Charges are treated as gross income to the utility recognized under the utility’s usual method of accounting.

A requirement of the 2005 Rev. Proc., however, is the securitization bonds are issued by an SPE wholly-owned by the utility. By adopting the 2024 Rev. Proc., securitization bonds issued by a state, political subdivision thereof or other organization authorized to issue debt on behalf of the state or political subdivision that is so designated pursuant to a qualifying securitization financing legislation as a financing entity (referred to therein as a “qualifying state financing entity”) will also be eligible for similar tax treatment, meaning the utility will not recognize gross income upon (i) the receipt of the financing order, (ii) the sale/transfer of the Securitization Property to a qualifying state financing entity, (iii) the issuance of the securitization bonds by the qualifying state financing entity or (iv) the utility’s receipt of ultimate proceeds from the securitization bonds issued. Furthermore, payments from the utility to the qualifying state financing entity pursuant to the securitization bonds will be treated as payments on obligations of the utility. Finally, the Securitization Charges will be treated as gross income of the utility recognized under the utility’s usual method of accounting.

The expansion of the revenue procedure to cover bonds issued by a qualifying state financing entity will allow a transaction to be structured and sold by a municipal issuer similar to recent transactions sponsored by public utilities in Oklahoma and Texas that were used to recover costs associated with Winter Storm Uri without potentially adverse tax consequences to the sponsoring utility. In this structure, the sponsor utility will apply for a financing order from its Regulatory Authority pursuant to qualifying state legislation. The financing order will, among other things, authorize the bond issuance and create the Securitization Property which will be sold by the utility to the qualifying state financing entity in an absolute transfer and true sale and pledged for the benefit of bondholders.

Pursuant to many qualifying securitization statutes, there is a statutory test imposed upon any issuance of securitization bonds that structuring, marketing and pricing of the securitization bonds results in the lowest Securitization Charges consistent with market conditions at the time of pricing and the terms of the financing order. Prior to the 2024 Rev. Proc., sponsoring utilities analyzed and compared the costs of issuing securitization bonds through a registered public offering or a private offering in reliance on Rule 144A. Now with the 2024 Rev. Proc., utilities and underwriters in states where the qualifying securitization financing legislation permits the use of a state financing structure will now also need to analyze the benefits to customers from this new option. When analyzing the benefits of a state financing structure, it is important to note, however, that the 2024 Rev. Proc. does not address whether securitization bonds issued by a qualifying state financing entity would be exempt from federal income tax. Therefore, further analysis will be required, on a case by case basis, to determine if interest on the bonds could be exempt from federal income taxes.

Hunton Andrews Kurth LLP – Michael F. Fitzpatrick, Jr., Adam O'Brian and George C. Howell III

March 11 2024

The Good, the Bad and the Extraordinary - Issuers May Be Able to Call Their Direct Pay Build America Bonds: Greenberg Traurig

Go-To Guide:

- Build America Bonds (BABs) provided vital funding during the Great Recession
- Direct Pay BABs subsidies paid to issuers have been reduced since 2013
- A recent court decision sheds light on the legal mechanics of sequestration and opens the door for possible refunding opportunities

The Good

Build America Bonds (BABs) were introduced in 2009 as part of the American Recovery and Reinvestment Act (the ARRA) to stimulate the economy in the aftermath of the 2008 financial crisis. Section 54AA of the Internal Revenue Code of 1986, as amended (the Code) provided for the issuance of BABs, along with a 35% credit for bondholders. Section 6431 of the Code added a direct pay option for BABs (Direct Pay BABs), allowing issuers of Direct Pay BABs to receive a subsidy payment equal to 35% of the interest they owed to bondholders. To receive either benefit, BABs had to be issued between April 2009 and December 2010.

BABs were a popular option with many issuers. The total amount of BABs issued from April 2009 to December 2010 was reportedly over $181 billion, representing over one-fifth of the total amount of municipal debt issued over the same period. BABs were used for all kinds of public purpose projects including about 30% towards educational facilities. Direct Pay BABs gave issuers access to the taxable market, allowing issuers to finance much-needed public infrastructure projects during a particularly vulnerable time for state and local government budgets. Both issuers and investors praised the program, and it ended up being one of the major success stories that came out of the ARRA.

The Bad

While BABs in many ways remain a success, a wrench was thrown into the program beginning with the Budget Control Act that Congress passed in 2011 (the Budget Control Act). The Budget Control Act contained a sequester provision that reduced the amount of the subsidy issuers received on

Direct Pay BABs in the event certain budgetary parameters were not met. That sequester was triggered in 2012 when Congress failed to accomplish certain deficit control targets. Since 2013, the subsidies paid to issuers for their Direct Pay BABs have been reduced by anywhere from 8.7% to the current rate of 5.7%.

This material reduction in the subsidy has hurt state and local governments. They must continue to pay bondholders the full taxable rate without receiving the full amount of the expected reimbursement from the federal government. According to some estimates, the cost to state and local governments has already exceeded $2 billion. Exacerbating the issue has been the fact that almost all Direct Pay BABs were issued with "make-whole" optional call provisions requiring issuers to pay bondholders the total interest that would be paid on the bonds until final maturity to permit issuers to refund their Direct Pay BABs early. This requirement makes the refunding of Direct Pay BABs financially untenable.

Most Direct Pay BABs also contain an extraordinary optional call provision that allow issuers to call their Direct Pay BABs at par (or a reduced make-whole amount) if a "material adverse change" occurs to section 54AA or section 6431 pursuant to which the issuer's 35% subsidy is reduced or eliminated (or similar language). The intent is to allow issuers to refund their Direct Pay BABs should the subsidy that underpins the BABs model be materially reduced due to a change in law. While everyone anticipated the possibility that the subsidy might be reduced, the roundabout way it ended up occurring caused much consternation for issuers and counsel alike. The language in section 54AA and section 6431 was not directly amended, and this resulted in uncertainty about how to interpret the legal mechanics of the sequestration; did Congress in effect change the law under section 54AA and section 6431 or was it simply an appropriation tactic where the law surrounding the subsidy remained the same, but a budget technicality meant there were less funds to pay issuers. As a result, despite the clear materiality of the subsidy reduction experienced by issuers, the majority of issuers and their counsel had doubts as to whether that was due to a "material change" to section 54AA or section 6431 and held on using the extraordinary call provisions.

The Extraordinary

Indiana Municipal Power Agency v. U.S. is a case recently decided in Federal Claims Court, affirmed and adopted by the Federal Circuit and, on Nov. 20, 2023, denied certiorari by the U.S. Supreme Court. This makes the decision the proverbial "law of the land." The *Indiana Municipal Power Agency* case involved a group of municipal power entities with outstanding BABs that were suing the federal government to both restore the BABs subsidy to 35% and pay the full amount that should have been paid to them, assuming at the 35% subsidy rate, since 2013. The power providers had two primary arguments: (1) that the federal government violated section 1531 of the ARRA (section 1531 added section 54AA and section 6431 to the Code); and (2) that the federal government breached its contractual obligations created by section 1531. The court has a lengthy discussion of law that is beyond the scope of this update including (i) whether section 1324 of the Code (section 1324 provides the appropriation for the BABs subsidies and the section that was targeted by the sequestration) authorizes "direct spending" or is an "appropriation Act"; (ii) whether the subsidy payments can be treated as an overpayment of taxes; and (iii) whether the full subsidy payments are owed due to any contractual obligations.

The court dismissed the claims of the power providers, concluding that the 35% subsidy was not owed until the related Form 8038-CP was filed and that the subsidy was properly sequestered, and that such sequestration has the effect of reducing the federal government's payment obligation. Therefore, the court concluded, the federal government did not owe the power providers the full subsidy. While the plaintiffs failed to restore the subsidy to 35%, the court's decision did represent a victory for issuers at large. In arriving at its conclusion, the court stated that, "The spending cuts implemented by the Taxpayer Relief Act and the Budget Control Act are irreconcilable with section 1531's 35-percent payment rate. *As a result, the Taxpayer Relief Act altered the Direct Payment BABs program, reducing the government's payment obligation. When sequestration was implemented in 2013, the defendant was required by law to pay issuers of BABs a reduced rate*. This change was consistent with the basic principle that Congress is free to amend pre-existing laws" (emphasis added). Essentially, the court ruled that the sequestration legislation changed section 1531, and thereby sections 54AA and 6431, materially reducing the amount the federal government is required to pay by law to issuers of Direct Pay BABs.

As noted above, issuers and their counsel have had concerns about using the extraordinary call provision in the context of sequestration due to uncertainty surrounding the legal mechanics involved in sequestration and the resulting reduction of the 35% subsidy. The court's opinion in *Indiana Municipal Power Agency* provides clarification on this question and allows issuers and their counsel to conclude that sequestration caused a "material change" to occur to sections 54AA and 6431. This may provide comfort to both issuers and their counsel that an extraordinary optional redemption event has been triggered based on the language used in many such provisions, thereby allowing issuers to refund or redeem their Direct Pay BABs using the more favorable terms applicable to the extraordinary call provisions.

The above is only a summary on the background of BABs, sequestration, and recent developments that may positively impact issuers' ability to refund or redeem their Direct Pay BABs under the extraordinary optional call provisions with their bond documents. Those with questions about their entity's particular situation and options should consult with experienced public finance counsel.

Greenberg Traurig LLP – Solomon Cadle, Vanessa Albert Lowry, Andrew P. Rubin and Martye Kendrick

March 11 2024

Cities Face Cutbacks as Commercial Real Estate Prices Tumble.

Lost tax revenue fuels concerns over an urban 'doom loop.'

In San Francisco, a 20-story office tower that sold for $146 million a decade ago was listed in December for just $80 million.

In Chicago, a 200,000-square-foot-office building in the city's Clybourn Corridor that sold in 2004 for nearly $90 million was purchased last month for $20 million, a 78 percent markdown.

And in Washington, a 12-story building that mixes office and retail space three blocks from the White House that sold for $100 million in 2018 recently went for just $36 million.

Such steep discounts have become normal for office space across the United States as the pandemic trends of hybrid and remote work have persisted, hollowing out urban centers that were once bustling with workers. But the losses are hitting more than just commercial real estate investors. Cities are also starting to bear the brunt, as municipal budgets that rely on taxes associated with valuable commercial property are now facing shortfalls and contemplating cutbacks as lower assessments of property values reduce tax bills.

Continue reading.

The New York Times

By Alan Rappeport

March 14, 2024

TAX - NEW JERSEY

Freda by Acme v. City of Sea Isle City

Tax Court of New Jersey - March 5, 2024 - N.J.Tax - 2024 WL 948964

Taxpayer that operated a new supermarket filed tax appeal challenging property tax assessment.

City moved to dismiss.

The Tax Court held that:

- Unpaid non-residential development fee was not an unpaid “municipal charge” precluding tax appeal, and
- Unpaid planning board escrow fees were not unpaid “municipal charges.”

An unpaid “municipal charge” that would prevent an appeal to the Tax Court challenging a property tax assessment from going forward is not merely a fee or imposition of a municipality; is part of a statutorily-specified class giving rise to a lien and eventual sale of the property.

Unpaid non-residential development fee relating to taxpayer’s new supermarket was not an unpaid “municipal charge” that would preclude an appeal to the Tax Court challenging property tax assessment, where there was no statutory authorization creating a lien for the development fee.

Unpaid city planning board escrow fees relating to taxpayer’s new supermarket were not unpaid “municipal charges” that would preclude an appeal to the Tax Court challenging property tax assessment, where governing statute did not mention that escrow fees were a lien or charge.

The law strictly construes a city’s attempt to block a taxpayer’s appeal to the Tax Court of a property tax assessment via the city’s recalibration of the dynamic established by the Legislature regarding unpaid municipal charges as a bar to a tax appeal.

TAX - NEW JERSEY

Borough of Longport v. Netflix, Inc.

United States Court of Appeals, Third Circuit - February 29, 2024 - F.4th - 2024 WL 854877

Two New Jersey municipalities brought putative class action, on behalf of all New Jersey municipalities, under the New Jersey Cable Television Act (CTA) against entertainment companies that provided streaming-video services, alleging that companies owed municipalities franchise fees under the CTA.

The United States District Court for the District of New Jersey granted companies’ motion to dismiss for failure to state a claim, holding that municipalities had no right of action to enforce the CTA. Municipalities appealed.

The Court of Appeals held that:

- The CTA did not create an implied right of action that would allow municipalities to enforce its franchise-payment requirement, and
- The New Jersey Constitution's provision recognizing the powers of municipalities did not warrant reading such an implied private right of action into the CTA.

The New Jersey Cable Television Act (CTA) did not create an implied private right of action that would allow municipalities to enforce, in action against streaming-video companies, the CTA's provision requiring cable-television companies to make annual franchise payments to municipalities; the statute expressly vested "all" enforcement authority in the Board of Public Utilities (BPU), making it clear that the legislature did not intend for municipalities to share enforcement power with the BPU, and there were no strong indicia that the legislature intended to include a private right of action for municipalities.

The New Jersey Constitution's provision recognizing the powers of municipalities did not warrant reading into the New Jersey Cable Television Act (CTA) an implied private right of action that would allow municipalities to enforce, in action against streaming-video companies, the CTA's provision requiring cable-television companies to make annual franchise payments to municipalities; the constitutional provision at issue did not change the plain meaning of the CTA and could not be interpreted to provide municipalities with statutory enforcement authority that would directly conflict with the CTA, which granted all enforcement power to the Board of Public Utilities (BPU).

TAX - DISTRICT OF COLUMBIA

Booz Allen Hamilton Inc. v. Office of Tax and Revenue

District of Columbia Court of Appeals - February 8, 2024 - A.3d - 2024 WL 481050

Taxpayer petitioned for review of an order of the District of Columbia Office of Administrative Hearings (OAH) upholding Office of Tax and Revenue's (OTR) denial of refund requests claiming qualified high-technology company (QHTC) franchise-tax benefits.

The Court of Appeals held that:

- Statute's plain language unambiguously applied to remove QHTC franchise-tax benefits from business entities located in ballpark area;
- Taxpayer was "located" in ballpark area for purposes of ballpark-area exclusion;
- Taxpayer was not entitled to equitable apportionment so as to be required to pay only the portion of franchise tax attributable to activities within ballpark area; and
- Taxpayer failed to administratively exhaust claims that position was taken in good faith and that therefore no penalties were warranted.

Plain language of ballpark-area exclusion in Ballpark Omnibus Financing and Revenue Act, providing that a business entity located in area of new stadium is not a qualified high-technology company (QHTC), unambiguously applied to remove QHTC franchise-tax benefits from business entities located in ballpark area; unambiguous text of ballpark-area exclusion was strong evidence that District of Columbia Council intended to do precisely what that language said, and there was no basis for drawing any inference from Council's failure to specifically discuss scope of exclusion, absent any specific information, beyond the text of provision itself, as to why Council enacted ballpark-area exclusion.

Office of Tax and Revenue (OTR) correctly determined that because taxpayer leased an office in ballpark area at which a substantial number of employees for taxpayer worked taxpayer was "located" in ballpark area for purposes of ballpark-area exclusion in Ballpark Omnibus Financing and Revenue Act, providing that a business entity located in area of new stadium is not a qualified high-technology company (QHTC) entitled to franchise-tax benefits; taxpayer had repeatedly referred to its office in ballpark area as one of its "locations," OTR's position was consistent with a natural and common meaning of "located," taxpayer's inability to settle on a clear and consistent alternative interpretation weighed significantly against taxpayer's position, legislative history did not shed any significant light on proper interpretation of term "located" for purposes of exclusion, and it was unclear to Court of Appeals whether a narrower or broader reading of term "located" would have been better as a matter of tax policy.

Taxpayer was not unfairly surprised by an unforeseeable interpretation of ballpark-area exclusion in Ballpark Omnibus Financing and Revenue Act, providing that a business entity located in area of new stadium is not a qualified high-technology company (QHTC) entitled to franchise-tax benefits, and thus taxpayer was not entitled to equitable apportionment so as to be required to pay only the portion of franchise tax attributable to its activities within ballpark area, assuming that Court of Appeals had authority in exceptional and extraordinary circumstances to provide equitable apportionment; arguments in support of equitable apportionment were at bottom policy arguments, rather than the kind of extraordinary and exceptional circumstances that might provide a basis for disregarding statute's text.

Taxpayer was required to administratively exhaust claim that no penalties were warranted because taxpayer took position in good faith that taxpayer was not "located" within ballpark area thereby rendering inapplicable ballpark area exclusion in Ballpark Omnibus Financing and Revenue Act, providing that a business entity located in area of new stadium is not a qualified high-technology company (QHTC) entitled to franchise-tax benefits; order on review by Court of Appeals had denied taxpayer's requests for refunds but did not address any issue of penalties.

Monetizing Renewable Energy Credits - Final Regulations on Direct Pay: BakerHostetler

Key Takeaways

- On March 5, 2024, Treasury and the IRS issued final regulations addressing direct pay elections for certain renewable energy credits.
- Eligible taxpayers and taxable entities seeking to make a direct pay election should pay close attention to the specific rules regarding the process for making the election and the timing for receiving proceeds from the government. The final regulations maintain that a direct pay election must be made on an original return filed no later than the due date (including extensions) for the taxable year for which the applicable credit is determined. Thus, a direct pay election may not be made on an amended return or through an administrative adjustment request. The final regulations do allow taxpayers to correct "numerical errors" in an election on an amended return if the original return and election contained all the required information. A taxpayer may not correct an item that was left blank on the original election.
- For entities that file federal returns, the deemed payment is treated as having been made on the later of the due date (determined without regard to extensions) of the return of tax for the taxable year or the date on which such return is filed with the IRS. For entities that do not file returns (e.g., governmental or political subdivisions), the elective payment is treated as having been made

on the later of the date that a return would be due or the submission of a claim for credit or a refund. Taxpayers requested that payments be made earlier than these dates, such as quarterly, but the IRS and Treasury declined to adopt those suggestions. The final rules may weigh significantly in certain taxpayer decisions regarding whether to elect direct pay or instead accelerate receiving payments by transferring eligible credits under § 6418 of the Internal Revenue Code.
- The final regulations held firm that partnerships and corporations are eligible only to receive credits under §§ 45Q (carbon capture), 45V (clean hydrogen) and 45X (clean energy manufacturing) via direct pay. Thus, applicable entities (as defined below) are not eligible to receive credits through a partnership or corporation, even if all the partners or shareholders are applicable entities.
- The final regulations adopt the proposed regulations' rules regarding "chaining," which refers to a transferee taxpayer that acquires a credit via transfer under § 6418 and then seeks to make a direct pay election for any specified credit portions received via such transfer. As such, transferee taxpayers are not eligible to make direct pay elections on credits they acquire under § 6418.

Continue reading.

BakerHostetler – Jeffrey H. Paravano and Nicholas C. Mowbray

March 13 2024

When does 10% PBU really mean 5% PBU? - Squire Patton Boggs

When the Internal Revenue Code ("IRC") says it does. (For those of you that want to remind yourselves of how a bill becomes a law, such as the IRC, see this video from Schoolhouse Rock).

As you may know, issuers of governmental-use bonds are generally permitted to use up to 10% of the tax-exempt bond proceeds of an issue for private business use ("PBU") before the tax-exempt bonds run the risk of being characterized as taxable private-activity bonds ("PABs"). If the PBU exceeds 10%, then the issuer will also need to determine whether the private security or payment ("Private Payment") test is met in order to determine if the bonds are PABs. (Remember, meeting the 10% PBU and Private Payment tests is generally a bad thing). However, because nothing is simple in the tax world, there is a second PBU/Private Payment threshold that you may not be as familiar with – the 5% unrelated or disproportionate test.[1]

The first step in applying the 5% unrelated/disproportionate test is to determine if the identified PBU is related to a governmental use.

Continue reading.

By Cynthia Mog on February 20, 2024

The Public Finance Tax Blog

Squire Patton Boggs

TAX - CALIFORNIA

San Bernardino County Fire Protection District v. Page

Court of Appeal, Fourth District, Division 2, California - February 14, 2024 - Cal.Rptr.3d - 2024 WL 619193

County fire protection district petitioned for writ of mandate challenging validity of initiative petition seeking to repeal a special tax on annexed property in district pursuant to state constitutional amendment restricting local government's ability to impose taxes without voter approval.

The Superior Court granted petition. Initiative proponents appealed, and district cross-appealed.

The Court of Appeal held that:

- Elections Code section criminalizing knowing false statements about initiative petitions did not apply;
- Initiative contained false and misleading statements implying that the special tax was unconstitutional; and
- District's cross-appeal was moot.

Initiative petition seeking to repeal a special tax on annexed property in county fire protection district contained false and misleading statements implying that the special tax violated state constitutional amendment restricting local government's ability to impose taxes without voter approval, and therefore the initiative was invalid; initiative petition's notice and text made implied false and misleading statements that the constitutional amendment applied and that the special tax violated the amendment because annexed property owners did not have the opportunity to vote on the special tax and approve it by a two-thirds vote, but the initiative's implied irrefutable facts were objectively verifiable as incorrect based on well-founded legal authority.

TAX - FLORIDA

State Farm Mutual Automobile Insurance Company v. Florida Department of Revenue

District Court of Appeal of Florida, First District - January 17, 2024 - So.3d - 2024 WL 176973 - 49 Fla. L. Weekly D205

After taxpayers, who were property and casualty insurance company and its subsidiaries, paid, under protest, assessed back taxes and interest they allegedly owed, taxpayers brought action against the Florida Department of Revenue to contest the legality of the assessment in full.

The Circuit Court granted Department's motion for summary judgment and denied taxpayers' summary judgment motion. Taxpayers appealed.

The District Court of Appeal held that calculation of adjusted federal income required addition of all interest earned from state and local bonds.

Calculation of property and casualty insurance companies' adjusted federal income, for purposes of determining companies' state corporate income tax, required addition of all interest earned from state and local bonds that was "excluded from taxable income" through subtraction from gross income for federal income tax purposes, even if a portion of that interest was also subtracted from companies' "losses incurred", which losses were then deducted from gross income to calculate federal taxable income; "excluded from" referred to specified items not included in, or subtracted from, sum to determine taxable income, interest and losses incurred were each specified items, and all bond interest was excluded from federal taxable income, even if interest was used in losses incurred calculation.

TAX - NEW YORK

Sisters of the Presentation of the Blessed Virgin Mary v. Van Wagenen

Supreme Court, Appellate Division, Third Department, New York - January 11, 2024 - 223 A.D.3d 987 - 202 N.Y.S.3d 814 - 2024 N.Y. Slip Op. 00100

Not-for-profit corporation sought judicial review of town's board of assessment affirming assessor's determination denying real estate tax exemptions for two parcels of land that had previously qualified as exempt as being used for religious and educational purposes.

Following a bench trial, the Supreme Court determined that corporation was entitled to a partial tax exemption for the portions of the subject property it actually used. Corporation appealed.

The Supreme Court, Appellate Division, held that corporation was entitled to continued real property tax exemption only for the portion of its property that was still being used for an exempt purposes and not for areas that were vacant and unused.

Not-for-profit corporation that owned property that had previously qualified as exempt from real property taxes as being used for religious and educational purposes was entitled to continued exemption only for the portion of the property that was still being used for those purposes as a playground for students and areas that were incidental to such use; remaining portion of property containing a vacant and unused school and mansion that were not safe to use and had no running water, and thus no longer served to further the exempted purpose.

Municipalities Taxing Stay-at-Home Workers During Pandemic was OK, Court Says.

The Ohio Supreme Court upheld a temporary state law that allowed employers to withhold municipal income tax irrespective of where their employees performed their work. The ruling sets a precedent in the state.

Welcome back to Route Fifty's Public Finance Update! Last week, the Ohio Supreme Court issued a long-awaited ruling upholding a state law that allowed cities during the COVID-19 pandemic to temporarily collect income tax from individuals working from home. The decision comes as a relief to municipalities in the state, as an opposite ruling could have cost city governments millions of dollars.

The case is notable because it sets an important precedent in Ohio and is likely the first post-pandemic remote work ruling by a state supreme court.

The Ohio case revolves around a law passed by the General Assembly shortly after the start of the pandemic and Ohio's stay-at-home order in March 2020. The measure temporarily allowed employers to withhold municipal income tax irrespective of where their employees performed their work. It stated that each day an employee spent working from home or an offsite location "shall be deemed to be a day performing personal services at the employee's principal place of work." The idea was to allow local governments to maintain their municipal budgets during the public health emergency.

Continue reading.

Route Fifty

By Elizabeth Daigneau,
Executive Editor, Route Fifty

FEBRUARY 22, 2024

Illinois Eyes Sports-Betting Tax Hike for Fiscal 2025 Budget.

- **Pritzker wants to raise over $800 million in revenue**
- **Plan includes cap extension on corporate tax deductions**

Illinois Governor J.B. Pritzker is proposing a $52.7 billion budget for the year starting in July that raises levies on sports betting and extends caps on corporate tax deductions.

The measures, announced on Wednesday, would leave the state with a budget surplus rather than a previously estimated deficit of about $721 million. The state expects a $128 million surplus once it contributes to its rainy day fund. The spending plan includes raising more than $800 million in revenue for fiscal 2025 in part by hiking a sports-betting tax.

Pritzker, a billionaire Democrat serving his second term, is proposing to increase Illinois' sports-wagering tax from 15% to 35%. He also wants to extend a cap on corporate net operating losses that was set to sunset this year to keep about $526 million coming into state coffers that would have been lost if it ended. The budget also proposes to cap a sales tax rebate for retailers.

Continue reading.

Bloomberg Politics

By Shruti Singh

February 21, 2024

TAX - OHIO

Schaad v. Alder

Supreme Court of Ohio - February 14, 2024 - N.E.3d - 2024 WL 589335 - 2024-Ohio-525

Worker filed action against city finance director alleging that state law that provided that, for limited time during COVID-19 pandemic, Ohio workers would be taxed by municipality that was their principal place of work rather than by municipality where they actually performed their work violated United States and Ohio Constitutions, and requesting injunction prohibiting enforcement of law and refund of his withheld municipal income taxes.

The Court of Common Pleas dismissed the suit. The First District Court of Appeals affirmed. The Supreme Court accepted worker's appeal.

The Supreme Court held that:

- Rational basis existed for statute, for purposes of whether statute violated due process under United States Constitution;
- Statute did not violate due-process limits on taxation power of the State; and
- Statute did not violate Home Rule Amendment of Ohio Constitution.

Rational basis existed for income tax statute providing that, for limited time during COVID-19 pandemic, Ohio workers would be taxed by municipality that was their principal place of work rather than by municipality where they actually performed their work, for purposes of whether statute violated due process under United States Constitution; Ohio had legitimate interest in ensuring that municipal revenues remained stable amidst rapid switch to remote work that occurred during COVID-19 pandemic.

Income tax statute providing that, for limited time during COVID-19 pandemic, Ohio workers would be taxed by municipality that was their principal place of work rather than by municipality where they actually performed their work did not violate federal due-process limits on taxation power of the State; due-process jurisprudence did not apply limitation on State's authority to tax out-of-state residents to intrastate taxation.

Income tax statute providing that, for limited time during COVID-19 pandemic, Ohio workers would be taxed by municipality that was their principal place of work rather than by municipality where they actually performed their work did not violate Home Rule Amendment of Ohio Constitution; statute empowered municipality that was not one where employee performed his work to collect tax from that employee while preventing municipality where employee was actually located to collect tax, and General Assembly had power to grant municipalities additional authority and to limit municipality's authority to collect taxes.

TAX - VIRGINIA

Emmanuel Worship Center v. City of Petersburg

Court of Appeals of Virginia, Richmond - February 13, 2024 - S.E.2d - 2024 WL 559285

Following payment by taxpayer, a church, of city real estate taxes for taxpayer's property located adjacent to taxpayer's main worship center to avoid tax sale, taxpayer filed bill of review challenging city's issuance of decree of sale of property.

The Circuit Court dismissed bill. Taxpayer appealed. The Supreme Court reversed and remanded for trial court to determine whether property was used for religious worship, and consequently whether taxpayer owed any delinquent taxes for the property.

On remand, and pursuant to a bench trial, the Circuit Court granted city's motion to strike taxpayer's evidence at the close of taxpayer's case-in-chief, determined that the property was not exempt from property taxes, but denied city's request for attorney fees. Parties cross-appealed.

The Court of Appeals held that:

- Property was not entitled to exemption from real estate taxation, and

- City was not entitled to attorney fees for having to defend against taxpayer's bill of review.

Taxpayer, a church, failed to prove that it used property adjacent to main worship center "exclusively" for religious worship purposes or for the residence of its minister, and thus property was not entitled to exemption from real estate taxation by city, even if various aspects of taxpayer's activities at property qualified as worship, such as conducting Sunday school and youth outreach; no minister had ever resided on property, taxpayer had leased much if not most of property to operator of commercial business unrelated to taxpayer, and taxpayer had never claimed that property served as "adjacent land" or otherwise supported worship center, but rather claimed that property was entitled to tax exemption as a standalone property.

Taxpayer, a church, failed to preserve for appellate review claim that property supported taxpayer's adjacent main worship center under statute providing exemption from real estate taxation by classification for adjacent land reasonably necessary for the convenient use of any such exclusive-use property, or for ancillary and accessory property the dominant purpose of which is to support or augment the principal religious worship use, because that argument had not been raised to date, let alone stated with reasonable certainty at the time of the ruling below.

City was not entitled to attorney fees for having to defend against taxpayer's bill of review challenging city's issuance of decree of sale of property for delinquent taxes after taxpayer had exercised right of redemption on property by paying all taxes, costs, and attorney fees then accumulated; all statutory provisions addressing attorney fees contemplated fees for work that ended upon sale of the property to pay delinquency, or upon taxpayer's redemption of the property by paying all arrearages then outstanding.

TAX - HAWAII

Cole v. City and County of Honolulu

Supreme Court of Hawaiʻi - February 12, 2024 - P.3d - 2024 WL 544315

Taxpayers filed notice of appeal to the Tax Appeal Court, seeking to contest city's classification of several investment properties they owned.

After consolidation of the appeal with 40 similar appeals, the Tax Appeal Court granted summary judgment for city. Taxpayers filed motion for reconsideration, and, after five years, sought ruling on the motion. After court entered an order denying the motion, taxpayers appealed, and the city applied for transfer, which was granted.

The Supreme Court held that failure to file an order disposing of taxpayers' motion for reconsideration, or a clerk's notice that the motion had been automatically denied, tolled time for taxpayers to appeal.

Tax appeal court's failure to file an order disposing of taxpayers' motion for reconsideration on their classification challenges, or a clerk's notice that the motion had been automatically denied, tolled time for taxpayers to appeal, and thus taxpayers' appeal, which was within 30 days of the court's ultimate entry or order denying the motion for reconsideration in response to letter from taxpayers requesting a ruling on their motion, was timely, even though five years had passed since the taxpayers filed their motion, and Intermediate Court of Appeals had jurisdiction over taxpayers' appeal.

Remote Work Tax Debate Settled By Ohio Supreme Court Decision.

The Ohio Supreme Court rules cities could tax remote workers who live outside city limits during the COVID-19 pandemic, upholding state law and potentially influencing future remote work tax policies.

The Ohio Supreme Court has recently made a significant ruling that could impact the future of remote work and municipal finance.

The court's decision affirms the legality of cities collecting income tax from individuals who worked remotely from home outside city limits during the COVID-19 pandemic.

According to a report published by Axios, this 5-2 court decision supports the notion that maintaining stable municipal revenues during such unprecedented times was a legitimate state interest — despite challenges to the contrary.

The state's supreme court ruling came in response to a case where a Blue Ash resident sought a refund from the city of Cincinnati for taxes paid while working from home, arguing the collection was unconstitutional. However, the majority, led by Justice R. Patrick DeWine, upheld the state law, distinguishing between interstate and intrastate taxation and emphasizing the unique relationship between state governments and municipalities.

Continue reading.

allwork.com

by Dominic Catacoraby

February 16, 2024

Maximizing Tax Efficiency in Investment Strategies: The Role of Municipal Bonds and Tax-Aware Asset Location.

Explore tax-efficient investment strategies that minimize the tax impact on returns. Learn about municipal bonds, tax-aware asset location, tax loss harvesting, and more. Maximize your portfolio's efficiency while promoting public good and understanding the implications on wealth distribution and inequality.

In today's financial landscape, the savvy investor is not just focused on the returns their portfolio brings but also on the strategies that minimize the tax impact on those returns. As we navigate through an array of investment options, certain strategies stand out for their efficiency in tax management. From tax-aware asset location strategies to strategic gifts that reduce estate taxes, the world of investment is ripe with opportunities to enhance your financial health while staying within the boundaries of tax regulations.

Unlocking Tax Efficiency through Municipal Bonds

At the heart of tax-efficient investing are municipal bonds. These bonds, issued by state and local governments, are anything but mundane. They fund essential projects like schools, infrastructure, and social services, contributing to the public good while offering a tax-exempt status to investors. This dual benefit makes municipal bonds particularly attractive to individuals in higher tax brackets. However, it's essential to recognize that the advantages they offer contribute to a broader conversation about wealth inequality. The tax exemptions provided by municipal bonds disproportionately benefit wealthier Americans, leading some experts to argue that they inadvertently widen the wealth gap. Despite this critique, the allure of municipal bonds remains strong, thanks to their low-risk profile and tax advantages.

Continue reading.

bnnbreaking.com

BNN Correspondents

17 Feb 2024

A 19th-Century Property Tax Idea Is Back. Can It Revive a Blighted City?

The Georgists advocated shifting the tax burden from buildings to land. Today that would face major political hurdles, but there might be variations on the concept that could spur housing development and discourage land speculators.

With housing shortages in some metro areas and urban blight in others, an old idea has resurfaced as a palliative to spur development and discourage land speculators. The proponents are called "Georgists," harkening back to the American social reformer Henry George of the late 1800s. Their central concept is a "land value" tax — a variation of property taxation that shifts the fiscal burden from improvements on property to the raw land itself.

The concept originally was predicated on the correlation of landholdings with personal wealth, so was thought to be progressive as a tax policy. Over time it morphed into a thesis that taxes on land would also discourage speculative holding of vacant property, driving owners toward the highest and best uses of their real estate by making physical improvements effectively tax free. It's an idea that has most prominently resurfaced in Detroit, home of vast swaths of derelict property, much of it owned by speculators hoping to profit from a Motor City economic revival.

The problem for today's Georgists is that property tax laws and modern urban land-use patterns have long ago outgrown the original idea. Shifting the tax burden in most urbanized areas from the value of improvements to the value of land would essentially grant a windfall to high-rise developers, big-box retail operators, builders, real estate partnerships and landlords — at the expense of middle-class homeowners.

Continue reading.

governing.com

by Girard Miller

Feb. 13, 2024

[Build America Bond Update: U.S. Supreme Court Declines to Review Federal Circuit Sequestration Ruling - Kutak Rock]

On July 13, 2023, the plaintiffs in *Indiana Mun. Power Agency v. United States* filed a petition for a writ of certiorari with the U.S. Supreme Court for review of a ruling by the United States Court of Appeals for the Federal Circuit in which the Court of Appeals ruled that Build America Bond interest refund payments are subject to sequestration by federal agencies.

On November 20, 2023, the U.S. Supreme Court denied certiorari, effectively ending the possibility of judicial remediation of the reduced interest refund payments.

Background on Build America Bonds

In 2009, in response to the financial crisis, Congress passed the American Recovery and Reinvestment Act (the "ARRA"), which included a new program meant to incentivize infrastructure investments by state and local governments and increase federal tax revenues – the Build America Bonds program (the "Program"). Under the Program, state and local governments would issue taxable bonds instead of their normal tax exempt bonds through an irrevocable election that the bonds be taxable, and in exchange for paying the higher interest rates on taxable bonds, the issuers would receive federal refunds of 35% of the interest payments on said bonds. In reliance on the federal government's commitment to provide refunds, state and local governments issued over $181 billion in taxable Build America Bonds.

Continue reading.

by Frederic H. Marienthal III and Anna E. Wilbourn

Client Alert | February 7, 2024

Kutak Rock

TAX - ILLINOIS

Village of Arlington Heights v. City of Rolling Meadows

Appellate Court of Illinois, First District, Sixth Division - January 12, 2024 - N.E.3d - 2024 IL App (1st) 221729 - 2024 WL 133018

Village filed action against neighboring city, seeking recovery of eight years of sales tax revenue for a business located in village that had been erroneously paid to city by the Illinois Department of Revenue (IDOR).

The Circuit Court granted city's motion to dismiss. Village appealed.

The Appellate Court held that:

- Circuit court had jurisdiction over sales tax dispute between village and city;
- Village was not limited to recovery of a six-month offset; and
- The doctrine of nonliability did not apply to bar village's declaratory action to recover sales tax revenue retained by city.

Circuit court had jurisdiction over village's action against city for recovery of sales tax revenue erroneously paid to city by the Illinois Department of Revenue (IDOR); IDOR did not have exclusive jurisdiction over sales tax issues, and the court could readily calculate the amount owed without IDOR's expertise if village could prove that city improperly retained sales tax generated by restaurant located in the village.

Village that sought eight years of sales tax revenue generated by restaurant in the village that had been erroneously paid to neighboring city by Illinois Department of Revenue (IDOR) was not limited under the Municipal Code to recovery of a six-month offset; city had a statutory obligation to timely report the sales tax error to IDOR, allowing city to keep sales tax generated in village would provide it with a windfall, and six-month limit on the recovery IDOR could provide did not preclude village from bringing a claim in circuit court to recover the remainder.

The fact that the amount allegedly owed under a contract is already fixed does not preclude a declaratory judgment action, because a party is not amenable to suit until a breach occurs; therefore, declaratory judgment could guide future conduct in such a situation because a court could determine whether or not a valid contract exists and, thereby, inform the party that potentially owes the money whether or not it would be in breach of a contract should it refuse to pay.

The doctrine of nonliability did not apply to bar village's declaratory action to recover sales tax revenue erroneously paid to neighboring city by the Illinois Department of Revenue (IDOR), although IDOR had corrected the error for prospective payments; the conduct for which the village sought relief was city's continuing conduct of retaining nearly eight years of sales tax allegedly belonging to village.

TAX - CALIFORNIA

County of Alameda v. Alameda County Taxpayers' Association, Inc.

Court of Appeal, First District, Division 5, California - January 29, 2024 - Cal.Rptr.3d - 2024 WL 323213

Advocacy organization and related parties brought action seeking to invalidate citizen's tax initiative to fund early childhood education and pediatric health care in county, which measure had been approved by a majority of voters during election.

The Superior Court concluded that measure was valid and entered judgments in county's favor. Organization and related parties appealed, and appeals were consolidated.

The Court of Appeal held that:

- If a local special tax is imposed via citizens' initiative, only a simple majority vote is required to adopt it, and
- Measure did not clearly, positively, and unmistakably violate Constitution section forbidding initiative statutes from identifying private corporation to perform any function.

A local tax enacted by voter initiative is not a tax imposed by local government within the meaning of Constitutional amendment providing that no local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two–thirds vote.

Voter initiative measure to fund early childhood education and pediatric health care in county, which named county's only "Level 1" pediatric trauma center and described center as a critical provider of pediatric care in the community without assigning center any function, power, or obligation, did not clearly, positively, and unmistakably violate Constitution section forbidding initiative statutes from identifying private corporation to perform any function, even though measure imposed duty on County Board of Supervisors to consult with multiple experts, including the local pediatric hospital, before spending revenue from Pediatric Health Care Account; experts themselves had only a passive role as consultees with no duties, no authority to make decisions, and no obligation to answer the phone when Board called, measure was carefully drafted to avoid naming specific private corporation in any exclusive role, and measure provided voters important information about where some of their tax money would be spent.

An Overlooked Hospital Performance Metric: Bond Ratings

In October 2021, a Pennsylvania judge denied the property tax exemption for three hospitals owned by a Pennsylvania hospital system, claiming that operations at the hospitals in question had become too similar to for-profit facilities to warrant tax-exempt status. The judge's ruling found that the hospitals in question met only the first prong of the five-prong test that qualifies organizations as tax exempt: They must advance a charitable purpose; donate a substantial portion of their service; benefit a substantial or indefinite class of persons; relieve the government of some of its burden; and operate entirely free from profit motive. This was one of several cases in recent years in which courts denied nonprofit hospitals their local property tax exemption on the grounds that they behaved too similarly to taxable organizations to warrant public subsidies.

Whether nonprofit hospitals deserve their tax-exempt status has been the subject of debate in recent years in both the academic and lay press. As an August 2022 Wall Street Journal article proclaimed: "Nonprofit medical institutions get federal benefits in exchange for providing support to their communities but often lag behind their for-profit peers." Part of this debate centers on the fact that it is difficult to distinguish between nonprofit and for-profit hospitals in terms of financial performance and quality. They report similar profit margins, patient mix, and burden of bad debt, while offering services that are seemingly quite similar in quality and only modestly different in scope. In addition, mounting evidence shows minimal differences in charity care spending between nonprofit and for-profit hospitals. These findings have led some to label nonprofit hospitals as "for-profits in disguise."

Continue reading.

healthaffairs.org

by Lauren A. Taylor Samuel Doernberg Sean Pomory Evan Casalino Thad Calabrese

FEBRUARY 12, 2024

TAX - INDIANA

Indiana Municipal Power Agency v. United States.

United States Court of Appeals, Federal Circuit - February 17, 2023 - 59 F.4th 1382 - 131 A.F.T.R.2d 2023-782

Issuers of Direct Payment Build America Bonds under authority of American Recovery and

Reinvestment Act (ARRA) brought action against the United States, claiming violation of statutory duty under ARRA and breach of contract based on IRS failing to refund 35% of interest payable under bonds.

The Court of Federal Claims granted government's motion to dismiss for failure to state a claim, and denied issuers' motion for reconsideration. Issuers appealed.

The Court of Appeals held that:

- Sequestration applied to tax refunds, and
- ARRA section authorizing bonds did not create contract requiring government to pay tax refund equal to 35% of interest paid by issuers.

Sequestration pursuant to Budget Control Act and American Taxpayer Relief Act applied to tax refunds of 35% of interest payable on Direct Payment Build America Bonds issued under authority of American Recovery and Reinvestment Act (ARRA), since refunds were issued from permanent, indefinite appropriation of necessary amounts for refunding internal revenue collections provided by statute, which constituted direct spending.

Section of American Recovery and Reinvestment Act (ARRA) authorizing Direct Payment Build America Bonds did not create contract requiring government to pay tax refund equal to 35% of interest paid by bond issuers; ARRA did not provide for execution of written contract on behalf of United States or reflect any language establishing a contract, but instead, it merely set forth payment program for bond issuers.

As Concerns Over Gambling Addiction Mount, States are Set to Rake in Millions from Super Bowl Bets.

Sports betting has spread to 38 states and Washington, D.C., over the past five years. In that time, states have also seen massive increases in calls to gambling addiction hotlines. Plus, more news to use from around the country in this week's State and Local Roundup.

This weekend is the Super Bowl, a spectacle that reveals a lot about choices state governments have made in recent years about sports betting.

Experts expect Americans to bet a record $23 billion on Sunday's game. States have fueled the massive uptick in online and in-person wagering on sporting contests, even though they have received relatively modest revenue increases and have seen dramatic increases in reports of people struggling with gambling addiction.

The showdown between the Kansas City Chiefs and the San Francisco 49ers on Sunday takes place in Las Vegas, a city that the National Football League and other professional sports leagues shunned for decades because of its famous ties to gambling, and sports betting in particular

Continue reading.

Route Fifty

By Daniel C. Vock | FEBRUARY 9, 2024

House Passes $78 Billion Tax Bill that Includes Affordable Housing Help: Squire Patton Boggs

On Wednesday, January 31, 2024, the U.S. House of Representatives passed the bill called the Tax Relief for American Families and Workers Act. Contained in this bill is a significant reduction to the required amount of Section 142(d) Qualified Residential Project Bonds that must be issued to obtain the 4% Low Income Housing Tax Credit. The author of this blog post co-authored a blog post[1] with Robert Labes on this very topic!

Click here to access the blog post and other insights regarding Global Projects and Infrastructure! And stay tuned for more on this and other developments in affordable and workforce housing tax issues in the coming weeks!

By Taylor Klavan on February 6, 2024

The Public Finance Tax Blog

Squire Patton Boggs

TAX - ILLINOIS

Village of Shiloh v. County of St. Clair

Appellate Court of Illinois, Fifth District - December 19, 2023 - N.E.3d - 2023 IL App (5th) 220459 - 2023 WL 8722508

Village filed action against county, county clerk, and others, petitioning for a writ of mandamus requiring that alleged incremental taxes owed to village be paid and sought declaratory judgment regarding payments and alleged violations of the Tax Increment Allocation Redevelopment Act.

The Circuit Court granted defendants' motion for involuntary dismissal based upon certain defects or defenses. Village appealed.

The Appellate Court held that:

- Village was entitled to payment for taxes collected from its tax increment finance (TIF) districts, but
- Reversal was not required based on village's failure to join necessary parties.

Village did not forfeit on appeal issue of whether county and county clerk were required to collect and then pay village funds from incremental taxes collected from village's tax increment finance (TIF) districts established by ordinance, where village's response to county and clerk's motion to dismiss argued that while a TIF district's life expectancy was 23 years, the last payment came in the 24th year because the property had to be assessed in the 23rd year as well.

Village was entitled to a 24th payment from county and county clerk for incremental taxes collected from village's tax increment finance (TIF) districts, even though the life expectancy of a TIF was limited to 23 years under the Tax Increment Allocation Redevelopment Act; in the year after village adopted ordinances establishing TIF districts, county distributed its first payment to village for taxes levied in the prior year, county made 23 yearly distributions of taxes, life of village's TIF districts did not exceed the 23-year limitation, and therefore, the fact that 24 payments were required, rather than 23, did not mean that a violation of the Act occurred.

Absence of school districts and fire protection district in village’s mandamus and declaratory judgment action against county and county clerk, which sought payment for incremental taxes collected from village’s tax increment finance (TIF) districts, did not require reversal of trial court’s order dismissing village’s complaint based on failure to join necessary parties, where court’s order did not materially affect school districts or fire protection district.

TAX INCREMENT FINANCING - COLORADO

Kaiser v. Aurora Urban Renewal Authority

Supreme Court of Colorado - January 22, 2024 - P.3d - 2024 WL 220401 - 2024 CO 4

City urban renewal authority, metropolitan districts, and limited liability company (LLC) brought action for declaratory and injunctive relief against county assessor and state Property Tax Administrator, alleging that Administrator’s methodology for implementing tax increment financing (TIF) violated the Urban Renewal Law (URL).

The District Court, Arapahoe County, entered summary judgment for county assessor. Urban renewal authority, metropolitan districts, and LLC appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. Administrator and county assessor sought certiorari review.

The Supreme Court held that:

- Under the URL, Administrator could require county assessors, when proportionately adjusting the base and increment values of properties located in an urban renewal area, to use methodology that credited base value with all property valuation increases that could not be directly attributed to redevelopment activities, and
- Colorado’s TIF scheme requires a direct relationship between an urban renewal authority’s redevelopment efforts and the tax revenues it receives; overruling *E. Grand Cnty. Sch. Dist. No. 2 v. Town of Winter Park*, 739 P.2d 862, and *Northglenn Urb. Renewal Auth. v. Reyes,* 300 P.3d 984.

Under the Urban Renewal Law (URL), state Property Tax Administrator could require county assessors, when proportionately adjusting the base and increment values of properties located in an urban renewal area, to use methodology that credited base value with all property valuation increases that could not be directly attributed to redevelopment activities, which meant that local government entities other than the urban renewal authorities would receive the property tax revenue derived from those increases in value; the URL explicitly and unambiguously adopted the “direct relationship” approach, i.e., the requirement of a direct relationship between an urban renewal authority’s redevelopment efforts and the tax revenues it received, by virtue of requiring proportionate adjustments whenever there was a general reassessment, and it entrusted the Administrator with crafting the methodology to determine how to make those adjustments.

Colorado’s tax increment financing (TIF) scheme requires a direct relationship between an urban renewal authority’s redevelopment efforts and the tax revenues it receives; overruling *E. Grand Cnty. Sch. Dist. No. 2 v. Town of Winter Park,* 739 P.2d 862, and *Northglenn Urb. Renewal Auth. v. Reyes*, 300 P.3d 984.

TAX - GEORGIA

Rice v. Fulton County

Court of Appeals of Georgia - January 18, 2024 - S.E.2d - 2024 WL 190489

Group of taxpayers brought putative class action against county and many of its municipalities, alleging that county and municipalities had utilized illegal method for assessing property taxes on homes sold during certain year.

The Superior Court denied taxpayers' motion for class certification. Taxpayers appealed.

The Court of Appeals held that:

- Taxpayers met commonality requirement for class certification, and
- Taxpayers met predominance requirement for class certification.

Group of taxpayers met commonality requirement for class certification, in their putative class action against county and many of its municipalities challenging property taxes assessed on homes sold during certain year; taxpayers alleged that class members all suffered same injury of having their property taxes calculated by illegal method of valuation, based upon same instance of county's and municipalities' injurious conduct of overriding computer assisted mass appraisal (CAMA) system's fair market value assessment with purchase price of properties.

Group of taxpayers met predominance requirement for class certification, in their putative class action against county and many of its municipalities challenging property taxes assessed on homes sold during certain year; taxpayers' claim that assessment violated Uniformity Clause of state constitution centered around their allegation that county and municipalities used illegal method to assess property taxes of putative class and that such method automatically impacted equalization and uniformity of their subsequent taxes, and answer to that common claim would determine city's and municipalities' liability for all putative class members.

TAX - MISSISSIPPI

Clarke County v. Quitman School District

Supreme Court of Mississippi - January 18, 2024 - So.3d - 2024 WL 189542

County's tax collector filed a complaint for interpleader, naming school district and county as parties, and seeking judicial determination as to which entity was entitled to funds recovered by county in delinquent taxpayer's bankruptcy proceeding.

After granting the interpleader motion, the Chancery Court denied county's motion for summary judgment, granted school district's motion for summary judgment in part, and ordered county to disburse $365,334 to school district. County and school district cross-appealed.

The Supreme Court held that school district was not entitled under statutory funding process to receive a portion of funds recovered by county in delinquent taxpayer's bankruptcy proceeding.

School district was not entitled to receive a portion of funds recovered by county in delinquent taxpayer's bankruptcy proceeding, although delinquency had resulted in $365,334 shortfall in school district's tax revenues for a school year, where the statutory scheme required the school district's requested budget to be funded through ad valorem taxes distributed by the county at the time requested, provided the school district with the opportunity to issue promissory notes in the amount of any shortfall, and did not take into account the delivery of delinquent tax funds recovered years later.

County had standing to challenge school district's entitlement to delinquent ad valorem taxes recovered by county from taxpayer's bankruptcy proceeding, although some of the recovered funds would have gone to school district if collected timely; tax scheme for funding school district mandated that county as levying authority raise an amount to equal the budget requested by the school district on an annual basis, adjusted up in the event of a delinquency or down in the event of an excess, and did not mandate that delinquent taxes recovered by the county outside of the statutory scheme be delivered to the school district.

[Tax or Fee? - The Fate of PA Stormwater Charges to be Decided in 2024]

Last year, the Pennsylvania Commonwealth Court held that a stormwater charge from the Borough of West Chester was not a fee for service, but rather an unauthorized local tax in *Borough of West Chester v. Pa. State System of Higher Education and West Chester University of Pa. of the State System of Higher Education*, 291 A.3d 455 (Pa. Cmwlth. 2023). We reported on this decision in [MGKF's 2023 Environmental Forecast], and noted that the case would likely be winding its way through the appellate process in 2023.

In early 2023, the Borough promptly appealed the decision to the Pennsylvania Supreme Court, and was joined by several amici curiae, which included municipalities, municipal advocacy organizations, and non-profit environmental groups. Briefs from the Borough and their aligned amici filed in mid-July 2023 argue that the Commonwealth Court's decision was incorrect and should be overturned, because the stormwater fee charged to the University reflected a fee for service rather than a tax, and that the charge was properly established based on impervious surface coverage. The Borough and other proponents of the stormwater charge argue that all properties within a locality benefit from municipal stormwater services and infrastructure, even if the property is not connected to or serviced by that infrastructure. They point to generalized improvements to overall water quality and an alleged "comprehensive" method of managing stormwater and reducing flooding within a locality as among the bases to support a universal stormwater charge. The Borough and several amici argue that if the Commonwealth Court's decision finding stormwater charges to be a tax, rather than a fee, were allowed to stand, local municipalities and authorities will be deprived of a designated funding source for the costs necessary to comply with state and federal laws and regulations involving stormwater.

On the other side of the argument are the Pennsylvania State System of Higher Education and West Chester University, represented by the Pennsylvania Attorney General, and aligned amici, who filed their briefs in mid-October 2023. They argue that the stormwater fee is a classic tax or assessment because the Borough could not show that the university received a concrete, direct, or discrete benefit that can be traced to the stormwater charges. In fact, the only evidence the Borough presented was that monies collected were used to promote generalized benefits of improved stormwater and reduced flooding, benefits that are shared equally by every property owner and resident within a locality. The university and aligned amici also argued that even if the stormwater charge was not declared a tax and considered a fee, the charges imposed were nevertheless inappropriate and illegal because the high value of the charges was not “reasonably proportional” to any benefits provided by the Borough from their stormwater infrastructure systems. They argue that the Borough failed to analyze or consider the actual expected costs of maintaining or operating any portion of the stormwater infrastructure system that is associated with any particular property, including any of the university’s properties in the Borough. The university and aligned amici also pointed to the fact that before the Borough’s enactment of the stormwater charge, funds for stormwater projects were paid from the Borough’s general fund, supplied by local tax dollars.

The fate of stormwater charges in the Commonwealth of Pennsylvania will be decided in 2024, as oral argument and a decision from the Pennsylvania Supreme Court is expected this year. The resolution of the *Borough of West Chester* case will have far-reaching implications on how local municipalities and authorities will fund stormwater projects, maintenance, and operations in the future.

Manko Gold Katcher & Fox – Diana A. Silva, Danielle N. Bagwell and Michael Nines, P.E., LEED AP

January 18 2024

IRS: Register for Elective Payment or Transfer of Credits

Qualifying businesses, tax-exempt organizations or entities such as state, local and tribal governments can take advantage of certain tax credits even if they don’t have taxable income through new elective payment and transfer options. These options can be applied to certain clean energy and manufacturing credits under the Inflation Reduction Act of 2022 and CHIPS Act.

To monetize applicable credits, an authorized representative of the entity must:

- Use this online tool to register the intention to make an elective payment or transfer election
- Include registration numbers received through this online tool on the entity’s tax return

The registration tool is part of the IRS business tax account application. For detailed guidance on how to use the tool, refer to Publication 5884, Inflation Reduction Act (IRA) and CHIPS Act of 2022 (CHIPS) Pre-Filing Registration Tool — User Guide and Instructions.

Continue reading.

TAX - CONNECTICUT

Alico, LLC v. Town of Somers

Supreme Court of Connecticut - December 19, 2023 - A.3d - 348 Conn. 350 - 2023 WL 8631975

Taxpayer sought review of decision by town board of assessment appeals to uphold personal property tax assessments on vehicles that were owned by out-of-state limited liability company (LLC), of which taxpayer was sole member.

The Superior Court denied taxpayer's request for judgment declaring that tax was unconstitutional under the dormant Commerce Clause. Taxpayer appealed, and the appeal was transferred to the Supreme Court.

The Supreme Court held that tax scheme for the personal property tax was not unconstitutional under the dormant Commerce Clause.

Tax scheme for personal property tax that was assessed on motor vehicles owned by nonresident limited liability company (LLC) and registered in Massachusetts but garaged overnight at home of taxpayer, the LLC's owner, was fairly apportioned, rather than internally inconsistent in violation of the dormant Commerce Clause, even though taxpayer paid taxes on the vehicles in Connecticut and Massachusetts; if every state had adopted same scheme, it would not result in double taxation, and to extent that taxpayer paid multiple taxes on the vehicles, it was because of the combined effect of Connecticut's and Massachusetts' different and nondiscriminatory tax schemes, as the former taxed vehicles on basis of physical location and amount of time they were in the state, and the latter taxed on basis of their registration.

How Governments and Nonprofits Can Take Advantage of Tax Credits for Clean Energy: Opening of the Pre-Filing Window Publications - Kutak Rock

On December 22, 2023 the Internal Revenue Service (IRS) announced the availability of the anticipated *"IRA/CHIPS Pre-filing Registration Tool" (the "Tool") relating to elective payment of certain tax credits. State and local governments and political subdivisions thereof, Indian tribal governments, tax-exempt organizations and other applicable entities will now be able to use the Tool to register tax credits expected to be claimed as direct payments for eligible energy projects.* The IRS announcement and additional information regarding the Tool may be found here.

There are 12 tax credits currently eligible for direct payments (also referred to as "elective payment") including, for example, the following credits: renewable electricity production (I.R.C. § 45 – pre-2025); carbon oxide sequestration (I.R.C. § 45Q); clean electricity production (I.R.C. § 45Y – 2025 onwards); energy credit (I.R.C. § 48 – pre-2025); and clean electricity investment credit (I.R.C. § 48E – 2025 onwards). Elective payment of these tax credits was made available through the Inflation Reduction Act of 2022, Pub. L. No. 117-169 (IRA). These tax credits are general business credits under I.R.C. § 38. Elective payment under I.R.C. § 6417 creates an alternative way for applicable entities that have earned tax credits to receive the benefit of the credits even if these entities cannot use the credit to offset tax liability. Please see our publication of June 16, 2023 describing elective pay tax credits generally. Please contact any member of the firm's Energy Group to discuss general eligibility for elective pay tax credits.

Continue reading.

Client Alert | December 28, 2023

Kutak Rock LLP

Municipal Bond Funds Are Hemorrhaging Cash Due to This Tax-Cutting

Trade.

- **Muni mutual funds see outflows despite strong November gains**
- **Investors can reduce tax bills by selling holdings at a loss**

It's vexing for managers of municipal bond funds: The market just had its biggest monthly rally in 41 years, yet investors keep pulling out their cash.

Blame the taxman.

Even after the November rebound, the deep losses that piled up since 2022 have left the prices of some bonds still deeply in the red. That's creating an opportunity for investors to reduce tax bills by cashing out of mutual funds at a loss — providing a tax write down — and then reinvesting the proceeds.

Continue reading.

Bloomberg Wealth

By Amanda Albright

December 11, 2023

TAX - VIRGINIA

Martin v. Lafountain

Court of Appeals of Virginia, Richmond - December 12, 2023 - S.E.2d - 2023 WL 8587795

Taxpayer who owned residential property near a for-profit halfway house, which was operated in residential neighborhood, filed petition for declaratory relief against city's commissioner of revenue, seeking declaration that the business run by owner and lessee of the property at issue was subject to business tax and that the business tax should be applied retroactively.

The Roanoke Circuit Court sustained commissioner's demurrer and dismissed taxpayer's petition with prejudice. Taxpayer appealed.

The Court of Appeals held that taxpayer did not have local taxpayer standing to challenge commissioner's failure to impose business taxes on owner and lessee of the property at issue.

Taxpayer did not have local taxpayer standing to bring petition for declaratory relief to challenge failure of city's commissioner of revenue to impose business taxes on owner and lessee of neighboring residential property on which a for-profit halfway house was operated; local taxpayer standing was limited to challenging expenditures, and even if commissioner's inaction could be treated as an expenditure, taxpayer made only speculative assertions that city expenditures would have to decrease or city taxes would need to increase in order to meet city's expenses if commissioner failed to collect business taxes from the owner and lessee of the property at issue.

Pennsylvania Supreme Court Holds City Wage Tax Not Required to Credit

[Delaware State Income Tax.]

The Pennsylvania Supreme Court held that the City of Philadelphia is not required provide a city wage tax credit for income tax payments that a resident made to another state. For the purposes of a dormant Commerce Clause analysis, the court found that state and local taxes do not need to be considered in the aggregate. Therefore, Philadelphia did not violate the dormant Commerce Clause by imposing its wage tax on a resident who worked exclusively in Wilmington, Delaware, and crediting her for Wilmington Earned Income Tax payments while not providing an additional credit for the resident's payments of Delaware Income Tax. In reaching its decision, the court first concluded that the wage tax was a "purely local tax … promulgated by Philadelphia's City Council and … collected … for the sole benefit of the City and its residents," and not a "state tax masquerading as a local tax" that would require the two taxes to be considered in tandem. The court then held that Philadelphia's tax scheme did not discriminate against interstate commerce because it was internally consistent as any excess tax paid was a result of Delaware's higher income tax rate rather than any inherent discrimination in Philadelphia's tax scheme itself and externally consistent as the imposition was justified by the City's provision of municipal benefits and services to its residents and of a full credit for the local Wilmington tax.

Diane Zilka v. Tax Review Board City of Philadelphia, No. 20 EAP 2022 and 21 EAP 2022 (Pa. Nov. 22, 2022).

Eversheds Sutherland (US) LLP – Timothy A. Gustafson and Dennis Jansen

December 13 2023

TAX - PENNSYLVANIA

Zilka v. Tax Review Board City of Philadelphia

Supreme Court of Pennsylvania - November 22, 2023 - A.3d - 2023 WL 8102749

Taxpayer, who was a resident of a Pennsylvania city with an income tax but who worked exclusively in another state, appealed decision of city's tax review board to deny her request for refund that represented a credit against the city's income tax for that portion of her out-of-state income-tax liability that was not offset by her credit against Pennsylvania income tax, even though the city allowed taxpayer a credit for what she paid in analogous local tax to a city in the other state.

The Court of Common Pleas affirmed without taking additional evidence. Taxpayer appealed. The Commonwealth Court affirmed. Taxpayer petitioned for allowance to appeal.

The Supreme Court held that:

- As a matter of first impression, Pennsylvania income tax and the city income tax would be considered discrete, rather than aggregate, taxes, and
- The Dormant Commerce Clause did not entitle taxpayer to the requested refund.

Pennsylvania income tax and the income tax levied by Pennsylvania city would be considered discrete, rather than aggregate, taxes when deciding whether Dormant Commerce Clause entitled taxpayer, who was a resident of the Pennsylvania city but who worked exclusively in another state, to a credit against the city's income tax for that portion of her out-of-state income-tax liability that was not offset by her credit against Pennsylvania income tax; city income tax was promulgated by the city council and collected for the sole benefit of the city and its residents.

Dormant Commerce Clause did not entitle taxpayer, who was a resident of a Pennsylvania city with an income tax but who worked exclusively in another state, to a credit against the city's income tax for that portion of her out-of-state income-tax liability that was not offset by her credit against Pennsylvania income tax, even though the city did allow taxpayer a credit based on the analogous local tax that she paid to a city in the other state; the Pennsylvania and city income tax were discrete taxes, given that the city income tax was promulgated by the city council and collected for the sole benefit of the city and its residents, and city income tax was internally and externally consistent, since any excess income tax paid by taxpayer was simply the result of the other state's higher income-tax rate, city allowed taxpayer a credit against analogous local tax that she paid to the other state, and domicile in itself established a basis for taxation.

What a Major Income Tax Case Before the Supreme Court Means for States.

During oral arguments this week, the court signaled it was wary of issuing an opinion that could upend the tax code.

Welcome back to Route Fifty's Public Finance Update! I'm Liz Farmer and this week the U.S. Supreme Court heard oral arguments on a highly anticipated case that many say could upend the tax code if the plaintiffs win a broad ruling and could cost state and local governments trillions of dollars.

During oral arguments on Tuesday, the justices seemed keenly aware and at times downright wary of the potential impact of their ruling.

At the center of *Moore v. United States* are foreign earnings and a provision in the 2017 tax reform called the Mandatory Repatriation Tax. The reform was intended to minimize the incentive for U.S. corporations to hoard money overseas by reducing certain taxes on foreign earnings. In exchange for those reductions, investors and corporations had to pay a one-time, retroactive tax on all foreign income dating back to 1986. The provision helped pay for some of the corporate income tax cuts included in the 2017 Tax Cuts and Jobs Act.

Continue reading.

ROUTE FIFTY

by LIZ FARMER

DECEMBER 6, 2023

TAX - NEW YORK

Andrews v. Incorporated Village of Freeport

Supreme Court, Appellate Division, Second Department, New York - November 15, 2023 - N.Y.S.3d - 2023 WL 7561283 - 2023 N.Y. Slip Op. 05727

In article 78 proceeding, real property owner petitioned to vacate tax lien, which arose from owner's failure to pay tax bill, to which amount due on unpaid water bill had been transferred.

The Supreme Court, Nassau County, denied petition as untimely and dismissed proceeding. Property owner appealed.

The Supreme Court, Appellate Division, held that statute of limitations for commencing article 78 proceeding began to run upon owner's receipt of tax bill.

In article 78 proceeding brought by real property owner, who sought to vacate tax lien that arose from failure to pay tax bill, to which amount of unpaid water bill had been transferred, against village, statute of limitations that required that proceeding be commenced within four months after determination to be reviewed became final and binding began to run upon owner's receipt of tax bill, rather than his receipt of water bill, and thus village failed to meet burden of establishing owner received notice of final and binding determination more than four months before he commenced proceeding; owner sought order vacating lien, and there was no evidence in record as to when owner received tax bill, only that arrears from water bills were transferred to tax bill sometime after last day of year village issued water bill.

TAX - MISSISSIPPI

[Stokes v. Jackson Sales & Storage Company]

Supreme Court of Mississippi - November 30, 2023 - So.3d - 2023 WL 8291181

Taxpayer petitioned for appeal from county board of supervisors' determination that taxpayer lacked requisite free-port-warehouse license to qualify for exemption from ad valorem property taxes.

The Circuit Court granted taxpayer's motion for declaratory judgment that taxpayer's license was not subject to renewal and was valid and in effect at all times since its original granting, and denied motion by county and county tax assessor to alter judgment. County and county tax assessor appealed.

The Supreme Court held that:

- License was valid and in effect at all times since it was issued;
- Letters from county tax assessor to taxpayer did not revoke license;
- Board had discretion over taxpayer's exemption;
- Board forfeited its right to assess ad valorem property taxes for 2012-2018; but
- Taxpayer was not exempt from ad valorem property taxes for 2019.

Taxpayer's free-port-warehouse license, which qualified it for exemption from ad valorem property taxes, was valid and in effect at all times since it was issued, even though county board of supervisors had authority to require renewal of license and license had not been renewed; license was originally issued by Department of Revenue's predecessor, annual renewal requirement was statutorily removed, but predecessor retained renewal authority, subsequent transfer of authority to issue licenses from predecessor to board did not invalidate licenses previously granted, and after renewal authority was transferred to board from predecessor, board's actions with respect to taxpayer's license did not amount to demand for taxpayer to renew its license.

Letters from county tax assessor to taxpayer did not revoke taxpayer's free-port-warehouse license that qualified it for exemption from ad valorem property taxes, even though taxpayer had failed to meet its reporting requirement since receiving its license; letters merely notified taxpayer that county had no record of taxpayer's license, and county did not have authority to revoke taxpayer's license simply because county kept inaccurate records.

Statute granting county board of supervisors discretion over exempting in-transit personal property from ad valorem taxes extended to exemption granted to taxpayer, as holder of free-port-warehouse license, by Department of Revenue's predecessor when predecessor, not board, had discretion over exemptions; statute's mandate that previously granted exemptions "shall continue in full force and effect" did not amount to grant of exemption in perpetuity, but instead, was intended to make it clear that current licensees did not need to reacquire exemption for same year in which transfer occurred, and statute ratifying any exemption granted before January 1, 2012 did not mandate that such exemptions continue in perpetuity, but instead, prohibited counties from collecting back taxes.

County board of supervisors forfeited its right to assess ad valorem property taxes for 2012-2018 against taxpayer with free-port-warehouse license, although board had discretion over granting taxpayer an exemption, since board affirmatively chose to grant taxpayer an exemption in such years by entering exemption for taxpayer into its meeting minutes, and statute allowing collection of back taxes when any person or property had escaped taxation in any former year or years did not apply, given that taxpayer did not escape taxation, rather, county granted an exemption for which taxpayer was qualified to receive.

Taxpayer was not exempt from ad valorem property taxes for 2019, even though taxpayer had valid free-port-warehouse license and had received exemption for nearly 40 years, since letter from tax assessor put taxpayer on notice that county intended to tax its in-transit personal property, tax assessor rejected taxpayer's argument that its exemption was not an annual exemption subject to county board of supervisors' discretion, and acceptance of taxpayer's argument in prior years did not prohibit rejection of same argument in 2019, given that board had statutory discretion over exemption.

TAX - PENNSYLVANIA

Zilka v. Tax Review Board City of Philadelphia

Supreme Court of Pennsylvania - November 22, 2023 - A.3d - 2023 WL 8102749

Taxpayer, who was a resident of a Pennsylvania city with an income tax but who worked exclusively in another state, appealed decision of city's tax review board to deny her request for refund that represented a credit against the city's income tax for that portion of her out-of-state income-tax liability that was not offset by her credit against Pennsylvania income tax, even though the city allowed taxpayer a credit for what she paid in analogous local tax to a city in the other state.

The Court of Common Pleas affirmed without taking additional evidence. Taxpayer appealed. The Commonwealth Court affirmed. Taxpayer petitioned for allowance to appeal.

The Supreme Court held that:

- As a matter of first impression, Pennsylvania income tax and the city income tax would be considered discrete, rather than aggregate, taxes, and
- The Dormant Commerce Clause did not entitle taxpayer to the requested refund.

Pennsylvania income tax and the income tax levied by Pennsylvania city would be considered discrete, rather than aggregate, taxes when deciding whether Dormant Commerce Clause entitled taxpayer, who was a resident of the Pennsylvania city but who worked exclusively in another state, to a credit against the city's income tax for that portion of her out-of-state income-tax liability that was not offset by her credit against Pennsylvania income tax; city income tax was promulgated by the city council and collected for the sole benefit of the city and its residents.

Dormant Commerce Clause did not entitle taxpayer, who was a resident of a Pennsylvania city with an income tax but who worked exclusively in another state, to a credit against the city's income tax for that portion of her out-of-state income-tax liability that was not offset by her credit against Pennsylvania income tax, even though the city did allow taxpayer a credit based on the analogous local tax that she paid to a city in the other state; the Pennsylvania and city income tax were discrete taxes, given that the city income tax was promulgated by the city council and collected for the sole benefit of the city and its residents, and city income tax was internally and externally consistent, since any excess income tax paid by taxpayer was simply the result of the other state's higher income-tax rate, city allowed taxpayer a credit against analogous local tax that she paid to the other state, and domicile in itself established a basis for taxation.

City Leaders Fund Child Care Center with Tax District Typically Used for Roads, Sewer.

By creating a tax increment financing district, Madison, South Dakota, looks to build a child care center to improve local economic development and access to child care services.

Brooke Rollag cannot work without child care.

The mother of four is the economic development director for the Lake Area Improvement Corporation in Madison.

Her job is to understand what businesses need to locate and expand in the area. And in Madison, those businesses need child care.

"Child care is infrastructure," Rollag said. "When you view it as a necessary means for people to go to work, that's infrastructure."

Continue reading.

Route Fifty

By Makenzie Huber,
South Dakota Searchlight

NOVEMBER 28, 2023

Tax Loss Harvesting Comes to Muniland: Bloomberg Masters of the Muniverse

There's been heightened volatility in rates and tax-loss harvesting may or may not be the best course of action. On this episode of Masters of the Muniverse, part of the FICC Focus podcast series, Andy Kalotay, a leading authority on quantitative analysis of municipal bonds, joins Bloomberg Intelligence's Eric Kazatsky and Karen Altamirano for an in-depth discussion about the muni market this year, tax-loss harvesting and what's on the horizon for 2024.

[Listen to audio.]

Nov 28, 2023

[Smarter, Targeted Tax Breaks That Could Help Resuscitate Central Cities.]

Office workers' exodus should be countered with wiser state and federal tax incentives, and there's a novel municipal bond angle to promote. But cities themselves must step up to stem the urban maladies that feed public fears.

Almost every day we read news reports of the demise of center-city downtowns. San Francisco has become the go-to target for critics who assail its street crime, homelessness, office vacancies, office workers' outmigration and retail business closures. But it's not just there: Commercial property loan defaults are rising rapidly in many cities. The COVID-19 pandemic and technology's enabling of work-from-home set the stage of decline for dozens of downtowns, and this year's viral videos of brazen retail theft gangs just confirmed public perceptions of growing urban dystopia. As with Humpy Dumpty, the question now is whether state and local politicians are capable of putting the pieces back together again.

We've all watched the fatuous federal efforts to support urban revitalization with "opportunity zones" that offer tax incentives for new businesses and real estate development in targeted census tracts. Critics have shown that those tax breaks have enriched the wealthy far more than they have helped local residents, and clearly they have not saved the cities where the problem now is an oversupply of vacant urban buildings. Various states have tried their own ways to promote redevelopment with special taxing districts and similar provisions, but too often those incentives rob Peter to pay Paul by depriving schools and counties of tax revenues that fund local infrastructure. None of these programs are sufficiently targeted to counter the magnitude of today's deteriorating downtown office and retail centers.

[Continue reading.]

governing.com

OPINION | Nov. 28, 2023 • Girard Miller

TAX - OREGON

[D.E. Shaw Renewable Investments, LLC v. Department of Revenue]

Supreme Court of Oregon - October 5, 2023 - 371 Or. 384 - 537 P.3d 529

Taxpayers, which operated wind farms that were centrally assessed by the Department of Revenue and which had persuaded the Department that the valuation methodology that the Department had used to assess that property for a particular tax year had been flawed, appealed from the Department's refusal of their request that the Department use the corrected methodology to also reduce the assessed value of their property for two previous tax years.

The Tax Court entered summary judgment for the Department. Taxpayers appealed.

The Supreme Court held that the statute governing the correction of errors in the certified assessment roll precluded the Department from exercising its general statutory authority to reduce the assessed value of taxpayers' property for the two previous tax years at issue.

Statute governing the correction of errors in the certified assessment roll precluded the Department of Revenue from exercising its general statutory authority to reduce the assessed value of taxpayers' property—which consisted of wind farms that were centrally assessed by the Department—for two prior tax years, even though taxpayers had persuaded the Department that valuation methodology that it had used to assess their property for different, but more recent, prior tax year had been flawed; taxpayers did not request a conference with the Department's director to challenge the Department's valuation opinion before the tentative assessments for those two prior years became final, and statute governing correction of errors prohibited the director from correcting an error in the valuation judgment that was an error in the Department's opinion of the value of property.

TAX - MAINE

Cassidy Holdings, LLC v. Aroostook County Commissioners et al.

Supreme Judicial Court of Maine - November 9, 2023 - A.3d - 2023 WL 7393512 - 2023 ME 69

Taxpayer, the owner of a nonresidential property with equalized municipal valuation of $1 million or greater, appealed city board of assessor's decision denying its property tax abatement application to county commissioners.

The commissioners declined the appeal based on their conclusion they lacked subject matter jurisdiction.

Taxpayer appealed that decision to the Superior Court. The Superior Court granted the appeal and remanded the matter to county commissioners. County commissioners appealed.

The Supreme Judicial Court held that taxpayer was not required to pursue appeal before the State Board of Property Tax Review because the county commissioners and State Board had concurrent jurisdiction over appeals of a municipality's denial of an abatement application.

TAX - TEXAS

Harward v. City of Austin

United States Court of Appeals, Fifth Circuit - October 11, 2023 - 84 F.4th 319

Shoreline property owners brought action against city, seeking various declarations, injunctions, and writs of mandamus regarding claim that city's ordinance declaring that their properties were within city's full-purpose jurisdiction and subject to taxation constituted an illegal annexation attempt under federal and Texas law.

The United States District Court for the Western District of Texas adopted the report and recommendation of the United States Magistrate Judge and dismissed all claims. Property owners appealed.

The Court of Appeals held that:

- The Tax Injunction Act (TIA) did not preclude property owners' claims for a declaration that their properties were within city's extraterritorial or limited-purpose jurisdiction and for invalidation of city ordinance;
- TIA did not bar property owners' alternative claims for equal municipal services from city or just compensation for the taking of their properties' jurisdictional status;
- TIA barred property owners' request for a declaration that city's notices to appraisal district that the properties were within taxing-unit boundaries were invalid; and
- TIA barred property owners' request or a writ of mandamus directing city to instruct appraisal district and county assessor-collector that the properties were in city's extraterritorial or limited-purpose jurisdiction.

Whether the Tax Injunction Act (TIA) prevented the district court from exercising jurisdiction over shoreline property owners' action against city claiming that city's ordinance declaring that their properties were within city's full-purpose jurisdiction and subject to taxation constituted an illegal annexation attempt under federal and Texas law was a question of subject-matter jurisdiction, which the Court of Appeals would review de novo.

For the Tax Injunction Act (TIA) to apply, the requested relief must to some degree stop the assessment, levy, or collection of state taxes; however, such a finding is insufficient where the relief would do so only indirectly, and in such a scenario, a court must make a more exacting examination to determine from the face of the taxpayer's complaint whether the target of a requested injunction is a tax obligation, with considerations including whether the targeted law inflicts costs separate and apart from the tax, whether the targeted law bears a close relationship to the tax, and whether the relief attempts to circumvent a state's "pay-now-sue-later" tax scheme.

Tax Injunction Act (TIA) did not preclude shoreline property owners' claims for a declaration that their properties were within Texas city's extraterritorial or limited-purpose jurisdiction and for invalidation of city ordinance declaring that their properties were within city's full-purpose jurisdiction and subject to taxation; property owners were challenging a separate legal mandate as opposed to a tax, and the challenged ordinance imposed costs separate and apart from the property taxes in that it subjected the properties to the city's broad home-rule authority.

Tax Injunction Act (TIA) did not bar shoreline property owners' alternative claims for equal municipal services from Texas city or just compensation for the taking of their properties' jurisdictional status, which claims stemmed from challenge to city's ordinance declaring that the properties were within city's full-purpose jurisdiction and subject to taxation; the requests would not stop the assessment, levy, or collection of city taxes.

Tax Injunction Act (TIA) barred shoreline property owners' request for a declaration that Texas city's notices to appraisal district that the properties were within taxing-unit boundaries were invalid, which was a request made in action challenging city's ordinance declaring that their properties were within city's full-purpose jurisdiction and subject to taxation; the request went beyond the ordinance and directly challenged the state's taxing power by affirmatively precluding the appraisal district from assessment, levy, and collection of future taxes on the properties.

Tax Injunction Act (TIA) barred shoreline property owners' request for a writ of mandamus directing Texas city to instruct appraisal district and county assessor-collector that the properties were in city's extraterritorial or limited-purpose jurisdiction, which was a request made in action challenging city's ordinance declaring that their properties were within city's full-purpose jurisdiction and subject to taxation; the request went beyond the ordinance and directly challenged the state's taxing power by affirmatively precluding the appraisal district from assessment, levy, and collection of future taxes on the properties.

US State Tax Revenue Drops in Sign of Tough Budget Decisions Ahead.

- **Revenue fell 14th straight month in September: Urban Institute**
- **Fixes include spending cuts, tax hikes, using rainy-day funds**

US states' tax revenue is sliding broadly, raising the prospect of difficult budget decisions in coming years for officials as they spend through cash amassed during the pandemic.

Total state tax revenue sank in September for the 14th straight month on an inflation-adjusted basis, falling by 5.6% from a year earlier, according to a fresh analysis from the Washington-based Urban Institute. Of those that provided information, 34 of 46 states reported year-over-year declines.

Continue reading.

Bloomberg CityLab

By Tanaz Meghjani

November 10, 2023

TAX - PENNSYLVANIA

School District of Philadelphia v. Board of Revision of Taxes

Commonwealth Court of Pennsylvania - October 6, 2023 - A.3d - 2023 WL 6527784

Public school district appealed certain commercial property assessments to the local board of revision of taxes as part of district's policy to appeal assessments that, if successful, would yield at least $7,500 in revenue.

The board upheld the assessments "on the papers." District appealed. The Court of Common Pleas granted property owners' motions to quash the assessment appeals. District appealed. The Commonwealth Court vacated the trial court's decision and remanded the matter. On remand, the Court of Common Pleas again granted property owners' motions to quash. District appealed.

The Commonwealth Court held that the district's implementation of its appeal policy violated the tax-uniformity clause of the Pennsylvania Constitution.

Implementation of public school district's policy to target its tax appeals to assessments that, if successful, would yield at least $7,500 in revenue, violated the tax-uniformity clause of the Pennsylvania Constitution; although the appeal policy might have been facially neutral, its implementation tilted toward a selection of a sub-classification of properties, i.e., commercial and industrial, given that, among other things, real estate advisor retained by district randomly rejected 520,000 properties by "eyeballing" and also that at least 33 assessments of single-family residential properties met the monetary threshold but were not appealed.

Love Me Tender [Bonds] – An Overview: Squire Patton Boggs

The famous song, *Love Me Tender*, by Elvis Presley, includes lyrics such as "We'll never part" and about being together " 'Til the end of time." In contrast to Elvis' wish, the issuer of tax-exempt bonds that makes a tender offer is hoping the exact opposite happens to the relationship between the bondholder and tax-exempt bond. In other words, the issuer hopes that economics drive a wedge between the two.

A tender offer is an offer by an issuer of bonds made to its bondholders to repurchase its outstanding bonds at a specified price on a specific date. There are several common reasons why an issuer may want to make a tender offer to its bondholders. First, the outstanding bonds may be paying interest at a rate that is higher than the current market rate, but the outstanding bonds are not yet callable (and taxable advance refundings no longer produce savings). Second, the issuer's outstanding bonds may be trading on the open market for less than face value. Thus, the issuer can offer to repurchase its bonds by paying above fair market value, but below the face amount, possibly saving itself some money (depending upon the time-value-of-money factors). Third, an issuer may have cash on hand and would like to pay down some of its liabilities, but its bonds may not be currently callable (and taxable advance refundings no longer produce savings). An issuer may offer cash or new bonds in exchange for the outstanding bonds being tendered. In the alternative, the issuer may offer to adjust the terms of the outstanding bonds.

Continue reading.

By Cynthia Mog on October 31, 2023

The Public Finance Tax Blog

Squire Patton Boggs

TAX - PENNSYLVANIA

Downingtown Area School District v. Chester County Board of Assessment Appeals

Commonwealth Court of Pennsylvania - October 6, 2023 - A.3d - 2023 WL 6526193

School district appealed from county board of assessment appeals' denial of district's appeal of taxpayer's real property assessment.

The Court of Common Pleas granted district's tax assessment appeal, ordered that assessment of taxpayer's property be increased to comport with its new fair market value, and rejected taxpayer's constitutional challenges to district's tax assessment appeal policy. Taxpayer appealed.

The Commonwealth Court held that school district's tax assessment appeal policy, although facially neutral, created an unconstitutional lack of uniformity as applied randomly.

School district's tax assessment appeal policy, although facially neutral, created a lack of uniformity as applied, in violation of the Uniformity Clause of the Pennsylvania Constitution; district used a monetary threshold for identifying properties for tax assessment appeal, but did not even attempt to capture each and every assessment that would meet monetary threshold, and instead implemented its policy in an arbitrary fashion, creating a systematic and disparate treatment of taxpayers, both those overassessed and underassessed.

TAX - PENNSYLVANIA

[School District of Philadelphia v. Board of Revision of Taxes]

Commonwealth Court of Pennsylvania - October 6, 2023 - A.3d - 2023 WL 6527784

Public school district appealed certain commercial property assessments to the local board of revision of taxes as part of district's policy to appeal assessments that, if successful, would yield at least $7,500 in revenue.

The board upheld the assessments "on the papers." District appealed. The Court of Common Pleas granted property owners' motions to quash the assessment appeals. District appealed. The Commonwealth Court vacated the trial court's decision and remanded the matter. On remand, the Court of Common Pleas again granted property owners' motions to quash. District appealed.

The Commonwealth Court held that the district's implementation of its appeal policy violated the tax-uniformity clause of the Pennsylvania Constitution.

Implementation of public school district's policy to target its tax appeals to assessments that, if successful, would yield at least $7,500 in revenue, violated the tax-uniformity clause of the Pennsylvania Constitution; although the appeal policy might have been facially neutral, its implementation tilted toward a selection of a sub-classification of properties, i.e., commercial and industrial, given that, among other things, real estate advisor retained by district randomly rejected 520,000 properties by "eyeballing" and also that at least 33 assessments of single-family residential properties met the monetary threshold but were not appealed.

TAX - CALIFORNIA

[One Technologies, LLC v. Franchise Tax Board]

Court of Appeal, Second District, Division 1, California - October 23, 2023 - Cal.Rptr.3d - 2023 WL 6969230

Taxpayer, which was a Delaware limited-liability company (LLC) that did business nationwide, filed a complaint for refund against the Franchise Tax Board, which complaint alleged that voter-approved initiative measure that, in order to create a funding method for clean energy job creation, generally required multistate businesses to apportion their California taxable income based on the single factor of in-state sales was invalid.

The Superior Court sustained Board's demurrer. Taxpayer appealed.

The Court of Appeal held that the measure did not violate the California Constitution's single-subject requirement.

An initiative measure does not violate the California Constitution's single-subject requirement if, despite its varied collateral effects, all of its parts are reasonably germane to each other, and to the general purpose or object of the initiative; that "reasonably germane" standard is an accommodating and lenient manner so as not to unduly restrict the people's right to package provisions in a single bill or initiative.

Voter-approved initiative measure that, in order to create a funding method for clean energy job creation, generally required multistate businesses to apportion their California taxable income based on the single factor of in-state sales did not violate the California Constitution's single-subject requirement; measure's provisions were reasonably germane to its purpose since they provided the mechanisms to raise tax revenues and direct them to clean energy job creation, and despite arguments that the measure also allowed cable companies expending $250,000,000 or more in California to reduce their in-state sales figure by half for taxation purposes and that such a "cable company tax break" was not mentioned in the measure's findings and declarations, the official or proposed titles, or the Attorney General's summary, the whole of the measure was laid out in a 4 ½-page voter information guide.

TAX - GEORGIA

DeKalb County v. City of Chamblee

Court of Appeals of Georgia - October 18, 2023 - S.E.2d - 2023 WL 6859224

City brought declaratory judgment action against county and various county officials, alleging that county failed to properly assess and pay city occupational tax on leasehold interests at county-owned airport located within city and county.

The Trial court denied county's motion to dismiss. After obtaining certificate of immediate review from the trial court, county filed application for interlocutory appeal, which was granted.

The Court of Appeals held that:

- City failed to state a claim for declaratory relief under Declaratory Judgment Act;
- City failed to state a claim for collection of past taxes and appointment of an auditor;
- County was not liable for occupancy taxes because it was not a "business" under city code; and
- There was no final ruling to review on issue of city's derivative claim for attorney fees.

City did not face any uncertainty as to any of its own future conduct but instead only sought an adjudication of issues that would impact the future conduct of county when it requested the court to determine that statute authorizing municipal airport owners to lease property required that county's leasehold interests at county-owned airport located within city and county be treated as taxable estates, which would provide city with taxable revenue, and thus, it failed to state a claim for declaratory relief under the Declaratory Judgment Act against county; city sought to determine propriety of county's actions, not its own, and so any judgment could not guide and protect city with regard to some future act.

City failed to point to any statutory provision authorizing its lawsuit against county for damages resulting from county's alleged failure to assess ad valorem taxes for leasehold interests at county-owned airport located within city and county, and thus, city failed to state a claim for collection of past taxes and for appointment of an auditor; separation of powers doctrine required specific legislative empowerment for the judiciary to act regarding executive function in collection of a tax.

County was not liable for occupancy taxes for its leasehold interests at county-owned airport, located within city and county, under city code which provided in pertinent part that each person engaged in a business, trade, or profession or occupation with location within city shall pay an occupational tax for said business, trade, or profession or occupation, because county's operation of the airport qualified as a governmental function, not a "business" under city's code; county did not operate airport for purpose of raising revenue or producing income, but instead, it controlled the airport for public, government, and municipal purposes, as provided by statute authorizing political subdivisions to acquire airports for such purposes.

There was no final ruling by the trial court upon city's derivative claim for attorney fees in city's action against county seeking declaratory relief for county's failure to pay occupancy taxes it allegedly owed city, and as such, there was nothing for Court of Appeals to review on appeal of trial court's denial of county's motion to dismiss the suit, where trial court expressly "reserved ruling" on city's attorney fees claim.

TAX - VIRGINIA

McKeithen Trustee of Craig E. Caldwell Trust U/A Dated December 28, 2006 v. City of Richmond

Supreme Court of Virginia - October 19, 2023 - S.E.2d - 2023 WL 6884689

Judgment creditor, a junior lienholder, moved for payment of remaining, unclaimed portion of surplus proceeds from judicial sale of judgment debtor's property to satisfy city's tax lien.

The Richmond Circuit Court denied motion and denied reconsideration. Judgment creditor appealed.

The Supreme Court held that:

- Unclaimed surplus proceeds escheated to city pursuant to statute governing judicial tax sales, but
- Escheat provision of statute violated takings clause of the State Constitution as applied.

Under statute governing distribution of surplus proceeds after judicial sale of property to collect delinquent local real estate taxes, the unclaimed portion of surplus proceeds held in the court's registry escheated to city after expiration of the two-year deadline for unknown lien beneficiaries to make a claim, even though city's tax lien had been fully satisfied.

Escheat provision of statute governing distribution of surplus proceeds after a judicial sale of property to collect delinquent local real estate taxes violated the takings clause of the State Constitution as applied to judgment creditor that unsuccessfully sought the remaining, unclaimed portion of surplus proceeds to satisfy its junior lien after city's tax lien had been fully satisfied and unknown senior lien beneficiaries did not make claim within two years of judicial confirmation of sale, where city laid claim to the unclaimed proceeds solely by operation of the mandatory statutory escheat, and city did not assert any specific public-use justification.

Blue and Red States Slash Taxes Despite Warnings of Hard Times Ahead.

Since 2021, half the states have cut personal income tax rates.

With a $750 million budget surplus on hand, there was little doubt whether North Dakota lawmakers would cut taxes earlier this year—the question was how much.

"The surplus was strong, and we believe it's going to be sustained into the future," said state Rep. Craig Headland. "So, it just made sense to cut taxes."

Headland was among the Republicans who negotiated terms of the legislature's $515 million tax cut this year—70% of which came from lowering personal income tax rates. The cuts leave North Dakota with the lowest tax rate among the states that collect income taxes.

In a special session this week, the legislature is considering more tax cuts that would exempt about 50,000 North Dakotans who earn $60,000 or less from income taxes. And Republicans, who control both chambers and the governor's office in North Dakota, plan to continue their march toward eliminating the state income tax; Headland said he plans to introduce such a bill when the legislature reconvenes in 2025.

Continue reading.

Route Fifty

By Kevin Hardy,
Stateline

OCTOBER 25, 2023

States Pitch Mileage Tax to Bridge Gap in Federal Highway Funding.

The main source of federal funding for highways and transit could run out of money by 2028, unless Congress finds a way to fix long-standing problems with the gas tax.

The primary federal account that provides funding to states for highways and transit could run out of money by 2028 unless Congress fixes long-standing problems, an expert told U.S. House members Wednesday.

Chad Shirley, an analyst for the Congressional Budget Office, said that the short-term influx of money from the 2021 infrastructure law would run out in five years, once again forcing Congress to decide whether to raise new transportation taxes, cut spending or use other federal money to make up for the transportation funding shortfall.

"If balances in the highway account or in the transit account go to zero, the federal government can't make its payments to state and local governments on a timely basis," Shirley testified during a hearing of the highways and transit subcommittee of the House Transportation and Infrastructure Committee.

Continue reading.

Route Fifty

By Daniel C. Vock

OCT 18, 2023

TAX - OREGON

D.E. Shaw Renewable Investments, LLC v. Department of Revenue

Supreme Court of Oregon - October 5, 2023 - P.3d - 371 Or. 384 - 2023 WL 6474466

Taxpayers, which operated wind farms that were centrally assessed by the Department of Revenue and which had persuaded the Department that the valuation methodology that the Department had used to assess that property for a particular tax year had been flawed, appealed from the Department's refusal of their request that the Department use the corrected methodology to also reduce the assessed value of their property for two previous tax years.

The Tax Court entered summary judgment for the Department. Taxpayers appealed.

The Supreme Court held that the statute governing the correction of errors in the certified assessment roll precluded the Department from exercising its general statutory authority to reduce the assessed value of taxpayers' property for the two previous tax years at issue.

Statute governing the correction of errors in the certified assessment roll precluded the Department of Revenue from exercising its general statutory authority to reduce the assessed value of taxpayers' property—which consisted of wind farms that were centrally assessed by the Department—for two prior tax years, even though taxpayers had persuaded the Department that valuation methodology that it had used to assess their property for different, but more recent, prior tax year had been flawed; taxpayers did not request a conference with the Department's director to challenge the Department's valuation opinion before the tentative assessments for those two prior years became final, and statute governing correction of errors prohibited the director from correcting an error in the valuation judgment that was an error in the Department's opinion of the value of property.

TAX - MAINE

Oakes v. Town of Richmond

Supreme Judicial Court of Maine - October 3, 2023 - A.3d - 2023 WL 6430640 - 2023 ME 65

Taxpayer filed two-count complaint for declaratory judgment and damages, alleging she did not have a taxable interest in property and seeking reimbursement for past paid taxes, interest, and a refund of purchase price.

The Superior Court granted town's motion to dismiss for failure to state a claim, and taxpayer appealed.

The Supreme Judicial Court held that:

- Abatement process is the exclusive process for pursuing a claim that a tax is discriminatorily excessive, a challenge to an assessment practice or methodology, and a true overvaluation claim, but exemption claims may be pursued through either the abatement process or a declaratory judgment action, and other challenges to a tax assessment may be pursued through either the abatement process or a declaratory judgment action; overruling *Talbot v. Town of Wesley*, 100 A. 937, and *Berry v. Daigle*, 322 A.2d 320;
- Taxpayer could use declaratory judgment method to challenge property tax on the ground that the town lacked the authority to impose the tax upon her because she did not own the land at issue; and
- Taxpayer could pursue compensation under statute allowing compensation based on a clerical error.

TAX - NEVADA

[Orbitz Worldwide, LLC v. Eighth Judicial District Court in and for County of Clark]

Supreme Court of Nevada - September 28, 2023 - P.3d - 2023 WL 6350110 - 139 Nev. Adv. Op. 40

Relators commenced private action on behalf of the state against online travel companies, asserting causes of action under the Nevada False Claims Act (NFCA), alleging that companies knowingly avoided obligations to pay transient-lodging taxes mandated by county and state law.

Following commencement of county's NFCA lawsuit against same companies, the companies moved for summary judgment in relators' suit on grounds of the government-action bar, triggered by county's NFCA case. The District Court denied the motion and then later denied companies' motion for reconsideration of that decision. Companies filed petition for writ of mandamus.

The Supreme Court held that:

- As a matter of first impression, government-action bar in NFCA contained no sequencing requirement, and so, when applicable, statute requires dismissal of a private NFCA action even if civil action on behalf of state or political subdivision was filed after the private action;
- As a matter of first impression, when a civil action under NFCA has been brought by or on behalf of a state governmental entity, the government-action bar presents no bar to a separate action on behalf of a different governmental authority, even if the two suits involve same allegations or transactions;
- Government-action bar did not require dismissal of relators' private action against online travel companies; and
  Failure to apply government-action bar did not interfere with Attorney General's control over private NFCA suits.

Supreme Court's exercise of discretion to entertain petition for writ of mandamus filed by online travel companies challenging district court's denial of its motion for summary judgment in relators' qui tam Nevada False Claims Act (NFCA) suit alleging that companies knowingly avoided paying transient-lodging taxes was warranted, where petition raised purely legal questions of first impression regarding effect of NFCA's government-action bar when a government entity files suit after the private qui tam action and the two suits involve two distinct governmental entities, the issues were of statewide importance, and moreover, the interpretation of the government-action bar at early stages of litigation furthered judicial economy.

Government-action bar in the Nevada False Claims Act (NFCA), stating that an NFCA action may not be maintained by a private plaintiff if the action is based upon allegations or transactions that are the subject of civil action or proceeding to which state or political subdivision is already a party, contains no sequencing requirement, and thus, when applicable, the statute requires dismissal of private qui tam NFCA action brought on behalf of the state even if civil action brought by state or political subdivision was filed after the private action.

When a civil action under the Nevada False Claims Act (NFCA) has been brought by or on behalf of a state governmental entity, the government-action bar presents no bar to a separate private action on behalf of a different governmental entity, even if the two suits involve same allegations or transactions.

Government-action bar in the Nevada False Claims Act (NFCA) did not require dismissal of relators' private action against online travel companies asserting that companies knowingly avoided obligations to pay transient-lodging taxes mandated by county code and state law by engaging in scheme to collect tax based on higher, retail room rate, but remitting tax based on lower, discounted room rate negotiated with hotels, even though county later filed own NFCA against same companies based on same allegations or transactions, where relators sought recovery of portion of transient-lodging tax to which the state, not county authorities, was entitled, and thus brought case only on their and that of the state, and state was not party to action brought by county.

Failure to apply government-action bar under the Nevada False Claims Act (NFCA) when private qui tam action was brought on behalf of the state against online travel companies for alleged scheme to avoid remitting full amount owed for transient-lodging taxes and county filed subsequent civil action on its own account against same companies did not interfere with Attorney General's control over private NFCA suits, as the Attorney General still had the right to intervene and use other procedural mechanisms to exercise a certain amount of control.

TAX - TEXAS

Harward v. City of Austin

United States Court of Appeals, Fifth Circuit - October 11, 2023 - F.4th - 2023 WL 6617932

Shoreline property owners brought action against city, seeking various declarations, injunctions, and writs of mandamus regarding claim that city's ordinance declaring that their properties were within city's full-purpose jurisdiction and subject to taxation constituted an illegal annexation attempt under federal and Texas law.

The United States District Court adopted the report and recommendation of United States Magistrate Judge and dismissed all claims. Property owners appealed.

The Court of Appeals held that:

- The Tax Injunction Act (TIA) did not preclude property owners' claims for a declaration that their properties were within city's extraterritorial or limited-purpose jurisdiction and for invalidation of city ordinance;
- TIA did not bar property owners' alternative claims for equal municipal services from city or just compensation for the taking of their properties' jurisdictional status;
- TIA barred property owners' request for a declaration that city's notices to appraisal district that the properties were within taxing-unit boundaries were invalid; and
- TIA barred property owners' request or a writ of mandamus directing city to instruct appraisal district and county assessor-collector that the properties were in city's extraterritorial or limited-purpose jurisdiction.

Tax Injunction Act (TIA) did not preclude shoreline property owners' claims for a declaration that their properties were within Texas city's extraterritorial or limited-purpose jurisdiction and for invalidation of city ordinance declaring that their properties were within city's full-purpose jurisdiction and subject to taxation; property owners were challenging a separate legal mandate as opposed to a tax, and the challenged ordinance imposed costs separate and apart from the property taxes in that it subjected the properties to the city's broad home-rule authority.

Tax Injunction Act (TIA) did not bar shoreline property owners' alternative claims for equal municipal services from Texas city or just compensation for the taking of their properties' jurisdictional status, which claims stemmed from challenge to city's ordinance declaring that the properties were within city's full-purpose jurisdiction and subject to taxation; the requests would not stop the assessment, levy, or collection of city taxes.

Tax Injunction Act (TIA) barred shoreline property owners' request for a declaration that Texas city's notices to appraisal district that the properties were within taxing-unit boundaries were invalid, which was a request made in action challenging city's ordinance declaring that their properties were within city's full-purpose jurisdiction and subject to taxation; the request went beyond the ordinance and directly challenged the state's taxing power by affirmatively precluding the appraisal district from assessment, levy, and collection of future taxes on the properties.

Tax Injunction Act (TIA) barred shoreline property owners' request for a writ of mandamus directing Texas city to instruct appraisal district and county assessor-collector that the properties were in city's extraterritorial or limited-purpose jurisdiction, which was a request made in action challenging city's ordinance declaring that their properties were within city's full-purpose jurisdiction and subject to taxation; the request went beyond the ordinance and directly challenged the state's taxing power by affirmatively precluding the appraisal district from assessment, levy, and collection of future taxes on the properties.

TAX - MAINE

Oakes v. Town of Richmond

Supreme Judicial Court of Maine - October 3, 2023 - A.3d - 2023 WL 6430640 - 2023 ME 65

Taxpayer filed two-count complaint for declaratory judgment and damages, alleging she did not have a taxable interest in property and seeking reimbursement for past paid taxes, interest, and a refund of purchase price.

The Superior Court granted town's motion to dismiss for failure to state a claim, and taxpayer appealed.

The Supreme Judicial Court held that:

- Abatement process is the exclusive process for pursuing a claim that a tax is discriminatorily excessive, a challenge to an assessment practice or methodology, and a true overvaluation claim, but exemption claims may be pursued through either the abatement process or a declaratory judgment action, and other challenges to a tax assessment may be pursued through either the abatement process or a declaratory judgment action; overruling *Talbot v. Town of Wesley, 100 A. 937, and Berry v. Daigle*, 322 A.2d 320;
- Taxpayer could use declaratory judgment method to challenge property tax on the ground that the town lacked the authority to impose the tax upon her because she did not own the land at issue; and
- Taxpayer could pursue compensation under statute allowing compensation based on a clerical error.

TAX - ILLINOIS

MB Financial Bank, N.A. v. Brophy

Supreme Court of Illinois - September 21, 2023 - N.E.3d - 2023 IL 128252 - 2023 WL 6153041

Taxpayers whose apartment-complex property had been taken by city in condemnation action brought declaratory judgment action against county treasurer seeking refund of property taxes paid between the date the city filed its condemnation complaint and the date it acquired taxpayers' property.

The Circuit Court dismissed action. Taxpayers appealed. The Appellate Court affirmed in part and reversed in part. Treasurer petitioned for leave to appeal, which was granted, and taxpayers sought cross-relief.

The Supreme Court held that city's title to property did not vest retroactively to date of filing of condemnation petition and thus did not relieve taxpayers from property tax liability for period between date of filing on condemnation complaint and date of payment of compensation; overruling *City of Chicago v. McCausland*, 379 Ill. 602, 41 N.E.2d 745.

Statute providing that property acquired for a use that is exempt from taxation shall be exempt on the date of the right of possession "except that property acquired by condemnation is exempt as of the date the condemnation petition is filed" does not render a condemning authority liable for property taxes from date a condemnation action is filed; rather, statute applies only if the relation-back rule is in effect to make the tax-exempt status of the property relate back to date condemnation action was filed.