Tax Bill's Fine Print: Making It Tougher for Cities, States to Refinance Debt.

Tax exemption would be erased for type of bond local governments rely on to lower financing costs for schools, roads and other projects

The North Olmsted City school district in suburban Cleveland was planning to wait a few years before refinancing $48 million in outstanding bonds used to build a new middle school and high school. Now Treasurer Robert Matson is hoping to get the deal done before Christmas.

The reason: The Republican tax plan in congress would eliminate a tax exemption on some types of bonds issued by state and local governments to refinance their old debt. "It just made all the sense in the world to do it," Mr. Matson said.

The GOP proposal targets the exemption for so-called advanced refunding bonds, which allow governments to refinance old bonds earlier to take advantage of low interest rates and, occasionally, to postpone upcoming debt payments.

The House approved its version of the tax measure last week, and the GOP has said it aims to get agreement on the bill by year's end. It is one of several municipal-market exemptions that could be phased out under the legislation. The nonpartisan Joint Committee on Taxation estimates that ending advance refundings would mean an additional $17.3 billion in revenue to the federal government over the next decade.

Analysts said the move is likely to reduce the yearly supply of municipal bonds and increase borrowing costs for governments.

The expected change in policy is already prompting cities and states to fast-track their advance refunding offerings before the end of the year. One underway is from the state of Wisconsin, which last week circulated preliminary advanced refunding documents for $375 million of transportation revenue bonds.

"We just want to get ahead of the possible large amount of supply that could hit the muni market in December," said the state's capital finance director David Erdman, who had originally expected to refinance the debt in 2018 or 2019.

New York's Metropolitan Transportation Authority sold $2 billion in transportation revenue bonds Monday and Tuesday partly to get ahead of any potential change in tax policy said spokesman Aaron Donovan.

Advance refundings have been allowed for decades, as long as governments have been issuing tax-exempt bonds. In 1986, as part of the tax overhaul under President Ronald Reagan, Congress limited government borrowers to one advance refunding per bond issue. The yearly volume of advance refundings varies depending on interest rates and the availability of old bonds to be refinanced.

Government borrowers have sold an average of $60 billion in advance refunding bonds per year over the past decade, about 15% of total municipal issuance. Last year, advance refundings swelled to $125 billion, or 30% of total issuance.

With advance refundings, borrowers invest the proceeds in safe, short-term securities, and those funds are used to make payments on older bonds that typically can't be refinanced until a decade has passed.

Advance refundings make the most sense for borrowers when short-term rates are high relative to long-term rates. In that scenario, the income produced by the shorter-term securities bought with the proceeds of the advance refunding bonds will approach the borrowing costs on those bonds.

Both sets of bonds remain outstanding until the first set can be refinanced, and both provide investors with interest exempt from federal taxes.

Participants in the municipal market said they have several concerns about the possible policy change. They worry public-finance officials would no longer be able to take advantage of low interest rates and municipal bond investors and traders would have less debt to buy and sell.

"As a bond manager we could be looking at less attractively priced interest levels for bond investors," said Dan Heckman, senior fixed income strategist at U.S. bank private wealth management.

Ending advance refundings would also take away a crutch some governments have used for short-term budgetary relief. Cash-strapped cities sometimes issue new, longer dated bonds to advance refund bonds that are coming due so they can postpone big debt payments.That move often adds to those cities' interest costs, compounding financial pressures.

If the proposal becomes law, municipalities could start writing earlier refinancing dates into their bond contracts to maintain their flexibility, some analysts said. But because many investors prefer longer dated bonds, that move could drive up borrowing costs as much as a quarter of a percent, said John Mousseau, director of fixed income at Cumberland Advisors, an investment-management firm.

Government-finance officials say the benefits of advance refunding to local taxpayers are significant. Florida bond finance director Ben Watkins estimated the state has saved $3 billion over the past 10 years with advance refundings.

"The vast majority of state and local government refundings are for economic savings rather than as a budgetary gimmick," said Mr. Watkins, a former chair of the Government Finance Officers Association debt committee who serves on the group's executive board.

The Wall Street Journal

By Heather Gillers

Nov. 22, 2017 7:00 a.m. ET

Write to Heather Gillers at heather.gillers@wsj.com

Portland to Require Prevailing Wage for Workers on Developments that Get Tax Breaks.

The Portland City Council voted 8-0 Monday night to require contractors working on new developments that receive tax breaks to pay their employees a prevailing wage.

It also granted $6.5 million in tax breaks for two affordable housing projects that could add 135 units, more than half of which would be considered affordable.

Mayor Ethan Strimling hailed the vote to require contractors to pay prevailing wages on Tax Increment Financing-funded projects.

“This is a huge step forward on the prevailing wage,” Strimling said. “We will be the first community in the state to put this in their TIF rules.”

The council, however, shot down an amendment by Strimling and Councilor Pious Ali to require those contractors working on projects that receive Tax Increment Financing to participate in an apprenticeship program registered by the state or federal government.

That provision, which was strongly supported by union workers during a public hearing but excluded from the proposal forwarded by the council’s Economic Development Committee, was set aside because of the potential impact on affordable housing projects.

Instead, the council will explore offering grants for a broader job-training program that would help other industries as well.

Councilor David Brenerman said that the apprenticeship program would have had a limited impact, since it would have applied to only a few projects.

“Rather than a symbolic gesture,” Brenerman said, “it seems to me we should do something that is meaningful to actually train people.”

Strimling first sought last year to add new requirements to individual projects receiving Tax Increment Financing.

After councilors blocked an effort to make a last-minute change to an agreement with biotech firm Immucell, he decided to forward his proposal to the council’s Economic Development Committee.

Strimling’s proposal, which was re-introduced in April, was more aggressive than the one that came out of committee. Not only was the apprenticeship program removed, but so was a requirement that at least 25 percent of the work hours be performed by Portland residents, minorities, women or veterans.

Instead, the committee recommended adding anti-discrimination language to the city policy and looking at the costs of studying whether there is a disparity in the employment practices of contractors.

The council also changed its policy to offer stronger incentives for affordable housing. Developers will be able to keep a higher percentage of their post-development property taxes – up to 75 percent for a maximum period of 30 years from 65 percent for a maximum period of 20 years – in an effort to make the city more competitive when seeking state funding.

Prevailing wages are set on an annual basis by the state Department of Labor on a county-by-county

basis for state construction projects exceeding $50,000.

In 2017, prevailing wages, including fringe benefits, were around $20 an hour, ranging from $13.63 an hour for a fence-setter to $91.28 for an elevator installer, according to the Labor Department.

Jason Shedlock, executive director of the Maine State Building & Construction Trades Council, which represents 5,000 union-affiliated members, pushed back against fears expressed by affordable housing developers, who were concerned about increased costs and delays.

“Set an example and show that you do care about job training right now,” said Shedlock, Strimling’s mayoral assistant until the position was this summer.

Councilors expressed support for apprenticeship programs and acknowledged their value, but hoped they would be able to help more workers by offering grants through a competitive process for wide-ranging job-training programs.

City Councilor Justin Costa joined Ali and Strimling in supporting the apprenticeship program. Councilor Spencer Thibodeau was absent due to an illness.

Councilors also voted to award $6.5 million in tax breaks for two housing projects that could add 135 units, more than half considered affordable.

The Tax Increment Financing proposals would return a portion of property taxes generated from new developments to the property owner, rather than providing an upfront cash subsidy.

The Portland Housing Authority would receive $2.1 million in tax breaks for its 55-unit project proposed for Boyd Street, while Avesta Housing would get $4.4 million for its 80-unit project on Cumberland Avenue.

Both groups hope the city commitment will make them more competitive when seeking state subsidies early next year, which are critical for each project to come to fruition.

And both agreements take advantage of a provision that allows affordable housing TIFs to last up to 30 years instead of 20.

Avesta would receive 75 percent of the property taxes generated from the new development, estimated to be $148,000 a year or $4.4 million over 30 years.

Under the proposed TIF agreement, the Portland Housing Authority would receive half of the post-development property taxes, an average of nearly $71,500 a year, totaling $2.1 million over 30 years, to help offset operating costs.

The Boyd Street project would produce 55 units of mixed-income housing, with 44 units being affordable to people earning up to 60 percent of the area’s median income. A housing report released by the city in October had that income threshold at $34,500 for a single person and $49,260 for a family of four.

Avesta Housing’s Deering Place project at 510 Cumberland Ave. would consist of 80 units of mixed-income housing, including 48 units considered affordable to households earning less than 50 percent of the area’s median income. For 2017, that income limit was $28,750 for a single person and $41,050 for a family of four.

THE PORTLAND PRESS HERALD

BY RANDY BILLINGS
STAFF WRITER

November 21, 2017

SLGS Will Soon be Unavailable for Subscription: Squire Patton Boggs

Are we having fun yet?

To add further stress to the advance refunding issues that everyone is scrambling to close by the end of the year, subscriptions for SLGS will not be available on or after December 8, if not earlier.

The most recent suspension of the application of the federal debt ceiling expires on December 8, and Congressional leaders have said that Congress will not vote this December either to extend the suspension of the application of the debt ceiling or to increase the ceiling. Instead, Congress will rely on the Treasury's use of "extraordinary measures" to defer having to deal with the debt ceiling.

One of these extraordinary measures is the suspension of the sale of SLGS. In all past instances when Treasury has suspended the sale of SLGS, Treasury has honored subscriptions for SLGS that were made before the suspension took effect, even if the delivery date of the SLGS fell after the suspension date. We anticipate that the Treasury will continue its historic practice here, but we will not know for certain until Treasury announces the closure of the SLGS window. Issuers should be prepared to bid for open market securities if a SLGS subscription cannot be made before December 8.

Because there are going to be a crush of advance refunding issues coming to market ahead of the potential December 31, 2017 repeal of tax-exempt advance refundings, issuers should also anticipate some difficulty in attracting at least three bids and/or favorable prices, given the likely volume of advance refunding issues that will be chasing a relatively limited number of providers of open market securities.

The Public Finance Tax Blog

By Michael Cullers and Johnny Hutchinson on November 22, 2017

Squire Patton Boggs

GOP Tax Overhaul Could Hit State and Local Pension Plans With Federal Tax.

"It's a huge burden," the executive director of the National Conference on Public Employee Retirement Systems said as he discussed the tax proposal.

WASHINGTON — State and local government pension plans would be confronted with new costs and complications under the Republican tax bill the U.S. House approved last week.

Some, but not all, public pension investments would become subject to what's known as the Unrelated Business Income Tax, or UBIT, if the current version of the House bill were to be enacted. The proposed change to how the tax is applied would make it so state and local government pension

plans are treated in a way that is similar to private sector pensions, or nonprofit organizations.

Hank Kim, executive director of the National Conference on Public Employee Retirement Systems, said that if the House proposal were to go into effect, it would be the first time that state and local pension systems would have to pay federal tax on their investments.

Route Fifty

Continue reading.

By Bill Lucia,
Senior Reporter

November 21, 2017

Alternatives to Tax-Exempt Advance Refundings Would Cost Issuers.

WASHINGTON — Halting tax-exempt advance refundings at the end of the year, as proposed by both pending tax bills, would increase issuers' costs, deprive them of savings for new projects, and push some to enter into swaps that could increase their risk.

Market experts say there are alternatives to advance refundings, many of which have been used since Congress, in the 1986 Tax Reform Act, barred private activity bonds from being advance refunded and limited governmental and 501(c)(3) bonds to one advance refunding.

These include taxable refundings, shorter or more frequent calls, current refundings, forwards, options, and forward-starting, interest rate swaps.

While muni market participants are fighting to save tax-exempt advance refundings, it may be hard for them to make headway on this front since tax bills in both the House and Senate are aligned against retaining these bonds after 2017.

Advance refundings are used most often by issuers to lower their borrowing costs. When interest rates drop, outstanding bonds with relatively high interest rates can be advance refunded.

Refunding bonds are issued at the lower interest rate and their proceeds are used to purchase securities, typically state and local government series securities or U.S. Treasuries, which are put into escrow until the call date of the bonds being refunded when the escrowed investments can be used to take the bonds out of the market.

Advance refundings also can be used by issuers to: lengthen the average maturities of existing date to reduce annual debt service; refinance certain types of projects to facilitate a merger or; do away with outdated or unwanted covenants in bond documents.

Halting tax-exempt refundings would be costly for muni issuers, most market sources agree.

"Eliminating tax-exempt advance refundings eliminates the issuer's ability to realize the full tax-exempt savings and lock it up prior to the call date of the bonds to be refunded," said Dave Caprera, of counsel at Kutak Rock in Chicago.

"It's going to cost state and local governments a bunch of money — and ultimately taxpayers," said

Kurt Freund, a managing director at RBC Capital Markets in Phoenix.

“It’s going to raise the cost of issuance,” said Tom Dannenberg, president and chief executive officer of Hutchinson, Shockey, Erley & Co. in Chicago.

Dannenberg said it will take away an issuer’s ability to both easily lower debt service costs and free up additional borrowing capacity for other much-needed projects.

Prohibiting advance refunding bonds could also shrink the market.

The par amount of tax-exempt advance refundings done in 2016 was more than $120 billion, almost 27% of the new long-term issue market, according to data from Thomson Reuters (TRI). That amount has been higher in the past and varies widely year-to-year depending on interest rates.

The Joint Committee on Taxation estimates Congress will raise $17.3 billion in revenues over 10 years by terminating advance refundings.

Dannenberg says he thinks JCT’s estimates are suspect because it is assuming all tax-exempt refundings will be replaced by taxable advance refundings and he doesn’t see that happening.

“If issuers can’t do tax-exempt refundings, they won’t simply do taxable advance refundings,” he said.

The tax bills’ provisions also have a retroactive impact in that issuers that sold bonds in recent years with the expectation that they will be able to advance refund them with tax-exempts will no longer be able to do so, George Friedlander, managing partner at Court Street Group Research, pointed out in a recent paper.

The bills have caused many issuers to push up tax-exempt advance refundings to November and December of this year before they are foreclosed from doing so.

But there are alternatives. For outstanding bonds, sources said, issuers can do taxable advance refundings, if they still produce savings. Issuers can also do tax-exempt current refundings, which must be done within 90 days of the call date. Current refundings would still be permitted by the tax bills.

Offerings for new bonds can be structured with shorter or more frequent call dates, forward or option contracts, and forward-starting interest rate swaps.

Freund said some issuers can still save money doing taxable refundings, depending on how high the interest rates are on the bonds to be refunded and current interest rates.

“Right now we’re analyzing and I would imagine others are analyzing — if they’re not they should be — whether it makes sense to do a tax-exempt refunding before the end of the year or a taxable refunding in February,” he said.

A taxable refunding would permit “a little bit less onerous pace going forward with the financing” and could still result in savings, albeit not as much savings as would result from a tax-exempt advance refunding, he said.

Issuers can also “do current refundings, I think that will happen for sure, going forward,” said Freund.

Chris Hamel, managing director and head of municipal finance at RBC Capital Markets in New York, said current refundings have become popular in recent years with low interest rates as a way to minimize negative arbitrage.

If interest rates are so low that an issuer's investment yield from the securities it's escrowed in a refunding is lower than the yield on its refunding bonds, then the issuer is stuck with negative arbitrage that eats into its savings. With a current refunding, the escrow is only in place for 90 days or less, minimizing the negative arbitrage.

RBC provided The Bond Buyer with statistics showing current refundings last year were 23% of the market, compared to 26% for advance refundings. In 2015, current refundings were 30%, compared to 22% for advance refundings.

New bonds can be structured with shorter calls or more frequent calls than the standard 10-year call, market sources said.

"Right now short calls cost a lot," said Friedlander. He said he doesn't see the market going to five-year calls, at least for now, because "the extra yield investors will want will be too much for issuers."

But Hamel said bank-qualified bonds in Pennsylvania, Nebraska, South Dakota and other states already have five-year calls. "It's not as if this doesn't already exist" in some parts of the market, he said.

And Freund said that while typically right now, "the earlier the issuer makes the call, the more the issuer will pay for it," markets "evolve over time."

"Five years from now people may only do five-year calls," and costs won't be as high as going with a five-year call today, he said.

Freund said it depends on the market and the maturity. "Right now, in many circumstances you can price an eight-year call at about the same as a 10-year call for a high-yield piece of paper," he said, adding "but not in all markets all the time."

Issuers also can enter into derivative products such as long bond purchase agreements, forwards, options, and forward-starting interest rate swaps, to achieve some, but not all of the savings they would have gotten from a tax-exempt advance refunding, sources said.

"I think another product you'll see people use, I would suspect, are contracts for forward delivery of bonds," said Freund.

An issuer may have bonds with a call date of July 1, 2022, he said. Ninety days before that call date would be April 1, 2022. The issuer might sell bonds six months before call date, price them and sell them to investors, but delay the delivery date of the bonds until April 1, 2022 when it could do a current refunding. The issuer has locked in low interest rates with a little bit of premium. It's hedging against interest rate increases and paying for that, said Freund.

"These are all techniques we saw the market adopt after the 1986 limitations on advance refundings and they still can be used," said Sam Gruer, managing director of Blue Rose Capital Advisors. "New products will be developed. The industry as a whole is very innovative."

Billions and billions of dollars of forward-starting interest rate swaps were done in the late 1990s and early 2000s by issuers who were prohibited from doing any, or any more advance refundings, Gruer said.

In a forward starting swap, an issuer enters into an interest rate swap that doesn't take effect for several years. Here's how it worked.

A state sold governmental or 501(c)(3) bonds in the early 1990s and advance refunded them in 2002. These refunding bonds were callable in 2012. In 2007, interest rates dropped even further and the state wanted to advance refund them again, but was prohibited from doing so by the Tax Reform Act of 1986.

So the state entered into a floating-to-fixed, forward-starting swap agreement with a dealer in 2007 that locked in the low interest rates from that year but didn't take effect for five years or 2012, when the refunding bonds could be called. Under the agreement, the state would pay fixed rates and receive floating rate payments from the bank or dealer acting as the swap counterparty.

The state also issued floating rate bonds in 2012. The floating rate from the swap and floating rates of the bonds canceled each other out. The state was left with a synthetic fixed rate bond that it used to current refund the 2002 refunding bonds when they became callable in 2012.
A variation of this is structure was for the issuer to pay higher rates on the swap when it takes effect, in order to get some of all of the payments upfront from the bank or dealer swap counterparty.

Gruer said forward-starting swaps "need to be analyzed carefully and maybe it's appropriate for some issuers but not for others."

He said some of these transactions cost issuers during the financial crisis when banks raised prices for letters of credit backing variable rate bonds and then stopped issuing them altogether. Under those LOCs if the bonds couldn't be remarketed the bank would have to buy them.

Money market funds at that time would only buy the bonds if they were backed by LOCs. That's because bonds backed by liquidity facilities were in trouble. Under those agreements banks agreed to buy bonds that couldn't be remarketed if the bonds were backed by an insurer rated triple-A. While the insurers were historically rated triple-A, they were all downgraded during the financial crisis.

By Lynn Hume

BY SOURCEMEDIA | MUNICIPAL | 11/22/17 07:33 PM EST

For Trump, GOP Tax Bill Could Have Big Downside.

The GOP tax plan that is speeding through Congress could deliver a much-needed win for the White House, but it could also kill one of Trump's other top priorities: legislation to rebuild U.S. infrastructure.

Not only would the tax overhaul use up one of the potential funding options for repairing infrastructure, it would also eliminate a financing tool that states have used to back a wide range of infrastructure projects.

That could spell doom for Trump's infrastructure overhaul, which was always going to be a tough sell for fiscal conservatives on Capitol Hill.

“Preemptively removing [private activity bonds] as a financing tool for infrastructure projects would undermine Congress’s stated goal of leveraging a $1 trillion investment in our nation’s infrastructure,” said Richard A. White, acting president and CEO of the American Public Transportation Association.

“Instead, this provision would have a chilling effect on private sector investments in infrastructure projects.”

The tax package that passed the House last week would eliminate the deduction on tax-exempt private activity bonds, which are used by public-private partnerships to help build roads, highways, housing, hospitals, airports and other critical projects.

Eliminating the program would save nearly $40 billion over a decade, according to a GOP summary sheet.

But transportation advocates worry ending the deduction will directly undercut Trump’s effort to revitalize the nation’s infrastructure.

The White House, which has promised to release its rebuilding proposal as soon as tax reform is finished, is aiming to raise $1 trillion worth of overall infrastructure investment. The administration wants to incentivize the private sector to partner with state and local governments on transportation projects by providing $200 billion in federal seed money.

But public-private partnerships rely heavily on tax-exempt private activity bonds and other municipal bonds. Ending their preferential tax treatment could make private firms less inclined to get involved with public infrastructure projects, according to transportation advocates.

Nearly two-thirds of the core infrastructure investments in the United States are financed with some form of municipal bonds, with $400 billion in municipal bonds issued to finance projects in 2015 alone.

“[Private activity bonds] are a crucial instrument for many local governments to build infrastructure,” said Marcia Hale, president of Building America’s Future. “If no longer available, it would be a major loss.”

Members of Congress have already been raising the issue with the administration.

During a meeting with the Congressional Women’s Caucus in the Capitol last week, Transportation Secretary Elaine Chao pitched Trump’s $1 trillion infrastructure plan and highlighted their preferred public-private partnership model.

But one of the participants, Rep. Elizabeth Esty (D-Conn.), raised a question: How are you going to drum up the private investment if we eliminate the preferential treatment of the private activity bonds?

“There was a long pause,” Esty said, recalling the conversation last week.

But Rep. Mark Meadows (R-N.C.), chairman of the conservative Freedom Caucus, said the elimination of the private equity bonds would not be a “death knell” for Trump’s public-private infrastructure model because other sources of funding, like municipal bonds, would still be available. And for many projects, he added, private equity makes up “the lion’s share” of the funding.

“Private activity bonds aren’t the only thing that can do public-private partnerships. Obviously, it’s

one vehicle, but it's not the only vehicle," he said last Thursday. "You've got a number of other things that you can [use]."

But Meadows, a member of the Congressional Caucus on Public-Private Partnerships, also suggested that House Republicans eliminated the bonds not out of an ideological opposition to them, but in an effort to find savings to pay for tax cuts in the larger package.

The Senate bill, he noted, retains the bonds' tax exemption, and Meadows said he'd support the Senate's approach — depending on the cost.

"The biggest thing for me is making sure we have a vehicle [for infrastructure funding]," he said. "Obviously it's one tool that gets removed, and I would not be surprised to see it get added back in the Senate."

Indeed, there is a wide range of support among Republicans for keeping the private activity bonds in the final bill.

Reps. Randy Hultgren (R-Ill.) and Dutch Ruppersberger (D-Md.), who co-chair the Municipal Finance Caucus, have been urging GOP leadership to keep the program.

And House Transportation and Infrastructure Committee Chairman Bill Shuster (R-Pa.) also thinks that the issue should be re-examined in the tax plan.

"It's been very beneficial in the transportation world," Shuster told The Hill this month. "I want to see them stay."

Lawmakers who are pressing to keep the private activity bonds in the final tax product are encouraged that the Senate version of the bill preserves them.

But transportation advocates also have concerns with the Senate measure, which would repeal the tax-exemption for advance refundings of municipal bonds. Eliminating that cost-saving opportunity for governments could hurt infrastructure efforts, advocates say, because the extra savings are sometimes used by transit agencies on infrastructure projects.

"We are concerned … that changing the treatment of private activity bonds, advance refunding bonds, and tax credit bonds will have a negative impact on overall infrastructure spending," said Ken Miller, Oklahoma state treasurer and president of the National Association of State Treasurers.

"As the Senate finalizes their tax-reform bill, we urge them to maintain the current treatment of these bonds to ensure the country is fully prepared to finance the administration's ambitious infrastructure plan in the year ahead."

Other roadblocks in the tax plan

Trump's infrastructure bill could hit another roadblock if the GOP tax overhaul passes: coming up with an offset to cover the cost.

While there is bipartisan agreement about the need to rebuild U.S. infrastructure, there has been less consensus over how to pay for it.

International tax reform, however, was considered one of the few viable funding options for the infrastructure plan.

A group of bipartisan lawmakers, including some members of the Freedom Caucus, had been pushing to use the revenues from repatriation, or taxing corporate earnings stored overseas at a one-time lower rate when they return to the U.S., to pay for infrastructure upgrades.

But the GOP tax bill would instead use repatriation to help pay for tax cuts — and that provision seems nearly certain to be part of the final legislation.

If the tax bill passes, that would take the potential funding option off the table for infrastructure — and that could make passing a bill difficult, if not impossible.

Fiscal conservatives have long been wary of massive federal spending on transportation, insisting that any package be fully paid for.

“If you don’t put infrastructure with tax reform, then you’re not going to do infrastructure — almost by definition,” Rep. John Delaney (D-Md.) told The Hill this month.

But Delaney said that if Republicans are unable to pass their tax overhaul, then it’s possible they will try to make a deal with Democrats on taxes — and that could include tying repatriation to infrastructure.

“Then there might be a chance for it to come back,” he said.

THE HILL

BY MELANIE ZANONA – 11/26/17 10:30 AM EST

– Mike Lillis contributed

Tax ‘Reform’: Don’t Pinch the SALT Deduction.

True tax reform should aim to satisfy four main ‘fiscal’ principles: It should aim at a tax system that is flatter (with lower nominal rates), broader (as many people as possible should have skin in the game), simpler and, even allowing—as I would –for some supply side magic, it should be fiscally responsible. As that final goal is extremely difficult to reconcile with those earlier principles without either truly brutal claw-backs in entitlements (not something I would favor) or (my very clear preference) some sort of federal VAT/GST/Sales tax, both political impossibilities for now, the best that can be hoped for is that any change in the tax regime should not worsen the country’s (unattractive) long term financial condition by too much.

It’s hard to see how (despite proposals such as the cut in corporate tax rates—good, but 20 percent looks like an overreach—and the welcome abolition of the Alternative Minimum Tax) the GOP plans genuinely satisfy any of those conditions.

Continue reading.

NATIONAL REVIEW

by ANDREW STUTTAFORD

November 26, 2017 2:23 PM

Save the SALT Deduction.

Do congressional Republicans and President Trump want to undertake a multitrillion-dollar federal bailout of states and cities? If not, the Senate and House should squelch their competing proposals to reduce or eliminate Americans' ability to deduct state and local taxes on their federal tax forms.

Curtailing tax breaks is generally a good idea. Subsidies for certain activities distort the economy. When the mortgage-interest deduction spurs a family to buy a more expensive home than they would have otherwise, it keeps that money from more productive parts of the economy.

But state and local tax deductions do not fall into this category. Since the nation's founding, American citizens have safeguarded small-scale democracy. The Bill of Rights prescribes that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states."

Scholars and judges differ over where state control ends and federal oversight starts. But no scholar argues that states, cities and towns don't possess the right and obligation to staff schools, pave roads, purify water and put out fires.

For this, local and state governments need money — which they mostly get from their own taxpayers, not from Washington. To assert that the federal government has the primary claim on this tax dollar, as Republicans are doing, is to claim that the federal government bears the primary responsibility for these tasks.

That's not a conservative argument, but a European one. In France, the national government, not Paris, stands behind a $37 billion "Grand Paris" plan to improve public transportation. In America, by contrast, Washington expects New York and New Jersey to bear half the cost of a new tunnel under the Hudson River, even though Amtrak, the national railroad, depends on this critical piece of infrastructure. Similarly, New York has received only $1.3 billion toward the $4.2 billion cost of the first three stops of the Second Avenue subway. The rest comes from New York taxpayers.

Wealthier taxpayers do disproportionately benefit from these tax deductions, because they pay the most in taxes. In New York City, just 1 percent of tax filers — 37,273 households — pay 49.3 percent of city income taxes. But their ability to deduct these taxes from federal taxable income is an indirect subsidy to New York's poorer and middle-class residents, who benefit from state and local spending on education, Medicaid, public safety and homeless services.

If Congress were going to diminish America's local-governance model anyway, now is not the time. Nearly a decade into the economic recovery, state and local governments remain under fiscal stress, particularly when it comes to pension and health care promises to retirees.

Chicago owes $45.2 billion to current and future public-sector pensioners, but had set aside only $9.5 billion as of the city's latest audited annual report. New Jersey and its local governments owe $122.2 billion, but have set aside just $53.7 billion. Even healthier governments, such as New York State and New York City, owe tens of billions of dollars in future health care payment obligations to retirees.

As retirement costs have grown, state and local governments have cut back on infrastructure investments. Municipal debt — the mechanism through which governments borrow to build and maintain infrastructure — is 17 percent below its 2007 level after inflation.

Republicans characterize this issue as a blue-state problem because blue states have higher taxes. But red states are struggling too. Texas owes $39.1 billion for pensions, but has set aside just $25 billion. Gulf states, including Florida and Louisiana, must invest in flood-protection measures. Houston voters approved new borrowing for such infrastructure this month — borrowing enabled by local tax deductions.

Republicans also characterize the issue as one of local mismanagement. “I don’t think it’s up to the federal government to save New York from its bad decisions,” said Mick Mulvaney, Mr. Trump’s budget director, last week. True, governments from Chicago to New Jersey have made poor fiscal decisions. In a system that grants citizens great autonomy to govern themselves at the local level, disparities in financial management are inevitable. But it is none of Washington’s business that New York’s taxes are too high.

One reality remains — somebody must pay. Three sources exist: taxpayers; public-sector retirees, via pension and health-benefits cuts; and municipal investors, via Detroit-style debt defaults in severe cases. Congress is making the first more difficult for state and local governments, and in most places, legal protections prevent governments from cutting pension benefits.

That leaves bondholders. As the Standard & Poor’s rating agency said this week, the overall impact of a tax plan that curtails state and local tax deductions “could be costly and detrimental to the credit quality of many public-finance issuers.”

Signing a bill into law that creates systemic distress for a financial market that affects the lives of all Americans is hardly the best way to improve the economy. And it may result in eventual tax increases, not tax cuts, at the federal level. Global investors may grow tired of America’s lurching from crisis to crisis and raise the cost of federal borrowing, as well.

THE NEW YORK TIMES

By NICOLE GELINAS

NOV. 24, 2017

Nicole Gelinas is a contributing editor to the Manhattan Institute’s City Journal.

How US Tax Reform will Impact Muni Bonds.

Upcoming tax changes has potential to significantly impact the US muni market

Despite higher Treasury yields and developing tax reform legislation, US municipals have demonstrated some reasonable resilience. Indeed, US Treasury debt lost roughly 40 basis points (bp) since the beginning of September, while munis managed to squeak out a slightly positive return (8bp). Year-to-date returns of 5.4% still exceeds UST by 290bp, and has outperformed AA-rated taxable investment grade US corporate bonds by 40bp. Our high conviction in moving down in credit quality continues to pay off, with Single-A and Triple-B rated muni issuers gaining 5.9% and 8.0%, respectively

On November 2, the US House of Representatives, Committee on Ways and Means released a proposed bill for comprehensive tax reform. Though each provision of the bill is expected to be scrutinized and debated, there are still a number of caveats which could directly (and indirectly)

affect the US municipal bond market.

For one, the reduction in corporate taxes from 35% to 20% could impact the demand from banks and property and casualty insurers. Considering these investors focus on longer-dated bonds, and make up nearly 25% of all muni bondholders, any forced selling would likely have a meaningful impact. Long-term yields could rise, as the muni curve steepens.

On the other hand, the proposal to eliminate Federal deductions of state and local taxes (SALT) would essentially raise individual's effective tax rates. In turn, this could make owning tax-exempt municipal bonds even more valuable for high income individuals; especially in-state bonds, in high tax states, including New York and California.

To be fair, the suggested cap on mortgage interest deduction could also negatively impact home prices, thereby reducing property tax revenue. As a result, local governments dealing with higher effective tax rates from SALT may be more limited in their ability to raise taxes (or issue new bond deals), in order to raise necessary income. In turn, this could adversely affect an issuer's credit quality and increase borrowing costs. In our view, this is a longer-term issue, as the years following passage of reform, higher effective tax rates will likely fuel higher muni demand.

Other proposals, such as eliminating the tax-exemption on private activity bonds or advanced refundings, can have meaningful impacts on muni supply. While issuers could flood the market in an effort to get ahead of any new law, a decline in future supply would likely exacerbate an already strong technical environment.

The removal of AMT (Alternative Minimum Tax) would also impact muni bonds where interest is subject to higher AMT rates. Though interest payments are still considered exempt from ordinary income, they are nonetheless subject to AMT. As a result, these bonds carry higher yields. If AMT is eliminated, prices on these securities could rise. Markets have reacted some to this potential provision, but not fully, as the spread between AMT and non-AMT bonds remains wide

For high income earners in North America, US munis are likely to remain a core holding in fixed income portfolios. That said, similar to many other fixed income assets, valuations in munis have also gone up. This is largely due to a significant supply/demand technical imbalance, as the new issuance of US munis has slowed. As a result, yield ratios (or muni yields relative to US Treasury yields) have declined. Still, when compared to taxable bond yields, munis are still compelling for investors in high income tax brackets.

Citi Private Bank

by Kris Xippolitos
Global Head of Fixed Income Strategy

November 20, 2017

This is an excerpt from the Bond Market Monthly update by Kris Xippolitos dated November 9 2017

S&P Criteria FAQ: Our Evolving Approach To Special Tax And Priority-Lien Tax Debt.

On Nov. 13, 2017, S&P Global Ratings published a request for comment (RFC) on proposed changes

to its rating methodology for assigning issue credit ratings secured by a priority lien. This would replace our “Special Tax Bonds” criteria (published June 13, 2007).

Continue reading.

TAX - NEW JERSEY

Congregation Chateau Park Sefard v. Township of Lakewood

Tax Court of New Jersey - October 20, 2017 - N.J.Tax - 2017 WL 4768875

Religious congregation brought action challenging county board of taxation’s denial of local property tax exemption for residence used as a parsonage.

Cross-motions for summary judgment were filed.

The Tax Court held that residence qualified for parsonage tax exemption even if property where congregation met to worship was not itself tax-exempt.

Residence where clergyman for religious congregation lived was owned by congregation and thus qualified for parsonage tax exemption, even if property where congregation met to worship and engage in religious activities was not owned by congregation and was not itself tax-exempt.

California Tax Credit Allocation Committee Prepares ‘Dual Track’ Strategy for Bonds.

The California Tax Credit Allocation Committee (CTCAC) is preparing a strategy for the possible elimination of tax-exempt private activity bonds through federal tax reform, according to an announcement today by Mark Stivers, the executive director. Stivers said if the program remains in jeopardy (the tax-exempt status of the bonds is repealed in the House version of the Tax Cuts and Jobs Act), CTCAC will be ready to accept streamlined applications and issue as much of the remaining bond cap allocation as possible in late December. CTCAC also plans to accept, review and award tax credit requests for late applicants on its standard 2018 schedule. Because 4 percent tax credits are unlimited and not competitive, CTCAC anticipates that the bond issuances will be able to close by the end of this year with the assurance that CTCAC will later award tax credits to qualifying developments.

Novogradac & Company LLP

Tuesday, November 14, 2017

S&P: Preliminary Macro-Level Volatility Assessments Assigned To Six Types Of Tax And Fees.

The assessment of revenue volatility in a pledged tax or fee (“tax”) for debt issued by U.S. municipal governments, state governments, or other public finance obligors is an important factor in S&P Global Ratings’ proposed methodology for rating priority-lien tax revenue debt (see the article

"Request for Comment: Priority-Lien Tax Revenue Debt", published Nov. 13, 2017).

Continue reading.

Nov. 13, 2017

BDA: Tax Reform Makes Major Progress in Both House and Senate.

Yesterday, the House of Representatives passed H.R. 1 the *Tax Cuts and Jobs Act*, which would eliminate private-activity bonds and municipal advance fundings, 227-205. The bill passed on a party-line vote, with 13 Republicans voting against the tax package.

While this is a big win for Republican leadership in the House, eyes quickly turned to the Senate where controversies continue to grow.

Senate Finance Concludes Mark-Up

Late last night, the Senate Finance Committee advanced the *Tax Cuts and Jobs Act* by a vote of 14-12. The Senate package, unlike the House companion, maintains the tax exemption for private-activity bonds while terminating advance refundings.

Majority Whip John Cornyn (R-TX) after the vote told the Bond Buyer that he will fight to include PABs in the final tax package when both Chambers come to the negotiating table.

Senate Republican leadership has signaled that they plan to introduce the package to the floor the week following Thanksgiving recess. At this time, it is unknown whether the debate rules will allow amendments to be offered.

Push for Private Activity and Advance Refundings

Earlier this week, the BDA sent letters to both House and Senate leadership in support of privavte-activity bonds and municipal advance refundings and requesting both be protected in any compromise bill.

The House Municipal Caucus, with support of the BDA and the MBFA, continue to be vocal advocates of maintaining current law for both provisions. And work continues on the Senate side, to embolden champions of both PABs and municipal advance refunding bonds, to be vocal leaders in the next stages of debate and compromise.

Next Steps

With much undecided, Members of Congress and their staff need to hear from you before and during the Thanksgiving recess. It is vital to continually remind the House and Senate of the importance of both provisions.

Talking points can be found here along with state specific advance refunding data.

The BDA will continue to provide updates as they become available.

Bond Dealers of America

November 17, 2017

Fitch: US Senate Tax Proposal Would Pressure US Colleges.

Fitch Ratings-New York-14 November 2017: The Senate Republicans' tax proposal released last week would add incremental pressure to US colleges and universities if made into law in its current form, Fitch Ratings says. The proposal is less onerous than the House proposal but would still raise costs, possibly threaten key funding sources over time and could add to student pressures that might result in lower enrollment.

The Senate proposal differs from the House's as the Senate version would preserve private colleges' and universities' ability to issue tax-exempt private activity bonds (PABs), an important capital financing vehicle for private universities. Eliminating PAB issuance, as the House version proposes, would increase borrowing costs for private institutions. While higher-rated institutions already issue taxable debt for more flexible use of proceeds, we expect this change would reduce the rate of investment in the sector overall and would speed a shift into alternative capital financing structures including private bank placements or internal equity. The Senate and House versions both propose ending tax-exempt advance refundings at the end of this year, which could marginally raise capital costs.

The Senate proposal matches the House's proposed 1.4% excise tax on the net income of certain private college endowments – currently those with more than 500 students and $250,000 per student of assets not related to the organization's tax-exempt purpose. The implementation of this tax is key to its immediate impact as the "The Chronicle of Higher Education" estimates only about 65 institutions would be affected today – generally institutions with financial capacity to manage through a resulting reduction in endowment support for student aid, research and other operating costs.

The impact on endowments would be moderated in any given year by investment returns. Establishment of a framework to tax endowments is credit-negative across the sector, as the rate could be increased or the levy more broadly applied in the future. Both proposals also would change the standard deduction, which could lower the tax benefits of endowment donations.

The Senate proposal is less negative than the House proposal as it retains the student loan interest rate deduction and certain other exemptions and credits related to higher education. In our view, loss of these tax benefits could make colleges more expensive for students. Given heightened emphasis on college affordability, this could mean lower enrollment, especially at regional colleges with very price-sensitive students.

Both proposals would substantially reduce the federal tax deduction for state and local taxes, which would place a practical limit on the tax raising flexibilities of higher tax states. Those states could be forced to make budgetary cuts to maintain their financial flexibility over time if natural revenue growth fails to keep up with expenditure growth. Higher education is generally one of the first things states cut at times of fiscal stress and cuts to appropriations could lead to a decline in an important higher education funding source.

If the Senate bill was made into law today we would not expect these incremental pressures to translate into downgrades for the Fitch-rated universe. The next steps practically ensure the proposals will change. The first step is for the House and Senate proposals to be further amended

and reconciled. Thus the final outcome on colleges and universities will remain uncertain through the end of 2017.

Contact:

Emily Wadhwani
Director, US Public Finance
+1 312 368-3347
Fitch Ratings
70 W. Madison Street
Chicago IL 60602

Tipper Austin
Associate Director, US Public Finance
+1 212 908-9199

Robert Rowan
Senior Analyst, Fitch Wire
+1 212 908-9159

Media Relations: Sandro Scenga, New York, Tel: +1 212-908-0278, Email: sandro.scenga@fitchratings.com.

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

American Cities Stuck With Part of Tab for Republicans' Tax Cuts.

- **Yanking bond subsidies will make local projects more costly**
- **'The brunt of that will be born by ratepayers and taxpayers'**

Congress's plan to cut taxes by more than $1 trillion sends part of the bill to America's states and cities.

The Republican-led House Thursday passed its version of a tax-code overhaul that pulls the tax-exemption from investments in so-called private activity bonds that finance projects like airports, water facilities and roads, promising to make financing tens of billions of dollars worth of public works each year more expensive. And, like the Senate's plan, it would do away with advanced refundings, a technique municipalities frequently use to refinance their debt when interest rates fall.

"The only thing that's going to go up is the interest that you're going to pay on that cost of capital," said Columbia, South Carolina Mayor Stephen Benjamin, who is the chair of Municipal Bonds for America, a coalition lobbying to keep tax breaks on municipal borrowing. "The brunt of that will be born by ratepayers and taxpayers."

The measures don't go all that far to cover the cost of tax cuts that will add an estimated $1.4 trillion to the federal deficit over the next decade. Doing away with private-activity bonds would save the federal government about $39 billion over the next decade because investors would steer their money into stocks, corporate bonds and other assets subject to the income tax, according to the

estimates of the House bill by the Joint Tax Committee. Yanking the subsidies from refinancings would save less than $20 billion over that time.

But it will mean a lot to local governments. Advanced refundings saved them an estimated $11.8 billion in the five years through 2016, according to data compiled by the Government Finance Officers Association.

The proposed tax changes would likely result in higher interest costs for municipal borrowers and strain their budgets, according to S&P Global Ratings. Tax break or no, localities still need to build roads, maintain schools and keep the water running.

Without tax-exempt status, money for projects now financed with private activity bonds would be raised in the taxable bond market, where the cost is higher. For example, an A-rated municipality that issues $100 million in 30 year general-obligation bonds in the taxable market rather than the tax-exempt market would see an additional cost of 0.55 percentage points, or $16.5 million more over that term, according to calculations based on Bloomberg's indexes.

While the Senate bill kept the tax-exemption for private activity bonds intact, both chambers' bills have backed ending advanced refundings. If that happens, local governments lose a tool that helped them during times of revenue shortfalls, like the period after the onset of last decade's recession, said John Hicks, executive director of the Washington-based National Association of State Budget Officers.

"It's a disappointment and a surprise that advanced refundings are being proposed for repeal," Hicks said. "It's an opportunity loss."

Bloomberg Politics

By Elizabeth Campbell

November 16, 2017, 10:13 AM PST Updated on November 16, 2017, 11:08 AM PST

MBFA Letter to Senate Finance Chairman Hatch.

The Municipal Bonds for America (MBFA) Coalition submitted a letter to Senate Finance Chairman Orrin Hatch (R-UT) and other members of the Senate Finance Committee to show its appreciation for protecting the underlying tax exempt status on municipal bonds, including private activity bonds (PABs). However, the Coalition strongly objected to the inclusion to deny tax exemption to advance refunding bonds.

November 14, 2017

Mayor Benjamin Submitted Letter to Sen. Cardin on Amendment to Strike Advance Refunding Provision.

Steve Benjamin, Mayor of Columbia, SC, and Chairman of the Municipal Bonds for America (MBFA) Coalition, submitted a letter showing support for Sen. Cardin's amendment, which would strike the

repeal of advance refunding bonds in the Tax Cuts and Jobs Act. The MBFA is appreciative of the attention that is being paid to this very important issue that would impact state and local governments across the country and is pushing for further support for the amendment during the mark-up proceedings this week.

House Tax Plan Faces Bipartisan Backlash Over Repeal of Development Incentives.

Local officials say private activity bonds needed for affordable housing

The grand opening Wednesday of Archer Park, an affordable housing complex of 190 units in a long-troubled neighborhood of Southeast Washington, had the trappings of similar ceremonies in the past.

But along with oversized ribbon-cutting scissors and celebratory speeches, the gathering had something less typical: An undertone of alarm over looming changes to the federal tax code that D.C. officials say would make developments like Archer Park impossible.

The development's solar-paneled roof and immaculate workout room have replaced what was once a set of squat brick buildings that hosted an open-air drug market — but only with help from a system of tax-exempt financing that would be eliminated in House Republicans' proposed tax overhaul.

The funding mechanism, known as private activity bonds, is one of several common tools of municipal finance that would be repealed under the House tax plan, which is expected to come to a vote this week. The Senate plan, by contrast, would preserve most of those tools.

Like much of the machinery of government, the provisions in question are esoteric and scarcely noticed when working as intended. But threats to eliminate them have stirred a backlash among local officials, who say they're needed to fund housing and infrastructure projects that would not otherwise be commercially viable.

The debate stretches far beyond the Beltway and, unlike the parallel discussion over whether to preserve the federal deduction for state and local taxes, is largely absent of a partisan tint.

Instead, city, county and state officials say the funding tools — which also include tax credits for revamping historic buildings and the New Markets Tax Credit, which lures developers to poor neighborhoods — are equally important in urban, rural, red and blue parts of the country.

"This is not a political issue," said Richard C. David, the Republican mayor of Binghamton, N.Y. He said he worries in particular about the loss of the Historic Tax Credit, which he said is vital for transforming aging buildings downtown in his city of 46,000.

Among the current projects that rely on such tax credits, he said, is the redevelopment of a public library into a culinary arts center by SUNY Broome Community College.

"I could give you a dozen buildings in downtown Binghamton that I think are going to be stagnant without the Historic Tax Credit," David said. The proposed elimination of those and other tax credits "shows a disconnect" in Congressional leaders' understanding of local government needs, he said.

That sentiment was echoed by Matthew Chase, executive director of the National Association of

Counties, who said many of the local officials he represents have been baffled and upset by proposals in the House plan to remove the private activity bonds and assorted tax credits for government-backed development.

“They’re extremely disappointed that at a time when the White House is focusing on infrastructure, they’re attacking the top tools that we use for economic development and infrastructure,” he said. “I think there was a clear lack of awareness on what these bond provisions fund. They are starving our financing for airports, ports and affordable housing, at a time when this country needs to be investing in all of them.”

Arguing in favor of the tax bill on the House floor Wednesday evening, Rep. Kevin Brady (R-Tex.), chairman of the House Ways and Means Committee, said reform was needed because the current system has “trillions of dollars in carve outs and loopholes” for “special interests.”

Lauren Blair Aronson, spokeswoman for the committee, said in a written statement that the tax bill “will continue to help state and local governments finance important public works projects” by maintaining the tax-exempt status of municipal bonds for those projects. The bill would “deliver greater accountability to taxpayers by removing this special status for private activity bonds, which directly benefit private individuals and entities,” she said.

Officials in cities struggling with a high cost of living say private activity bonds are especially important for encouraging private-sector developers to build affordable housing.

D.C. Mayor Muriel E. Bowser (D) says approximately 9,000 units of affordable housing have been created in the District since 2010 using private activity bonds.

In New York City, the loss of private activity bonds would threaten $2.6 billion annually in funding for affordable housing, an amount that translates into thousands of units per year, said Freddi Goldstein, a spokeswoman for Mayor Bill de Blasio (D).

Todd A. Lee, executive director of the D.C. Housing Finance Agency, said the tax-exempt bonds — which effectively allow developers to borrow at municipalities’ low interest rates — are important both by themselves and because their use can make projects available for a 4-percent tax credit for low-income housing. Combined, those breaks can bring private investment to low-return projects that would otherwise never get off the ground, he said.

“These 190 units would not be here but for the 4-percent tax credit,” said W. Christopher Smith, chairman and chief executive of WC Smith, the real-estate company that developed Archer Park. Speaking after the opening ceremony for the complex, Smith estimated that half of his colleagues who build affordable housing are unworried by the House plan, confident that “there’s no way” Congress would remove private activity bonds.

“The other half are just scared to death,” he said.

The Washington Post

By Peter Jamison

November 15, 2017

Federal Tax Reform: Senate Proposal Repeals Advance Refundings but Keeps Private Activity Bonds.

The Senate Finance Committee unveiled a section-by-section description of its tax reform package on November 9, 2017, including municipal bond provisions that reject efforts by the House Ways and Means Committee to terminate the tax exemption for interest earned on qualified private-activity bonds and public-purpose bonds issued to finance the construction of professional sports stadiums, and the tax-favored status of tax credit bonds. However, the Senate's version of the Tax Cuts and Jobs Act follows the House in repealing the tax exemption on bonds that advance refund governmental or qualified § 501(c)(3) bonds after 2017, leaving the future of advance refundings in substantial doubt. The Joint Committee on Taxation (JCT) projects that the Senate's version of the act will raise $16.8 billion from its repeal of advance refunding bonds, compared to $56.9 billion that the House bill plans to raise from various tax-exempt-bond repeals.

Earlier on November 9, the House Ways and Means Committee completed its tax reform bill (H.R. 1) and reported it out of committee without changing the provisions that would adversely affect the tax-exempt bond market. As discussed in further detail in our alert on November 3, 2017, the House version would prohibit the issuance after December 31, 2017, of: all private activity bonds; tax credit bonds providing either a tax credit or direct-subsidy payment; advance refunding bonds; and governmental bonds used to build professional sports stadiums (with an earlier effective date of November 2, 2017).

Please click here to view a table that summarizes and compares some of the key provisions of the House and Senate bills.

Legislative Timetables and Uncertainties

The Senate Finance Committee is expected to have statutory language available when it begins its markup of the act on today at 3 p.m. ET, and a vote of the Committee is expected within the next few days. On the other side of Capitol Hill, the House Ways and Means Committee bill was approved on Friday and is scheduled to be considered by the House Committee on Rules on Wednesday. House Speaker Paul Ryan (R-WI) has indicated that he expects to bring the House tax-reform bill to the floor for a vote on Thursday. A vote in the Senate could be held as soon as the week after Thanksgiving.

House Speaker Ryan and Senate Majority Leader Mitch McConnell (R-KY) both have said that they want to approve a tax-reform bill before the end of 2017. For that to happen, Senate Republicans must work within strict budgetary and procedural constraints. The Senate's version of the act must add no more than $1.5 trillion to the federal deficit over 10 years and must also satisfy an additional requirement that the tax reforms add nothing to the federal deficit beyond a 10-year budget window, which ends in 2027 for legislation passed this year. These budgetary restrictions and other limits on what can be considered part of a "reconciliation" measure in the Senate were established under Section 313 of the Congressional Budget Act of 1974 and are popularly referred to as the "Byrd Rule" (after their initial sponsor, the late Senator Robert C. Byrd (D-WV)).

If the Senate's bill raises federal deficits for any fiscal year after 2027, a Senator may raise a point of order against the legislation, which would require part of the legislation to be struck or 60 Senate votes to waive the Byrd Rule. Senate leaders understand the difficulty of obtaining this number of votes on a highly partisan piece of tax legislation, leaving deficit-neutrality within 10 years as the only practical option for the act to pass the Senate. In this regard, it is significant that the House

bill, as written, violates the Byrd Rule because it would add about $155 billion to the 2028 federal deficit, according to estimates by the Committee for a Responsible Federal Government.

While the House and Senate will need to resolve their different tax proposals in a conference committee after each chamber passes its bill, most commentators expect the final version of the act to look more like the Senate's plan than like the House's version because of the stricter constraints on reconciliation bills in the Senate under the Byrd Rule. The Senate Finance Committee's mark already faces serious side-constraints because it is within $4.3 million of violating the reconciliation instructions' $1.5 trillion target for deficit increases through 2027. That leaves the Senate with little margin for error if it accepts any of the popular provisions in the House plan, such as the individual deduction for state and local real estate taxes—which are not part of the Senate's initial draft—and it remains to be seen whether any of those measures will be accommodated through cuts elsewhere in the bill, delays in implementation of some measures, or earlier expiration dates for others.

Certainty as to the fate of municipal bonds will come only with a final tax reform bill passed by both chambers and a signature of the President. If such tax reform is not enacted by year's end, lingering uncertainty as to the provisions and effective date of subsequent attempts at legislation could prevent some deals from being issued on a tax-exempt basis well into the new year.

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

by the Public Finance Group

November 13, 2017

Ballard Spahr LLP

U.S. Tax Reform: How The Proposed Senate Bill Would Affect Municipal Credit Quality - S&P

(S&P Global Ratings) Nov. 15, 2017–The U.S. Senate's tax reform bill–published last week as a "conceptual markup," with the actual legislation not expected to be available until the day of the vote–is a mixed bag for the municipal market, in our view.

Continue reading.

Local Governments Scramble to Assess Impacts of Tax Proposals.

Whether representing a booming urban center, a ritzy suburb, a steel town struggling for growth, or an overtaxed collar county of Chicago, local officials are concerned about the GOP tax plan.

District of Columbia Mayor Muriel Bowser and Alexandria, Virginia Mayor Allison Silberberg stood in front of a gaggle of reporters with the U.S. Capitol looming behind them on Monday, urging

Congress to reject a suite of provisions in the House and Senate tax plans that could hurt state and local governments. Bowser ticked off billions of dollars of investment made in the city utilizing bonds that would no longer exist under the House tax proposal, including “historic investments in affordable housing” that has supported veterans and low-income families. The list included everything from public schools, to major revitalization projects, to parks and small businesses.

The briefing mirrored the conversations that local officials across the country are having as they attempt to figure out what the implications of the tax bill for the future of their local governments and residents.

While the District of Columbia itself stands to lose from the bill Congress is writing down the street, beyond the Beltway—both near and far—local governments are scrambling to assess the impact to their communities and impact their ability to govern.

Continue reading.

By Mitch Herckis,
Route Fifty Senior Director of Programs

November 16, 2017

House Tax Bill Would Hit Nonprofits Hard.

Hospitals, university buildings and affordable housing projects could become much more expensive to develop if the tax plan approved Thursday by the Republican-controlled House becomes law.

The plan calls for eliminating a tax break on a type of bond financing used to build those and other projects, prompting worries by hospitals, colleges and housing groups that they could be forced to cut services, raise prices or cancel projects. They hope the Senate tax plan, which would not eliminate the tax break, comes out on top.

Nonprofits and affordable housing builders are able to borrow money by selling so-called private-activity bonds, which share an important feature with municipal bonds issued by government agencies to finance public projects: The interest income paid to bondholders is not subject to federal or state income tax.

Because of that tax exemption, investors are willing to buy bonds with lower interest rates, which means lower borrowing costs for bond issuers.

The House tax plan, by eliminating the federal tax exemption, would raise borrowing costs for new private-activity bonds.

Investment bankers and finance officers at nonprofits estimate the loss of the tax exemption could push up interest rates on private-activity bonds by 0.5 percent to 1.5 percent — a significant sum when the principal typically runs from the tens to the hundreds of millions of dollars.

Consider Keck Graduate Institute, one of the Claremont Colleges in California, which this year borrowed $52.6 million to build a 290-unit apartment building for students. The institute is paying about 4.7 percent interest on that private-activity debt.

Hugh Tanner, an investment banker at Raymond James who helped put the bond offering together, said Keck would have paid more like 5.7 percent if it had to issue taxable bonds.

Over the 30-year life of the bond, that extra 1 percent would add up to $14.8 million in additional interest, he said.

Those higher borrowing costs would trickle down to students. The institute plans to charge $1,360 for studios — below average for Claremont — but Tanner said rents would have to have been closer to $1,500 a month had Keck borrowed at the higher, taxable rate.

Kevin DeGood, director of infrastructure policy at the liberal advocacy group Center for American Progress, said cutting the bonds' tax exemption would hurt nonprofits across the country while providing little extra tax revenue.

The Joint Committee on Taxation, an arm of Congress, estimated that cutting the exemption would result in additional federal tax income of $39.8 billion over the next 10 years — a meager sum considering that the committee also estimates the tax plan as a whole will result in an overall reduction of federal tax income of $1.4 trillion over that period.

"If you're a hospital, the additional interest you pay if your bonds are taxable has to come out of donations, out of patients, out of somewhere," DeGood said. "There is no benefit to anybody to make it more expensive for a hospital to build a new wing. There is not a rational policy argument here. This is about hunting in the night for revenue to pay for egregious tax cuts."

Private schools, too, could be pinched by higher borrowing costs.

Over the past 10 years, private colleges and universities in California — including the University of Southern California, Pepperdine, Stanford and several smaller schools — have borrowed $4.1 billion through private-activity bonds to build all manner of campus projects.

For affordable housing developers, who rank second only to hospitals in their use of private-activity bonds, the idea of paying higher interest rates is a secondary concern. Their biggest worry is that if these bonds become taxable, the change would have the secondary effect of killing one of the biggest funding sources for affordable housing projects: low-income housing tax credits.

There are two types of those credits, both of which give tax breaks in exchange for investing in affordable housing projects.

One of the types of credits, though, is available only to projects that are financed mostly with tax-exempt bonds. No tax-exempt bonds means a whole class of tax credits would effectively disappear.

Will Cooper Jr., chief executive of Irvine affordable housing investment firm WNC Inc., estimated that the combined loss of tax-exempt bonds and the related tax credit program could reduce the number of affordable housing units built in California by 200,000 over the next decade.

By James Rufus Koren / Los Angeles Times

Posted Nov 17, 2017

Tax Bill Could Crush Private Bond Work, Deter Stadium Financing.

The House could vote as early as Nov. 16 on tax reform provisions that developers say could decimate the number of future public-private infrastructure projects and could deter municipalities from investing taxpayer dollars in stadium construction or renovation.

The House GOP tax reform bill (H.R. 1) would repeal the tax-exempt status for qualified private-activity bonds, which could lead up to a 50 percent reduction in such projects and could lead to the loss of tens of thousands of low-income housing units, developers say. Another provision would eliminate a tax exemption for income earned on interest from stadium bonds that might make those projects slightly more expensive—but it might not stop cities from luring teams with promises of taxpayer-backed stadium funding.

The Council of Development Finance Agencies said a poll of its project development members found that more than half of recent infrastructure projects using private activity bonds—a market of about $84 billion— wouldn't have gone forward without the tax exemption for interest earned on the bonds. The group estimates that eliminating that exemption would increase interest rates for borrowers by 1.5 percent to 2.5 percent and increase borrowing costs for state and local governments by as much as 25 percent to 35 percent, Tim Fisher, legislative and federal affairs coordinator with the group, told Bloomberg Tax Nov. 15.

Conversely, the elimination of the tax exemption for stadium bonds would be a hit, but probably wouldn't tank current projects.

"It's a meaningful amount of money, but frankly not enough to jeopardize the project going forward," Las Vegas Stadium Authority Chairman Steve Hill said at a Nov. 9 authority meeting. The group is going to borrow about $700 million to lure the Raiders away from San Diego to a new stadium in Sin City, and is backing up the project with an increase in the hotel tax.

Neither of the House exemption-elimination provisions are in the latest Senate proposal.

Bond Change Potentially 'Devastating'

Private activity bonds are issued by state or local governments and loaned to private companies to finance qualified projects. The bonds are most commonly used for the construction of affordable multifamily housing, but also for hospitals and infrastructure projects such as roads and bridges

Eliminating the exemption on the private-activity bonds used for construction, transportation, and water infrastructure projects in which a private entity either owns, manages, or leases the project would earn the federal government about $38.9 billion over the next decade, according to a Joint Committee on Taxation report. But developers and politicians argued that the negative effects to public-private development—such as low-income housing and nonprofit education and medical projects—would be "devastating" for local government.

Analysis by J.P. Morgan showed that municipal markets have rallied on expectations that several provisions in the House or Senate bills could reduce issuing of municipal bonds between 15 to 30 percent next year.

Fisher told Bloomberg Tax he anticipates that if the House bill becomes law, there will be a rush to issue bonds before the exemption is eliminated and then a large decrease as municipalities and private investors pare back or become more selective with projects that made up 19 percent of the municipal bond market in 2016.

Low-Income Housing Projects
Rep. David Price (D-N.C.) decried the provision in testimony last week, saying eliminating the exemption would cost his state more than 6,200 units of affordable housing.

“If Republicans get their way, these projects would die on the vine,” he said in testimony Nov. 9. “At a time when funding for infrastructure is repeatedly squeezed, the last thing we should do is push through a plan that would hamstring our local governments and destroy our ability to leverage private investment.”

“By eliminating Private Activity Bonds, the ability of communities around the country to finance critical healthcare, infrastructure and affordable housing projects will be eliminated, as governments and project sponsors will be forced to borrow at higher interest rates,” Jon Penkower, managing director of the California Statewide Communities Development Authority, told Bloomberg Tax in an email Nov. 14. “According to Novogradac & Co. (using National Association of Home Builders formulas), the elimination of private activity bonds and therefore 4 percent Housing Credits would cost California $2.2 billion in federally catalyzed investments annually and lead to the loss of 20,000 affordable homes annually.”

But eliminating the exemption might bring more fairness to the economy and lessen taxpayer burdens. Most of the owners of projects funded through private-activity bonds have the way to capture through fees or other charges—such as tolls, rent, or hospital bills—the increased cost of the debt, a Congressional Budget Office analysis found. The change might also force nonprofits to be more selective and operate more efficiently.

Fisher disagreed, saying that the economic hit to construction jobs and government services would be “orders of magnitude bigger” than the revenue the federal government will gain.

“Private activity bonds are really the core of what state and local governments do. They’re the bedrock tools of development,” he said. “It’s just going to be a huge impact.”

California Reaction
California, the most populous state, is eligible to use the greatest amount of public-activity bonds. Last week, a group of state lawmakers sent a letter to House Majority Leader Kevin McCarthy (R-Calif.) and Minority Leader Nancy Pelosi (D-Calif.) in part to urge them to fight for the exemption.

“Eliminating the tax-exempt private activity bond program and the 4% low-income housing tax credits that go with them undercuts the bipartisan affordable housing package the Legislature passed this year,” the letter said.

California’s Infrastructure and Economic Development Bank has issued private activity-bonds in support of museums, schools, performing arts centers, charitable organizations, and research institutes throughout the state, according to a Nov. 9 letter to the state’s congressional delegation from Michael Cohen, director of the state’s Department of Finance. The bonds are used to help around 1,000 veterans buy homes every year in the state, Cohen said.

Stadium Bond Tweak
Meanwhile, although the House bill could make it more expensive for municipalities to lure professional sports teams, it might not be a large enough stick to dissuade the current practice of luring a franchise with tax-backed assistance.

Hill said the House bill’s tweak would increase costs of developing the new Raiders stadium about $3 million annually because the interest rate difference between the current tax-exempt bonds and

taxed bonds was about .5 percent. An increased hotel tax is projected to bring in about $50 million annually to pay down the stadium's $700 million in bond debt and help with ancillary development.

According to Bloomberg Terminal data, there are currently 627 outstanding municipal bonds for stadium construction or renovation totaling about $8.56 billion of debt. Government entities in New York, Florida, and Texas have issued about $5.83 billion of that. America's largest major-league sports organizations either declined to comment or didn't respond to requests for comment. However, the Wall Street Journal reported that the National Football League is going to lobby against the House bill's provision.

Analysis by the Joint Committee on Taxation says eliminating the exemption would increase revenue by about $200 million over the next decade. However, an analysis by the Brookings Institution says the exemption has cost the federal government $3.7 billion since 2000.

The practice of luring teams with financial assistance is still going strong. This year Nashville pledged to issue between $200 million and $225 million in bonds to erect a soccer stadium in hopes of netting a Major League Soccer expansion team. FC Cincinnati is also currently in talks with Hamilton County, Ohio officials and seeking about $100 million to create a new facility.

Bloomberg BNA

By Alex Ebert

November 16, 2017

With assistance from Che Odom in Washington

To contact the reporter on this story: Alex Ebert in Columbus, Ohio at aebert@bna.com

To contact the editor responsible for this story: Cheryl Saenz at csaenz@bna.com

Copyright © 2017 Tax Management Inc. All Rights Reserved.

Smaller Private Colleges Face Tougher Burden if Private Activity Bonds Go Away

The House Republican tax package would put some more pressure on the already pressured private higher education sector.

Eliminating the tax-exemption for private activity bonds would force private schools to issue more expensive taxable debt for capital projects.

The House bill, which advanced Thursday from the House Ways and Means Committee, would terminate PABs on Jan. 1, 2018.

A large number of the nation's private higher education institutions are located in the Northeast region and have historically borrowed for various campus improvement projects with tax-exempt bonds sold by conduit issuers.

"The loss of the tax exemption means the cost of capital across the board for private colleges is going up," said Bill Rhodes, who heads Philadelphia-based Ballard Spahr's higher education

practice. “It’s going to draw up their borrowing costs.”

Rhodes said the loss of PABs could force some schools that have started long-range master plans to rethink the scope of their projects.

The loss of access to the tax-exempt market wouldn’t be felt equally.

Moody’s Investors Service Analyst Susan Fitzgerald said a growing amount of larger research institutions have been issuing taxable bonds in recent years due to favorable market conditions and more flexibility about how to use the proceeds, so their short-term capital projects may not be negatively impacted.

“Taxable and tax-exempt debt are very compressed with spreads now,” said Fitzgerald. “This current market environment would not be a shock to the system, but in 20 to 30 years it could be.”

Municipal Market Analytics managing director Lisa Washburn said many smaller private colleges are already facing negative headwinds and the loss of PABs would just add to their financial burden. It would be different, she said, for the most selective private schools with the largest endowments, which have the financial flexibility to withstand the rising borrowing costs and have already gained experience in the taxable bond arena.

“The Harvards, Princetons and Dartmouths are not likely to be meaningfully impacted, but smaller more tuition-dependent schools would definitely face some risk from the bill,” said Washburn.

“The smaller, less selective schools would definitely be more impacted from the loss of private activity bonds because their resources are generally much thinner.”

A report Thursday from S&P Global Ratings said higher education would be among the most impacted sectors from the House tax bill with both private and public schools impacted by an elimination of advanced refundings.

Jessica Matsumori, senior director for S&P’s U.S. Public Finance Higher Education Group, said smaller schools could face serious fiscal challenges without the use of tax-exempt bonds.

“Smaller private colleges may face capital-raising challenges as the par amounts of their debt are small and their brand may not be as strong as the larger schools tapping the taxable market,” said Matsumori. “While the difference in rates is not very meaningful at the moment for higher rated borrowers, this will certainly increase the institutions’ cost of capital and could have significant implications over the longer term if the difference between taxable and tax-exempt rates widen or even return to a more historic relationship.”

Fitzgerald said liberal arts colleges with small endowments would feel brunt of losing PABs since many are already feeling credit pressures from meeting targeted enrollment numbers with fewer high school graduates pursuing higher education than in past decades. She said with increased fiscal challenges in a competitive higher education landscape, increased borrowing costs hit the smaller schools much harder than universities with more revenue diversity.

“Many of these small schools already run on thin margins,” said Fitzgerald. “It would squeeze their budgets.”

Fitch Ratings analyst Emily Wadhwani said if the PAB option goes away for private colleges it would likely lead to more alternative capital financing structures with some schools delaying investments for non-critical maintenance expenses. Despite the rising cost of capital that would result, Wadhwani

said the end of PABs would not likely have any direct impact on credit ratings.

“While it’s probably too soon to tell whether the PAB exemption will remain in any final tax overhaul bill, there will be clear implications if it does,” said Wadhwani. “It would increase borrowing costs incrementally and could pressure debt issuance overall for the sector.”

While tuition-dependent schools may see the brunt of the damage from the tax bill, another provision in the legislation that taxes endowment investment earnings would negatively impact wealthier universities. The proposed bill includes 1.4% tax on endowment income of private not-for-profit colleges and universities with financial assets more than $100,000 per student.

Moody’s noted in a Nov. 7 report that about 45% of private higher education issuers it rates surpass this threshold and some schools may also get additional pain from an excise tax of 20% on salaries of private higher education employees earning over $1 million.

Matsumori said the House’s proposed 1.4% tax on endowment earnings would hit an estimated 20% of private and public colleges that S&P rates and may lead to high tuition rates at those institutions. She noted that while most small schools would not be subject to the endowment earnings tax, other parts of the bill that could lead to eliminating individual estate and charitable contribution deductions would add another barrier to fundraising efforts.

Washburn said the loss of PABs would mean some schools may need to reexamine their capital projects and prioritize more. She said the sea change could ultimately lead to fewer construction projects on college campuses.

“Projects will need to be evaluated in the context of costing more to finance and the impact of the higher debt service on the budget,” said Washburn. “Arguably, all else equal, fewer dollars will be available for higher education infrastructure.”

BY SOURCEMEDIA | MUNICIPAL | 11/09/17 07:21 PM EST

By Andrew Coen

Conduit Issuers Contemplate a World Without Private Activity Bonds.

PHOENIX – Conduit issuers would lose the major reason for their existence if Congress terminates future issuance of private activity bonds.

Conduit issuer officials told The Bond Buyer that an inability to issue the bonds they sell for healthcare, higher education, affordable housing, and other types of projects would result in a new reality both for issuers and the borrowers who have relied on them. In some cases they would virtually blink out of existence except to manage their existing debt portfolios, but others would fall back on secondary missions or possibly assume additional responsibilities at the discretion of legislators.

The Republican tax bill pending in the House would eliminate PABs.

“It’d be a setback, I’m not going to kid you, because this is our business,” said Harry Huntley, executive director at the South Carolina Jobs-Economic Development Authority. “This is what we do.”

The Senate GOP's initial tax proposal would keep private activity bonds.

Conduit issuers are the vehicle that non-governmental private activity bond issuers, such as 501(c)(3) nonprofits and businesses using PAB allocations, use to issue tax-exempt bonds.

South Carolina's JEDA, created more than 30 years ago, is the statewide issuer for industrial development revenue bonds, 501(c)(3) deals, and other types of issuance that stand to go away under H.R. 1, the Tax Cuts and Jobs Act.

Huntley said JEDA issued more than $1 billion last year, but most years is roughly in the $500 million neighborhood. Huntley said he expects many conduit issuers would cease to exist, though his would continue.

"We're not going to evaporate and go away," said Huntley, noting that JEDA has statutory authority to run taxable bond programs and provide small business loans. But those conduit issuers with more specialized roles would be in a different situation, he said.

"Some of the authorities would probably go away," said Huntley.

One of those more narrowly-tailored conduit issuers is the Washington Health Care Facilities Authority, which fills a specific role in Washington State.

"We're the only issuer of not-for-profit 501(c)(3) healthcare bonds," said Donna Murr, executive director at WHCFA.

WHCFA would exist only to monitor its existing debt, Murr said. She said WHCFA has issued over $16 billion since its 1980 creation with about $5.5 billion currently outstanding. The authority saved borrowers about $68 million last year, she said.

Since its inception in 1997, the Louisiana Local Government Environmental Facilities and Community Development Authority, or LCDA, has helped finance more than $6 billion of economic and infrastructure projects for municipalities, nonprofits, and eligible for-profit companies as a political subdivision of the state.

Executive Director Ty Carlos said the proposal to end tax-exempt private activity bonds came as a surprise because it wasn't known to be on the table.

"I think it's going to have pretty significant implications here for economic development," he said. "It's very concerning."

Carlos said he scrambled to notify LCDA's members and board of directors "to make them aware of what we understand is going on." He suggested that they contact Louisiana's representatives in Congress to "air their concerns."

"I hope this gets resolved before tax reform is passed," he added.

In Florida, a state-created conduit issuer is helping a charter school in Doral fast-track its bond issue to market because of the proposed tax bill in the House, said Florida Development Finance Corp. Executive Director Bill Spivey.

"They were going to close in January, but now they are trying to get it done by December," Spivey said Thursday. "We can accommodate that and are just accelerating the process as much as we can to try to help."

In California, where several conduit issuers operate under the umbrella of the treasurer's office, State Treasurer John Chiang has some specific concerns.

"The most important thing to the treasurer is how does the elimination of PABs impact affordable housing," Tim Schaefer, the deputy treasurer for public finance. "The second factor is to what extent does the elimination of PABs have as a direct, and trickle down impact, on the healthcare industry."

The California Health Facilities Authority was the fourth-largest municipal bond issuer by volume through the first nine months of 2017, according to Thomson Reuters (TRI) data, credited with more than $3.3 billion of debt.

The state deployed more than $6 billion of tax-exempt PAB authority for multifamily and single family homes in 2016, according to a letter Chiang sent to U.S. House Majority Leader Rep. Kevin McCarthy, R-Calif., in early November.

"As of September, we had issued $16 billion in healthcare facilities debt in the state of California," said Vince Brown, a deputy state treasurer. "It's across the board from childrens' hospitals to some of the big players like Sutter and Kaiser. So this will impact the whole hospital financing structure from conduits."

If they lose the ability to sell tax-exempt debt to fulfill their missions, Schaefer said, the conduits might have to reinvent themselves and go into the business of selling taxable debt.

Huntley, who recently traveled to Capitol Hill to lobby against the termination of PABs, said he thought members of Congress heard the conduit issuers' message but that PABs are a "low-hanging fruit" for lawmakers looking to provide tax benefits elsewhere in the code.

"It's picking off the low-hanging fruit like our private activity bonds to provide for a maybe outsized corporate tax break," he said, adding this clashes with the Trump administration's stated goals of encouraging private infrastructure investment and charter schools.

"I hope that politics doesn't get in the way of doing what's right," he said.

BY SOURCEMEDIA | MUNICIPAL | 11/14/17 07:15 PM EST

Charter Schools Face Higher Capital Costs if Congress Ends PABs.

BRADENTON, Fla. — Charter schools could face significant growing pains if Congress passes a tax bill that bans the use of private activity bonds.

Even though the first charter school issued bonds 19 years ago, the sector remains a small but steadily emerging segment of the municipal market.

Without access to tax-exempt financing as proposed in H.R. 1, the Tax Cuts and Jobs Act, start-up charter schools face an uncertain future while existing schools could struggle to expand, analysts and industry experts said.

The bill is pending in the House of Representatives. Senate Republicans are also working on tax legislation, releasing a proposal that spares PABs.

"The recently proposed federal tax reform bill in its current form would be a huge blow to all public

charter schools that depend on bond financing," said Lynn Norman-Teck, executive director of the Florida Charter School Alliance, referring to the House bill.

"Without access to this low cost source of financing, public charter schools would need to turn to other sources of capital, which would be more expensive and restrictive," she said. "The additional costs of alternative capital would pull money out of the classroom where it is needed the most."

Florida's 654 charter schools enrolled 283,755 students in the 2016-17 school year, according to the Florida Department of Education.

Charter schools are publicly funded nonprofit or for-profit public schools that operate under a contract or charter from a local school district or state charter authorizer. Most teach students from pre-kindergarten through high school.

They offer tuition-free access to students, and typically enjoy more flexibility from regulations than a traditional public school.

Viewed as an innovative form of education over traditional public schools, charter schools are supported in most states and by President Donald Trump.

Trump's pick to lead the U.S. Department of Education, Betsy DeVos, is an ardent supporter.

"Parents no longer believe that a one-size-fits-all model of learning meets the needs of every child," DeVos told the U.S. Senate Committee on Health, Education, Labor and Pensions during her Jan. 17 confirmation hearing. "And they know other options exist, whether magnet, virtual, charter, home, faith-based or any other combination."

For that reason, charter school supporters were surprised that the House GOP proposed eliminating low-cost financing for them.

"I would be highly distressed, regardless of where you are on charter schools," California Deputy Treasurer Tim Schaefer, referring to the potential elimination of PABs.

"You can be friend or foes to charter schools, but here in California there are parents demanding that alternative," he said. "If you take away from the charter schools, the ability to finance…you are denying people those choices, because it would create an environment where they are unsustainable."

California has the highest number of students in charter schools, at 602,840, according to an October 2017 enrollment report by the National Alliance for Public Charter Schools.

Texas has the second-highest enrollment, with 303,130 students, and Florida came in third.
To access the bond market, most charter schools must be 501(c)(3) nonprofit entities. Conduit issuers are used to sell their tax-exempt bonds, though there are a few exceptions.

Since the first $11 million of bonds were issued in 1998, a total of $17.73 billion of bonds have been sold for such facilities across the U.S., according to an issuance database created by Wendy Berry, a NewOak director and senior analyst.

If Congress eliminates PABs, Berry said charter schools will encounter higher borrowing costs using other financing options, and they will have fewer dollars to spend on the core mission of education programming.

“I think this was a big surprise for the folks who follow this the closest, the folks who make sure the municipal market is represented in the halls of Congress,” she said. “This was not something that was discussed.”

Berry, who specializes in covering the charter sector, said “there have been a surprising number of taxable deals done.” Some federal financing programs are available, though they are also taxable.

“It’s not good news, obviously,” she said.

Minnesota passed the first charter school law in 1991, with California following suit in 1992. Today, more than 6,800 charter schools in 43 states and the District of Columbia educate nearly 3 million students, according to the National Alliance for Public Charter Schools.

Some 67% are independently run non-profit, single-site schools; 20% are run by non-profit organizations that run more than one charter school; and 13% are run by for-profit companies, according to the Alliance.

The House bill would also remove other sources of charter school capital funding such as new markets tax credits, qualified zone academy bonds, and other tax credit programs, S&P Global Ratings said in “U.S. Tax Reform: Municipal Credit And Market Implications,” a Nov. 9 report.

“While charter schools in some states – for example Colorado, Arizona, Nevada, and Michigan – may qualify to still issue debt as governmental bonds, most states are not currently set up to do so and would require additional legislative action to be eligible,” the S&P report said.

The House bill would “significantly curtail new market activity” and make it even more difficult for start-up or new charter schools to finance their school buildings, or for existing schools to expand, S&P analysts said.

In Michigan, 10% of students are enrolled in 294 charter schools, which are considered public school academies. Any parent, teacher, group or entity can apply for a charter, except private school operators.

As public schools, charters in Michigan receive per-student base funding. They also are eligible for governmental bond issuance.

In 1979, charter schools became eligible under the State School Aid Act to borrow from the Michigan Municipal Bond Authority, using its shared credit rating. The authority issues state qualified school bonds.

Most states have not created such entities, and charter schools rely on conduit issuers to sell tax-free private activity bonds as 501(c)(3) nonprofits.

In response to the charter school facility financing challenges, the California Legislature passed Assembly Bill 2717 in 2006, making charter schools eligible for financing assistance through the California School Finance Authority, according to the CSFA’s Conduit Bond Program Report.

The CSFA has issued about $1 billion of private activity bonds for charter schools since then, according to Deputy State Treasurer Vince Brown. The CSFA also has an intercept program to make sure the debt service gets paid to the bondholders, he said.

The CSFA has been the largest issuer of charter school debt in the state, issuing 64% of the total par amount since 2010 and 75% of the par amount since 2013, “thereby distinguishing itself as the

primary conduit bond issuer for California charter schools," according to the authority's report.

The National Alliance for Public Charter Schools, in a Nov. 7 letter to House Committee on Ways and Means Chairman Kevin Brady, R-Texas, and ranking member Richard Neal, D-Mass., said several provisions in H.R. 1 would be "devastating" to charter schools.

In addition to eliminating PABs, the act would terminate the use of advance refundings and remove a charter school's ability to finance new projects with new markets tax credit financings and qualified zone academy bonds, said the two-page letter by Alliance President Nina Rees.

From 2003 through 2016, NMTC investments in charter schools totaled $1.99 billion, supporting academic space for 200 public charter schools and leveraging $3.21 billion in total project financing, Rees wrote.

"Early-stage schools would be put at a particular risk by the elimination of NMTCs as those credits typically support the development and construction of new buildings," she said. "The result of this bill is that some charter schools would not be able to afford a facility."

NewOak's Berry described the situation in Congress as the "first inning of what is likely to be an extra-inning ballgame."

"The Senate has released their version and it's totally different from the House," Berry said. "I'm optimistic if the worse comes to fruition then they will pay higher borrowing costs but it will not be the end of the ability to finance charter schools."

BY SOURCEMEDIA | MUNICIPAL | 11/15/17 07:20 PM EST

Loss of Tax-Exempts Would Widen the Gap Among Healthcare Issuers.

CHICAGO — Already bruised this year by GOP efforts to dismantle the Affordable Care Act and pressured on operations, the not-for-profit healthcare sector would also face higher capital costs should the House Republican tax bill pass.

The package before the House would eliminate tax-exempt advance refundings and private activity bonds for housing, private universities, not-for-profit hospitals, and other development projects. The Senate Republican proposal preserves PABs. Leaders are aiming for reconciliation between the two in mid-December.

The end of tax-exempt borrowing would ripple through the hospital sector with far-reaching effects across the healthcare landscape, said market participants.

It could drive more interest in direct bank loans and prompt an even bigger wave of mergers and consolidations as smaller and lower-rated hospitals and systems struggle to raise affordable capital. The current consolidation wave has largely been driven by hospital efforts to conform to changes demanded by the ACA.

"I think certainly it's going to be difficult for hospitals and it's going to raise capital costs, but for the larger and highly-rated systems they will probably be O.K. because they have been issuing some taxable debt and have relationships and there are cross-over buyers that are certainly interested," said George Huang, a director in Municipal Securities Research at Wells Fargo Securities. "They are

sophisticated and can spread the additional costs."

"Where it becomes more of an issue is for the smaller guys who will see their market access impaired," Huang added. "The whole municipal market would evolve."

On Tuesday, GOP senators announced their version would include a repeal of the ACA's individual insurance mandate in a move to help cover the deficit from tax cuts. The Congressional Budget Office has estimated that 13 million would lose coverage without the mandate.

That could drive up the uncompensated care costs for hospitals that fell after the ACA was adopted and the ranks of insured – either through private insurance or Medicaid expansion — swelled.

Healthcare borrowers have brought $32.7 billion of tax-exempt issuance to market so far this year, according to data from Thomson Reuters (TRI). About $300 billion of long-term, tax-exempt healthcare-related borrowing and about $20 billion of short-term paper was outstanding last year, said Richard Ciccarone, president of Merritt Research Services.

Smaller hospitals likely would rely more on bank loans which could grow more costly as their deals are often too small and not index eligible to attract traditional fixed-income corporate buyers, said one public finance healthcare banker whose clients include both small, local systems and national systems.

"If a corporate buyer has a choice between a known name and larger, double-A rated system and a smaller A rated system or hospital that requires more research, they are going to pick the known name," said the healthcare banker.

The banker said there could possibly be some accommodation in the corporate market in response to the tax changes, with a sub-sector focused on paper from former tax-exempt borrowers. Still, using the corporate market requires a whole new set of demands on borrowers; make-whole call features are preferred to traditional 10-year municipal calls and more frequent routine disclosure is required which can add to a borrower's cost, the banker added.

Nuveen offered a similar assessment on the disparity.

"For issuers, we expect a bifurcated outcome: larger, more highly rated issuers should be able to access the taxable bond market for their infrastructure financing needs. Smaller, lower-rated or non-rated issuers may be unable to access the bond market," Shawn O'Leary, senior vice president at Nuveen Asset Management LLC, said in a report on the impact of the tax bill on various sectors.

The average spread between the Bloomberg Barclays Taxable Municipal Bond Index and the Bloomberg Barclays Municipal Bond Index from November 2016 through October was 126 basis points. The higher costs could force some to put off projects or renovations.

"Demand exists in the tax-exempt market for these smaller deals, and professional investors have the credit research capabilities to analyze such issuers," O'Leary said. "This is not true of the taxable market. The loss of access to the tax-exempt market would likely shut out critical access hospitals."

Huang added that the full extent of the hit might not be felt until rates rise or spreads widen between taxable and tax-exempts. "For years, hospitals have had excellent cost of capital and could borrow cheaply," he said.

Some upsides exist on the use of taxable debt and that's been the appeal for larger systems. It frees

them of the burden of going through a conduit issuer, so they can get into the market more quickly, and it frees them from IRS rules on how the proceeds can be spent. “For some, it’s worth the tradeoff,” Huang said.

Another upside is for current holders. The elimination of advance refunding could drive up demand for existing tax-exempt healthcare paper, improving its valuation, Huang said.

The American Hospital Association sounded the alarm on behalf of its members in a letter last week to the House Ways and Means Committee, warning that smaller hospitals can’t afford more costly loans and taxable borrowing, saying that throughout the sector the higher costs will be borne by patients.

“Non-profit hospital borrowers save, on average, an estimated two percentage points on their borrowing compared to taxable bonds or bank financing,” wrote Thomas Nickels, AHA executive vice president.

“Lower borrowing costs translate into lower health care costs for patients. The lower cost of tax-exempt financing also makes possible necessary upgrades and modernizations that would not be possible for hospitals with weaker finances,” he added.

In the near-term, conduits could see a rush to market. It’s a tough task to hurry a deal to market if not already in the works. The deal must run through the conduit process which includes a TEFRA hearing required by the Internal Revenue Service and counsel must issue an opinion. For issuers that had plans for early 2018 financings, it’s doable, and slated deals can be increased.

Michigan-based Trinity Health is speeding up planned borrowing that would include $200 million of net new money, up to $300 million to reimburse itself for a hospital acquisition, and a refunding of up to $550 million.

“We are looking at trying to come to market at some time in December,” Dina Richard, treasury and chief investment officer, said during the system’s annual investor call last week. “We have accelerated our plan of finance in light of the recent tax reform discussion,” she said.

“The Illinois Finance Authority would be accommodating, and is prepared to speed deals through the hearing process and would call special meetings if any borrower has any needs that arise” until Dec. 31, said its executive director, Christopher Meister.

The agency is the state’s primary route for healthcare borrowers to access the municipal market. A financing on the board’s agenda last week for Northwestern Memorial Healthcare was increased in size slightly due to the change.

Higher borrowing costs would exacerbate existing fiscal pressures due to changes in customer demands, cost consciousness and public and congressional pressure to contain costs along with changing reimbursements with a wave of retirements among Baby Boomers, market participants added.

Fitch Ratings left a negative outlook on the sector this year while the rating outlook is stable. Pressures on operating margins reflect the erosion in payor mixes as the baby boom generation moves into Medicare and newly eligible Medicaid patients access more healthcare services to address deferred care and chronic conditions. The sector also faces growing wage and benefit pressures.

BY SOURCEMEDIA | MUNICIPAL | 11/15/17 07:20 PM EST

By Yvette Shields

Muni Groups, Upset by House Tax Bill, Pin Hopes on Senate.

WASHINGTON – Municipal market participants turned their attention to the Senate for a better outcome after the House voted 227 to 205, mostly along party lines, on Thursday to pass a tax bill that would put an end to private activity bonds and advance refundings after this year.

The House bill would also eliminate the deduction for state and local income and sales taxes as well as cap the deduction to $10,000 for property taxes. That led 13 Republicans, mostly from high-tax states like New York, New Jersey, California to defect from their party and vote no on the House bill.

Muni market groups said they will now focus their fight on the Senate and any negotiations between the two chambers over a final bill.

The bill in the Senate would save PABs and also enhance them by eliminating the alternative minimum tax. However, it would also completely repeal the SALT decision and stop advance refundings after this year.

“We have only just begun the process of a battle that we have come prepared to fight,” said Emily Brock, director of the Government Finance Officers Association’s federal liaison center.

She said the House vote was not unexpected but “represents a vote on legislation that untangles a century-long federal-state-local partnership and places significant burdens on state and local governments’ revenues which provide public services.”

The House bill “could have calamitous effects on infrastructure and local economies across the country,” Brock said. “Clearly the time is now to help the Senate understand the potential impacts to public infrastructure that these provisions wield.”

New Orleans Mayor Mitch Landrieu, president of the U.S. Conference of Mayors blasted the House for passing a “dangerous” tax reform bill and called on the Senate to end the “assault on cities.”

Bond Dealers of America CEO Mike Nicholas said the group is “disappointed” that the House passed its bill with the provisions to terminate PABs and advance refundings.

“While a comprehensive reform of the tax code is needed, the reform should encourage state and local governments to invest in infrastructure, housing, hospitals, and senior living facilities, not limit the tools it has available to provide these needed investments, while hurting issuers ability to manage risk and invariably raising costs for all taxpayers,” he said.

Nicholas said that while BDA members applaud the bill in the Senate for retaining PABs, Senators must “retain current law with regards to municipal advance refundings in any package brought to debate on the Senate floor.”

Some Democrats on the Senate Finance Committee have complained that the tax bills pending in both chambers would fall under the Pay-As-You-Go Act of 2010 and force the Office of Management and Budget to sequester billions of dollars in across-the-board spending cuts in Medicare and other federal mandatory programs, zeroing out subsidy payments for direct-pay bonds such as Build America Bonds.

The Congressional Budget Office confirmed the bills would be a problem under the PAYGO Act in a letter to House Democratic Whip Rep. Steny Hoyer, D-Md. But Senate Finance Committee chairman Orrin Hatch, R-Utah, rebuffed the idea that PAYGO would hold up the tax bill. He told committee members on Wednesday there has never been a single sequester ordered under the PAYGO statute.

Budget experts said that in order to waive the tax bills from the PAYGO Act, Congress would have to pass a separate bill, apart from the reconciliation process, that would require 60 votes, rather than a simple majority, in the Senate.

But long-time legislative observers said the Republicans may have the upper hand on the PAYGO issue. They can just pass a tax bill and then offer a bill to waive the PAYGO Act, putting Democrats on the spot to either support the waiver or trigger OMB-mandated billions of dollars of cuts to mandatory federal programs.

Some municipal market groups are putting their hopes for more favorable action in a conference between the House and Senate tax bills. The Senate Finance Committee approved the bill Thursday night. It will then release the text of the bill next week so the full Senate can vote on it after Thanksgiving. The House could both take up and vote on the Senate bill or the two chambers could try to resolve their differences in conference.

Sandy MacLennan, president of the National Association of Bond Lawyers, said, “We remain optimistic that the municipal bond and related tax credit provisions in the House bill will be revised in conference.”

The House bill would eliminate tax credit bonds after this year.

“It is especially important to retain the favorable tax treatment for private activity bonds and advance refundings which are important financial tools for municipal issuers and non-profit organizations,” MacLennan said. “Elimination of either of these tools will ultimately either reduce investment in capital projects or increase costs paid by local taxpayers, ratepayers, and users of these facilities.”

Chuck Samuels, a member of Mintz Levin who is counsel to the National Association of Health and Higher Education Facilities Authorities, said he is “disappointed but not surprised” that the termination of PABs was left in the House bill.

“But House Ways and Means Committee Chairman Brady has made clear the House still has work to do on its bill in preparation for conference and we are working hard on House members as well as keeping Senate bill clean,” he said.

BY SOURCEMEDIA | MUNICIPAL | 11/17/17 07:27 PM EST

KBRA: Tax Reform Proposals Impact Public Sector Tax Exemption Program.

Over the last two weeks, both the Republican-controlled House and Senate released their proposals for tax reform. Key revenue-raising provisions in each version include elimination of the tax exemption on certain types of municipal bonds. The House passed a tax reform bill that eliminates the tax exemption on private activity bonds (PABs) and advance refunding bonds. The Senate proposed a bill that retains the tax exemption for PABs, but eliminates the tax exemption for advance refunding bonds.

While there is debate about the actual revenue impact of the provisions in these bills, one thing is clear, they will increase the cost of capital for state and local governments across the country at a time when operating budgets are constrained and growth in tax revenues is projected to be insufficient to fund critical infrastructure projects.

- Private activity bonds have been a critical component of the funding for public facilities and infrastructure for decades.
- Many high profile projects have incorporated PABs in their funding, including the Port of Miami, Presidio Parkway and the new Goethels Bridge.
- Advance refunding bonds enable state and local governments to take advantage of lower interest rates in the same way that a homeowner takes advantage of lower mortgage rates to reduce monthly mortgage payments.
- KBRA believes that the tax exemption for both PABs and advance refunding bonds help state and local governments to more effectively manage the cost of operations and fund capital projects.
- KBRA will monitor the changes made to PAB and advance refunding bond financing programs and evaluate the impact on public finances.

Please click on the link below to access the report:

Tax Reform Proposals Impact Public Sector Tax Exemption Programs

If you have any difficulties accessing the report, please contact info@kbra.com or visit www.kbra.com.

Municipal Finance Caucus Speaks Out in Defense of Bonds.

In a marathon legislative day in on Capitol Hill, tax reform took one step towards final passage of the House and potentially a step back in the Senate.

Municipal Finance Caucus Speaks Out
Last night, House Municipal Finance Caucus co-chairman Reps. Randy Hultgren (R-IL) and Dutch Ruppersberger (D-MD), with support from the BDA and MBFA, testified during a House Rules Committee hearing in defense of two amendments filed to H.R 1 the Tax Cuts and Jobs Act:

- **Amendment 54:** Reinstates private activity bonds by striking Sec. 3601. (co-sponsors:Hultgren (R-IL), Messer (R-IN), Ruppersberger(D-MD), McGovern (D-MA), Polis (D-CO))
- **Amendment 55:** Reinstates advance refunding bonds by striking Sec. 3602. (co-sponsors Hultgren (R-IL), Messer (R-IN), Ruppersberger (D-MD), McGovern (D-MA))

After hours deliberation, the Rules Committee decided not to accept any of the 139 amendments filed. Amendments will also not be allowed on the House floor during debate which is expected to begin today and conclude with a vote for final passage tomorrow morning.

While all amendments were rejected, having these points raised during the process **will have influence over Senate deliberations**. Senators and their staff are watching the House debate closely noting amendments filed and statements made. This action will go far in emboldening Senators to take a stand.

Both the BDA and MBFA continue to work with our partners in the Municipal Finance Caucus in an effort to have Members speak on the record, during the House debate, in defense of private-activity

and municipal advance refunding bonds.

House Moves Towards Vote
The House will conduct one hour of debate over the rules of the tax package and then begin a four hour debate on the bill itself. House Leadership currently feels as if they have the 218 votes needed for passage.
Expect some push back to emerge from moderate members of the House Republican Caucus over Senate changes to the package, but it is not known if there will be enough to delay the vote.

Senate Adds Controversy
The Senate Finance Committee added a few layers of difficulty for approval of their tax package yesterday afternoon. During a Committee recess for lunch, rumors leaked that Chairman Hatch was amending the repeal of the individual mandate of the Affordable Care Act as a payfor for the sweeping tax cuts included in the package. These rumors were later confirmed and the provision was added.

Overnight, the Chairman announced that a majority of the individual tax cuts will expire after 2025, while maintaining permanence for corporate rates, in an effort to bring the legislation in compliance with Senate rules.

Next Steps
The BDA is sending letters to both House and Senate Leadership today in support of privavte-activity and municipal advance refunding bonds and requesting both be protected in any compromise bill.

We will continue to provide updates as they become available.

Bond Dealers of America

November 15, 2017

House's Tax Plan Impacts Key County Priorities.

House tax reform plan keeps muni bonds mostly tax-free, caps property tax deduction, taxes interest on advance refunding bonds, private activity bonds

The House Ways and Means Committee passed the GOP's tax overhaul bill, the Tax Cuts and Jobs Act (H.R.1) Nov. 9 by a 24–16 vote along party-lines. Introduced Nov. 2 by Chairman Kevin Brady (R-Texas), the legislation culminates a year of work by Brady and House Republican leadership to craft a comprehensive tax reform package. The 452-page bill would alter nearly every portion of the tax code, including many key county priorities outlined below.

Broadly, the House Republican tax reform plan would lower individual and corporate tax rates and sets a new rate for so-called "pass through businesses," or businesses that file on the individual side of the tax code. To make up revenue lost by lowering rates and to simplify the code, the package also eliminates or caps dozens of tax deductions and credits. Ultimately, the Joint Committee on Taxation estimates H.R. 1 will result in a roughly $1.5 trillion increase in the national deficit over the next decade.

Both chambers of Congress intend to move quickly on the legislation, aiming to send a final bill to the president's desk before Christmas. While the initial versions approved by each chamber could

differ substantially, ultimately both chambers must agree on the same package before taking a final vote. Republicans plan to use the budget reconciliation process to pass the bill, which only requires a simple majority vote in the Senate but adds additional financial restrictions and rules to the legislation.

Continue reading.

NATIONAL ASSOCIATION OF COUNTIES

By JACK PETERSON Nov. 13, 2017

Bipartisan U.S. Conference of Mayors Criticizes House for Passing 'Dangerous' Tax Reform Bill; Calls on Senate to End the 'Assault on Cities'

WASHINGTON – New Orleans Mayor Mitch Landrieu, President of The United States Conference of Mayors (USCM), today released the following statement on behalf of Democratic, Republican and Independent mayors demanding the Senate make improvements to the House tax reform bill:

"The bipartisan U.S. Conference of Mayors made it clear that we will not ever support a bill that disproportionately benefits the wealthy and undercuts the hard working men and women of our working class. Today, by passing this dangerous bill, Congress chose to do the bidding of the billionaires and to ignore the deep concerns of their constituents. But the fight is not over. As this now moves to the Senate, we will continue to aggressively fight this full-fledged assault on cities and demand that the state and local tax deduction (SALT) along with the tax exemption on private activity bonds and advance refunding bonds remain intact. We will not stand for any bill that further rewards the wealthiest Americans at the expense of nurses, teachers and fire fighters.

"As long as tax reform is under consideration in Washington, mayors will hold their Congressional representatives accountable and push to enact measures that create jobs and make our communities stronger. This bill fails that test – but we remain optimistic that the Senate's version will remove corporate giveaways and offer real reforms for cities and their middle class residents."

U.S. Tax Reform Poses More Risks for State and Local Governments.

CHICAGO/NEW YORK — State and local governments could suffer hits to revenue collections under the tax reform bills being considered in the U.S. Senate and House because of the potential loss of a federal subsidy applied to bond issues and because a proposed increase in the standard taypayer deductions would affect some states.

These additional risks to state and local governments are coming to light as lawmakers and experts sift through the bills before the two chambers.

State and local governments have already been grappling with the potential revenue-raising risks of provisions in the two bills that would eliminate or cap taxpayer deductions of state and local income, sales and property taxes from their federal tax bills.

Analysts on Wednesday said that the U.S. House of Representatives bill, which was unveiled Nov. 2,

could knock out a federal subsidy applied to billions of dollars of bonds sold by states and local governments in the aftermath of the Great Recession.

The threat to the subsidy was disclosed in correspondence this week between the Congressional Budget Office and Representative Steny Hoyer, a Democrat who was seeking more details about the effects of the House tax bill.

Build America Bonds (BABs) were created under an economic stimulus law that allowed municipal issuers to sell for a limited time taxable debt with the federal government contributing 35 percent of interest costs. Between April 2009 and the end of 2010, $181.5 billion of BABs were sold in 2,351 issues.

The future federal subsidy on the $13.5 billion of BABs sold by California, the biggest issuer of the debt, totals $6.7 billion, according to the state treasurer's office.

"Rather than follow through on an earlier Congressional commitment to reimburse states for the costs of issuing Build America Bonds, which were used to jumpstart our Great-Recession-decimated economy, Congress instead wants to allow our nation's wealthiest tycoons to feed deeper at the public trough," California Treasurer John Chiang said in a statement.

"As a result California taxpayers will be on the hook for $6.7 billion that could otherwise be used for education, public safety, and other vital public programs," he added.

The U.S. government's payment on BABs became subject to federal across-the-board spending cuts known as sequestration, resulting in subsidy cuts that ranged from 8.7 percent in 2013 to 6.6 percent in the current fiscal year, according to the Internal Revenue Service.

The Congressional Budget Office said this week that the estimated $1.5 trillion increase over 10 years in the federal budget deficit under the House tax bill would, in fiscal 2018, wipe out funding for many programs subject to sequestration under federal law.

That would leave BABs issuers without a federal subsidy, according to Bill Daly, governmental affairs director for the National Association of Bond Lawyers.

But Congress has the ability to protect the BABs' subsidy.

"Seems to us it's entirely a budgeting problem and all the Congress has to do is say the deficit will not be subject to sequestration," said Philip Fischer, municipal research strategist at Bank of America Merrill Lynch.

So far in 2017, BABs have notched total returns of 7.17 percent, outpacing other fixed-income classes including U.S. Treasuries and corporate bonds, according to Bank of America Merrill Lynch indexes.

In addition, big increases in federal standard deductions in both the House and Senate bills could cause revenue problems for eight states unless they take preemptive legislative action.

For Colorado, Idaho, Minnesota, Missouri, North Dakota, South Carolina, Utah and Vermont a rise in the federal deduction would automatically increase the state deduction, decreasing tax collections, according to Ron Alt, senior manager of research at the Federation of Tax Administrators.

By REUTERS

NOV. 15, 2017, 8:57 P.M. E.S.T.

(Reporting by Karen Pierog in Chicago and Laila Kearney in New York; Additional reporting by Stephanie Kelly in New York; Editing by Daniel Bases and Leslie Adler)

MSRB: Municipal Securities Provisions of the "Tax Cut and Jobs Act"

Read the MSRB Fact Sheet.

TAX - GEORGIA

Columbus Board of Tax Assessors v. Medical Center Hospital Authority

Supreme Court of Georgia - October 16, 2017 - S.E.2d - 2017 WL 4582405

Hospital authority brought declaratory judgment action against board of tax assessors, city, and county tax commissioner, seeking declaration that its leasehold interest in a continuing care retirement facility was public property exempt from ad valorem taxation.

The Superior Court granted summary judgment in favor of authority. Tax board appealed. The Court of Appeals affirmed. Tax board petitioned for writ of certiorari, which was granted.

The Supreme Court of Georgia held that bond validation proceedings did not conclusively render hospital authority's leasehold interest public property exempt from taxation.

Fact that bonds used to finance construction on property were validated as having a public purpose did not conclusively render hospital authority's leasehold interest in a continuing care retirement facility public property exempt from ad valorem taxation. Question of whether a hospital authority's property interest qualified for ad valorem tax exemption as "public property" was a separate and distinct question from the issues presented in a bond validation proceeding.

TAX - NEW JERSEY

Ciba Specialty Chemicals Corp. v. Township of Dover

Tax Court of New Jersey - August 3, 2017 - 2017 WL 3372554

Tax Court took up the discrete issue of whether on the relevant valuation dates there existed a reasonable probability of a change in zoning for the subject property from industrial/commercial to mixed-use, including residential. "The answer to this question will be a crucial element of the highest and best use analysis used to determine the true market value of the subject property for local property tax purposes."

The municipality argued that a zoning change was reasonably probable on the relevant dates and that the true market value of the subject property should reflect its potential to be developed with a project that includes residential units.

The owner of the subject property argued that a change in zoning was not reasonably probable on the valuation dates and that the parcel should be valued for its potential development only for

permitted commercial and industrial uses. Owner argued that because the municipality had not named a licensed real property appraisal expert to offer an opinion on the reasonable probability of a zoning change at the subject property, it was impossible, as a matter of law, for the municipality to meet its burden of proof. Owner also argued that the opinion proffered by the municipality's proposed expert witness is an inadmissible net opinion, providing a separate basis for granting summary judgment in favor of plaintiff on the zoning-change question.

The municipality argued that it may rely on the testimony of a land development planning expert who issued a report and addendum proffering an opinion on how a mixed-use development, including residential units, might be situated on the subject property. The proposed expert's report and addendum included an opinion that a change in zoning at the property to permit such development was likely to occur.

"The court concludes that the motion record does not support a determination that, as a matter of law, the municipality cannot meet its burden of proof with respect to the reasonable probability of a zoning change on the relevant valuation dates. There are no legal precedents in this State holding that only a licensed real estate appraiser can offer an opinion with respect to the reasonably probability of a zoning change. To the contrary, it is well established that the determination of who may provide expert testimony rests with the trial court, which is charged with evaluating the proposed expert's training, knowledge, and experience. It is certainly reasonable to argue that a licensed real estate appraiser is the best professional to offer an opinion on the reasonable probability of a zoning change for purposes of determining the value of real property. However, a witness with training, knowledge, and experience in land development planning may also possess sufficient expertise to offer an opinion on that topic. The most appropriate way for the court to decide whether the municipality's proposed expert is competent to offer opinion testimony on the likelihood of a zoning change at the subject property is for the court to evaluate the evidence adduced at trial regarding the training, knowledge and experience of the witness."

TAX - COLORADO

HDH Partnership v. Hinsdale County Board of Equalization

Colorado Court of Appeals, Div. IV - October 19, 2017 - P.3d - 2017 WL 4684139 - 2017 COA 134

Hunting and fishing club members appealed decision of the Board of Assessment Appeals which agreed that members, who each held record title to tracts of land within club, were the owners of the parcels and bore the property tax burden.

The Court of Appeals held that:

- Club, rather than its members, was true owner of tracts of land title in names of members and thus was responsible for paying property tax assessments, and
- Parcels were subject to property tax assessments as fractions of the club grounds as a whole.

Statute providing that each tract or parcel "shall be separately appraised and valued, except when two or more adjoining tracts, parcels, or lots are owned by the same person, in which case the same may be appraised and valued either separately or collectively" does not require tax assessor to assess taxes to the individual record title holders, as statute is silent on how ownership is determined.

Hunting and fishing club, rather than its members, was true owner of tracts of land title in names of members and thus was responsible for property tax assessments. Although memberships were conveyed by deed, members did not have possessory rights to the parcels and did not have control over access and improvements to the tracts, members' right to access club grounds could be revoked if they did not pay assessments, and club enjoyed traditional benefits of ownership, including the rights to exclude nonmembers or members not in good standing, to erect or remove improvements, to control river and its waters, and to profit from the land.

Hunting and fishing club parcels were subject to property tax assessments as fractions of the club grounds as a whole, rather than based on the personal property value of the members' licenses to use the club as determined by comparable sales of deeds to other parcels in the past; while individual members were record owners of each parcel, club was the actual owner and members were only licensees.

S&P: U.S. Tax Reform: Municipal Credit And Market Implications.

The Tax Cut and Jobs Act legislation proposed in the House of Representatives, in its current form, will likely result in near-term changes to supply and demand dynamics in the municipal market potentially increasing costs, decreasing access, and negatively affecting credit quality for some public finance borrowers over the longer term, in S&P Global Ratings' view.

Continue Reading

Nov. 9, 2017

S&P Request for Comment: Priority-Lien Tax Revenue Debt.

S&P Global Ratings is requesting comments on proposed changes to its methodology for assigning ratings and related credit products to U.S. ratings on priority-lien tax revenue debt issued by municipal governments, state governments, or other U.S. public finance obligors where the pledged revenue stream is limited.

Continue Reading

Nov. 13, 2017

The Senate Gives the House the Byrd and Retains Tax-Exempt Qualified Private Activity Bonds, Tax Credit Bonds, and Tax-Exempt Stadium Financing Bonds. Tax-Exempt Advance Refunding Bonds, However? Not so Much.

We summarized last week the tax-exempt and tax-advantaged bond provisions of the Tax Cuts and Jobs Act (the "Act"), as introduced and referred to the House Ways and Means Committee. As a reminder, these provisions, which came as a shock to state and local governments, 501(c)(3) organizations, and others involved with public finance, would eliminate the ability of state and local

governmental units to issue: (1) tax-exempt qualified private activity bonds (including qualified 501(c)(3) bonds); (2) tax-exempt advance refunding bonds; (3) tax-exempt professional sports stadium bonds; and (4) tax credit bonds (regardless of whether the bondholder receives a tax credit or the issuer receives a direct payment subsidy in respect of the tax credit bond).

The foregoing provisions were included in the version of the Act that was approved today by the House Ways and Means Committee. With one notable exception – the prohibition on tax-exempt advance refundings — these provisions, and indeed any tax-exempt bond provisions, are absent from the Senate Finance Committee Chairman's Markup of the Act, which was also released today. More analysis and speculation after the jump.

Continue reading.

The Public Finance Tax Blog

By Michael Cullers and Johnny Hutchinson on November 9, 2017

Squire Patton Boggs

Market Commentary: Yields Drop on Tax Reform Plans, PAB Issuers May Rush to Market.

Tax reform proposals from the House and Senate had a significant impact on the municipal bond market this past week. Generic benchmarks moved anywhere from 5 to 15 basis points into lower yields as the market responded to the push to reform the tax code for the first time in more than 40 years.

Most impactful was a suggestion by the Administration to remove the exemption on advance refundings, which represented about one-third of the entire market issuance of last year. Further, the alternative minimum tax and private activity bonds are on the chopping block.

Continue reading.

This Market and Policy commentary is brought to you by Court Street Group. For a full copy of the report, click here.

Posted 11/10/2017 by George Friedlander

Neighborly Insights

Tax Reform Bill Would Eliminate Future Supply of Nearly 1 Million Affordable Rental Housing Units.

According to Novogradac & Company analysis, the Tax Cuts and Jobs Act, House Ways and Means Committee Chairman Kevin Brady's landmark tax reform legislation would reduce the future supply of affordable rental housing by nearly one million units. That would translate to a reduction of as much as two-thirds of the current production of affordable rental housing provided by the Low-

Income Housing Tax Credit (LIHTC) program.

Specifically, the following changes proposed by the bill would negatively affect the number of rental homes built or renovated by the LIHTC:

- Eliminate private activity bonds and associated 4 percent LIHTCs.
- Lower corporate tax rate from 35 percent to 20 percent, and
- Change inflation factor for future LIHTC allocations from CPI-U to "chained CPI."

The following analyzes the effect of each change and provides a rough estimate of the degree to which each change would affect the number of affordable rental housing units supported by the LIHTC over 10 years.

1. Elimination of private activity bonds and associated 4 percent LIHTCs.

The latest data available from the National Council of State Housing Agencies (NCSHA) shows that in 2015, 49,380 tax-exempt multifamily private activity bond-financed homes were awarded 4 percent LIHTCs. However, according to data from the Council of Development Finance Agencies (CDFA), new tax-exempt multifamily bond issuance increased at least 51 percent or more in 2016; based on CDFA data the estimated number of rental homes financed is assumed also to have increased by 51 percent in 2016. Accordingly, repeal of the 4 percent LIHTC for tax-exempt bonds means a loss of roughly 788,000 to 881,000 affordable rental homes over 10 years, or more.

2. Lower corporate tax rate from 35 percent to 20 percent.

The reduction of the top corporate tax rate from 35 percent in 2017 to 20 percent in 2018 would reduce the tax loss benefits of LIHTC investments, since the value of depreciation expense deductions would be reduced. An analysis by Novogradac & Company found that lowering the corporate tax rate to 20 percent would reduce LIHTC equity by about 15 percent, translating to $1.2 billion or more in loss equity annually. This loss of investor equity translates into loss of 85,600 to 93,900 affordable rental homes over 10 years, or more.

Much of this loss could be addressed through a two-step proposal to increase allocable LIHTC and modernize the credit percentage formula.

3. Change inflation factor for future LIHTC allocations from CPI-U to "chained CPI."

The current draft of tax reform legislation would change the inflation adjustments throughout tax code from a factor based on the consumer price index for all urban consumers (CPI-U) to one based on a "chained" CPI-U. Many economists claim that the chained CPI-U provides a more accurate estimate of changes in the cost of living from one month to the next by accounting for the effects of substitution on changes in the cost of living. This change will decrease inflation adjustments in LIHTC allocations in future years, and would lead to a loss of 8,200 more affordable rental homes over 10 years.

Conclusion

On balance, it appears that Chairman Brady's tax reform legislation would reduce the total amount of LIHTC-financed affordable rental homes by about 882,000 to 983,000, or more, over 10 years. Furthermore, given the lower financial feasibility under a lowered corporate rate, the changes would also result in rental homes that would likely serve higher average income levels, provide fewer amenities and/or social services.

Published by Michael Novogradac on Friday, November 3, 2017 – 12:00am

---

Affordable Housing Advocates Say Trump Tax Reform Bill is 'Devastating'

Elimination of private-activity bonds would lead to steep drop in affordable housing units

Affordable housing advocates were cautiously optimistic that the House tax reform bill would have only modest effects on low-income housing after the Trump administration's framework explicitly retained the tax credit responsible for virtually all construction and preservation of low-income housing units—the Low-Income Housing Tax Credit (LIHTC).

While the House's tax reform bill released Thursday does include LIHTCs, the unexpected elimination of private-activity bonds would have devastating effects on the construction and preservation of affordable housing. When combined with other changes the bill proposes, accounting firm Novogradac & Company estimates a loss of nearly 1 million affordable housing units produced over 10 years.

"This was the worst case scenario that we were bracing for," said Rachel Fee, Executive Director of the New York Housing Conference. "We knew bonds were slated for elimination in previous tax reform proposals so that threat has been out there," she explained, "However, given that the tax reform framework announced last month explicitly supported the housing credit, we were hopeful that there was sincere interest from the administration and House Republicans in supporting this public-private partnership model with a track record of success."

The LIHTC program provides two types of credits for developers willing to put affordable housing units in their projects—the 9-percent credit and the 4-percent credit. The 4-percent credit can only be claimed if 50-percent or more of the project is funded using tax-exempt private-activity bonds.

The House tax reform bill, dubbed the Tax Cuts and Jobs Act, proposes eliminating private-activity bonds, so while LIHTCs are explicitly retained in the bill, the elimination of the bonds would eliminate the 4-percent credit and likely lead to a precipitous drop in construction of low-income housing units produced by the program.

"These bonds contribute to 60-percent or more of the affordable rental housing built or renovated every year," said Michael Novogradac of Novogradac & Company. "Hundreds and hundreds of thousands of units of affordable housing would be lost over the next 10 years."

The bond elimination compounds a problem that was expected in the bill—the corporate tax rate cut. The bill proposes cutting the rate from 35 to 20-percent. This would ultimately lower the value of LIHTCs and thus the amount of equity available to developers for building low-income housing units.

Novogradac & Company's analysis measured the effects of the elimination of the 4-percent LIHTC, the corporate tax cut, and change in inflation adjustments through out the tax code and found a reduction in LIHTC-financed units produced somewhere between 882,000 and 983,000 over 10 years.

The New York Housing Conference, in coordination with New York City and the State of New York, estimates that the combination of the corporate tax cut and the elimination of the 4-percent credit would cost New York alone $4.5 billion and 17,128 affordable housing units annually.

It could ultimately lead to as much as a 15-percent drop in the number of new affordable housing units, and that's before taking into account the effects of eliminating private-activity bonds.

Private-activity bonds are used to fund a number of different public works, in addition to affordable housing units. Trump has actually proposed expanding the use of private-activity bonds in the past, as part of his push for increased spending on infrastructure projects, so this cut comes as a surprise. Treasury Secretary Steven Mnuchin actually advocated for "enhancing" private-activity bonds during his confirmation process.

The Joint Committee on Taxation estimates that elimination of private-activity bonds would save the federal government $38.9 billion over the next 10 years. That's a drop in the bucket for a bill that the House estimates would add $1.5 trillion to the deficit over 10 years.

CURBED.COM

BY JEFF ANDREWS NOV 3, 2017, 5:00PM EDT

Eliminating Bonds Would Slash Affordable Housing.

Housing advocates say the loss of PABs would devastate LIHTC production by half.

The proposed elimination of private-activity bonds (PABs) would devastate the production and preservation of affordable housing across the country.

Roughly half of all low-income housing tax credit (LIHTC) developments utilize tax-exempt bonds and 4% credits, and losing the use of the bond program could mean roughly 60,000 fewer affordable homes are built or rehabilitated each year, estimate authorities.

Although the Republican House tax reform plan maintains the LIHTC program, the initial Nov. 2 proposal repeals PABs, which are used in conjunction with the 4% housing credit. The plan also seeks to lower the corporate tax rate from 35% to 20%, another move that could significantly reduce LIHTC investment.

"What the private-activity bonds provide is both reasonably priced construction and permanent financing, but they also come with the as-of-right 4% LIHTC," says Rafael Cestero, CEO and president of the Community Preservation Corp. (CPC), a nonprofit affordable housing and community revitalization finance company based in New York City.

Approximately 50,000 to 60,000 affordable homes are produced with bond-financed 4% credits each year, reports the National Council of State Housing Agencies. Multifamily bonds without credit financing produce about another 10,000 affordable rental homes per year.

As a result, the repeal of tax-exempt bonds could mean the loss of more than 500,000 affordable homes over 10 years.

Novogradac & Co. estimates that all the different measures in the House tax reform legislation would reduce the total amount of LIHTC-financed affordable rental homes by nearly one million over 10 years.

"It would be a catastrophe," says Bob Moss, principal and national director of governmental affairs

at CohnReznick, a national accounting and advisory firm. “In New York alone, housing advocates project that [the state] will lose $4.5 billion in affordable housing investment, 17,000 affordable homes, and 28,000 jobs annually. The national impact of losing 50% of production is devastating, at a time when an estimated 25 million Americans are paying more than 50% of their monthly income in rent. It also eliminates a major tool for rebuilding in disaster-affected areas.”

In California, 4% LIHTC and tax-exempt bond financing was awarded to 182 developments with 19,418 affordable units last year.

In addition, PABs are used to create affordable homeownership opportunities for low- and moderate-income families, says Cestero, estimating that about 2,000 families in New York would not receive the long-term financing needed each year for their homes.

Prior to joining CPC, Cestero served as commissioner of the New York City Department of Housing Preservation and Development, the largest municipal affordable housing development and maintenance code enforcement agency in the nation.

“When the bill writers said, ‘Let’s get rid of private-activity bonds and keep the LIHTC,’ they didn’t understand they would be shutting down about 40% of affordable housing production,” says R. Lee Harris, president and CEO of Cohen-Esrey, a Kansas-based developer. “It was an unintended consequence.”

If the lawmakers truly want to get rid of private-activity bonds, they will come up with another way to deliver 4% LIHTCs, he says.

Other housing leaders were also quick to point out the impact of repealing the bond program.

“The proposed elimination of private-activity bonds jeopardizes the unprecedented commitment of Gov. Cuomo to provide safe affordable housing and combat homelessness across New York state,” says RuthAnne Visnauskas, commissioner of New York State Homes and Community Renewal (HCR). “You can’t take private-activity bonds and the tens of billions of dollars in private investment that they leverage out of New York’s economy without negatively affecting our seniors, our veterans, and our rural and urban communities.

Since 2011, HCR has issued over $10.9 billion in low-cost tax-exempt bonds and leveraged another $13 billion in private capital to create and preserve more than 33,000 affordable multifamily units and finance affordable mortgages for more than 9,800 homeowners, according to Visnauskas.

“The current proposal to eliminate tax-exempt private-activity bonds would raise financing costs and devastate the housing market in nearly every community in New York state,” she says. “We are continuing to work closely with our congressional delegation to protect this critical federal investment in affordable housing.”

The House will begin its markup of the legislation known as the Tax Cuts and Jobs Act, and the Senate still has to release its version.

Advocates are urging affordable housing supporters to contact their members of Congress to support multifamily housing bonds.

Affordable Housing Finance

Donna Kimura

November 07, 2017

Donna Kimura is deputy editor of Affordable Housing Finance. She has covered the industry for more than a decade. Before that, she worked at an Internet company and several daily newspapers. Connect with Donna at dkimura@hanleywood.com or follow her @DKimura_AHF.

GOP's "Tax Cuts and Jobs Act" Trims Renewable Energy and Other Tax Credits.

On November 2, 2017, the House Ways and Means Committee unveiled its much anticipated tax reform bill titled the "Tax Cuts and Jobs Act" (the "House Plan"). The House Plan is a significant step by Republican lawmakers to fulfill a campaign promise to reform the United States tax code. Significantly, for solar, wind, and other renewable energy companies that have been scrambling to predict how proposed tax reform might affect their industries, the House Plan includes substantial modifications to existing renewable energy tax credits including the production tax credit ("PTC") and the investment tax credit ("ITC"). Specifically:

The PTC
The House Plan would permanently reduce the maximum PTC rate from 2.4 to 1.5 cents per kilowatt-hour–with no inflation adjustments going forward–for all projects that did not begin construction prior to the date the House Plan is enacted. It is possible that this reduction may be retroactive for projects that commence construction on or after November 2, 2017, the day on which the House Plan was released. Under current law, the PTC is scheduled to sunset in 2020; this schedule would remain unchanged in the House Plan.

Effective for all tax years–including years beginning prior to, on or after enactment of the House Plan–the House Plan would require a "continuous program of construction" from the date a facility begins construction to the date it is placed in service. The "continuous program of construction" requirement exists under current law and has been interpreted by the Department of the Treasury (the "Department") to permit several "safe harbor" time periods. At present, it is unclear whether the House Plan, if enacted, would effectively eliminate those safe harbors or whether the Department may issue them unchanged or substantially unchanged.

The ITC
The House Plan would align the expiration dates and phase-out schedules for different qualified energy properties and extend the ITC to certain other technologies. Solar energy, fiber-optic solar energy, qualified fuel cell, and qualified small wind energy property would be eligible for a 30% ITC if construction begins before 2020 and would be phased out for construction that begins before 2022 using the same schedule currently applicable to solar energy property. Qualified microturbine, combined heat and power systems, and thermal energy property would be eligible for a 10% ITC if construction begins before 2022. The permanent 10% ITC available for solar energy and geothermal property would be eliminated for all facilities if construction of such facility begins after 2027.

Similar to the PTC, the House Plan would also require a "continuous program of construction" until a facility is placed in service to meet the "beginning of construction" requirement to qualify for the ITC. Existing Department guidance regarding the continuous program of construction is currently applicable only to wind facilities intended to qualify for the PTC. As with regard to the PTC, it is not clear whether the Department will apply the same standard to projects intended to qualify for the ITC if the House Plan is enacted.

The good news for the renewable power industry is that the PTC and ITC survive under the House Plan, albeit with changes that may have a significant impact on the industry. Other tax incentives did not fare as well. For example:

Section 199 Domestic Production Activities Deduction

The Code Section 199 domestic production activities deduction or "DPAD" would be repealed effective for tax years beginning after 2017. This affects a variety of domestic manufacturers of a number of items, including solar panels, construction equipment, and software, as well as oil and gas producers.

New Market Tax Credits

New Market Tax Credits would be eliminated effective for tax years after 2017, but credits that would have already been allocated may be used over the course of up to seven years as contemplated under current law.

Historic Rehabilitation Credit

The rehabilitation credit for expenses incurred to rehabilitate old and/or historic buildings would be repealed. Under a transition rule, the credit would continue to apply to expenditures incurred through the end of a 24-month period of qualified expenditures that would have to begin within 180 days after January 1, 2018.

Enhanced Oil Recovery Credit

The enhanced oil recovery credit would be repealed effective for tax years after 2017.

Credit for Producing Oil and Gas from Marginal Wells

The credit for producing oil and gas from marginal wells would be repealed effective for tax years after 2017.

The House Plan is far from final, but it is moving very quickly. The House Ways and Means Committee Chair, Kevin Brady, has indicated that the House Republicans plan to pass the House Plan by Thanksgiving.

By Mary Burke Baker. Elizabeth C. Crouse, and Rachel D. Trickett

K&L Gates

Friday, November 3, 2017

Fitch: Tax Proposal May Add Fiscal Strain to US Public Finance.

Fitch Ratings-New York-06 November 2017: A tax reform proposal by Republicans in the U.S. House of Representatives could affect some states' and local jurisdictions' revenues if passed, says Fitch Ratings. The likelihood of the passage of this proposed legislation into law remains far from certain and will be subject to potentially key changes as it proceeds through the House and the rest of Congress.

The proposal could limit tax raising flexibility, particularly for the states that charge higher taxes, as it would substantially reduce the federal tax deduction for state and local taxes. This would cause an increase in the impact of state and local taxes, as they would be without an offsetting federal deduction. Residents in states with comparatively high taxes, such as California, Connecticut, Massachusetts, New Jersey and New York, would be more affected and may have less tolerance for higher taxes going forward. The proposed tax cuts for the higher-income taxpayers most likely to benefit from the current deduction for state and local taxes, including rate reductions and elimination of Alternative Minimum Tax, could somewhat offset this effect. Most states are not in a position to lower taxes in response to the federal tax increase due to tepid revenue growth and ongoing spending pressures.

If the proposed changes to the deduction of mortgage interest and the cap on the deduction for property taxes reduce the incentive to buy houses, assessed property values in areas with high average home prices could see lowered growth or even decline and reduce the amount of property tax local governments collect. This change could result in lower revenue growth prospects for local governments absent tax rate increases.

A proposed 1.4% excise tax on net income from the largest private colleges' endowments would be an incremental financial stress but would likely not have significant near-term credit effects on Fitch-rated colleges or universities. The impact would be narrow. For example, only approximately 140 endowments had funds in this range according to 'The Chronicle of Higher Education.' However, it could lower the incentives for donors to fund endowments and raise the possibility of higher and more onerous taxes on endowments in the future.

The potential elimination of private activity bonds (PABs) and 501(c)3 non-profit bonds would likely lower the interest in and feasibility of public-private partnerships, which have increasingly been used to procure transportation projects. Eliminating PABs would raise airport financing costs and possibly cause a reduction in private participation in water projects.

Eliminating the use of these bonds would also mean an incremental increase in borrowing costs and, eventually, slow issuance for the non-profit healthcare sector. Fitch would expect the increase in hospital borrowing costs to add pressure to the sector, but not result in downgrades.

Senate Bill Saves, Enhances PABs, but Eliminates Advance Refundings.

WASHINGTON – The municipal bond market would fare better in the Senate Republicans' tax reform proposal released Thursday, which would preserve private activity bonds and even enhance them. But advance refundings would still be terminated after this year.

Halting advance refundings after Dec. 31, which is also in the House tax reform bill, would generate $16.8 billion in tax revenue over 10 years, according to the Joint Committee on Taxation.

The proposal, which was released by Senate Finance Committee Chairman Orrin Hatch, R-Utah, on Thursday as a conceptual outline and will be debated by the panel in the coming week, would not only preserve private activity bonds but also eliminate the alternative minimum tax. Most PABs, except those issued for nonprofit entities, are subject to the AMT, which makes them less attractive to investors under current law.

Muni market organizations reacted positively to the retention of municipal bonds and PABs while pledging to try to persuade senators to preserve advance refundings, which Thomson Reuters

estimated as representing almost 27% of the market last year.

“The fact that the Senate draft bill recognizes that private activity bonds are critical to building and maintaining the nation’s infrastructure is good, and we will work to help the Senate reach the same conclusion when it comes to advance refunding bonds,” William Daly, director of governmental affairs for the National Association of Bond Lawyers, said in a statement.

Mike Nicholas, CEO of the Bond Dealers of America, expressed a similar view. He applauded the Senate for “preserving the tax exemption on municipal bonds and for protecting private activity bonds which help finance housing, senior living facilities, hospitals, airports and the nation’s infrastructure, among many other projects.”

But Nicholas urged the Senate Finance Committee to remove its halt to advance refundings because it ” simply allows municipal bond issuers the flexibility to reduce their cost of finance and frees up borrowing authority for additional capital improvement projects at a lower cost to the taxpayer.”

The Municipal Bonds for America Coalition echoed the same sentiments, thanking the Senate Finance Committee for preserving municipal bonds and PABs while saying work needs to be done to fight the repeal of advance refundings.

MBFA Director Justin Underwood said termination of advance refunding “will only burden taxpayers and is in direct conflict to the stated objective of the Tax Cuts and Jobs Act. The MBFA, and its partners, will continue to make a strong coordinated effort on both sides of the Capitol to ensure the tax treatment of all municipal bonds is protected during tax reform.”

The Senate outline also would lower the top income tax rate to 38.6% for high income earners, which is below the current effective top rate of 43.4% and the 39.6% top rate in the House bill. The current tap rate includes a 3.8% Obamacare tax on top of the 39.6% top income tax rate.

The Senate and House bills each would set the income threshold for their top rate at $500,000 for single filers and $1 million for married couples filing jointly. The current threshold is set to be $426,700 for individuals in 2018 and $480,050 for married couples filing jointly.

The Senate proposal also has a proration provision that would make tax-exempt bonds less attractive to property and casualty insurance companies relative to other fixed income investments, like corporate bonds. Insurance companies currently make up about 10% to 15% or the muni market, according to sources.

As expected, the Senate panel’s proposal would fully repeal the federal deduction for state and local taxes, which would be harsher than in the pending House bill that would allow the deduction of up to $10,000 of state and local property taxes.

The Senate proposal would preserve the home mortgage interest deduction for loans of up to $1 million unlike the $500,000 loan cap on new borrowing in the House bill. But the Senate would eliminate the mortgage interest deduction for home equity lines.

Both measures pending in the House and Senate would hurt states, especially high-tax states like California, New York and New Jersey.

Emily Brock, director of the Government Finance Officers Association, described the elimination of the SALT deduction and advance refunding as “a one-two punch for state and local governments across the United States.”

“It seems counter-intuitive to tear away the opportunity to realize substantial savings on debt service while also promoting the enhancement of public infrastructure,” Brock said. “We look forward to helping Congress understand the impact of the plan on communities in both the short- and long-term.”

The SALT deduction is used by more than six million California tax returns, California’s Finance Director Michael Cohen said in a letter to his state’s congressional delegation. The average deduction for state and local income taxes alone is nearly $16,000 per return, while state and local property taxes average less than $6,000 per return.

Seven New York House Republicans who “knew the elimination of SALT would be crippling,” recently wrote a letter expressing their opposition to the tax bill, Rep. Joe Crowley, D-N.Y., said during the closing statements of members of the House Ways and Means Committee Thursday.

That committee approved its tax reform bill in a vote along party lines, sending it to the floor for passage that’s expected before the congressional Thanksgiving recess.

Senate staffers who briefed reporters Thursday said their proposal was the result of five years of bipartisan work. “We feel this is a pretty middle of the road bill, ”a senior staff member said.

The Senate bill is not yet in legislative language, which will be worked out during the Finance Committee’s deliberations.

The Bond Buyer

By Brian Tumulty

November 09 2017, 11:52pm EST

Should Hospitals and Universities Be Able to Borrow Tax-Free? A $750 Billion Market Waits for the Answer.

Officials have contemplated ending tax exemption on private-activity bonds for several years to raise revenue

A team of private and public officials prepared a routine offer for investors last week: Buy tax-exempt bonds to pay for the widening of an interstate outside Washington, D.C.

But demand for the debt swelled after Republicans unveiled a proposal to end the tax-free benefits of these so-called private-activity bonds, according to an investor who participated in the offering. Prices on the interstate bonds have jumped 3% since the $353 million offering closed Friday morning, according to Municipal Securities Rulemaking Board data.

It didn’t take long for the House Republican tax plan to roil a roughly $750 billion corner of the municipal-debt market.

“Over the last three trading days, the types of bonds that are scheduled for potential elimination are being gobbled up,” said John Miller, co-head of Global Fixed Income at Nuveen Asset Management. “People are paying higher prices with some nervousness that these bonds will be very scarce going forward.”

For decades, nonprofits and certain for-profit firms have been able to raise money the same way that state and local governments do: by issuing tax-exempt bonds for projects perceived to have a public benefit. The proceeds from these private-activity bonds—which have averaged about $110 billion a year over the past decade—help pay for everything from hospitals, nursing homes, college dorms and lecture halls to charter schools, housing and highways.

Elected officials have been contemplating ending this tax exemption on private-activity bonds for several years as a way of raising additional revenue. Former House Ways and Means Committee Chairman Dave Camp floated the idea in 2014, and the current proposal states that $40 billion in additional tax revenue would be made available over the next decade if the exemption were removed.

It is possible private-activity bonds could remain tax free if changes are made to the Republican House plan as it makes its way through Congress. But now that an actual proposal is on the table, those who follow the municipal-bond market are predicting that market will shrink if the exemption is gone and it will be more difficult to attract private investment to infrastructure—a key goal of President Donald Trump's 2016 campaign.

Analysts also expect a surge of tax-exempt borrowing by private companies and nonprofits rushing to take advantage of the exemption before it is gone.

"The whole thing is quite shocking," said George Friedlander, managing partner at Court Street Group Research and a four-decade municipal-market veteran who has been tracking tax policy since the 1980s.

There was a time when private-activity bonds could be used to fund any project as long as a local-government official approved. Congress first established rules for private-activity bonds in 1968, offering a specific list of approved projects including airports and low-income housing. In the 1980s, Congress added new types of private-activity bonds and capped how much nonprofits could issue, but the cap was lifted in the 1990s.

The use of private-activity bonds has attracted criticism from some who argue that certain borrowers shouldn't be able to benefit from the exemption. A Congressional Budget Office report in December found that some projects financed with private-activity bonds "probably would take place without a subsidy" and others likely would not be worth the cost.

"We should question whether large hospitals and universities that take in hundreds of millions of dollars in revenues should able to borrow at tax-exempt rates," said Greg LeRoy, executive director of Good Jobs First, a research group on economic-development incentives.

Dennis Zimmerman, a former Congressional Budget Office analyst and the author of a book about private-activity bonds, said that having a federal tax benefit largely administered by state and local officials invites waste. If government directly subsidized these projects, he said "it would concentrate the mind of state officials about whether there were real social benefits here."

Others say smaller nonprofits such as museums or charter schools might have trouble accessing the corporate-bond market and have to rely on bank loans. "Or just let the roof leak," said Natalie Cohen, a senior analyst with Wells Fargo Securities,

"If we had to pay any additional interest on debt in the taxable market, that would eat into our pretty slim margins," said Randy Safady, chief financial officer at CHRISTUS Health. The company operates Catholic hospitals in six U.S. states and is hoping to issue more than $250 million in tax-

exempt bonds in the coming year to rebuild patient rooms and a cooling system at its hospital in Corpus Christi, Texas.

A letter to the House Ways and Means Committee on Monday, signed by trade associations of hospitals, universities, engineers, airports, bond lawyers and public officials, said ending the tax exemption for private-activity bonds would “undermine vital projects.”

Christopher Meister, executive director of the Illinois Finance Authority, which facilitated $3.6 billion in private-activity bonds in fiscal year 2017, said he and other officials are ready to expedite deals for nonprofits and other private-activity borrowers that want to get them done by Dec. 31.

“We are prepared to hold special meetings if there is that need,” Mr. Meister said.

The Wall Street Journal

By Heather Gillers

Nov. 8, 2017 5:30 a.m. ET

Hatch's Tax Proposal Seen Saving PABs and Advance Refundings, Killing SALT Deduction.

WASHINGTON – Senate Finance Committee chairman Orrin Hatch’s tax reform proposal, which could be released as soon as Thursday, is expected to be kinder to municipal bonds and tougher on state and local governments, legislative and other sources said Wednesday.

As it stands now, the tax proposal from the Republican from Utah would not terminate private activity bonds, as has been proposed by House Republicans, Senate sources said. The proposal also might not end advance refundings, as is also proposed by the GOP bill pending before the House Ways and Means Committee.

But lobbyists and muni market participants cautioned that it is unwise to take anything for granted until the proposal is released and these provisions are in print. And legislative sources say nothing is final until the proposal — called the chairman’s “mark” — is released.
At the same time, Sen. David Perdue, R-Ga., said during an interview on CNBC Wednesday that the chairman’s tax proposal will completely repeal the federal deduction for state and local taxes. This would be a blow to state and local governments, especially high-tax states. The deduction is believed to the key to governments’ ability to raise taxes.

A complete repeal of the deduction would be harsher than the provision in the bill in the House Ways and Means Committee, which would allow the deduction of up to $10,000 in annual property taxes. That bill would eliminate the deduction for state and local income and sales taxes. The committee is expected to complete voting on its tax reform bill on Thursday.

Meanwhile, Hatchsaid on Wednesday that Republican losses in the midterm elections could have an impact on tax reform legislation. “I mean, it could, because the elections went against the Republicans,” the Washington Post quoted Hatch from a brief morning interview.

Democrats won a number of state and local seats. In gubernatorial races, Democrat Lt. Gov. Ralph Northam beat Ed Gillespie in Virginia and in Philip Murphy bested Republican Lt. Gov. Kim

Guadagno in New Jersey.

Legislative experts said the tax reform bill in the Senate will be more critical than the one in the House, which could be good for muni bond supporters if PABs and advance refundings are maintained.

“At the end of the day, if there’s a final bill, the Senate will have more influence in the outcome,” said the source, who did not want to be identified.

Hatch and other Senate Republicans must carefully craft their tax reform proposal and ultimate bill to get 50 votes, assuming Vice President Mike Pence would cast a vote to break a tie. They cannot afford to lose more than two Republicans. The House would probably have to accept whatever bill, if any, the Senate passes in order to keep votes in the Senate.

BY SOURCEMEDIA | MUNICIPAL | 11/08/17 07:22 PM EST

Could the GOP Tax Plan be a Game Changer for Raiders’ Las Vegas Stadium?

First, it would have to pass.

Only after the Trump tax plan completes a run through the congressional gauntlet — a tossup possibility at best, according to experts — would the finances for the Raiders stadium in Las Vegas significantly change.

A provision in the original version of the bill would prohibit the use of tax-exempt bonds to finance public stadium projects. Such bonds would make up the bulk of the $750 million in public funding approved by the Nevada Legislature in October 2016 to build the $1.9 billion project.

At its Thursday meeting, the Las Vegas Stadium Authority board will hear scenarios prepared by Clark County consultants on how the provision could affect the stadium project. Board Chairman Steve Hill dismissed chatter that the need to pay federal interest on stadium bonds could jeopardize the viability of the project.

“It matters, it’s meaningful,” Hill said. “But it is not debilitating.”

Hill said the authority might need to redirect about $3 million per year to pay federal interest if the law changed. That money otherwise would go toward paying interest on issued bonds or into the bond waterfall — a reserve fund. If that somehow led to the room tax funds designated for stadium construction coming up short, the Raiders would need to make up any shortfall.

“The way the law is written, we have one commitment, which is simply to provide the bond capacity that (the) 0.88 percent (tax) can bond,” Hill said. “If it isn’t $750 million, then the developers — the Raiders — would be responsible for closing that gap.”

Through a combination of loans from Bank of America and the NFL, as well as personal seat license and naming rights revenue from the stadium project, the Raiders plan to put $1.15 billion toward the construction of the stadium and a practice facility.

Had the Raiders and the stadium authority completed their required agreements by October as originally planned, they might have mitigated the impact of the provision by beginning bond issues

before the law potentially takes effect. The four-month holdup, necessitated by a delay in completing the construction contract between the Raiders and contractors Mortenson and McCarthy, means bond issues will not begin until well into 2018.

The Raiders also must put in the first $100 million of their contribution toward the stadium before they can access any public money. Hill said the authority first will make a cash contribution from room tax revenues before using the rest of the funds toward bonds.

“Every month that we don’t issue bonds, we’re collecting room tax that could be used to buy down the bonding it would take to get to the $750 million,” Hill said. “If we collect $50 to $60 million in room tax, then we only need to bond $690 million. We’re not actually bonding $750 million.”

Room tax revenue fell short of projections for a second consecutive month after exceeding expectations in the first five months of collections. The seven-month total of $29.3 million outpaces anticipated revenue by just under $3 million.

While the tax proposal would create an estimated $200 million for the federal government over a 10-year period, its introduction could be related to the recent dustup between the president and the NFL over players kneeling during the national anthem.

“Why is the NFL getting massive tax breaks while at the same time disrespecting our Anthem, Flag and Country?” President Donald Trump tweeted last month. “Change tax law!”

Responding to a follow-up question at a press briefing later, White House press secretary Sarah Huckabee Sanders expounded on the president’s tweet.

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

No major action will be taken at the board’s first meeting in two months. The planned October meeting was canceled in the wake of the Oct. 1 massacre.

The board will receive an update on the much-discussed community benefits plan being developed by the Raiders and community leaders. While the board does not hold formal approval power of the plan, it appeared as an item up for a vote on the October agenda. It is listed as an informational item this time.

“We just decided that there was enough that was new that we didn’t want to put the board in a position of having to take any action on it,” Hill said.

The board meets at 1 p.m. Thursday at the Clark County Government Center.

The Las Vegas Sun

By Adam Candee

Wednesday, Nov. 8, 2017 | 2 a.m.

There's One U.S. Market That Loves the GOP Tax Bill.

- **Ending private activity bonds may reduce supply as much as 40%**
- **Calendar bulks up as issuers rush prohibited deals to market**

Yesterday a man called and asked why it was so hard to find California municipal bonds.

He referred to himself not as an investor but a collector, which isn't the first time someone has likened the municipal market to numismatics or philately, where you have to know a lot about the subject at hand. I told him the objects of his affection were going to get simpler, but rarer, too.

It's all the result of the tax deliberations in Congress. The lower-house version of the GOP tax reform plan would effectively throttle muni-bond sales in years ahead, and buyers — or "collectors" like my caller yesterday — are scooping up the existing securities in anticipation of this shortage. That has triggered a torrid rally for the sector, now up 0.61 percentage points month-to-date, a move that stands in stark contrast with the sell-offs in stocks and the dollar that the tax debate has stoked.

"If this plan is implemented in its current form," wrote analysts led by Vikram Rai at Citigroup in a piece published on Nov. 8, of the House GOP tax reform plan, "municipal issuance could shrink and tax-exempt issuance will shrink dramatically thus increasing its scarcity value."

The House version of tax reform calls for an end to tax credit bonds, tax-exempt stadium finance, advance refundings and private activity bonds. Which means at least one-third and perhaps as much as 40 percent of the municipal market issuance would end with it.

The Senate version of tax reform, released Thursday night, is silent on everything except advance refundings, which it wants to abolish, too.

How much might municipal bond sales fall? Mikhail Foux, Clare Pickering and Mayur Patel at Barclays were the first ones to make a prediction in their report on November 8: "If curtailing tax-exempt issuance becomes permanent, the total 2018 supply drops to $250 billion to $270 billion and the tax-exempt portion of it gets even smaller, due to a dramatic increase in taxable muni issuance to $70 billion-$80 billion."

To put this in perspective, the last time long-term municipal sales were anywhere near $250 billion was 2001, when they totaled $261 billion, according to data compiled by Bloomberg. For this year so far, about $313 billion has been issued.

The falloff in new sales may occur even without tax reform being enacted. If the House passes H.R. 1, its version of tax reform, the effective dates for doing away with advance refundings and private activity bonds is Jan. 1, 2018. After that date, bond lawyers won't be able to give unqualified opinions about the tax-exempt status of new advance refundings and private activity bonds.

It's no wonder that the problem is especially acute in high-tax states like California and New York, where investors face the loss of their state and local tax deductions. The municipal market, or what remains of it, will be one of the only ways to shelter cash from taxes.

Over the short-term the rally in municipals may be delayed a bit. The new deal calendar seems to be fattening up as more issuers rush private activity and advance refunding deals to market before the end of the year.

Bloomberg Markets

By Joe Mysak

November 10, 2017, 8:01 AM PST

BDA and ASA Urge Congressional Leadership to Preserve Vital Financing Tools.

Read the letter.

NOVEMBER 7, 2017

Public Finance Network Opposes Bond Provisions in H.R. 1

The Public Finance Network, of which NASACT is a member, recently sent a letter to House Ways and Means Committee Chairman Kevin Brady (R-TX) to express opposition to provisions in H.R. 1 that eliminate financing tools used to provide critical investments in infrastructure and save taxpayer money.

The group urged the committee to reconsider two specific provisions:

- The repeal of the ability to advance refund municipal bonds.
- The termination of the ability to use private activity bonds (PABs).

View the full letter.

To learn more, contact NASACT's Washington office at (202) 624-5451.

The following organizations make up the Public Finance Network:

- Government Finance Officers Association
- United States Conference of Mayors
- National Association of State Treasurers
- National Association of Counties
- National League of Cities
- American Hospital Association
- Airports Council International – North America
- National Community Development Association
- American Public Power Association
- International Public Management Association for Human Resources
- National Association of College and University Business Officers
- American Society of Civil Engineers
- National Association of Health and Educational Facilities Finance Authorities
- Large Public Power Council
- National Association for County Community and Economic Development
- National Association of Local Housing Finance Agencies

- National Association of Bond Lawyers
- National Association of Municipal Advisors
- National Council of State Housing Agencies
- National School Boards Association
- Association of American Medical Colleges
- International Municipal Lawyers Association
- American Public Works Association
- National Association of Towns and Townships
- National Association of State Auditors, Comptrollers and Treasurers
- National Association of Regional Councils

Monday, November 6, 2017

Say Goodbye to Muni Deals Like These If Tax Bill Is Enacted.

Take a look at the municipal fixed rate calendar this week and mark off the deals that would no longer be done on a tax-exempt basis, if the House Republicans have their way. It is a melancholy exercise.

Of the $301 billion in long-term, fixed-rate municipal bonds sold so far this year, I estimate that at least one-third would no longer be allowed, between advanced refundings, stadium bonds, private-activity bonds and tax-credit bonds. I'd like to be more precise, but I don't believe any of the numbers I've seen, which is very muni.

There's Clark County, Nevada, selling $107.8 million in general obligation bonds. The proceeds would "advance crossover refund the county's series 2009B GO limited-tax flood control bonds," according to S&P Global Ratings. I really wanted to explain the intricacies of a crossover refunding, but sorry, Clark County. No more advance refunding.

Then there's the Louisiana Public Finance Authority. The authority wants to sell $50.8 million in tax-exempt bonds for Tulane University in New Orleans to current refund some bonds it sold back in 2007. Denied! As a nonprofit 501c3 institution, Tulane will no longer be allowed to borrow in the tax-exempt market.

Those $36 million in taxable bonds the university wants to sell for improvements? Those are okay.

The Oregon Facilities Authority is selling $66.7 million in revenue bonds for Reed College, the liberal arts school in Portland, Oregon, to build a new dorm and refund some bonds whose first redemption date is in 2020. Sorry! Reed College is a nonprofit, and these would not be allowed to be sold on a tax-exempt basis in the new year.

South Dakota's Housing Development Authority is selling $75 million in mortgage bonds. The authority purchases mortgage loans from lenders at the time the lender makes a commitment to a purchaser or builder of a home. Since its founding in 1974, it has purchased 72,113 qualified mortgage loans totaling $4.5 billion. These would seem to be swept up in the elimination of private activity bonds, no?

The Ohio Air Quality Development Authority plans to sell $210 million in tax-exempt revenue bonds to help the Pratt Paper company build a mill to recycle waste paper and corrugated containers in Wapakoneta, Ohio.

The unrated deal is being sold in minimum denominations of $100,000, reflecting just how hard it is to build mills that turn one thing into another thing. All I can say is, if you can stomach the risk factors, better get these now, because this sort of deal will disappear on Jan. 1. Private activity bonds!

Bloomberg Markets

By Joe Mysak

November 7, 2017

The Tax Bill Would Take Big Bite Out of the Muni Market.

- Private activity bond prohibition would hit nonprofits hard
- Reform could reduce annual sales by up to 40 percent

To appreciate the enormity of the Republicans' assault on the municipal debt market, you have to go to the Municipal Securities Rulemaking Board's glossary and look at the definition of "Private Activity Bond."

And there you'll find bonds sold for airports, docks and "certain other transportation-related facilities; water, sewer and certain other local utility facilities," single- and multi-family mortgages, blight redevelopment and student loans.

And then: 501c3s, which means museums, hospitals, colleges and universities.

There had been at least some confusion on this point. On Friday I read a research note that questioned whether 501c3 nonprofits were included. After all, the list of bond "reforms" in the new tax bill only listed prohibitions on tax credit bonds, stadiums, private activity bonds and advance refundings, without specific definitions. But the statutes alluded to in the text make it clear that it would affect all of the above.

When the bill was unveiled on Thursday, I estimated that it would eliminate between 20 percent and one-third of the market. That was an unscientific calculation, because munis resist categorization.

There are advance refundings, and then there are issues that combine advance and current refundings. There's higher education, but you can't combine that with advance refundings, because some of those higher ed deals were advance refundings, so there'd be some double counting. I wasn't the only one to encounter this difficulty.

But what I will say now is that the new tax proposal would appear to blow up at least one-third of the municipal market, and possibly as much as 40 percent, depending on the direction of interest rates.

And then I couldn't help but thinking of Santiago's fish in "The Old Man and the Sea."

Bloomberg Markets

By Joe Mysak

November 6, 2017, 9:21 AM PST

Kroll: Flawed Estimates Provide Misleading Support for the Elimination of Tax Exemption for Not-for-Profits.

Kroll Bond Rating Agency (KBRA) has released a public finance research report entitled “Flawed Estimates Provide Misleading Support for the Elimination of Tax Exemption for Not-for-Profits”.

The proposed bill intends to eliminate the benefits of tax exemption for not-for-profit hospitals and universities, airports, ports, and low income housing (called “private activity bonds” or PABs). It also eliminates tax exemption for advance refunding bonds, which has implications for all state and local borrowers.

KBRA believes the estimated revenue raising benefits of the proposal regarding PABs and advance refunding bonds are overstated. Unfortunately, this overstatement bolsters the appeal of these provisions to policymakers beyond their true merit.

To access the full report, please click on the link below:

Flawed Estimates Provide Misleading Support for the Elimination of Tax Exemption for Not-fo--Profits

If you have any difficulties accessing the report, please contact info@kbra.com or visit www.kbra.com

---

Changes to Bond Rules in GOP Tax Bill Could Shake Up Infrastructure Financing.

WASHINGTON — The tax bill Republicans in the U.S. House are moving swiftly ahead with this week threatens to raise borrowing costs for health care facilities, affordable housing and other infrastructure projects involving states, local governments and nonprofit organizations.

The legislation would strip the tax-exempt status from a category of debt known as private activity bonds. State and local governments can issue these bonds as part of public-private partnership deals, and for 501(c)(3) nonprofits like hospitals and universities.

Because the interest earned on certain private activity bonds is not subject to federal income tax, investors buying the debt expect lower interest rates compared to taxable bonds.

In addition to the private activity bond rule changes, the GOP tax bill would eliminate a tax exemption for advance refunding bonds. State and local governments use these bonds to refinance debt at lower interest rates, which can save taxpayers money.

The tax bill would target private activity bonds and advance refunding bonds issued after 2017.

Emily Brock, who directs the Government Finance Officers Association’s federal liaison center, said the effects of the bond-related provisions would be “immediate and severe.” She also said the provisions caught the finance officers association by surprise.

“We conducted at least 90 Hill visits over the past couple months, just to get a sense of what this

was going to look like," Brock told Route Fifty, as she discussed the tax bill. "Nowhere within those 90 Hill visits did we talk or discuss private activity bonds or advance refunding."

Natalie Cohen, managing director of municipal research with Wells Fargo Securities, said that not being able to issue tax-exempt private activity bonds would be "a handicap, for sure."

She flagged the elimination of the tax exemption for 501(c)(3) bonds as particularly significant.

"You're talking about hospitals, nursing homes, universities, charter schools," she said. Drug rehab centers, too, Cohen noted. "All of those would be precluded from the tax-exempt market."

In 2016, upwards of $72 billion in private activity bonds were issued for 501(c)(3) nonprofits, mainly hospitals and universities, according to the Government Finance Officers Association.

Linda Schakel is a partner who focuses on public finance issues at the law firm Ballard Spahr LLP.

As she discussed the possible consequences of eliminating the tax exemption for private activity bonds, Schakel pointed out that "if we're talking about hospitals who may be issuing $100 million in debt, that's going to add up and that cost has to be passed on some way."

"Most of their money comes either from the fees that they charge for their services or charitable contributions," she added.

The GOP tax bill would not alter the federal government's Low-Income Housing Tax Credit program. According to the U.S. Department of Housing and Urban Development, the program provides state and local agencies the equivalent of nearly $8 billion in budget authority each year to issue tax credits for the acquisition, rehabilitation, or new construction of rental housing for lower-income households.

But Schakel said projects that use the tax credit also frequently depend on private activity bond financing. And she predicted that without the tax exemption for the bonds, the number of rental units getting built through the Low-Income Housing Tax Credit program would go down.

Private activity bonds are different than standard, tax-exempt state and local municipal bonds that are regularly used to finance public works projects like bridge repairs and firehouses. These standard state and local bonds would remain tax-exempt under the GOP legislation.

Along with hospitals, universities and affordable housing, private activity bonds can be used to finance projects involving infrastructure that has both public and private elements or benefits—such as airports, docks and wharves and rail facilities. To be tax-exempt the bonds have to meet specific criteria spelled out in the federal tax code.

When state and local governments issue private activity bonds as part of public-private partnership deals, they effectively lend the borrowed money to the private sector partner taking part in the project, or there is some kind of long-term lease arrangement made.

For example, the Maryland Economic Development Corporation, a state entity, issued about $313 million in private activity bonds last year, as part of a light-rail project near Washington, D.C., with the intent of loaning the proceeds to the project's private developer.

The White House has promised an ambitious proposal for new infrastructure investment and Trump administration officials have signaled public-private partnerships will be a key element.

“This flies in the face of that,” Cohen said of the GOP tax plan. “It significantly limits what can be financed through the tax exemption.”

President Trump himself recently suggested during a meeting with lawmakers that public-private partnerships could be “more trouble than they’re worth,” according to news reports.

Congressional Republicans are working with tight margins as they seek to enact a tax code rewrite that cuts rates for corporations and individuals, while also adhering to a budget blueprint that calls for adding no more than $1.5 trillion to federal deficits over 10 years.

Eliminating the tax exemption for private activity bonds would increase federal revenues by an estimated $38.9 billion over a decade’s time, according to a summary of the bill from the House Ways and Means Committee. Doing the same for advance refunding bonds would boost revenues by an estimated $17.3 billion.

The tax legislation would also block tax-exempt bonds from being put toward professional sports stadium and arena projects. This would raise another $200 million, the summary of the bill says.

The Ways and Means Committee’s markup of the tax bill began on Monday and will continue on Tuesday.

Route Fifty

By Bill Lucia,

November 7, 2017

Bill Lucia is a Senior Reporter for Government Executive’s Route Fifty and is based in Washington, D.C.

House Tax Reform Bill Contains Provisions Adversely Impacting Public Finance: Holland & Knight

HIGHLIGHTS:

- The Tax Cuts and Jobs Act introduced in the U.S. House of Representatives on Nov. 2, 2017 – now in markup by the House Ways and Means Committee – has a number of provisions that would likely have a negative impact on the public finance sector.
- The bill would eliminate tax exemption of interest paid on private activity bonds, advance refunding bonds and bonds that finance stadium facilities used by professional sports teams, as well as certain tax credit and subsidy bonds.
- The bill also would eliminate the alternative minimum tax and reduce corporate tax rates, two items that can affect the public finance bond markets.

Rep. Kevin Brady (R-Texas), Chairman of the House Ways and Means Committee, on Nov. 2, 2017, introduced H.R. 1, the Tax Cuts and Jobs Act, and released a section-by-section summary of the bill. A markup of the bill by the Committee started on Nov. 6. The bill, as introduced, would eliminate tax exemption of interest paid on: 1) private activity bonds (including 501(c)(3) bonds), 2) advance refunding bonds and 3) bonds financing stadium facilities used by professional sports teams. The bill would also eliminate certain tax credit and subsidy bonds. In addition, the bill would eliminate the

alternative minimum tax and reduce corporate tax rates from 35 percent to 20 percent – two items that are relevant to the public finance bond markets.

Prohibition on Issuing Tax-Exempt Private Activity Bonds

Provision: Bonds issued by a state or local government are generally classified as private activity bonds if more than 10 percent (in most cases) of the financed project is used by non-governmental entities (including 501(c)(3) institutions). Section 3601 of the House plan would remove the present tax exemption of interest paid on various types of private activity bonds. This would eliminate tax-exempt financing of most airports, most seaports, multifamily housing projects, non-governmental solid waste disposal facilities, manufacturing facilities, single-family housing loans, student loans and several other types of projects. In addition, tax-exempt financing of facilities owned by Section 501(c)(3) organizations would be eliminated. That would prevent future tax-exempt financing of private 501(c)(3) hospitals, colleges and universities, K-12 schools, nursing homes and affordable housing facilities. The bill would also adversely impact the issuance of tax-exempt private activity bonds by Indian tribal governments, including previously allowed private activity bonds for certain reservation-based manufacturing facilities. This prohibition on issuing tax-exempt private activity bonds would apply to bonds issued after Dec. 31, 2017.

Comment: These changes would result in higher financing costs for Section 501(c)(3) organizations that own or operate hospitals, colleges and universities, K-12 schools, retirement homes and housing facilities. These changes would also increase the cost of financing needed infrastructure at airports and seaports. Further, by eliminating tax-exempt financing of student loan programs, the bill, if enacted, would increase the cost of a college education. Still further, by eliminating tax-exempt financing for qualifying multifamily housing projects and single-family housing loan programs, the changes could reduce access to both types of housing.

Prohibition on Issuing Tax-Exempt Advance Refunding Bonds

Provision: Advance refunding bonds are bonds that are issued to refinance outstanding tax-exempt debt more than 90 days prior to the date the refinanced debt is repaid. Current law allows bonds issued for governmental projects and for 501(c)(3) entities to be advance refunded once. The bill would eliminate the ability to issue tax-exempt bonds to advance refund outstanding bonds. This prohibition would apply to advance refunding bonds issued after Dec. 31, 2017.

Comment: This change would limit the ability of states, local governments and Section 501(c)(3) organizations to lock in interest rate savings while rates are low and avoid the risk of rates having increased by the time the outstanding bonds are permitted to be repaid.

Prohibition on Issuing Certain Tax Credit or Interest Subsidy Bonds

Provision: State and local governments are currently permitted to finance certain types of projects by issuing tax-favored bonds carrying a taxable interest rate. They are able to reduce their borrowing costs either by receiving interest subsidy payments from the federal government or through the assignment of federal income tax credits that are provided to the holders of these bonds. The bill would prohibit the issuance of these types of tax-favored bonds.

Comment: The change would eliminate new clean renewable energy bonds, qualified school construction bonds, qualified forestry conservation bonds, qualified energy conservation bonds and qualified zone academy bonds. This prohibition would apply to bonds issued after Dec. 31, 2017.

Prohibition on Issuing Tax-Exempt Professional Stadium Bonds

Provision: Current law allows the use of tax-exempt governmental bonds to finance professional stadiums in limited circumstances. The bill would prohibit the issuance of any tax-exempt bonds to finance professional sports stadiums. “Professional sports stadium” would be defined as a facility (or appurtenant real property) that, over at least five days during any calendar year, is used as a stadium or arena for professional sports, games or training.

Comment: Unlike the other prohibitions, this one would apply to bonds issued after Nov. 2, 2017.

Elimination of Alternative Minimum Tax

Provision: The bill would eliminate the alternative minimum tax. That tax currently has a highest marginal rate of 28 percent. The interest on most tax-exempt private activity bonds currently is subject to the alternative minimum tax. Exceptions from the alternative minimum tax are provided for interest on bonds that finance projects owned or operated by a Section 501(c)(3) organization and for bonds financing certain types of housing programs. The elimination of the alternative minimum tax would be effective for tax years beginning after Dec. 31, 2017.

Comment: This would benefit current holders of private activity bonds subject to the alternative minimum tax who have previously paid that tax on the interest they received.

Reduction of Corporate Tax Rates

Provision: The bill would reduce the general corporate marginal tax rate from 35 percent to 20 percent. The reduction of the corporate tax rates would be effective for tax years beginning after Dec. 31, 2017.

Comment: The corporate tax rate reduction would reduce the value of interest on tax-exempt bonds not being taxable and, as a result, may reduce demand. Also, it is common when a bank directly purchases tax-exempt bonds from the issuer for the loan documents to provide for an automatic increase in the interest rate on the bonds if the corporate tax rates fall to compensate for the reduction in the value of the bonds. Many states, local governments and Section 501(c)(3) organizations that previously privately placed tax-exempt bonds with a bank could see their borrowing costs increase as of Jan. 1, 2018.

Considerations for Bond Issuers and Borrowers

Holland & Knight attorneys are assisting a number of issuers in analyzing the impact of H.R. 1 on both future and prior capital plans and financings. Holland & Knight also has a robust government affairs practice with key relationships in both the executive and legislative branches in Washington, D.C. If you have any questions regarding the tax reform bill currently being drafted in the House of Representatives, please contact a member of our Public Finance Team.

Holland & Knight

By Edward J Rojas

November 7, 2017

Lawmakers Fight to Save Infrastructure Financing Tool in GOP Tax Bill.

Lawmakers on both sides of the aisle are fighting to save tax-exempt bonds in the GOP tax bill that are used to finance infrastructure projects around the country.

In a bipartisan letter earlier this year, more than 150 members of Congress urged House leadership to keep the deduction on tax-exempt municipal bonds, which are considered a critical tool for public-private partnerships and infrastructure rebuilding efforts.

Now, Reps. Randy Hultgren (R-Ill.) and Dutch Ruppersberger (D-Md.), who co-chair the Municipal Finance Caucus, are renewing those calls following the release of the GOP tax bill in the House.

Under the plan, interest on newly issued private activity bonds would no longer be tax-exempt. Eliminating the program would save $38.9 billion, according to a summary sheet.

The bonds are issued for private projects and have been used to finance a wide range of infrastructure projects around the country, including roads, highways, housing, hospitals and airports.

“We will be reaching out to House leadership urging them to keep the tax-exempt status of private activity bonds which are used to fund important public goods such as healthcare facilities, affordable housing and education,” Hultgren and Ruppersburger said in a joint statement this week.

It’s just the latest criticism to emerge of the House GOP tax bill, which would reduce the corporate tax rate, among other provisions.

Ending the preferential tax treatment of private activity bonds has drawn the ire of transportation advocates, who say it would undermine President Trump’s infrastructure bill, which is supposed to rely on public-private partnerships.

Nearly two-thirds of core infrastructure investments in the United States are financed with municipal bonds, with $400 billion in municipal bond issued to finance projects in 2015 alone, according to Hultgren’s office.

House Transportation and Infrastructure Committee Chairman Bill Shuster (R-Pa.) agrees that the issue needs to be re-examined in the tax plan.

“It’s been very beneficial in the transportation world,” Shuster told The Hill. “I want to see them stay.”

THE HILL

BY MELANIE ZANONA – 11/07/17 07:39 PM EST 16

U.S. House Tax Bill Would Shake Up Municipal Market Supply and Demand.

CHICAGO/NEW YORK (Reuters) – U.S. tax reform plans are already transforming municipal debt market dynamics, sparking a sharp rally even as details released by Republicans in the U.S. House of Representatives are likely to shift over the coming days and weeks.

Investors are snapping up municipal bonds and driving yields sharply lower because the current plan, unveiled last Thursday, would slash the amount of tax-exempt debt available.

Additionally, the removal of some state and local tax deductions compounds the issue for residents in high-tax states like New York and California, market analysts say.

With potentially new supply/demand dynamics hanging over the market, the yield on top-rated 30-year muni bonds fell 22 basis points in the wake of the plan's release, according to Thomson Reuters Municipal Market Data.

Provisions in the House bill would make so-called specialty state muni bond funds even more attractive for tax reduction purposes, while limiting new issuance largely to borrowings by states and local governments.

Even with changes likely, proposals to end or cap deductions of property and sales taxes from federal taxes and the elimination of tax-exempt status for an array of health care, higher education, housing, infrastructure and refunding bonds have unnerved the $3.8 trillion U.S. municipal market.

John Miller, co-head of fixed income at Nuveen Asset Management, said the House bill as it stands could call into question as much as 40 percent of the market's new supply by making interest earned on certain bonds subject to federal taxation.

Affected debt would include private-activity bonds to fund economic development; revenue bonds sold for non-profit hospitals, colleges, nursing homes and other organizations; housing bonds; and advance refunding bonds that allow issuers to take advantage of lower interest rates before outstanding bonds can be called.

"The market would be less diverse, more (general obligation bond) focused and smaller… a great deal of scarcity and probably less yield," Miller said.

A DEARTH OF REVENUE BONDS

Big unfunded pension liabilities for some states, local governments and school districts, as well as high-profile municipal bankruptcies in Detroit and Puerto Rico, have tarnished the appeal of general obligation bonds backed by a government's full faith and credit pledge.

Chris Dillon, portfolio strategist at T. Rowe Price, said the House bill would eliminate a big pool of non-profit hospital and other revenue bonds that his company prefers.

"If you're taking right field away from us we're still going to play baseball, but we prefer to have the full field," Dillon said.

The House bill retains the 39.6 percent highest individual tax bracket, which is a positive for the market. That and the diminished ability of taxpayers to deduct local taxes would enhance the attractiveness of existing or new muni debt.

Top states for the income and sales tax deductions as a percentage of adjusted gross income are New York, California, Maryland, Connecticut and Oregon, while New Jersey, New Hampshire, Connecticut, New York and Illinois are the tops for property tax deductions, according to Jared Walczak, senior policy analyst at the Tax Foundation.

Most of those states have individual income tax rates of 5 percent or higher and give residents who buy in-state bonds a state tax exemption. As a result, state-specific muni funds would get a boost under the bill.

"In states like New York, New Jersey, California, Massachusetts and some other high-tax states,

you'll see a drift to owning their own state paper," said John Mousseau, fixed income director at Cumberland Advisors.

On the other hand, the bill's flat 20 percent business tax rate could make munis less attractive for corporate buyers like banks and property and casualty insurance companies.

"So clearly that will affect their demand to a degree – they will not be buying as much," said Barclays analyst Mikhail Foux. "That's the bigger negative."

In the meantime, issuers of bonds that face a potential cut- off of federal tax exemption could fast-track deals, according to Joseph Krist, a partner at Brooklyn-based public finance consulting firm Court Street Group Research.

"I would be really surprised if we did not see a rush to the market between now and the end of the year from issuers who have had any kind of potentially prohibited form of financing," Krist said.

by Karen Pierog, Laila Kearney

Reporting by Karen Pierog in Chicago and Laila Kearney in New York; Editing by Daniel Bases and Dan Grebler

NOVEMBER 7, 2017

Commentary: Muni Market Tax Reform Provisions are Reckless and Unacceptable.

To work well, public policy in a democracy must be transparent and allow time for debate, input and analysis. The House Ways and Means Committee just released its tax plan and is scheduled to have it adopted by year end. The Senate is on a similar fast track. Yet the provisions with respect to municipal bonds have broad ramifications for infrastructure development, healthcare and higher education costs and affordable housing to name a few.

The given time frame provides little opportunity for a democratic process of debate and compromise to take place. More importantly the process leaves no time for a crucial cost benefit analysis nor to account for potential negative social impacts.

The plan calls for the elimination of 501(c) (3) bonds used to provide low cost financing to hospitals, nursing homes, higher education and not-for-profits. According to industry experts there were $72.4 billion of such bonds issued in 2016. These same experts predict that eliminating tax exemption for these entities will increase borrowing costs by 25 to 30%.

Take for example nursing homes and assisted living facilities. According to the Census Bureau the nation's 65 and older population will reach 83.7 million people by 2050. This is double the population of 43 million as of the 2012 census. This tax plan does not account for what this will do to the cost of meeting the growing needs of this population.

We have an opioid epidemic in this country where over 50,000 to 60,000 people are losing their lives each year, and according to the New York Times the leading cause of death for Americans under 50. The president has made this a priority yet this tax proposal will assure that needed drug rehab centers will likely not get constructed.

We have a healthcare crisis in this country where cost increases at 4.89% last year well outstripped inflation. Where does Congress think higher financing costs for hospitals will be absorbed? The same question can be asked with respect to higher education as the bill will require private colleges and universities, as well as student loan providers to borrow at higher rates of interest.

The proposal will also eliminate private activity bonds that finance infrastructure. This includes projects such as airports, light rail and solid waste facilities. This is infrastructure as basic as roads and bridges and crucial to job growth and economic development. This is ironic in that private activity bonds by design promote public private partnerships needed to close the one trillion dollar infrastructure gap, a mantra of the Trump administration and the Republicans.

Another aspect of the tax plan is to eliminate advance refundings. Refunding bonds allow states, cities and schools to refinance debt, much like a homeowner refinances a mortgage when interest rates drop. Last year state and local taxpayers saved $3.0 billion as a result of this financing option.

I realize that the deficit reduction is crucial to economic growth (though this tax plan will add $1.5 trillion to the deficit over the next 10 years). However what Congress is not accounting for are the potential impacts I mention above. At a minimum these impacts must be quantified and measured against deficit reduction and viewed through the prism of social costs. The plan's timing precludes this type of comprehensive analysis. From a policymaking standpoint this is reckless and unacceptable.

The Bond Buyer

by Michael Belsky

November 08 2017, 12:56pm EST

Michael Belsky is the Executive Director of the Center for Municipal Finance at the Harris School of Public Policy at the University of Chicago and teaches a course on the fundamentals of municipal bonds as part of the Municipal Finance Certificate Program. Mr. Belsky is also the Managing Director for Fixed Income at Greenwich Investment Management, a firm specializing in high yield municipal bonds.

House Panel Declines to Restore Infrastructure Financing Tool in GOP Tax Bill.

House tax-writers declined to restore an infrastructure financing tool that was cut out of the GOP tax bill, while the Senate has not yet decided how to treat the issue in its own tax package.

In a party-line vote on Wednesday, the House Ways and Means Committee rejected a Democratic amendment that would have kept the deduction on tax-exempt private activity bonds, which are used by public-private partnerships to back a wide range of infrastructure projects around the country.

The House GOP tax plan, which is expected to get a final committee vote on Thursday, eliminates the program for private activity bonds. Doing so would save $38.9 billion, according to a summary sheet.

But there is bipartisan support for keeping the preferential tax treatment for the bonds.

Transportation advocates are warning that eliminating the program could hurt President Trump's

infrastructure push, which is supposed to rely on public-private partnerships. Nearly two-thirds of core infrastructure investments in the United States are financed with municipal bonds.

Reps. Randy Hultgren (R-Ill.) and Dutch Ruppersberger (D-Md.), who are co-chairmen of the Municipal Finance Caucus, have been urging House leadership to keep the bonds.

House Transportation and Infrastructure Committee Chairman Bill Shuster (R-Pa.) also agrees that the issue needs to be re-examined in the tax plan.

“It’s been very beneficial in the transportation world,” Shuster told The Hill on Tuesday. “I want to see them stay.”

Across the Capitol, it’s unclear how the bonds will be treated in the Senate GOP tax bill, which may be unveiled on Thursday.

Sen. John Thune (R-S.D.), chairman of the Commerce, Science and Transportation Committee, said they are still ironing out the details.

Thune acknowledged the importance of the bonds for infrastructure but also emphasized that lawmakers need to make trade-offs in order to bring tax rates down.

“I don’t have a final answer for you on that yet. We’re looking at all the offsets,” Thune told reporters Wednesday afternoon. “I know that they’re heavily used to pay for infrastructure, so we’re aware of that.”

THE HILL

BY MELANIE ZANONA – 11/08/17 05:15 PM EST

– Niv Elis contributed

Municipal Bonds-Tax Reform Reckless and Unacceptable.

Public policy in a democracy should be transparent and allow time for debate, input and analysis. The House Ways and Means Committee just released its tax plan and aims to adopt it by year-end. The Senate is on a similar fast track. Yet the provisions with respect to municipal bonds have broad ramifications for infrastructure, health care, higher education and affordable housing, and there is insufficient time for thoughtful cost/benefit analysis.

The tax plan calls for the elimination of 501(c) (3) bonds used to provide low-cost financing to hospitals, nursing homes, higher education and nonprofits. There were $72.4 billion of such bonds issued in 2016. Eliminating tax exemption for these entities will increase borrowing costs by 25 to 30 percent, experts say.

Take for example nursing homes and assisted living facilities. The nation’s 65 and older population is expected to reach 83.7 million people by 2050, nearly double the population of 43 million as of the 2012 census. This tax plan does not account for the cost of meeting the growing needs of this population.

We have an opioid epidemic that claims the lives of over 50,000 to 60,000 people each year. This tax plan assures that needed drug rehab centers will not be constructed.

We have a health care crisis in this country where cost increases at 4.89 percent last year well outstripped inflation. Where does Congress think higher financing costs for hospitals will be absorbed? The same question can be asked with respect to higher education as the bill will require private colleges and universities, as well as student loan providers, to borrow at higher rates of interest.

The proposal will also eliminate private activity bonds that finance infrastructure. This includes projects such as airports, light rail and solid waste facilities. Private activity bonds by design promote public-private partnerships needed to close the $1 trillion infrastructure gap, a mantra of the Trump administration and the Republicans.

The plan also eliminates advance refundings. Refunding bonds allow states, cities and schools to refinance debt, much like a homeowner refinances a mortgage when interest rates drop. Last year state and local taxpayers saved $3 billion via this financing option.

I realize deficit reduction is crucial to economic growth (though this tax plan will add $1.5 trillion to the deficit over 10 years). At a minimum these impacts must be quantified and measured against deficit reduction and viewed through the prism of social costs. The plan's timing precludes this type of comprehensive analysis.

CRAIN'S CHICAGO BUSINESS

by MICHAEL D. BELSKY

Executive director, Center for Municipal Finance, University of Chicago's Harris School of Public Policy

---

CBPP: House Tax Bill's Changes to State and Local Tax Deductions Would Hurt States.

The House tax bill released today ends the federal deduction for state and local income and sales taxes and limits the deduction for state and local property taxes to taxes under $10,000 — all to pay for marginal income-tax rate cuts. That would be a bad deal for most Americans. It would likely harm state budgets nearly as much in the coming years as full repeal of state and local tax deductions, would likely shift more of the load for paying state and local taxes from high-income people to low- and middle-income families, and would fall much harder on some states than others. The proposal also probably would hurt local government budgets over time because states would likely shift costs to localities and because in some states such as New Jersey and New York a sizeable share of taxpayers pay more than $10,000 in local property taxes.

Property taxes are almost all levied by local governments and aren't a major source of revenue for states, while income and general sales taxes are the two main sources of state tax revenue. Property taxes account for only 2 percent of state tax revenue nationally, while income and sales taxes account for 37 percent and 31 percent, respectively.

Continue reading.

CBPP

Michael Leachman

Director of State Fiscal Research

Nov 2, 2017

MBFA Letter to House & Senate on PABs and Refundings.

Read the MBFA letter.

Muni Bond Buyers Expected a Sideshow. They Got a Major Surprise.

- **Tax plan would roll back some big municipal debt programs**
- **Advanced refunding, private activity bonds would be scrapped**

Municipal bond analysts and portfolio managers expected the Republican tax plan to affect only the margins of their industry, tinkering with demand by cutting corporate rates or eliminating the Alternative Minimum Tax.

They didn't anticipate the detail on page 275 of the 429-page document: a repeal of the tax-exemption for advance refunding bonds, a major source of supply for the $3.8 trillion market. More than $37 billion of the securities have been issued already this year, according to data compiled by Bloomberg.

"This is new to me," said Jeffrey Lipton, head of municipal research at Oppenheimer & Co. "That's going to be a negative for state and local governments."

There were other surprises, too, that could further reduce the sales of new tax-exempt bonds and, as a result, make them even more valuable. One provision would scuttle the sales of so-called private-activity bonds, which businesses use to finance infrastructure projects, while another would prevent tax-exempt bonds from being used to build sports stadiums.

There was little impact on bond prices, with the bill likely to be revised heavily as it works its way through Congress. Yields on benchmark 10-year tax-exempt debt was unchanged at 2.01 percent, according to Bloomberg's indexes, while those on longer dated bonds slipped 0.01 percentage point as prices edged up.

State and local governments issue advanced refunding bonds to refinance outstanding securities that can't yet be repurchased from investors. They do that by issuing new tax-exempt debt, investing the money in Treasuries and using the income to pay off their debt as it comes due.

The tax bill released Thursday would effectively end that practice by stripping the tax-exempt status from refunding bonds, unless they are issued within three months before the bonds can be called back, a time frame so short it would likely not be worth the expense.

According to Chris Mier, chief strategist at Loop Capital Markets, the provision would substantially reduce the pace of new bond sales. "We know how large the advance refunding component is in our marketplace and how big of a role it plays. I think it would have a profound impact," he said in a telephone interview.

It’s not only investors who would be affected. State and local governments would also find it more difficult to cut their debt-service costs.

“I think it’s bad policy, obviously,” said Mier. “It would inhibit the ability of governments to reduce debt service costs of outstanding debt.”

Bloomberg Markets

By Rebecca Spalding, Danielle Moran, and Amanda Albright

November 2, 2017

GOP Tax Plan Puts Billions in Muni Market Savings at Risk.

State and local stakeholders were blindsided by an aspect of the tax bill that would eliminate tax-free financing for many large government projects.

In a surprise move, the Republican tax plan released on Thursday contains a proposal that finance experts say would be devastating for governments trying to find money for economic development projects.

The bill would eliminate all private activity bonds, which allow tax-exempt municipal bonds to be issued on behalf of a government for a project built and paid for by a private developer. Tax-exempt bonds fetch lower interest rates in the municipal market and therefore lower the overall cost of financing. The projects financed with this type of debt are typically things in the public interest, such as low-income housing, hospitals or airports.

Nixed State, Local Tax Deduction Makes New GOP Tax Plan a Tough Sell for Some Republicans
“It’s been a big surprise to the entire public finance community,” says Will Milford, a tax attorney at the firm Bryant Miller Olive. “For months, we’ve been hearing that munis were safe.”

Milford added that targeting private activity bonds is especially confusing because those types of bonds are the “logical way” to stimulate private investment in infrastructure — a hallmark of President Trump’s campaign. In fact, during his confirmation hearing, Treasury Secretary Steve Mnuchin suggested that private activity bonds could be expanded.

“It goes against everything we were hearing would be a focus,” Milford says.

The federal government, though, would benefit from eliminating private activity bonds because it currently loses out on collecting tax revenue from the interest they earn for investors.

Many state and local government stakeholders are warning of dire consequences.

Oregon Treasurer Tobias Read said in a statement that the proposal would functionally eliminate the Oregon Facilities Authority. Over the past 27 years, $9 out of every $10 the authority has helped finance has gone toward either a health care or educational facility, according to the treasurer’s office.

“All of these projects would need to be done with taxable, higher-interest-rate financing, which makes it far less likely for them to pencil out,” says Laura Lockwood-McCall, the debt division director at the Oregon State Treasury.

The Council of Development Finance Agencies (CDFA) president, Toby Rittner, called the move "devastating" and said in a letter that eliminating private activity bonds "is bad policy [that] will cripple economic, infrastructure and community development."

The bonds have received criticism in the past, and a 2013 New York Times article called them a "stealth subsidy for private businesses" because they were used for things like a golf course and office buildings.

But government stakeholders argue they overwhelmingly help finance needed projects. New York City's housing department, for example, tweeted on Friday that the state's tax-exempt housing bonds helped finance affordable housing for nearly 170,000 people over four years.

The tax bill doesn't stop at eliminating private activity bonds. It would also nix other types of bonds valued by state and local governments.

Among the most concerning to local leaders, it would ban governments from issuing what are called advanced refunding bonds. These bonds allow governments to refinance debt earlier than they would have otherwise, ultimately letting governments take advantage of lower interest rates years sooner. The bill also bans issuing tax-exempt bonds for sports stadiums, a proposal that had already been floated this year on Capitol Hill.

It's unclear exactly how much of the municipal market would be affected by the change, but experts say it would be a significant portion. According to Municipal Market Analytics' Matt Fabian, up to 20 percent of the $3.7 trillion municipal market is made up of private activity bonds. Making those bonds taxable would dampen future issuance.

When it comes to the advanced refunding bonds, Fabian says between 10 and 20 percent of all annual bond refinancings fall under that category. That means up to one-tenth of the total $386 billion in average annual bond issuance could be attributed to that type of bond.

The notion of eliminating the tax-free status of all municipal bonds has been a perennial topic in Congress for years. But when the Republican framework for tax reform preserved that status, municipal bond market users thought they had emerged unscathed.

Now, stakeholders are left scratching their heads.

The lobbyist for the Government Finance Officers Association told the *Bond Buyer* that the proposal never surfaced in more than 90 meetings on the Hill. Meanwhile, the CDFA worked for weeks with Democrats in Congress to introduce a new type of disaster recovery bond to aid residents and municipalities in rebuilding. That bill, also introduced this week, would be rendered obsolete under the latest tax plan.

GOVERNING.COM

BY LIZ FARMER | NOVEMBER 3, 2017

Nixed State, Local Tax Deduction Makes New GOP Tax Plan a Tough Sell for Some Republicans.

The Trump administration and congressional Republicans took a step forward in their attempt to

overhaul the US tax code on Thursday by releasing legislation proposing sweeping changes.

The “Tax Cuts and Jobs Act” will include a broad set of proposed changes to the corporate and individual tax system, building off a nine-page framework the White House and congressional Republican leaders dropped in September.

Among the details of the new bill emerging Thursday morning is a proposed elimination of the state and local tax (SALT) deduction, which is a benefit that allows people to deduct those taxes from their federal bill. House Ways and Means Committee Chair Kevin Brady said Tuesday the GOP reached a deal that would allow people to deduct state and local property taxes up to $10,000 but not income or sales taxes.

While most House Republicans are in favor of getting rid of the SALT deduction, this proposal is likely to be one of the biggest hangups for those House Republicans in states like New York, New Jersey, and California, which could prove to be an obstacle to the bill’s passage.

View Full Story From Business Insider

NOVEMBER 3, 2017

Industry Groups Come Out Swinging to Save Tax-Exempt PABs.

WASHINGTON – Muni market supporters of tax-exempt private activity bonds were marshalling forces Friday to fight the House Republicans attempt to do away with them in their tax reform bill.

Representatives of several organizations said they were blindsided Thursday to learn that the tax-exemption for private activity bonds would be terminated as one of the revenue raisers to pay for tax reform.

“We don’t have a lot of time,” Tim Fisher, legislative and federal affairs coordinator of the Council of Development Finance Agencies, said Friday. “The fact they did not highlight this in advance gives me reason to think they planned to sneak this covertly through.”

Loss of the tax exemption would mean issuers would have to go to the taxable bond market, driving up costs “in the neighborhood of 25% to 30%,” Fisher said.

The House Ways and Means Committee is to begin deliberations on the 429-page tax reform bill at noon Monday. Chairman Kevin Brady, R-Texas, expects to finish the voting Thursday, sending the bill to the floor of the House for a vote the following week.

Consternation about this turn of events is deepest among transportation infrastructure groups that expected a president with a background in real estate development to roll out a tax plan emphasizing public-private partnerships financed with private activity bonds.

The Trump administration’s FY 2018 budget proposal “took a very different approach to this issue, recommending lifting the cap on PABs and expanding their eligibility,” said Dave Bauer, senior vice president of government relations for the American Road & Transportation Builders Association.

Eliminating PABs “would take a step in the opposite direction,” said Adam Snider, spokesman for the American Association of Airport Executives.

“Instead of making it more costly for airports to finance critical infrastructure projects, lawmakers should help airports by improving their bond options, increasing federal Airport Improvement Program funding, and eliminating the outdated federal cap on local passenger facility charges,” Snider said.

The American Public Transportation Association also pointed out the inconsistency. “Preemptively removing PABs as a financing tool for infrastructure projects would undermine Congress’ stated goal of leveraging a $1 trillion investment in our nation’s infrastructure,” APTA said. “Instead, this provision would have a chilling effect on private sector investments in infrastructure projects.”

Terminating the tax exemption of PABs after Dec. 31 of this year would raise $38.9 billion over 10 years, according to the congressional Joint Committee on Taxation. Another $17.3 billion would come from ending the advance refunding of bonds after the same date. Repeal of tax credit bonds, on the other hand, would reduce revenues by $500 million because they are taxable bonds.

Ending the tax exemption for bonds for professional sports stadiums and arenas would be effective Nov. 2 and would raise $200 million in revenues. That provision may be broader than realized. Richard Chirls, a partner at Orrick Herrington & Sutcliffe, pointed out on Friday, that a state university could not issue tax-exempt governmental bonds for a stadium if that stadium was used for a professional sports exhibition, training, or games for more than five days in any calendar year.

Democrats favor an expansion of the use of municipal bonds as part of their infrastructure strategy, including making permanent Build America Bonds.

The 24 Republicans on the House Ways and Means Committee who agreed to the bill can thwart any proposed changes offered by Democrats, who are in the minority and hold only 16 seats on the committee.

Five or more Republicans on the committee would have to break rank from their party and vote with the Democrats to restore the tax exemption for PABs.

“We are working like crazy to make noise on this and get any Republican we can to offer an amendment that would strike the provision in the bill,” Fisher of CDFA said.

The Municipal Bonds for America Coalition drafted a letter on Friday to emphasize the broad support for PABs and was seeking groups to sign it.

Fisher said the lobbing focus is on committee Republicans who have supported PABs in the past.

Nine of the Republicans on the committee are, in fact, cosponsors of a bill that would expand the use of PABs to public buildings.

A spokesman for the lead sponsor, Rep. Mike Kelly, R-Pa., said on Oct. 27 that the congressman planned to propose inserting the Public Building Renewal Act, which authorizes the issuance of $5 billion in new PABs, into the tax reform legislation.

Kelly’s spokesman did not immediately respond Friday to a request for an update on the congressman’s plan.

Likewise, 14 Republicans on the committee are sponsors of a bill to strengthen the low-income housing tax credit which is often linked with PABs in financing affordable multifamily housing projects.

Barbara Thompson, executive director of the National Council of State Housing Agencies, said her group is reaching out to those Republicans to highlight how the low-income tax credit would become ineffective without PABs.

“The program is structured so the only way you can get the credit is if its bond financed,” Thompson said. “You might as well be eliminating the credit. Our concern is that members don’t realize the linkage.”

Thompson said terminating tax-exempt PABs “would decimate rental housing production.”

The Bond Buyer

By Brian Tumulty

November 03 2017

Bloomberg Briefs: Administration Aims to Shrink Muni Market by One Third.

Read the Brief.

Bloomberg | Nov. 3

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Bond Buyer

By Lynn Hume

November 03 2017, 5:02pm EDT

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

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

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

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

Other changes in the plan include:

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

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

The Bond Buyer

By Brian Tumulty

November 02 2017, 12:52pm EDT

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

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

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

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

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

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

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

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

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

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

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

eliminate PABs and advance refundings in the tax plan he floated in 2014.

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

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

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

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

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

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

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

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

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

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

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

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

could be a different set of oxes gored," he said, referring to revenue raisers.

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

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

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

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

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

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

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

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

The Bond Buyer

By Lynn Hume & Brian Tumulty

November 02 2017

Tax Tradeoffs Would Leave Muni Market Unrecognizable.

The municipal industry will be forever changed if the tax reform package proposed in the House is adopted unaltered. Of course, the probability of no alterations to Tax Cuts and Jobs Act H.R. 1 is

quite remote. But the allotted compressed timeframe considered for adoption means that the tradeoffs will need to be determined quite swiftly, with less contemplation and reflection.

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

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

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

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

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

Deductibility for other state and local taxes, primarily income taxes, would not be preserved over the $400,000 limit. The bulk of the taxes that are collected are skewed to these higher income levels. High wealth and income states would be particularly vulnerable to this provision. Of course, there is

also the weighty matter of how the states that have income taxes would “harmonize” with a vastly changed federal system of taxation.

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

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

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

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

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

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

The time to voice opposition is now!

The Bond Buyer

By John Hallacy

November 03 2017, 1:06pm EDT

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

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

governments for reasons described more fully below.

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

Repeal of Tax Exemption for Private Activity Bonds

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

The House bill would tax interest on private activity bonds issued on or after January 1, 2018. This sweeping change would strike from the Internal Revenue Code sections 142 (Exempt Facility Bonds), 143 (Qualified Mortgage Bonds and Qualified Veterans' Mortgage Bonds), 144 (Qualified Small Issue Bonds, Qualified Student Loan Bonds and Qualified Redevelopment Bonds), and 145 (501(c)(3) Bonds), as well as 146 and 147, which set forth operating rules for interest on private activity bonds, including 501(c)(3) bonds, to qualify for the exemption from federal income tax under section 103 of the code.

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

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

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

Repeal of Advance Refunding Bonds

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

Low-Income Housing Projects Financed by Tax-Exempt

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

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

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

Infrastructure

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

No Transition Rule for State and Local Bonds Issued after 2017

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

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

Under general tax principals, a modification of a bond is considered significant if there is a change in the yield on the debt instrument of more than 0.25%, a deferral of one or more scheduled payments for a period of more than five years (or, if lesser, 50% of the original term of the

instrument), or a change of obligor on the tax-exempt bond if the new obligor is not a related entity of the original obligor.

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

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

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

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

November 3, 2017

by the Public Finance Group

Copyright © 2017 by Ballard Spahr LLP.
www.ballardspahr.com
(No claim to original U.S. government material.)

Market Commentary: Tax Reform Proposal Hammers Munis.

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

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

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

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

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

Factors that would harm the muni market indirectly.

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

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

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

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

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

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

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

1. The cuts are sharply greater than those needed to make corporate tax rates competitive on a global basis;
2. Cuts this dramatic sharply increase the projected Federal deficit—which used to be a concern of Republicans—all the way up to the distant past of a month or two ago, when a tax cut bill that raises the deficit by $1.5 trillion or more over 10 years would have been anathema to most lawmakers;
3. The case that cuts of this magnitude will be massively stimulative to the economy is a weak one that has been refuted by most economists, many of whom note that a) unemployment is already extremely low, and unlikely to be pushed significantly lower by such a corporate tax cut; b) corporation are already awash in cash that they have been unable or unwilling to invest in new projects because they do not find such projects to meet profitability targets—a pattern

exacerbated by accelerating technological change, which no one seems to want to discuss, but which mutes the benefit of large new brick and mortar projects;

4. Cuts this deep clearly leave a hole in the Federal budget that will be filled over time in ways that are damaging to recipients of disbursements from the Federal government. High on that list will be state and local governments. Witness the likely impact of this proposal, which, in a bolt from the blue, seeks dramatic new revenues from the municipal sector to pay, in part for the massive tax cuts, and which will leave no room for the previously planned, highly publicized "infrastructure program."

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

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

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

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

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

Key provisions specifically targeted at municipal borrowings.

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

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

sharply overstate the benefit to the Federal government of each reduction in access to the muni market described below.

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

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

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

Elimination of all advance refundings

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

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

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

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

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

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

increased costs to state and local governments if the elimination of PABs were effectuated.

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

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

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

The case for maintaining Private Activity Bonds

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

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

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

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

Market implications

It is probably not a surprise that muni yields increased modestly this week, even as long-term

Treasury yields dropped by roughly 12 basis points. The muni market is beginning to consider:

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

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

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

Neighborly Insights

Posted 11/03/2017 by George Friedlander

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

Disclaimer: Neighborly has entered into a paid agreement with Court Street Group to provide commentary on a regular basis to all customers, users, prospective customers, and prospective users of Neighborly and Neighborly Securities. The opinions and statements expressed in this report are solely those of the author(s), who is solely responsible for the accuracy and completeness of this report. The opinions and statements expressed on this report are for informational purposes only, and are not intended to provide investment advice or guidance in any way and do not represent a solicitation to buy, sell or hold any of the securities mentioned. Opinions and statements expressed reflect only the view or judgment of the author(s) at the time of publication, and are subject to change without notice. Information has been derived from sources deemed to be reliable, but the reliability of which is not guaranteed. Readers are encouraged to obtain official statements and other disclosure documents on their own and/or to consult with their own investment professional and advisors prior to making any investment decisions.

NABL: House Tax Bill Eliminates PABs, Advance Refundings.

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

Among the provisions that would affect state and local bonds, the bill would eliminate private activity bonds (sec. 3601), advance refundings (sec. 3602), and tax credit bonds (sec. 3603)

beginning with bonds issued after December 31, 2017. The draft bill would also eliminate tax-exempt bonds for professional stadiums for bonds issued after today, November 2, 2017 (sec. 3604). The bill would also terminate the New Markets Tax Credit (sec. 3406).

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

Republican Tax Plan May Mean Slightly Less Grand Sports Stadiums.

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

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

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

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

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

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

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

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

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

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

Ted Gayer, one of the authors of the Brookings study, welcomed the proposal to end what he called

an “egregious but small misuse of federal tax dollars.”

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

By REUTERS

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

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

NFL Lines Up Against Stadium Provision in Tax Plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Wall Street Journal

By Andrew Beaton

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

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

Republicans Push to End Muni Sales by Businesses, Stadiums.

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

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

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

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

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

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

projects typically raise money with private activity bonds.

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

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

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

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

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

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

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

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

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

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

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

Bloomberg

By Martin Z Braun and Mark Niquette

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

— With assistance by Amanda Albright

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

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

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

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

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

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

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

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

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

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

Bloomberg

By Eben Novy-Williams

November 2, 2017, 1:34 PM PDT

— With assistance by Martin Z Braun

Do You Have a Recent Private Activity Bond Project?

Private Activity Bond (PAB) Project Submission Form

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

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

Continue.

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

Sign on to the CDFA Letter.

CDFA | Nov. 3

How Federal Tax Changes Would Affect the States.

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

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

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

Continue reading.

Bloomberg BNA

October 30, 2017

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

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

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

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

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

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

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

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

Contact:
Stephen Walsh
Director, U.S. Public Finance
Fitch Ratings, Inc.
+1 415 732-7573
650 California Street
San Francisco, CA

TAX - WASHINGTON

Ferlin v. Chuckanut Community Forest Park District

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

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

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

The Court of Appeals held that:

- District was not void at inception;
- Raising and spending money generated from property tax levy to repay city's loan was a legitimate

park purpose, and thus district did not exceed its statutory authority by adopting levy;
- District was statutorily and organizationally distinct from city, and thus district was authorized to impose tax within its boundaries without violating state constitution's requirement for uniformity in taxation; and
- Levy did not violate state constitution's provision regarding the object of levied taxes.

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

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

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

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

How Tax Reform Can Support Rural Broadband.

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

The gap in high-speed broadband access between rural and urban areas remains wide in the U.S. According to the Federal Communications Commission, 39 percent of rural Americans (23.4 million) lack broadband access to a fixed service with speeds of 25 megabits per second (Mbps) download/3 Mbps upload, while only four percent of urban residents lack access to those speeds. Without access

to high-speed broadband, rural residents are severely limited when it comes to economic development, civic engagement, and the other social benefits related to broadband availability and its adoption.

Continue reading.

The Brookings Institute

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

November 6, 2016

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

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

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

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

Continue Reading

The Public Finance Tax Blog.

By Johnny Hutchinson and Michael Cullers on November 2, 2017

Squire Patton Boggs

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

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

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

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

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

A full report will be published shortly.

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

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

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

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

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

Continue reading.

ROUTE FIFTY

BILL LUCIA

OCTOBER 30, 2017 07:59 PM ET

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

A new report from the Tax Foundation takes a look.

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

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

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

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

Continue reading.

Route Fifty

By Bill Lucia,
Senior Reporter

October 24, 2017

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

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

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

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

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

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

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

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

In New York, taxpayers would pay an average of an additional $5,300 in federal income taxes a year

without the SALT deduction, Cuomo's office said in a separate statement.

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

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

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

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

By REUTERS

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

(Editing by Daniel Bases and Frances Kerry)

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

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

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

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

Tax Policy Takes Center Stage.

After a federal infrastructure plan and healthcare legislation failed to materialize, an even higher

priority has regained the center stage. Congress has now focused on tax reform – or cuts depending on where you stand. Of particular concern is what the effects will be on the municipal market.

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

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

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

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

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

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

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

Holding other factors constant, one would expect lower taxes to lead to greater profitability for businesses and a lower tax collections for all governments concerned. However, it is debatable

whether the changes contribute to consistent higher growth of 3% to 4% for GDP.

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

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

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

By John Hallacy

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

When Gratuitous Honesty May be the Best Policy?

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

Continue reading.

By Cynthia Mog on October 17, 2017

The Public Finance Tax Blog

Squire Patton Boggs

Public Power Utilities Support Retention of Tax Exemption for Bonds.

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

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

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

The letter was sent to the six leaders who negotiated the framework: Treasury Secretary Stephen Mnuchin, National Economic Council Director Gary Cohn, House Speaker Paul Ryan, R-Wis., Senate Majority Leader Mitch McConnell, R-Ky., House Ways and Means Committee Chairman Kevin Brady, R-Texas, and Senate Finance Committee Chairman Orrin Hatch, R-Utah.

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

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

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

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

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

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

said.

American Public Power Association

by Paul Ciampoli

October 20, 2017

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

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

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

NABL: IRS Withdraws Proposed Political Subdivision Regulations.

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

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

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

TAX - WASHINGTON

End Prison Industrial Complex v. King County

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

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

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

The Court of Appeals held that:

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

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

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

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

TAX - OHIO

MacDonald v. Cleveland Income Tax Board of Review

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

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

The Supreme Court of Ohio held that:

- SERP was "pension" within meaning of ordinance excluding "pensions" from taxable income;
- Definition of "pension" in pension exclusion ordinance was not limited by administrator's rules and regulations defining "pensions";
- City ordinance defining "qualifying wages" for income tax purposes did not override exclusion of

SERP from taxable income under pension exclusion ordinance; and
- City's election to tax income on qualifying-wage basis under state law did not require city to impose income tax on SERP.

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

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

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

New IRS Audit Procedures: Hawkins Advisory

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

Read the Hawkins Advisory describing the changes.

IRS Releases New Public Approval Proposed Regulations: Mintz Levin

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

Timing and Dissemination of Reasonable Notice

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

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

Content of Reasonable Notice

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

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

Insubstantial Deviations and Curing Substantial Deviations

Perhaps the second most helpful part of the Proposed Regulations is the expanded description of

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

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

Optional Application

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

By Len Weiser-Varon on October 13, 2017

Mintz Levin

Proposed TEFRA Rules Get Positive Reception from Bond Attorneys.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

forward and a good modernization."

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

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

By Brian Tumulty

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

South Dakota Asks Supreme Court to Consider Online Sales Tax.

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

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

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

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

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

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

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

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

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

National League of Cities

by Lisa Soronen
Executive Director, State & Local Legal Center

October 11, 2017

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

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

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

Some states just say no.

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

Continue reading.

GOVERNING.COM

BY LIZ FARMER | OCTOBER 13, 2017

Finally: Withdrawal of the Political Subdivision Regulations Is Announced

The eagerly awaited verdict on the proposed political subdivision regulations (Proposed Political Subdivision Regulations) ("Proposed Regulations") is finally in and their withdrawal has been announced. These regulations have been a frequent subject of our posts (here, here, here, here, here, and here) Treasury issued its interim Report on June 22, 2017 (here) under Executive Order 13789 (here) identifying eight regulations for review, including the Proposed Regulations. (Discussed in previous blogs by Michael Cullers and Johnny Hutchinson here and here.) Now Treasury has issued its "Second Report to the President on Identifying and Reducing Tax Regulatory

Burdens," ("Second Report") dated October 2, 2017, announcing its recommendations on those eight regulations as well as potentially far-reaching plans for further review of burdensome regulations. Of the eight regulations reviewed, Treasury recommended full withdrawal of only two, one being the Proposed Regulations (the other being an anti-taxpayer regulation addressing transfers of family businesses, which could be an especially sympathetic area under the Trump administration). In recommending withdrawal of the Proposed Regulations, Treasury noted that "some enhanced standards for qualifying as a political subdivision may be appropriate" but that "regulations having as far-reaching an impact on existing legal structures as the proposed regulations are not justified." So what might we expect in the future?

Continue Reading

The Public Finance Tax Blog

By Bob Eidnier on October 12, 2017

Squire Patton Boggs

TAX - OHIO

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

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

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

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

The Supreme Court of Ohio held that:

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

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

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

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

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

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

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

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

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

Trump Puts Spotlight on Sports Tax Breaks.

WASHINGTON — President Donald Trump's attacks on protests by some National Football League

players shifted to tax policy on Tuesday, as the president floated the possibility of pushing to change laws that benefit the league.

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

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

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

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

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

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

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

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

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

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

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

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

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

For the NFL, there would be no impact from the bill. The NFL’s teams pay taxes on their profits, as

well as on player salaries and merchandise sales. The NFL central office, which coordinates and manages the league's affairs, for years claimed tax-exempt status, meaning it didn't pay taxes on its income. But amid criticism of the practice, the league renounced the status in 2015, calling it a "distraction."

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

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

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

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

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

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

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

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

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

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

The Wall Street Journal

By Richard Rubin

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

—Andrew Beaton and Eli Stokols contributed to this article.

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

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

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

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

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

Below are five facts about the financing of sports stadiums.

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

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

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

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

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

by Daniel Bases

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

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

One hundred forty characters, but a barrage of questions.

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

federal tax regimes.

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

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

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

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

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

‘Can’t Make Sense’

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

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

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

Tax Breaks

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

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

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

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

When investors buy municipal bonds, they lend a local or state government money for a fixed period

of time, often to pay for roads, schools, and other construction projects. In exchange for an investment, the local or state governments pay the investor interest throughout the term of the bond. Currently, interest isn't taxable.

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

Bloomberg BNA

By Ryan Prete

October 11, 2017

To contact the reporter on this story: Ryan Prete in Washington at rprete@bna.com

To contact the editor responsible for this story: Jennifer McLoughlin at jmcloughlin@bna.com

Copyright © 2017 Tax Management Inc. All Rights Reserved.

IRS Tax Exempt & Government Entities FY 2018 Work Plan.

Read the Work Plan.

Surge in Multifamily Housing Bond Issuance Linked to Tax Incentives.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ruth Anne Visnauskas, commissioner of New York State Homes and Community Renewal, said her

agency has completed two RAD deals this year, has four or five in the works for the remainder of this year, and 10 more in the pipeline for next year.

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

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

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

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

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

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

By Brian Tumulty

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

Tax Battle Lines Shift in Cities and Suburbs.

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

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

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

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

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

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

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

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

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

Governing.com

By Justin Marlowe | Columnist

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

Oct | 2017

TAX - OHIO

McNair v. City of Brecksville

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

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

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

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

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

TAX - TENNESSEE

Islamic Center of Nashville v. Tennessee

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

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

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

The Court of Appeals held that:

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

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

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

TAX - OREGON

Wittemyer v. City of Portland

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

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

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

The Supreme Court of Oregon held that:

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

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

"TEFRA is a Four-Letter Word"

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

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

Continue Reading

The Public Finance Tax Blog

By Michael Cullers on October 2, 2017

Squire Patton Boggs

Proposed TEFRA Rules Get Positive Reception from Bond Attorneys.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

By Brian Tumulty

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

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

Read the Advisory.

Treasury Department Formally Withdraws Political Subdivision Rule Proposal.

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

Treasury Department Press Release

NABL: Treasury to Withdraw Political Subdivision Regs.

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

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

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

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

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

Here is a link to the Framework, a 9-page document that provides an overview of the various measures that may be included in tax reform. The Framework was preceded by the blueprint for tax

reform released by House Republicans on June 24, 2016 (discussed in a previous blog post). This post addresses a few of the highlights from the Framework.

Highlights

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

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

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

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

Important Disclaimer

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

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

The Public Finance Tax Blog

By Joel Swearingen

September 29, 2017

Squire Patton Boggs

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

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

Continue reading.

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

USA September 29 2017

Greenberg Traurig LLP

IRS Issues New Proposed TEFRA Regulations: Nixon Peabody

Read the Nixon Peabody Public Law Alert.

CDFA Defending Development Finance Interests During Tax Reform.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

By Brian Tumulty & Lynn Hume

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

Good Jobs First Subsidy Tracker Makes GASB 77 Data Accessible.

View the Subsidy Tracker.

Good Jobs First | Sep. 28

TAX - ILLINOIS

In re County Collector

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

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

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

The Appellate Court held that:

- Town had right to intervene;
- County collector was not required to issue refunds on demand but rather could issue refunds after collecting funds from appropriate taxing bodies; and
- Purchasers were entitled to be paid refunds from town's general tax revenue, rather than from special service areas.

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

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

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

TAX - OHIO

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

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

Voters sought writ of mandamus, seeking to compel board of elections to certify their petition for

repeal of county sales and use tax.

The Supreme Court of Ohio held that:

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

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

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

Fitch: U.S. Cannabis Legalization.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NATIONAL ASSOCIATION OF COUNTIES

By CHARLIE BAN Sep. 21, 2017

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

What Can You Do?

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

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

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

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

Talking Points

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

statutory rights of states and local governments to develop and operate our own tax systems.
- This is not just a fight over money and taxes. It is perhaps the most important debate about the proper balance and true partnership between local governments, states, and the federal government.

TAX - CALIFORNIA

California Cannabis Coalition v. City of Upland

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

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

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

The Supreme Court of California held that:

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

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

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

that term a broader meaning than adjoining specific term, “local or regional governmental entity.”

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

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

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

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

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

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

Clear evidence that constraining exercise of voters’ initiative power was intended purpose of constitutional provision limiting ability of local governments to impose general tax, rather than evidence that voters intended to exempt initiative power from provision as precondition for preserving that power in unencumbered form, was necessary to construe provision as applying to tax-related voter initiatives; court had obligation to protect and liberally construe initiative power

and to narrowly construe provisions that would burden or limit its exercise, and clear statement rule was consistent with and appropriately advanced duty to safeguard exercise of initiative power.

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

TAX - VERMONT

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

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

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

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

The Supreme Court of Vermont held that:

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

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

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

The Public Finance Tax Blog

By Johnny Hutchinson on September 21, 2017

Squire Patton Boggs

TAX - OHIO

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

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

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

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

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

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

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

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

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

The full South Dakota Supreme Court opinion is available here.

Last Updated: September 19 2017

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

McDermott Will & Emery

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Atlantic City Casino Tax Appeal Settlements Covered Through Municipal Bonds.

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

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

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

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

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

Tax Refund

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

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

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

Cleared for Recovery

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

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

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

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

CASINO.ORG

SEPTEMBER 23, 2017 BY KATIE BARLOWE

---

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

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

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

Tax-exempt Municipal Bonds

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

Private Funds

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

Food and Beverage Taxes

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

you over $10.

Rental Car and Hotel Taxes

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

Live Entertainment Taxes (LET)

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

Parking Fees

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

State Infrastructure Funding

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

Stadium Sales Tax

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

Donald W. Reynolds National Center for Business Journalism

by Jimmie Jackson | September 13, 2017

Exposing Government Favoritism.

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

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

For the first time, city and state governments are releasing financial reports covered by the new

Government Accounting Standards Board's Statement 77, which requires governments following "Generally Accepted Accounting Principles" – the widely accepted industry standard – to report the value of tax abatements in their yearly financial statements.

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

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

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

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

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

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

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

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

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

burden through higher taxes.

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

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

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

U.S. News

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

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

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

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

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

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

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

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

also make someone an itemizer (that is why low-tax Utah has an unusually high percentage of returns that itemize deductions).

Continue reading.

Tax Policy Center

by Leonard E. Burman & John Iselin

September 12, 2017

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

Abstract

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

Download PDF.

The Urban Institute

by James R. Nunns & Eric Toder

September 8, 2017

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

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

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

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

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

final criteria on or about Nov. 6, 2017.

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

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

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

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

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

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

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

Contact:

Primary Analyst
Kevin Holloran
Senior Director
+1-512-813-5700
Fitch Ratings, Inc.
111 Congress Avenue, Suite 2010
Austin, TX 78701

Secondary Analyst
Olga Beck
Director
+1-212-908-0772

Committee Chairperson
Jessalynn Moro

Managing Director
+1-212-908-0608

Media Relations: Benjamin Rippey, New York, Tel: +1 646 582 4588, Email: benjamin.rippey@fitchratings.com.

Additional information is available on www.fitchratings.com

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

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

Anticipated Rating Impact Limited

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

Rating Changes More Predictable

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

Continue reading.

MBFA Chair Contributes Op-Ed in The Hill.

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

Specifically, the Op-Ed Highlights:

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

September 14, 2017

Florida Judge Refuses to Validate Poinciana CDD Bonds.

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

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

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

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

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

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

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

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

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

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

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

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

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

He cited testimony from a July 18-21 trial in which the chairmen of the Poinciana CDD boards said

they did not recall consultants explaining how the club membership fees were set.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Bond Buyer

By Shelly Sigo

Published September 06 2017, 12:02pm EDT

SLGS! (For Now)

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

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

The Public Finance Tax Blog

By Johnny Hutchinson on September 12, 2017

Squire Patton Boggs

SLGS Forever?

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

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

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

The Public Finance Tax Blog

By Alexios Hadji on September 8, 2017

Squire Patton Boggs

A Gift Idea for the Tax Advisor Who has Everything.

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

Continue Reading

The Public Finance Tax Blog

By Cynthia Mog on September 13, 2017

Squire Patton Boggs

TAX - MINNESOTA

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

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

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

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

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

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

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

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

TAX - INDIANA

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

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

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

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

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

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

---

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

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

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

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

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

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

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

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

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

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

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

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

Bloomberg Politics

By Martin Z Braun

September 13, 2017, 2:00 AM PDT

Muni Bonds' Tax Break Looks Safe For Now.

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

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

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

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

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

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

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

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

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

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

Bloomberg News

Sep 13, 2017 @ 5:06 pm

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

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

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

# # #

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

---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

project.

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

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

The Bond Buyer

By Brian Tumulty

Published August 29 2017, 2:16pm EDT

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

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

Continue Reading

The Public Finance Tax Blog

By Bob Eidnier on August 31, 2017

Squire Patton Boggs

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

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

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

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

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

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

The Blues argue in court filings that there is no uncertainty about the city's standing as owner of Scottrade Center, and opponents appear now to be using those words against them in the amended petition.

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

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

In a news release, Kiel Center Partners said that the amendments "are as shallow and embarrassing to our city as the original lawsuit itself."

The plaintiffs are Alderwoman Cara Spencer, former state Rep. Jeanette Oxford and former city counselor James Wilson.

Friday's motion from the plaintiffs also adds an allegation that the amount of debt the city would incur for the Scottrade Center renovation, totaling $105 million with interest, is an unconstitutional proposal unless it gets voter approval.

They say the financial agreement between the city and the Blues constitutes "an unconditional promise to pay" the amounts without making them subject to annual appropriations. Without a public vote, that's unconstitutional under state law, attorneys wrote.

Garvin said he had not reviewed the proposed amendments fully, but at first blush believed the plaintiffs were confusing different statutes when it comes to bonds.

"The language they're suggesting is required for certain types of deals, but I don't think it is for this kind," Garvin said.

It's unclear yet whether the new counts brought by the plaintiffs will be allowed to be added to their lawsuit. That decision is now up to a judge, who is likely to let the Blues weigh in before taking action.

Kiel Center Partners did not elaborate on the Blues' qualms with the proposed amendments, but said, "It is clear the plaintiffs and their attorneys have either failed to read or are disregarding underlying documents and statutes."

In court filings, the Blues argue that the financing agreement does not violate the law, and they allege that the plaintiffs have no standing because they aren't part of the Blues' lease with the city.

In court filings, attorneys for the Blues say the case hearkens back to a 2006 case involving public funds for the new Busch Stadium, *Moschenross v. St. Louis County. Oxford*, a longtime advocate against public funding for major sports venues, was one of the defendants in that case, losing both in trial court and on appeal.

Relevant to the current lawsuit is the judge in *Moschenross* said public financing for professional sports venues aren't unconstitutional if private profits are incidental and the project ultimately serves economic development. Blues attorneys said the current financing agreement "furthers recognized public purposes."

The result of the *Moschenross* case was the undoing of a county voter-approved proposition requiring voter approval for publicly financing professional sports venues. In February, Oxford was one of two plaintiffs in a lawsuit against the Scottrade Center renovations that was dropped less than 24 hours after it was filed.

Court hearings on motions in the Spencer case and the Blues' lawsuit against the comptroller are both set for Sept. 8.

By Mike Faulk

Sep 2, 2017

St. Louis Post-Dispatch

Recent United States Supreme Court Ruling Has Far-Reaching Ramifications for Bond Financing: Bryant Miller Olive

TAMPA, Fla., Aug. 28, 2017 /PRNewswire/ — A recent U.S. Supreme Court ruling has paved the way for religious entities to potentially use tax-exempt bonds for secular projects on their properties, leading to questions about how this will play out as organizations consider bond financing for new projects.

Many church leaders are wondering if bonds could be used for everything from playgrounds to buildings as legal experts determine exactly what is covered in the recent *Trinity Lutheran Church v. Comer* decision.

On June 26, the U.S. Supreme Court, in a 7-2 decision, held that the government cannot exclude religious institutions from generally available, secular government programs solely because of the institutions' religious character.

A key potential ramification of this ruling is that religious institutions are now on solid legal footing to apply for tax-exempt bonds for building projects that are unrelated to religious instruction or ministry.

Historically, religious entities – most often a church and adjoining school – struggled to obtain bond financing due to uncertainty surrounding the breadth of the U.S. Establishment Clause and Blaine Amendments. The U.S. Establishment Clause and the Blaine Amendments (enacted in more than 35 states) were enacted to further the separation of church and state, including prohibiting direct government aid to educational institutions whose religious mission cannot be separated from their purpose.

In *Trinity Lutheran Church v. Comer*, the U.S. Supreme Court opinion highlighted a distinction between the status of the applying entity and the actual use of the facility being financed. In essence, the ruling stated that the intended use of the facility carries significantly more weight than the religious status of the applying entity.

"Previously, even if religious entities were not explicitly ineligible for bonds, financiers would shy away from these potentially controversial projects," said Kareem Spratling, Bryant Miller

Olive shareholder and public finance expert. "With this decision, I am now confidently recommending bonding as a potential funding avenue for clients trying to fund secular projects such as playgrounds and gymnasiums."

Spratling says several things for religious institutions to consider include the specific use of the project, if the facility would be open and available to the public, and if the project, while not directly tied to religious instruction, may have some crossover with religious instruction – for example, a roof that covers both a church and gymnasium.

As with any landmark decision, Spratling advises there is a strong possibility of further clarifying litigation on this issue around the country as religious entities move to utilize tax-exempt bonding for their projects. Due to the complex nature of bonding and the legal uncertainty of the landscape, entities should seek legal advice from bonding experts to determine if their project qualifies.

About Bryant Miller Olive: With a distinguished 45-year history of serving its clients' needs, Bryant Miller Olive represents governments, businesses and agencies in legal matters relating to public finance, state and local government law, complex transactions, project finance, and litigation. The firm has served as Bond Counsel on more deals than any other firm in the Southeast over the past five years, and more than any other firm in Florida over the past decade. Members of the firm are often called upon to handle some of the most complex legal issues in the boardroom and in the courtroom. The firm has offices in Tampa, Tallahassee, Orlando, Miami, Jacksonville, Atlanta and Washington, D.C. For more information, visit http://www.bmolaw.com.

IRS Seeks Applications for Advisory Committee for the Tax Exempt and Government Entities Division.

The IRS is seeking applicants for vacancies on the Advisory Committee on Tax Exempt and Government Entities (ACT). The committee provides advice and public input on the various areas of tax administration served by the Tax Exempt and Government Entities Division (TE/GE). Applications will be accepted through September 18, 2017.

TAX - WASHINGTON

Watson v. City of Seattle

Supreme Court of Washington - August 10, 2017 - P.3d - 2017 WL 3428951

Various organizations brought action against city, alleging that an ordinance that purported to tax firearms and ammunition sold within city limits was a regulation preempted by state law.

The Superior Court granted city's motion for summary judgment. Organizations appealed. The Court

of Appeals certified a question, and the Supreme Court accepted direct review.

The Supreme Court of Washington held that:

- Ordinance was a tax, rather than a regulatory fee, and thus ordinance was not facially preempted;
- Tax was not limited by statute regulating business and occupation tax;
- State did not impliedly preempt field of firearm and ammunition taxation; and
- Ordinance did not conflict with statute preempting local regulation of firearms.

City's ordinance purporting to tax firearms and ammunition sold within city limits was tax, rather than regulatory fee, and therefore ordinance was not facially preempted by state firearm statute. Even though revenue was segregated, purpose of ordinance was to raise general revenue to provide broad-based public benefits, including public health research and gun safety programs, funds were allocated to nonregulatory purpose, and there was no direct relationship between expected amount of revenue generated and economic burden of gun violence.

City's flat tax on firearms and ammunition sold within city limits was not limited by statute regulating business and occupation tax. Even though city's tax and business and occupation tax were both excise taxes, city's tax was calculated on per unit basis, rather than measured as percentage of retailer's income, and city's tax did not affect gun retailers' business and occupation tax rate, which was capped by statute.

State did not impliedly preempt field of firearm and ammunition taxation by expressly preempting field of firearms regulation; preemption statute made no mention of taxation, purpose of statute was to advance uniformity in firearms regulation, which was achievable without restricting municipal tax authority, and legislature was typically explicit when preempting taxation.

Ordinance taxing firearms and ammunition sold within city limits did not conflict with state statute preempting local regulation of firearms, which allowed cities to "enact only those laws and ordinances relating to firearms that are specifically authorized by state law," and thus conflict preemption did not apply. Argument that taxation of firearms was required to be specifically authorized by state statute would have exempted firearms sales from all forms of taxation, including basic sales tax, and, in context, statute only required specific authorization for regulatory laws and ordinances.

TAX - NEW YORK

Sprint Communications Co., L.P. v. City of New York Dept. of Finance

Supreme Court, Appellate Division, First Department, New York - June 27, 2017 - N.Y.S.3d - 152 A.D.3d 184 - 2017 WL 2743348 - 2017 N.Y. Slip Op. 05194

Telecommunications service provider commenced action against municipality's department of finance, seeking declaratory judgment that it was subject to supervision of New York State Department of Public Service and therefore was liable for municipal utility tax and not municipal unincorporated business income tax.

The Supreme Court, New York County, granted municipality's motion for summary judgment declaring that provider was not utility within meaning of municipal utility tax code and therefore was liable for both utility tax and unincorporated business income tax. Provider appealed.

The Supreme Court, Appellate Division, held that:

- Provider, an unincorporated business, had burden of proving that it was entitled to statutory exemption, and
- Provider was not "utility" exempt from municipality's unincorporated business income tax.

Telecommunications service provider, an unincorporated business, had burden of proving that it was entitled to statutory exemption, in its action seeking declaratory judgment that it was subject to supervision of New York State Department of Public Service and therefore was liable for municipal utility tax and not municipal unincorporated business income tax.

Telecommunications service provider was not "utility" exempt from municipality's unincorporated business income tax; provider was competitive entity that did not enjoy monopoly status and light regulation by public services commission (PSC) to which it was subject did not rise to level of supervision necessary to classify it as utility.

Tax Policy by Tweet: Squire Patton Boggs

One of the many recent targets of Twitter criticism from President Trump has been the internet retailer Amazon. Presumably after being informed by his staff that jobs in the retail industry constitute a much more significant share of national employment than those in coal mining (or after hearing about it on CNN), Mr. Trump posted the following tweet on August 16:

Continue reading.

The Public Finance Tax Blog

By Michael Cullers on August 23, 2017

Squire Patton Boggs

IRS Focuses on Tax Exempt Financings Involving Developers: Orrick

For a number of years, the IRS Office of Tax-Exempt Bonds ("TEB") has expressed concerns about potential tax abuses that may exist in what it has characterized as "developer-driven deals" involving the use of tax-exempt bonds. TEB has generally used this term to describe tax increment financings, assessment and special tax bonds, and PILOT (payment in lieu of tax) bonds, and has also used this nomenclature to challenge the tax exemption of certain financings issued by special governmental districts such as community development districts. While it is entirely appropriate for TEB to focus on topics and bond issues like these, TEB often sees abuses and technical problems where none exist. Based on audit activity in recent years, it appears that TEB has adopted an approach of identifying tax-exempt bond transactions with significant private developer involvement and advancing the view that interest on such bonds is taxable, even when those transactions meet all applicable tax requirements and also satisfy the public and tax policies behind those requirements. Simply stated, TEB seems to take the view that developers benefit too much from these transactions for the bonds to qualify for tax-exemption regardless of the supporting legal authority, clear and specific provisions of the Internal Revenue Code ("Code") and applicable Treasury Regulations notwithstanding.

State, city, county and other local governmental entities that issue municipal bonds, investors and market professionals are increasingly concerned about these attacks, often based on novel arguments by the IRS that are inconsistent with established tax law and traditional types of financing practices by municipal governments. An additional concern is that there seems to be confusion within TEB as to the different tax rules that apply to these financing structures. It is important for market participants to be aware of TEB's posture regarding these transactions, and we believe it is useful at this juncture to clearly set forth the federal tax law requirements that apply to these financings in order to bring clarity to the marketplace, governmental issuers, legal experts and even the regulators.

Basic Principles of Tax-Exempt Financing

Since the first federal income tax was enacted, interest on obligations of states and local governments has been excluded from tax. In the 1930s and 1940s, the Internal Revenue Service ("IRS") asserted that interest on assessment bonds issued by local governments did not qualify for this exemption because private property owners that were obligated to pay the assessments (and not the issuing municipalities) were the real obligors on the bonds. The courts uniformly rejected those early IRS attempts. See, e.g., *Commissioner v. Pontarelli*, 97 F.2d 793, 1938 (Acq.); *The Riverview State Bank v. Commissioner,* 1 T.C. 1147, 1943 (Acq.); *Independent Gravel Company v. Commission*, 56 T.C. 698, 1971; Rev. Rul. 56-159, 1956 C.B. 609.

In response to IRS' concerns that these judicial decisions unduly expanded the availability of tax-exempt bonds for private businesses, in 1968 and again in 1986 Congress revised the Code to provide specific limits on the tax-exemption for municipal bonds that finance facilities for private persons. But Congress recognized that tax-exempt municipal bonds should continue to be allowed as a tool to promote certain traditional economic development purposes. Thus, even if an issue of municipal bonds is used to solely to finance property that is to be owned and used by a private person, Congress has allowed the bonds to be tax-exempt so long as principal and interest on the bonds is not payable from or secured by property used by any private person. For example, Congress made clear that municipal bonds that are secured by and payable solely from generally applicable taxes are to be tax-exempt even if all bond proceeds are used to fund a grant to a private business to induce it to locate a new factory within the boundaries of the issuer.

Traditional Financing Structures for Economic Development

Fostering local economic development, usually real estate and infrastructure development or grants to assist local business development, is one of the oldest and most important uses of municipal bonds. It is an important and well-established function of state and local governments. In many jurisdictions, it is perhaps more important than ever before given the pressing needs for economic growth and infrastructure development. While many borrowing structures are used, most of the municipal bonds issued for these purposes are either some form of assessment bond or tax increment bond. For example, assessment bonds were authorized by statute as early as 1915. In Texas, special districts trace their roots back to 1917 and public improvement district bonds ("PIDs"), secured and payable from assessments, were authorized in 1987. Tax increment bond financings ("TIFs") are authorized by statute in 49 States. They began in California around 1950 and in Texas around 1989.

Assessment bonds, including PID bonds in Texas, are paid from assessments or special taxes (as opposed to general ad valorem property taxes) levied on parcels of land that benefit from the local infrastructure facilities financed by the bonds. For general federal income tax purposes, assessment bond proceeds are treated as being loaned to the property owner or owners who are obligated to pay

the future assessments. Tax increment or TIF bonds are different as they are bonds payable from future incremental ad valorem property or sales taxes, including PILOTs. In many cases, the incremental tax payments are derived from a wide array of property owners or other taxpayers. However, in some cases, the incremental tax payments are attributable to a specific developer or business enterprise. Regardless of the source of the incremental tax payments, such tax payments are "taxes of general applicability," and the obligation to pay generally applicable taxes is fundamentally different than the obligation to repay a loan.

Quite different tax requirements apply to assessment bonds as compared to tax increment bonds. This is one area where there seems to be confusion within TEB.

Overview of Tax Requirements

Generally, except in the case of assessment bonds (and certain specified qualified private activity bonds), proceeds of tax-exempt bonds cannot be loaned to a private developer ("private loans"). Such private loans, with the exceptions noted below, violate the private loan bond restrictions in the Code. In addition, generally tax-exempt bonds cannot be issued if both (i) the assets financed by the proceeds are used by a private party ("private use") and (ii) the bonds are paid with, or secured by, payments or assets provided by a private party ("private payments"). As is true in many areas of the tax law, a number of exceptions and rules of special application result in specific definitions of private loans, private use and private payments.

Assessment Bonds

As noted above, for tax purposes, the proceeds of assessment bonds are treated as loaned to the assessed (for the most part, private) property owners. Section 141(c) of the Code sets forth a special exception to the private loan prohibition that allows the proceeds of assessment bonds to be loaned to private parties. This exception from taxable private loan status requires (i) an assessment regime to be established under state law, (ii) the requirements of that regime to be applied on an equal basis among assessed property owners and (iii) the bond proceeds to be used to finance "essential governmental function" (e.g., governmentally owned and publicly used) improvements. Bonds that meet these special requirements, relating to State and local governmental procedures and control, do not violate the private loan bond prohibition.

While assessment payments from business property owners, are deemed to be private payments, there is no private use of the bond financed assets as they are owned by local governments and used by the general public. Policy-wise, Congress has determined that this type of development financing is consistent with the general purposes of tax-exempt financing, even though it is often the real estate developer who is the initial beneficiary of the bond proceeds and uses the bond proceeds to pay for the infrastructure costs or is reimbursed with the bond proceeds for those costs. In other words, the tax rules essentially allow for private payments in this context, so long as the bonds finance public infrastructure, even though it is a private developer that uses the proceeds to pay, or get reimbursed for, its costs of providing the infrastructure.

Tax Increment Bonds

By comparison, tax increment financing, or TIF bonds have no special statutory rule relating to private loans, but also have no special limitation requiring bond proceeds to finance public infrastructure; i.e., the essential governmental function requirement discussed above does not apply to TIF bonds. Tax increment bonds qualify as tax-exempt because there is no creation of a private loan and because the bonds are not repaid from private payments or secured by privately-owned property. As the proceeds of tax increment bonds typically will be used by, or granted to, a private

developer, these bonds avoid taxable private activity bond status by being secured and payable only from taxes of general applicability (ad valorem property taxes, general sales taxes, hotel occupancy taxes, etc.).

As is true for assessment bonds, long-standing principles and specific rules in the Treasury Regulations set forth the requirements for tax increment bonds to bear tax-exempt interest. These include rules dealing with the ability of a governmental entity to make grants of bond proceeds, rules for determining when bonds are secured by and payable from generally applicable taxes, including PILOTs, and a special rule relating to avoiding private loan status when a private party receiving a grant of bond proceeds is obligated to pay the generally applicable taxes that will repay the bonds. Given the long history of these types of financings and the regulatory effort put into framing how these transactions are compatible with tax-exempt financing, it is clear that these types of financings are an appropriate use of tax-exempt bonds. Yet TEB is proceeding against some of these transactions on a variety of theories that undermine or ignore the existing statute and regulations.

Are All TIF and Assessment Bonds Developer Driven?

In a number of recent bond audits, TEB is not applying the law to the facts in cases involving tax-exempt assessment bonds and tax increment bonds. Almost every real estate development transaction starts with an agreement, often called a "development agreement," between the developer and the local agency/issuer. The development agreement describes in some detail the facilities the developer is required to install or construct and how costs of those facilities will be paid or reimbursed to the developer. This is true in most assessment district transactions where, for example, the developer is obligated to construct specified infrastructure to accommodate future residential development. Similarly, in tax increment deals, the development agreement will specify the facilities (typically to be privately owned by the developer) that will be funded, in part, by the grant of the future tax increment. In both types of transactions, the development agreement will obligate the local agency/issuer to pay or reimburse the developer for all or a portion of the developer's costs either from future assessments or from future tax increment revenues. If bonds are issued instead, the specified assessments or tax increments will be used to pay debt service on the bonds. This is a standard and common type of tax-exempt financing transaction.

In at least one current audit, TEB has taken the position that where the developer had the right to receive future ad valorem property tax increment revenue as reimbursement for its infrastructure costs, the use of those revenues to pay debt service on tax increment bonds instead is to be treated as private payments. This position was taken by TEB despite the only source of debt service on the bonds being the future ad valorem property taxes. Apparently, TEB is of the view that a right by the developer to receive these tax payments which precedes the issuance of bonds, taints the property tax revenue stream and converts the generally applicable taxes into private payments when bonds are later issued. This TEB position has the potential to call into question the tax-exempt status of literally thousands of municipal bond transactions completed all over the country and to undermine a standard financing structure for tax increment bonds. Indeed, in many, if not most tax increment financings, the development agreement precedes the bond issuance, and specifies that the developer has the right to be reimbursed either from bond proceeds or from future tax increment payments.

Equally troubling is the TEB position being taken in an audit regarding the private loan financing test. The developer had been granted the right to receive future tax increment payments expected to be derived by a city from increases in ad valorem property taxes throughout a large redevelopment district. The city's grant was required to be allocated by the developer to the costs of its commercial project located within the redevelopment district. With the city's cooperation, approval and consent,

a conduit issuer issued the tax increment bonds the proceeds of which were used by the developer for the specified purposes. The bonds were secured and payable only from the same future tax increment grant payments, the bond proceeds were paid to the developer, and the city retained the tax increment payments originally promised to the developer but not needed to repay the bonds (e.g., the excess debt service coverage). This is, in substance, the same as the city issuing the bonds. For reasons that are not at all clear, TEB has taken the position that the bond proceeds were treated as if loaned to the developer even though the developer has no payment obligation with respect to the bonds or right to any of the city retained tax increment payments.

Another recent example of TEB's antipathy towards developer driven tax-exempt bond deals is the well-publicized audits involving Florida Community Development Districts and the question of what constitutes a "political subdivision." In those cases, the IRS examined a type of assessment bond transaction where it did not like the perceived developer benefit. TEB's challenge, however, was one in which it stretched to find a problem and did so, contrary to century-old precedent regarding the definition of a "political subdivision." In connection with this enforcement matter, the IRS literally created a new definition of "political subdivision" and attempted to apply it retroactively to reach a negative conclusion as to the tax-exempt status of the bonds. While those audits were resolved on other grounds, and the IRS has more or less withdrawn this position regarding political subdivisions, the case again demonstrates the degree to which TEB will stretch or ignore existing law to reach, apparently, a pre-conceived result.

In yet another well-publicized example, TEB has concluded that bonds secured and payable from PILOTs issued to finance a public school are taxable. In that case, TEB again strained to conclude there was a private loan problem based on PILOTs to be made by a developer on an unrelated project. To be sure, the recent history of tax rules relating to PILOT transactions is complicated. However, the bonds in question were issued under prior tax rules applicable to PILOTs and the bonds were structured to comply with those prior requirements as well as with the IRS analysis set forth in a pair of high profile private letter rulings applying those prior rules. TEB's analysis apparently ignores the tax law that was in place at the time the bonds were issued and that actually applies to the bonds. Those same TEB arguments would have applied equally to the transactions approved in the two favorable private letter rulings.

Conclusion

Tax-exempt bond financing for economic and infrastructure development is an important and regularly used tool for local governments throughout the country. It can be easy to characterize any individual transaction as providing some sort of benefit to a private developer; after all, a grant of bond proceeds (or a loan in the assessment bond context) is essentially a contribution or benefit provided by the local government to a commercial enterprise. However, that is true in virtually every such transaction, and, in fact, that is the point, to provide benefit to the private developer. Fostering economic development requires the government to provide incentives to private business interests. The tax law has developed, and Congress has expressly permitted, specific rules for when tax-exempt bond financing is allowed in this context. The examples described above, indicate a willingness by TEB to ignore State and local decision making, long standing municipal bond structures and existing law and to look for new ways to attack development and infrastructure transactions. This is an inappropriate and disruptive path for TEB to be pursuing.

Orrick, Herrington & Sutcliffe LLP 2017

August 23, 2017

Reforms May Be Needed to Better Track State PAB Volume Cap Allocations.

WASHINGTON – The difficulty of tracking how states are allocating private activity bonds under their volume caps begs the question of whether reforms are needed, a Council of Development Finance Agencies staffer said during a webinar on Tuesday.

“There is some question with regard to is it time for volume cap reform,” Pete Mathews, CDFA’s manager of research & resources, who puts together a PAB volume cap survey each year, said at a webinar on the group’s 2016 report, which will not be publicly released until next week.

“There are so many variations in volume cap management among states, that it makes it kind of hard to track the issuance of volume cap,” he said.

The issuance of PABs is subject to state volume caps, which are based on an Internal Revenue Service formula that takes into account population estimates and inflation. For states and territories in 2016, volume cap was the greater of $100 per capita or $302,875,000. The $302.88 million figure is used by states and territories with small populations

Mathews said that the Internal Revenue Service only keeps track of PABs on a per project basis. Issuers of tax-exempt PABs must file a Form 8038 with the IRS. But the IRS does not publicly provide any detailed aggregate information about the filings.

CDFA, like The Bond Buyer before it, tries to collect PAB information from the states each year. But as Mathews pointed out, “Each state has its own rules and procedures for allocating volume cap.”

Some states allocate volume cap by category. They provide certain amounts for each category of tax-exempt PABs.

The may provide one amount for exempt facility bonds, which include bonds for airport, water furnishing, sewage and other facilities, another amount for single family housing bonds, and a separate amount for small issue industrial development bonds.

Other states sub-allocate volume cap to local governments or authorities. These states often have no idea how their PAB volume cap is allocated and issued.

There is no requirement for states to keep track of their PAB volume cap allocations and issuances, Mathews said.

Add to that, confusion among the differing terms used by federal, state and local governments, he said.

States use the term multifamily housing while the federal government calls it residential rental property. Both are used in connection with bonds issued to finance the construction or rehabilitation of housing projects where a specified portion of the units will be rented to moderate- and low-income families.

Single family bonds and mortgage revenue bonds, or MRBs, are both used to refer to bonds issued to finance mortgage loans on single family homes of first-time homeowners meeting certain income and purchase price requirements.

Industrial development bonds, industrial revenue bonds, and manufacturing revenue bonds are all

used synonymously. Qualified or tax-exempt small issue bonds can refer to IDBs, IRBs, MRBs, aggie bonds, or first-time farmer bonds. IDBs are small issues of bonds sold by state or local governments that lend the bond proceeds to private users such as manufacturing companies.

PAB allocations can be carried forward for three years if not immediately used. Mathew said that states have had a lot of extra carry forward since 2008 and that the extra capacity has made it easier for them to not have to worry about tracking their allocations.

Overall PAB issuance has been increasing since 2013, fueled by housing bonds, Mathew said. IDB volume has remained at roughly $250 million since 2013.

CDFA expects the 2016 report will show IDB volume at about $250 million, a slight increase from 2015 when it was $244 million, he said.

The Bond Buyer

By Lynn Hume

Published August 22 2017, 6:23pm EDT

TAX - CONNECTICUT

Town of Stratford v. LeBlanc

Appellate Court of Connecticut - August 8, 2017 - A.3d - 175 Conn.App. 362 - 2017 WL 3382328

Town brought action to foreclose municipal tax liens on real property.

Following entry of default, the Superior Court granted town's motions for judgment of strict foreclosure and rendered judgments of foreclosure by sale, and debtor moved to open the default judgments.

The Superior Court denied debtor's motions and rendered judgments of foreclosure by sale. Debtor appealed.

The Appellate Court held that debtor failed to establish reasonable cause to open default judgments.

Debtor failed to establish reasonable cause to open default judgments in municipal tax lien foreclosure action years after entry of judgments and years after fire that allegedly destroyed his relevant business records, where trial court extended foreclosure sale date, debtor did not provide sufficient reason for not filing appearance, and debtor had approximately five months after service of process before fire occurred to file appearance.

Treasury Clarifies Effective Date of Revised Definition of 'Available Amount.'

On July 18, 2016, the Treasury Department published final regulations on non-issue price arbitrage restrictions (the "**Final Regulations**"). A copy of the Final Regulations is available here. Since that time, the mid-afternoon naps of issuers, tax lawyers, and possibly Sean from *Portlandia* have been improved by reading my "comprehensive" blog post on the Final Regulations.

Among other things, the Final Regulations included substantial changes to the working capital financing rules. One such change is to the definition of "available amount" in Section 1.148-6(d)(3)(iii)(A). Very generally, tax-exempt bond proceeds can be used to finance working capital expenditures only to the extent that the working capital expenditures exceed the issuer's "available amounts." Under the prior rules, available amounts excluded proceeds of the bond issue that would finance working capital, but included proceeds from the issuer's other tax-exempt bond issues. Bob Eidnier pointed out an unintended consequence of the prior rules in his blog post on the Final Regulations:

Continue reading.

The Public Finance Tax Blog

By Joel Swearingen on August 16, 2017

Squire Patton Boggs

Florida CDDs Rebuke Residents Opposing Bond Deal.

BRADENTON, Fla. – Two central Florida community development districts contend their residents used "sophistry" in trying to persuade a judge not to approve the district's bonds, attorneys said in final briefs.

Circuit Judge Randall McDonald is expected to decide in coming weeks whether to validate up to $102 million of bonds at the request of the Poinciana CDDs, created to finance infrastructure for the Solivita development near Orlando.

The ruling will follow a July 18-21 trial in which McDonald heard residents claim that most of the debt will be used to buy overvalued amenities in Solivita from developer AV Homes, which retained ownership of the amenities it wants to sell to the CDDs.

"The districts' evidence at trial demonstrated that all elements required for validation were met," said a closing brief filed Monday by the CDDs attorney, Douglas M. Smith with Hopping Green & Sams PA.

"The districts' proposed amenity acquisition and the issuance of bonds and levy of assessments to repay the bonds is eminently reasonable under the circumstances."

Smith said the bond issue complies with Florida law, even though the residents apparently wanted the supervisors of the two CDD boards to negotiate a different deal.

"But they [the residents] cannot point to anything legally wrong with the transaction," Smith wrote. "So they employ sophistry to try to convince this honorable court to give them what they want."

The elected CDD supervisors plan to use $73.7 million of bond proceeds to buy 17 existing amenities such as pools and parks. AV Homes charges Solivita residents a club fee annually to use the facilities, filings said.

Residents opposing the bond deal, who will be charged assessments on their tax bills to pay the debt service for 30 years, contend that the CDDs improperly inflated the values of the amenities, most of

which are between 10 and 15 years old.

Opponents, in their Aug. 11 closing brief, contended that "a bond validation at the expense of residents should not be a vehicle to permit AV [Homes] to cash in on millions of dollars of illegal assessments."

"It cannot be the law that this court is required to validate bonds that are not based on fair value but rather are based on an arbitrary target amount specifically intended to allow a developer to cash out 30 years' worth of illegal fees it was never really entitled to collect," said the residents' attorney, J. Carter Andersen with Bush Ross PA.

Under Florida's Homeowners' Association Act, Andersen contended, AV Homes has illegally collected club membership fees from residents that exceeded the proportionate share of the expenses of owning and operating the amenities.

The purchase price of the existing facilities was set by calculating the present value of 30 years of fees the developer intended to collect from residents, he said.

"Through this bond validation proceeding, AV is attempting to monetize its illegal profit stream by selling the amenities facilities to the two community development districts that AV established for Solivita," Andersen wrote.

Andersen also contended that AV Homes worked with bond underwriters, MBS Capital Markets, to calculate "an enormous target purchase price for the amenities – a price based not on fair market value but instead on the profit stream AV expected to receive" from the club fees.

"AV paid and controlled the consultants the districts' boards of supervisors relied on when they agreed to AV's target price," Andersen said. "With the help of the districts' counsel, the districts' manager, and the districts' engineer – whose fees relating to the amenities purchase were also paid by AV – MBS and AV were able to monitor the consultants' work and control the conclusions of the consultants' reports."

At the same time, he said the districts' boards "mistakenly" thought their consultants were independent from AV.

Andersen also said that at least one CDD supervisor, LeRue "Skip" Stellfox, was concerned about getting an independent property appraiser to value the price for the amenities, citing a 2009 article in The Bond Buyer about an Internal Revenue Service investigation into the purchase of overvalued amenities in the Village Center CDD, which is about 80 miles north of Solivita.

The IRS concluded that the Village CDD was not a political subdivision because its board was, and would always be, controlled by a developer rather than by residents or other publicly elected officials.

Andersen alleged that AV Homes "selected most of the residents who currently serve as supervisors" for the Poinciana CDDs.

The Village investigation ultimately led the IRS to propose a controversial new definition for political subdivisions that can issue tax-exempt bonds, a determination that remains unresolved today.

"The Internal Revenue Service's dealings with the Villages in connection with an unrelated transaction has no bearing on this case," argued Smith, Poinciana CDD's attorney. "Suffice it to say,

federal income tax law is not at issue in a bond validation, nor is another CDD's dealings with the IRS relevant to whether state requirements for bonds and special assessments have been met."

Smith said his final argument focused on four main points – the valid public purpose to the project; the "irrelevance of fair value" under Florida law; the validity of the district's valuation; and the validity of the assessment allocation.

The public purpose, he said, is to construct new amenities and to acquire existing amenities for the benefit of the lands in the districts, giving the community control over the amenities and their upkeep, and providing funds for reserves and replacement.

"There is no doubt that the public purpose is valid," Smith said, adding that the districts used "sound business judgment" and engaged independent professionals to evaluate the purchase proposal by AV Homes.

The district supervisors ultimately concluded the transaction was in the best interests of the districts and their residents, he said, noting that the court is not empowered to "second-guess" the legislative decisions of the CDD boards.

"This court's role is not to evaluate the viability of the project, its financial feasibility, or other collateral
matters," he said. "Its sole role is to assure itself that the actions of the boards comport with the modest legislative thresholds for validating bonds and special assessments, i.e., that the boards did not
act arbitrarily and capriciously."

In arguing against validation, Andersen said the CDD bonds did not meet the requirements of a lawful public purpose, compliance with Florida law, or the fair and reasonable apportionment of special assessments.

"Under the public-purpose requirement, if the primary beneficiary of a project is a private party, then the bonds may be validated only if the public interest is present and sufficiently strong," he said.

Smith said the closing arguments of the resident opponents failed to sum up evidence or testimony presented or testimony at trial.

"What their closing does exemplify, however, is four classic fallacies: contextomy (taking words out of context); proof by verbosity (barraging the reader with so many "facts" one cannot reasonably respond to all); shotgun argumentation (raising every issue under the sun to con the reader into thinking something must be wrong); and argument by repetition (repeating falsities so many times that the listener begins to believe they are true)," Smith said.

William Mann and Brenda Taylor are the lead defendants opposing the CDD bond validation, though other Solivita residents have donated funds for the legal challenge. Resident Martin Kessler is also an opponent, representing himself.

The judge may hand down a ruling in the validation case before Labor Day, according to participants in the trial.

The Florida Supreme Court would hear an appeal, if filed.

In a separate case, Solivita homeowners are suing AV Homes and its subsidiary, Avatar Properties

Inc., for violating the state's Homeowners' Association Act for what they allege are the illegal collections of club membership fees.

Circuit Judge Andrea Teves Smith denied a motion to dismiss the class-action case on Aug. 4.

The Bond Buyer

By Shelly Sigo
Published August 16 2017, 11:26am EDT

When Will States Get Smart and Stop Subsidizing Movies?

In 2010, actor Ted Danson, filming "The Big Miracle" in Alaska, set off a local ruckus when he urged federal regulators to block oil drilling off the state's shores. The source of the controversy wasn't so much that a Hollywood star was pontificating about a public issue; it was that the picture was receiving nearly $10 million in state tax incentives, and many Alaskans found Danson's ingratitude shocking. Soon after, Alaska lawmakers reexamined the state's subsidies for film and TV productions. Legislators first narrowed the program, and then, in 2015, as evidence mounted that the incentives didn't pay off economically, they killed it.

Alaska is hardly alone in getting mixed up in the TV and movie biz. Starting in the early 2000s, states rushed to grab a piece of what they saw as a lucrative industry. By 2010, all but six were offering producers special deals. But a backlash has ensued, with seven states terminating the deals and a handful of others reining them in. In a sensible world, it would only be a matter of time before all local governments deep-sixed their film initiatives.

The rise of celluloid subsidies resulted from a sharp increase in the 1990s of so-called runaway productions— movies and TV shows filmed in foreign countries for cost savings. The number of U.S.-conceived movies and TV series shooting abroad rose to 285 in 1998, up from 100 in 1990, according to a study by the consulting firm Monitor Co. More than eight in 10 of those productions were in Canada, where a roughly 20% decline in the Canadian dollar, plus tax rebates that the government offered to American producers, slashed the cost of filming by about one-fifth compared with a similar production in the United States.

After the Monitor report, states took action. A few had launched modest incentive programs in the 1990s, but Louisiana changed the game in 2002 when it vastly expanded its effort, offering producers an exemption on sales taxes and an investment-tax rebate. Hollywood started shifting productions to the Bayou State, leading others to follow Louisiana's lead. States were giving away about $1.5 billion to Hollywood annually by 2010, up from less than $100 million in 2002.

Tax deals have become so pervasive that projects ranging from massive summer blockbusters to the cheesiest TV reality shows get them. In 2015, all eight Oscar-nominated films, including the ultimate winner, "Birdman," received state tax breaks. Sometimes the money goes to movies that would almost certainly be made in a state anyway. A 2014 best-picture nominee, "The Wolf of Wall Street," is a tale of New York's finance world, made by a director, Martin Scorsese, long based in New York; nonetheless, the production won $30 million in incentives to film in … New York!

One reason the incentives have spread so quickly is that they're easy to get. States have long offered subsidies for industries like manufacturing, but typically these are long-term arrangements that involve firms building or renovating physical plants — binding employers to a site for years. By

contrast, most celluloid incentives go to productions that shoot on location, which rarely requires investing long-term in infrastructure and generally produces only temporary employment. Being so mobile lets Hollywood executives shop for the best deal available on one film or season of a TV series and then go somewhere else if there's an even better deal.

This mobility makes it possible for producers to hold a state hostage, economically speaking. The producers of the hit Netflix series "House of Cards" filmed the show's first two seasons in Maryland, and then postponed production for Season 3, which was set to begin in early 2014, informing the state that they would move elsewhere if the subsidies weren't improved. The legislature caved.

Even signature productions have fled their hometowns when inducements dried up. After financing for Florida's production tax-credit program ran out, the makers of "Ballers" (an HBO series about an ex-Miami Dolphin player-turned-agent that was filmed in that city) shifted production to Los Angeles. Incentives have turned skilled workers into nomads, struggling to follow the celluloid migration.

The ephemerality of these jobs helps explain why the film industry produces so little local economic impact. Following the state tax-revenue slump that the 2008 fiscal crisis caused, several states launched studies of the film industry's economic effects to see if the budget hit was worth it — and the results were disheartening. A Massachusetts Department of Revenue 2013 report estimated that the state spent $128,575 in incentives for every film job that went to a Massachusetts resident, and $68,000 per position when jobs taken by residents of other states were included.

Much of the production money leaves the state. A Michigan analysis of film subsidies estimated that nearly half the money that productions in the state expended went elsewhere almost immediately; producers, it turned out, hired experienced out-of-state firms that moved workers into Michigan for the filming and then quickly left. In 2009, Michigan spent $37.5 million in tax credits to create the equivalent of just 216 full-time film-production jobs.

A broad evaluation of film-incentive plans in 40 states by USC researcher Michael Thom found that they produced a small uptick in jobs but had virtually no impact on wages and gross state product.

Notwithstanding these numbers, advocates keep pushing for incentives, arguing that a local film industry glamorizes a location and thus attracts tourists and educated workers looking to live in stimulating environments.

Not only are these nebulous claims difficult to justify, but given modern viewing tastes, local filming is just as likely to result in ridicule of a place and its residents as it is to glorify them. Just ask New Jersey residents what they thought of the reality series "Jersey Shore."

And in some places, the negatives have amounted to more than bruised egos and disappointing job gains.

When Michigan enacted a rich film-incentives program during the nation's 2008 economic slowdown, investors formed Motown Motion Pictures, an effort to create a Hollywood-style studio in down-and-out Pontiac. On the site of a former General Motors plant, the investors parlayed federal tax credits, state incentives, and money borrowed through municipal bonds — backed by Michigan's public-employee pension funds — to develop an $80 million facility, which would, it was hoped, employ up to 3,600 people.

But the initiative attracted just one major production — Disney's "Oz," which wound up employing a few hundred people, many from out of state. Meantime, as the payoff from the film credits failed to generate the economic activity that boosters promised, investors began making only partial

payments on their borrowed money, sticking the pension fund with the bill for the rest. After the state stopped the incentives in 2015, it had to allocate $19 million just to pay off bad debt from the studio.

Still, some states persist in trying to lure handout-seeking Hollywood producers. Last summer, Ohio doubled to $40 million annually the film tax credits it offers. Pennsylvania, which had begun shrinking its subsidies, reversed course last year to add more.

All these efforts face a massive counterattack from the two giants of the industry. Three years ago, California increased its tax credits from $100 million annually to $330 million. New York, long the No. 2 spot for film and TV production, has gone further, dishing out $420 million a year.

Both California and New York are, then, now paying heavily to keep a business they once dominated without incentives. Indeed, one economist declared that states are in "perpetual competitive purgatory" for the film business — able to hold onto productions only as long as they pony up taxpayer dollars for them. The only way out of purgatory is all together, all at once.

The Los Angeles Times

by Steven Malanga

August 13, 2017

Steven Malanga is the senior editor of the Manhattan Institute's City Journal, from which this essay was excerpted.

Throwing Money at Businesses Has Been a Bad Idea Since the Start.

It's time to abandon corporate tax breaks. Just look at their history.

While spending public resources to lure private companies and the jobs they bring has mushroomed in recent years, the idea is actually pretty old. In his book *City Power: Urban Governance in a Global Age*, published last year, law professor Richard Schragger cites a passage from the September 1890 issue of Scribner's Magazine: "A curious outgrowth of the rivalries of American cities, is the practice that obtains so generally of offering bonuses and pecuniary inducements to manufacturers to move their plant."

It was a bad idea then. It contributed to a municipal bond default crisis when promised returns did not materialize and cities could not pay off the debts they had incurred. And as the evidence densely piled up in Schragger's book demonstrates, it remains a bad idea today.

Yet the practice continues to grow. This March, the Upjohn Institute published the most comprehensive study of economic development incentives yet produced, analyzing data from 1990 to 2015. The researchers found that although the average amount of incentives tripled over that period, increasing from 9 percent of business taxes to 30 percent, they were largely ineffective and governments would have experienced the same results without the incentives 94 percent of the time.

Governments looking for a more effective way to spur economic development ought to take a look at what's going on in Richmond, Va. In 2014, then-Mayor Dwight C. Jones created the Office of Community Wealth Building, which was charged with reducing overall poverty by 40 percent and

child poverty by 50 percent by 2030. The program's integrated strategy focuses on expanded workforce development, targeted job creation, improved educational outcomes and development of a regional transportation system.

Unlike a lot of innovative government programs, the Office of Community Wealth Building has not only survived a change of administration but has been strengthened and expanded. The current mayor, Levar Stoney, lauded the program during his campaign. A quarter of Richmond's residents live below the federal poverty level and, as Stoney says, "You can't be a AAA bond-rated city without reducing poverty."

Richmond hasn't entirely abandoned the idea of incentives. While cash incentives that Stoney proposed didn't survive the budget process, two business developments in Richmond each received major tax breaks from the state. In each case the city provided customized workforce training, which the Upjohn study says research suggests "might be 10 times more effective than tax incentives in encouraging local business growth." But states typically spend only $1 on customized job training for every $20 in tax incentives, the researchers found.

In *City Power*, Schragger writes that while abandoning economic development policies that rely on tax breaks and other giveaways is practically impossible politically, "it is the right thing to do." Perhaps as the evidence piles up and experiments like Richmond's are seen as successful, more public leaders will be able to actually do the right thing.

GOVERNING.COM

By Mark Funkhouser | Publisher
Former mayor of Kansas City, Mo.

AUGUST 2017

Lawsuit Says Seattle's 'Tax-the-Rich' Measure Violates State Constitution.

A new tax-the-rich measure in Seattle was hit with its first legal challenge Wednesday.

The new Seattle measure, passed by the city council in July, would impose a 2.25% tax on any income over $250,000 or above $500,000 for couples filing jointly. It is expected to impact about 9,000, or 2%, of the city's taxpayers.

A lawsuit filed by the Freedom Foundation, a conservative think tank, on behalf of 19 Seattle citizens, alleges the measure violates the state constitution as well as restrictions on cities to impose such taxes. A separate group called the Opportunity for All Coalition, founded by Seattle venture capitalist Matt McIlwain, filed a lawsuit later in the day.

Backers of the tax welcome the suits, because they believe a court ruling in favor of the tax will pave the way for a statewide income tax.

The battle in the state courts could lead to a fundamental change to the unique politics of Washington state, a liberal-leaning state with a longstanding aversion to taxing income.

A similar measure lost in the capital city of Olympia last year, and a tax-the-rich statewide initiative was voted down in 2010.

Washington is one of seven states in the country, including Florida, Texas and Wyoming, without an income tax.

The last time voters passed a graduated statewide income tax in Washington it was struck down by the state Supreme Court in 1933 as unconstitutional. The state constitution requires property be taxed at a uniform rate, which the court said applied to income in turning down the tax.

“This tax is illegal and we are confident an independent judiciary is going to uphold the law, is going to uphold 100 years of precedent,” said David Dewhirst, litigation counsel for the Freedom Foundation.

Seattle City Attorney Pete Holmes said he believes city will be able to persuade the state’s top court that the 1930s decision was in error. The state Supreme Court’s attention to current events in recent years, including a ruling that the state was failing to adequately to fund public schools, means the court could be more receptive to taking another look at the income tax issue, he said.

“We’ve acknowledged that this a tenuous legal path forward, but we nonetheless believe it’s viable,” said Mr. Holmes.

David DeWolf, a Gonzaga University School of Law professor emeritus, said the state’s highest court would now be more open to an income tax measure, provided it was statewide and applied to a broader swath of the population, not just a few wealthy residents.

But Mr. DeWolf predicted courts would be skeptical of the Seattle tax because of the restrictions on cities imposing taxes and because of how many people are exempted from paying.

“When you impose a tax it needs to be uniform,” he said.

The Seattle economy is booming with unemployment hovering around 3%, and the city has a balanced budget. Yet as housing prices have soared, homelessness has too.

The tax would bring in about $140 million every year for the city. The money would be used to fund affordable housing, education and transit services, and replace federal funding that might be lost because of federal budget cuts.

Backers of the tax say they want the rich to pay their fair share. The state has the most regressive tax system in the nation as it raises revenue from sales, property and other taxes, according to the Institute on Taxation and Economic Policy, a nonpartisan research group.

The state’s poorest 20% of residents, or those making less than $21,000 a year, pay 16.8% of their income. The richest 1%, or those making $507,000 or more, pay 2.4% of their income, according to the group.

“Seattle is challenging this state’s antiquated and unsustainable tax structure by passing a progressive income tax,” said Seattle Mayor Ed Murray when the measure passed.

The Wall Street Journal

By Zusha Elinson

Updated Aug. 9, 2017 6:30 p.m. ET

Write to Zusha Elinson at zusha.elinson@wsj.com

NYC Mayor Promotes Millionaires' Tax to Help Fix Transit Woes.

NEW YORK — Mayor Bill de Blasio, flanked Monday by community activists, labor leaders and fellow Democratic politicians, officially rolled out a proposal for a millionaires' tax to help fix the subways and aid low-income commuters.

"People do not want to see this madness continue," de Blasio declared, citing people getting work reprimands, picking their kids up late and missing doctor appointments because of subway delays.

Henry Garrido, executive director of District Council 37, the municipal labor union, said that sometimes even the people tasked with fixing the subway can't get to work on time.

The number of subway delays has tripled in the past five years to 70,000 per month, and trains are overcrowded on some lines. About 5.7 million people take the subway on an average work day.

At the mayor's press conference, speakers stressed that the tax would affect only a handful of taxpayers — an estimated 30,000 to 35,000 — all of them in New York City. The tax, which would generate about $800 million annually, would increase the top income tax rate from about 3.9 percent to 4.4 percent for married couples who make more than $1 million and individuals making more than $500,000.

In turn, they said, the improvements would fuel the economy, benefiting rich and poor alike.

The proposal includes $250 million for half-priced Metrocards for 800,000 New Yorkers at or below the poverty level.

The tax, spearheaded in Albany by Democratic state Sen. Michael Gianaris of Queens and Assemblyman Daniel O'Donnell of Manhattan, must be approved by state lawmakers.

It faces significant challenges. Cuomo and the Republicans who control the state Senate have strongly resisted efforts to raise taxes on the wealthy in recent years. Assembly Speaker Carl Heastie, a Bronx Democrat, has repeatedly proposed higher taxes on millionaires to no avail.

The often frosty relationship between de Blasio and the Senate's Republican leaders won't help.

"I'm pleased Mayor de Blasio recognizes that additional funds contributed by the city would further that goal, but raising taxes is not the answer," said Senate leader John Flanagan, a Long Island Republican. Flanagan added that the city has a $4.2 billion surplus, "and therefore has the ability to do so with existing resources. Mayor de Blasio doesn't need to reach into the wallets of city residents to make that happen."

Gianaris said opponents "may posture in the beginning," he but predicted they'll come around.

O'Donnell agreed. "Public sentiment … drives a lot of this. The public is paying attention to what the MTA is, who runs it … and what they're doing with the money."

And the mayor's proposal doesn't address the need for emergency funding to fix the ailing system, transit officials and the governor said. Joseph Llota, chairman of the Metropolitan Transportation Authority, recently unveiled an emergency plan to stabilize the system at a cost of about $836 million. The governor offered to split the cost of the plan with the city, but the mayor refused to commit money to support it.

Associated Press

Updated Aug. 7, 2017 4:09 p.m. ET

BDA Submits Comment Letter: Urges the Secretary of the Treasury to Withdraw the Proposed IRS Political Subdivision Rule.

BDA Comment Letter: BDA Urges Withdrawal of IRS Political Subdivision Rule

- Please review the BDA's comment letter, which urges the Secretary of the Treasury to recommend to the President, per the process required by Executive Order 13789 (outlined below), that the IRS proposed political subdivision rule be rescinded.
- BDA reiterates the arguments it made in previous comment letters, including that the rule is a burdensome and inappropriate "one-size-fits-all" federal standard.
- Additionally, the proposed rule's definitions would add unnecessary complexity to tax law and hamper economic growth by denying many communities of the ability to issue tax-exempt bonds to finance beneficial public projects.

Proposed Political Subdivision Rule Targeted for Potential Modification or Withdrawal

Treasury has released a report focused on implementing Executive Order 13789 (Identifying and Reducing Tax Regulatory Burdens) that directed Treasury to review temporary, proposed, or final IRS regulations issued between January 1, 2016 and April 21, 2017 (the date of the executive order). (Please see the Bond Buyer story here.)

Specifically, Treasury was directed to identify regulations that:

- Impose an undue financial burden on U.S. taxpayers
- Add undue complexity to the Federal tax law
- Exceed the statutory authority of the IRS

The Executive Order instructs the Treasury to submit a report to the President by September 18, 2017 recommending specific actions to mitigate the burden imposed by the regulations identified.

Political Subdivision Proposed Rule Targeted

- The political subdivision proposed rule was one of eight regulatory actions identified as burdensome, complex, or outside the statutory authority of the IRS to be reviewed further

Bond Dealers of America

August 8, 2017

NASACT: Questions Surround Tax Reform and Maintenance of the Tax Exemption for Municipal Bonds.

Congress is gearing up to tackle tax reform this fall, and it appears almost anything is on the table. For most state and local governments, concern surrounds loss of the deduction for state and local

taxes and more importantly the maintenance of the tax exemption for municipal bonds.

The exemption of tax on municipal bonds has existed since the Sixteenth Amendment to the Constitution in 1913, which developed the structure for our federal tax system. The exemption allows states and municipalities to finance public projects at a lower finance rate than borrowing on the open market. Lower financing rates mean savings for local taxpayers while offering interest free of federal tax, and in many cases, state tax, for investors. This financing vehicle is one that is efficient, low-cost and that assists in creating essential jobs. It should be recognized for its importance for building and maintaining the infrastructure in our country.

There are real and tangible benefits that the tax exemption for municipal bonds affords our governments and its citizens. NASACT members are engaged in a variety of programs to manage taxpayer dollars and finance public infrastructure in the most efficient and effective manner possible. The tax exemption for municipal bonds is one such vehicle that allows our governments to successfully finance important and needed public projects. Such projects include the construction and maintenance of schools, streets, highways, hospitals, bridges, low-income housing, water and sewer systems, ports, airports and other public works.

Any repeal or limitation of the tax exemption would drive up the costs of building infrastructure, which in turn could cause state and local governments to scale back or eliminate important public projects. If investors see less of a tax break, they could demand higher interest to make up for the loss or move their funds to other investments where they would receive favorable tax treatment. Such changes will result in higher borrowing costs for governments.

As fiscal stewards of taxpayer dollars, your input to your congressional representatives is paramount. Should you have an opportunity to visit your representatives at home or if you are in Washington, we urge you to stress the importance that the tax exemption by highlighting the infrastructure financed by municipal bonds in your state. You may also wish to call or contact your congressional delegation as efforts to reform the nation's tax system unfold.

NASACT is involved in several initiatives and coalitions regarding the tax exemption and our local government partners at National Association of Counties (NACo) and the Government Finance Officers Association (GFOA) have developed a myriad of tools to help stress the importance of the tax exemption. These tools are available at:

http://www.naco.org/advocacy/action-centers/municipal-bonds
http://www.gfoa.org/products-and-services/resources/federal-government-relations/federal-tax-exemption-municipal-bond

Thursday, August 10, 2017

NABL: IRS Clarifies Effective Date in Non-Issue Price Arbitrage Regs.

The IRS has sent to the Federal Register for publication on Monday, August, 14, 2017, a correction to clarify the effective date in the non-issue price arbitrage regulations published in the Federal Register July 18, 2016. The correction adds regulation section 1.148-6(d)(3)(iii)(A) to the list of provisions that are effective for bonds sold on and after October 17, 2016.

The correction is available here.

Hatch Interview Raises Concern about Municipal Bond Tax Exemption, SALT Deduction.

WASHINGTON — The continuing concern that the tax exemption for municipal bonds or the federal deduction for state and local taxes may be curbed or eliminated under a Republican tax reform plan was reinforced Sunday by the chairman of the Senate Finance Committee.

Charitable donations and mortgage interest are the only two federal tax deductions that Sen. Orrin Hatch, R-Utah, said he can guarantee will survive under tax reform.

“Everything in the code it going to be looked at,’’ Hatch said during an interview on the Fox News program “Sunday Morning Futures.’’

Hatch’s comment highlights why mayors, governors and local officials around the nation are continuing to lobby congressional lawmakers on these issues.

Last week New Orleans Mayor Mitch Landrieu, the president of the U.S. Conference of Mayors, led a bipartisan delegation of five other mayors who met with five U.S. senators the day before senators began their August recess.

“I think that we know it’s fair to say that we know that it’s in play,’’ Landrieu told reporters after the meetings, referring to the SALT deduction. “Any time there’s a jump ball we want to make sure that we get it. So that’s why we’re here.’’

Mayors also stressed the importance of maintaining the tax-exempt status of municipal bonds. “If you take away the tax exempt status of municipal bonds you will cost us 28% more than you used to,’’ he said.

Hatch, who was not among the senators who met with the mayors, said Sunday that he’s hoping to work on tax reform with his Democratic counterpart on the finance committee, Sen. Ron Wyden of Oregon.

Republicans are eyeing the elimination of most tax deductions in order to broaden the tax base and lower rates, but Hatch expressed doubts during Sunday’s interview that President Trump’s goal of lowering the corporate rate to 15% is achievable.

“I think it’s more likely it will come down around somewhere between 20% and 25%,’’ he said.

Nor did Hatch support presidential adviser Steve Bannon’s suggestion for a top individual tax rate of 44.5%.

“I’m not for that,’’ Hatch said. “We’re certainly going to hit the rich. There’s no question they’re not going to get anything, hardly anything out of any tax reform that we do. But the fact of the matter is, you know almost 60% of all taxes is paid by the upper 5%.’’

Hatch also expressed doubt that tax reform can achieve a revamp of individual rate to only three rates of 15%, 25% and 35%. “If we can get those rates it’d be miraculous,’’ he said.

The Bond Buyer

By Brian Tumulty

Published August 07 2017, 1:03pm EDT

Why Main Street Doesn't See More Historic Tax Credit Financing and What Can Be Done About It.

Both Houses of Congress have promised to produce draft legislation to overhaul the federal tax code in September 2017. On the table for possible elimination is the federal historic tax credit (HTC). As one strategy to meet this threat, legislators in both houses have introduced legislation, the Historic Tax Credit Improvement Act (HTCIA), which would modernize the HTC in the context of a reformed tax code. As described in the following article, the HTCIA would address many of the barriers to the use of the HTC for small Main Street transactions. Main Street organizations are urged to contact their Congressional delegations to co-sponsor this bill and protect the HTC from elimination under tax reform. Consider signing the National Trust's advocacy letter and hosting a site visit for your Members of Congress during the August recess. For help, contact Shaw Sprague at ssprague@savingplaces.org.

On July 30, 2016, after six inches of torrential rain, a flash flood roared down Main Street in Ellicott City, Maryland, a vibrant 18th century commercial district. Located at the confluence of Tiber Creek and the Patapsco River, this popular destination for Baltimore and Washington residents has been plagued many times over the years with damaging floods. This time, tragically, two people died, hundreds of cars were damaged or destroyed and scores of businesses were shuttered. Just under one year later, in a remarkable turnaround, 90 percent of the commercial properties are now back in service. Ellicott City is a certified Main Street Maryland community.

In the midst of this human and cultural disaster, the Main Street program, managed by the Ellicott City Partnership, collaborated with Preservation Maryland to provide a variety of disaster relief financing that helped expedite the recovery. Preservation Maryland set up a field office to provide technical assistance to property owners who qualified for the federal and state historic tax credits (HTC). The Main Street program focused on short-term emergency grants to defray the costs of immediate health, transportation and safety concerns. Main Street's programs, described in more detail below, were a hit. But in the end, only a few buildings utilized the federal credits to help finance damage repair. (See below for a refresher on 20 percent and 10 percent HTC basics.)

Continue reading.

Main Street America

July 25, 2017 | John Leith-Tetrault,

Public Funding for Scottrade Center Faces Lawsuit, Comptroller's Opposition.

ST. LOUIS – Opponents of the publicly funded $64 million renovation to Scottrade Center filed suit Friday to keep the city from paying for the project, alleging the plan is unconstitutional in Missouri.

And on the same day, a spokesman for St. Louis Comptroller Darlene Green said she had no intention of signing the financial agreement that would fund the city's commitment to the arena.

“The Comptroller has not approved the transaction to issue bonds for the renovation of Scottrade Center, as it would incur debt to the city’s general fund for nonessential services and negatively impact the city’s credit,” Green spokesman Tyson Pruitt said.

In a statement, Kiel Center Partners, the Blues ownership group, called the lawsuit “frivolous” and said Green has a legal obligation to sign the finance agreement.

Pruitt said the comptroller was asking other city officials to find a new way to fund the project. Her refusal to approve the bond transaction raises legal questions about the comptroller’s ability to impede proposals passed by the Board of Aldermen.

Green has apparently refused to sign the documents since February when the financial agreement was approved by the Board of Aldermen and the Board of Estimate and Apportionment. Now, her argument could be bolstered by the fact that litigation is pending to stop the agreement.

The city of St. Louis, the St. Louis Blues, and the leaseholders Kiel Center Partners are among the defendants named in the lawsuit filed Friday. It was filed on behalf of Alderman Cara Spencer, former state Rep. Jeanette Oxford and former city counselor James Wilson.

The lawsuit alleges the ordinance is unenforceable under Article VI of the Missouri Constitution, “in that it permanently grants substantial public money to a for-profit corporation for the purpose of assisting that corporation to make further profits for itself.” The city owns Scottrade Center through a public-private partnership signed in 1992, which the lawsuit alleges the ordinance also violates.

In a prepared statement, Deputy City Counselor Michael Garvin said the city would not comment on the litigation, but noted the ordinance and financing agreement were approved properly by the city.

“We will vigorously defend the City, its ordinances and agreements,” Garvin wrote.

Mayor’s spokesman Koran Addo did not comment in response to questions on the comptroller’s statement.

Kiel Center Partners specifically attacked Spencer’s intentions for filing suit.

“This lawsuit, spearheaded by one member of the Board of Aldermen in a clear attempt to counter the consensus of her fellow elected officials, is frivolous, disappointing and embarrassing to our city,” read the statement, issued under Scottrade Center letterhead. “It also has the potential to be extremely costly, not only to taxpayers, but to the regional and national reputation of St. Louis.”

In response, Spencer said, “We’re exploring the legality of the ordinance. I would think the Blues would want to welcome that.”

Under the 1992 agreement, the plaintiffs argue the city’s ownership of the building is limited to what is called a “bare legal title” where the Blues have exclusive control over the property for 50 years. Aldermen who supported public financing for the renovations argued earlier this year the city is obligated to pay because the city owns the building, but opponents say the lease essentially grants the building to the Blues through 2042.

The original ordinance passed by the Board of Aldermen in 1992 also notes the city was entering the agreement because it did not have the funds to pay to renovate the former Kiel Auditorium.

The Board of Aldermen approved the new renovations funding in a contentious meeting in February by a 15-12 vote. Coupled with interest on the bonds, the city is expected to pay $105 million on the

project over 30 years.

Erich Vieth, attorney for two of the plaintiffs, said the original lease also stipulates that if the city were to pay for renovations, the owners would be obliged to pay it back in the form of increased rent. The Blues owners currently pay $1 a year in rent.

Work already has begun on the three-year renovation project, but how it's currently being financed isn't clear.

The suit was filed in the 22nd Circuit Court in St. Louis. It has been assigned to Judge Robert Dierker Jr.

Aug 11, 2017

By Mike Faulk

St. Louis Post-Dispatch

Prospects of Sports Stadium Financing in the U.S.

The use of tax-exempt municipal debt for the construction of sporting facilities has been a very common practice amongst many government entities. The commonly held belief amongst many politicians (who often decide on the governmental subsidies for these infrastructures) and their constituents is that big sporting infrastructure construction has a substantial positive impact on local economies.

However, there have been many counter-arguments stating the opposite and arguing against the governmental subsidies to construct sporting venues. In the Tax Reform Act of 1986, there were propositions introduced to limit the use of public funding for sporting stadiums, because unlike other publicly funded infrastructures (roads, water and wastewater infrastructures, bridges, and so on,) sporting facilities provide benefit to a small number of people. Even under President Obama's administration, there were proposals that were brought forward on the use of tax-exempt bonds for stadium construction – eventually they were rejected by the Congress.

In this article, we'll take a closer look at the governmental subsidies for the construction of sports stadiums, their net impact on local economies and whether this type of municipal debt is worth holding or adding on to your investment portfolio.

Continue reading.

municipalbonds.com

by Jayden Sangha

Jul 27, 2017

S&P: Overview Of Request For Comment On U.S. & Canadian Not-For-Profit

Transportation Infrastructure Enterprises.

In this CreditMatters TV Segment, Director Joe Pezzimenti and Managing Director Kurt Forsgren briefly discuss the proposed changes in the approach for determining the ratings for U.S. and Canadian not-for-profit transportation infrastructure enterprises and the potential rating implications, if adopted.

Watch Video

Aug. 8, 2017

TAX - OHIO

Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision

Supreme Court of Ohio - July 18, 2017 - N.E.3d - 2017 WL 3085080 - 2017 -Ohio- 5823

City schools board of education appealed decision of the Board of Tax Appeals that retained reduced values that county board of revision had adopted for condominium parcels.

The Supreme Court of Ohio held that:

- In reviewing valuation of property for tax purposes, Board of Tax Appeals (BTA) was to perform its own weighing of evidence in record rather than giving presumption of validity to value assigned by county board of revision; and
- A board of revision may, when reviewing complaints seeking a decrease in the assessed value of taxable property, elicit evidence from consultants and staff appraisers.

TAX - NEVADA

Southern California Edison v. State Department of Taxation

Supreme Court of Nevada - July 27, 2017 - P.3d - 2017 WL 3221310

Taxpayer, which was electrical utility company, brought action against Department of Taxation seeking refund of use tax paid on out-of-state coal purchases.

Following bench trial, the District Court entered final judgment finding that taxpayer was not entitled to tax refund. Taxpayer appealed.

The Supreme Court of Nevada held that:

- Taxpayer’s out-of-state coal purchases were subject to use tax;
- Taxpayer was not entitled to refund of use taxes as remedy for dormant commerce clause violation; and
- Taxpayer was not entitled to tax credit toward use tax.

Out-of-state purchases of Arizona coal by Nevada taxpayer, which was electrical utility company, were subject to Nevada use tax, even if purchases would have been exempt from sales and use tax if coal had been from Nevada mine, since use tax applied with respect to all personal property acquired out of state in a transaction that would have been taxable if it had occurred within Nevada, determining whether coal sales would have been taxable if they had occurred in Nevada depended

on location of sale, not location of mine, Nevada-based sales of Arizona-mined coal were taxable in Nevada, and allowing sales and use tax exemption for proceeds from in-state mines to apply in order to avoid dormant commerce clause violation would allow taxpayer to avoid use, sales, and net proceeds taxation.

Absent any favored competitors that benefited from use tax exemption for proceeds of in-state mines that violated dormant commerce clause, taxpayer, which was electric utility company, was not entitled to refund of use taxes it paid on out-of-state coal purchases as remedy for dormant commerce clause violation, where other coal-based power companies did not use coal mined in state, in that there were not large enough coal deposits in state to justify commercial operations, and energy producers using other in-state input material, such as oil, geothermal, and natural gas, were not substantially similar competitors to taxpayer, despite output of electricity being same.

Arizona transaction privilege tax (TPT) paid by Nevada taxpayer, which was electric utility company, as part of purchase price for coal did not constitute sales tax, and, thus, taxpayer was not entitled to tax credit toward use tax it paid on same out-of-state purchases, since TPT was tax upon privilege or right to engage in business in Arizona, not upon sales, and TPT tax was borne by Arizona seller of coal, despite being passed on to taxpayer as part of purchase price.

Arizona's mining transaction privilege tax (TPT), as a tax levied for the privilege of conducting nonmetalliferous mining business in Arizona, is not rendered a sales tax simply because it uses gross proceeds of sales to determine the value of the tax owed upon severance from the ground.

TAX - MISSOURI

St. Louis Rams LLC v. Director of Revenue

Supreme Court of Missouri, en banc - August 1, 2017 - S.W.3d - 2017 WL 3259771

Director of Revenue sought judicial review of decision of Administrative Hearing Commission determining that professional sports franchise was entitled to a refund of state sales tax paid, plus statutory interest, for a certain period and that franchise was not liable for state sales tax and interest assessed by the Director for another period.

The Supreme Court of Missouri held that entertainment license tax (ELT), which franchise was obligated to pay to city based upon the gross receipts derived from admission charges and which professional sports franchise passed directly onto ticket buyers, was included in "the amount paid for admission," for purposes of sales tax statute, and thus the total amount franchise received from ticket buyers, including the ELT, was subject to sales tax and did not constitute a tax upon a tax.

The IRS Isn't The Only One Monitoring Your Exempt Hospital.

As discussed in my previous blog post, the IRS is ramping up compliance audits of governmental hospitals who are exempt under 501(c)3. However, the IRS isn't the only one monitoring your tax-exempt hospital. Other organizations have started policing these requirements.

As a refresher, at the end of 2014, the IRS released the final regulations under Section 501(r) for charitable hospitals exempt under Section 501(c)3. These regulations are in response to requirements enacted under the Affordable Care Act, and they finalize regulations first proposed in

June 2012 to hold tax-exempt hospitals to a higher standard.

The final regulations discussed requirements for what must be included in the written Financial Assistance Policies, along with information detailing requirements for Amounts Generally Billed, Limitations on Charges, Extraordinary Collection Actions, and Community Health Needs Assessments.

At the time regulations were issued, many wondered how the IRS would ensure tax-exempt hospitals were following all of these new requirements. In time, the IRS updated Schedule H of Form 990 to include general questions regarding these requirements. The form instructs hospitals to include website links for financial assistance policies and CHNAs.

However, the IRS isn't the only one looking at your policies for compliance under 501(r). Specifically, the Southern Poverty Law Center (SPLC) has started issuing letters to tax-exempt hospitals detailing their potential failures under 501(r). In particular, the SPLC is closely examining tax-exempt hospitals' Financial Assistance Policies (FAPs). For example, the SPLC is examining policies to:

- Ensure FAPs are being made widely available to the public, including the plain language summary;
- Make sure that the policies are available in other languages if the area has a certain number of non-English speaking residents;
- Verify that the FAPs include the basis for calculating the amounts actually charged or billed to patients; and
- Confirm that the policies list any Extraordinary Collection Actions that the hospital may take against patients.

These SPLC letters ask that the hospitals return proof of correction to them within a short time frame. If a hospital does not respond to them in a timely fashion, they will file a formal complaint against the hospital to the IRS. And trust me, you don't want to be put on the IRS' noncompliance "radar," as this significantly increase your chances of an IRS audit.

Last Updated: August 3 2017

Article by Amie Whittington

Horne LLP

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Moving On Down – In the Right Direction.

In contrast to the theme song, "Movin' on Up", from the 1970s sitcom The Jeffersons, sometimes "moving on down" is better in certain circumstances. For example, it is preferable when discussing the sequestration rate for direct pay bonds. Since sequestration began during the fiscal year ending September 30, 2013, the sequestration rate (i.e., the portion that the Federal government will not pay) has generally been going down. The IRS just announced that the 6.6% haircut for the fiscal year ending September 30, 2018, will apply to all subsidy payments made by the Treasury Department that are processed on or after October 1, 2017. The 6.6% sequestration rate is lower than the current 6.9% sequestration rate.

Continue Reading

By Cynthia Mog on August 9, 2017

The Public Finance Tax Blog

Squire Patton Boggs

SIFMA Submits Comments to IRS on Implementation of Executive Order 13789: Identifying and Reducing Tax Regulatory Burdens.

On August 7, SIFMA's Municipal Securities Division provided comments to the Internal Revenue Service (IRS) on IRS Notice 2017-38, "Implementation of Executive Order 13789 (Identifying and Reducing Tax Regulatory Burdens)" and the pending 2016 IRS proposal to redefine "political subdivision" for the purpose of determining issuers who are eligible to issue tax-exempt bonds. SIFMA reiterated our previous position in opposition to the proposed change and urged the Treasury Department to withdraw the proposal.

SIFMA Comment Letter

Rays Can Learn from Oakland A's New Privately Funded Stadium.

The Oakland Athletics, whose Coliseum is the one MLB stadium that gets as much grief as Tropicana Field, are moving closer to a new home.

The team recently launched a website that provides some information about their process, and also includes a survey to help guide site selection and stadium design. (The Rays also have a similar site.) What caught our attention when perusing the Oakland website was this line:

> Our new ballpark will be privately financed.

At a time when even the wealthiest franchises are turning to taxpayers for construction funds — $615 million of the $850 million for Citi Field and $1.2 billion of the $2.3 billion for new Yankee Stadium was publicly financed — are there teams that really pay their own way?

If anything, the Athletics should have had a strong negotiating position. Oakland is losing the Raiders to Las Vegas, and the Warriors are moving to San Francisco. The team ought to have some leverage with a city government seeking to hold on to its last major professional team. Instead, they claim to be taking no taxpayer dollars.

From an MLB perspective, this changes everything.

Continue reading.

by Mister Lizzie @ElizabethStrom

Aug 11, 2017

TAX - WISCONSIN

Milewski v. Town of Dover

Supreme Court of Wisconsin - July 7, 2017 - N.W.2d - 2017 WL 2883925 - 2017 WI 79

Property owners brought action against municipality, alleging excessive property tax assessment and raising as-applied constitutional challenges to statutes governing procedure to be followed in challenging tax assessor's property valuation.

The Circuit Court granted municipality summary judgment. Property owners appealed. The Court of Appeals affirmed. Property owners petitioned for review, which petition was granted.

The Supreme Court of Wisconsin held that:

- Property owners had due process right to contest tax assessor's valuation of their real property as excessive;
- Tax assessor who enters home to conduct an "interior view" occupies private property for the purpose of obtaining information and is therefore conducting a Fourth Amendment search; and
- Statutory scheme governing process for challenging tax assessor's property valuation was unconstitutional as applied to property owners.

Warrantless home search, conducted by tax assessor in conformance with requirements of statutory scheme governing valuation of homes for tax purposes, was not, as matter of law, reasonable. While useful in ensuring compliance with state constitution's uniformity clause, by statute, real property could also be valued from best information the assessor could practicably obtain, such search was not minor intrusion, and not every application for an administrative warrant would result in issuance of a warrant.

Statutory scheme governing process for challenging tax assessor's property valuation, which scheme conditioned property owners' right to contest tax assessor's valuation of their real property as excessive on their granting of assessor's request to view property, was unconstitutional as applied to property owners who exercised their Fourth Amendment right to deny assessor's request to inspect home's interior, and who were thereafter denied their Fourteenth Amendment due process right to contest their increased tax burden.

NABL Submits Comments on Proposed Political Subdivision Regs.

Today NABL submitted comments in response to Notice 2017-38 that, pursuant to Executive Order 13789, identified significant tax regulations issued on or after January 1, 2016 that (i) impose an undue financial burden on U.S. taxpayers, (ii) add undue complexity to the Federal tax laws, or (iii) exceed the IRS' authority. Eight regulations were identified, including the proposed regulation on the definition of political subdivision. Under Executive Order 13789, the Treasury Department must submit a report to the President by September 18, 2017 specifying the actions it will take to mitigate the burdens identified in Notice 2017-38. Notice 2017-38 requested public comment on what steps the Treasury Department should take.

NABL reaffirmed its position that that the proposed political subdivision regulations should be withdrawn and that the Treasury Department should affirm the applicability of the Shamberg rule as the sole standard for evaluating a governmental entity's status as a political subdivision under section 103(c)(1) of the Code.

NABL's comments can be found here.

TAX - OHIO

Image Group of Toledo, Inc. v. Holland-Springfield Township Joint Economic Development Zone

Court of Appeals of Ohio, Sixth District, Lucas County - June 23, 2017 - N.E.3d - 2017 WL 2709811 - 2017 -Ohio- 4470

Taxpayers, which were businesses and an individual in a joint economic development zone formed by a township and village, brought action against zone, zone's board of directors, and township that had joined with a village to form the zone, challenging the zone's implementation of 1.5% income tax and seeking a declaratory judgment that the contract creating the zone was void.

The Court of Common Pleas found that taxpayers had standing, found that zone's creation met statutory requirements, and, in a second judgment upon reconsideration, found that the income tax imposed by the zone was invalid. Taxpayers appealed, and zone, zone's board of directors, and township cross-appealed.

The Court of Appeals held that:

- Taxpayers had standing to challenge zone's legality;
- Township and village agreed in their contract forming the zone to share the costs of improvements for the zone, as required by statute governing the formation of joint economic development zones;
- Zone complied with statutory requirements concerning the selection of its review council;
- Failure by township and village to provide for public inspection the addendum to zone's formation contract and zone's economic development plan for 30 days prior to a public hearing did not void zone's creation;
- Township's submission to county board of elections of a copy of the resolution that approved the formation of the zone satisfied statute governing the formation of joint economic development zones; and
- Township provided valid consideration to support the contract with village to form the zone.

Taxpayers, which were businesses and an individual in a joint economic development zone that had imposed a 1.5% income tax, had standing to challenge the zone's legality. The limited applicability of the zone's income tax was a discreet and particularized injury to taxpayers and others located within the zone that was different from that suffered by the public at large.

Township and village agreed in their contract that formed a joint economic development zone to share the costs of improvements for the zone, as required by the statute governing the formation of such zones, despite argument that it was acknowledged at a meeting of the township trustees that the village was only a partner for legislative purposes. Statute at issue defined "contributions" broadly to be any form to which the contracting parties agreed, and township and village agreed to the village's nominal contribution to engage in activities to promote, compliment, and benefit economic development in the zone as determined in the sole discretion of the village and agreed to

village’s possible contribution to maintenance and improvements to rights of way.

Under the statute allowing for the formation joint economic development zones, if new, expanded, or additional services, facilities, or improvements are part of the zone’s economic development plan, a schedule for them must be included in the plan.

Any decision by the Court of Appeals as to taxpayers’ appeal of the trial court’s conclusion that the lack of scheduled new, expanded, or additional services, facilities, or improvements in a joint economic development zone, whose existence taxpayers were challenging, meant that none of the zone’s income tax revenue had to be spent in the zone would have been purely advisory, and thus the Court of Appeals would decline to address the issue, where no income tax revenue had yet been collected.

Joint economic development zone between township and village complied with statutory requirements concerning the selection of its review council, where township administrator accessed publicly available information, consulted with the county auditor, and used her own experience from living in the area to ascertain the four largest employers, which had first chance at representation on the council under the statute governing joint economic development zones, one of the employers declined appointment to the council, another employer was unavailable to attend the meeting and failed to respond to future requests, the purportedly next largest employer failed to timely respond as to how many people it employed, and the next two employers in line accepted appointments.

Failure by township and village, which had formed a joint economic development zone, to provide for public inspection the addendum to zone’s formation contract and zone’s economic development plan for 30 days prior to a public hearing did not void the creation of the zone. Statute governing the formation of joint economic development zones did not require an additional 30 days of public inspection every time a change was made to the proposed contract forming a zone, and the formation contract, a description of the zone’s boundaries of the zone, and the zone’s economic development plan were available for public inspection for 30 days prior to a public hearing.

Township’s submission to county board of elections of a copy of the resolution that approved the formation of a joint economic development zone with village satisfied statute that required each party to the formation of a zone to submit a copy of the ordinance or resolution approving the contract forming the zone to the county board of elections, despite argument that township did not submit with the resolution a copy of the contract with the village forming the zone; submission of a copy of the resolution was all that the statute required.

Township provided valid consideration to support the contract with village that formed a joint economic development zone with township, where township agreed under the contract to provide expanded public services beyond those that it was already providing and to provide for the construction and improvement of such roads in the township it deemed appropriate to provide an improved transportation network to benefit the zone.

Taxpayers, which were business and an individual located in a joint economic development zone that township and village had formed, lacked standing to challenge the adequacy of consideration of the township and village’s contract forming the zone, where taxpayers were incidental beneficiaries to the contract.

Oh Great; More Issue Price Talk.

Various industry groups and issuers from around the country have re-submitted comments applauding Treasury for including the proposed political subdivision regulations among those on the chopping block, following the President's Executive Order 13789 to eliminate burdensome tax regulations. Not surprisingly, the style of most of those submissions has been simple and thematically consistent: "Good Job. Keep Going."

There appears to be no appetite, though, for telling Treasury that it should have included the new issue price regulations as a "significant" regulatory project that deserved a second look. You'll recall that Treasury did not even examine the new issue price regulations to see whether they meet the President's criteria in the Executive Order. (In other words, the issue price regulations didn't just escape the executioner's blade; they were never captured.) Instead, everyone seems to be of the view that it's better to live with the "devil that we know" rather than staring into the abyss of what might be proposed and adopted next.[1]

Continue reading.

The Public Finance Tax Blog

By Johnny Hutchinson on August 3, 2017

Squire Patton Boggs

IRS: Bonds Tax Exempt after Hospital Contract with Pharmacy School.

WASHINGTON – A recent Internal Revenue Service private letter ruling is being greeted by tax lawyers as confirmation that the tax-exempt status of bonds issued by public teaching hospitals isn't jeopardized under most agreements with medical schools, nursing schools and pharmacy schools.

IRS private letter ruling 2017226007 dated July 13 addressed the case of an unnamed county hospital with tax-exempt bonds outstanding that signed a five-year contract with a pharmacy school. The contract does not involve money. It allows pharmacy students to perform clinical rotations but the school creates the curriculum, takes attendance and provides instructors.

The hospital, meanwhile, has the right to immediately remove any student or faculty member who jeopardizes the hospital's license or the health and safety of patients, visitors or staff.

The IRS concluded the agreement is a management contract, but found that it did not meet the safe harbor conditions under the new Revenue Procedure 2017-13. That procedure clarified certain types of arrangements and compensation that would not be treated as providing a share of net profits.

Even so, the IRS concluded that the agreement did not result in a private business use that would jeopardize the tax exempt status of its bonds.

Under the tax code, bonds are private activity bonds if more than 10% of the proceeds are used for private use and more than 10% of debt service payments are from or secured by private parties.

"All big state teaching schools are going to have arrangements like this,'' said Elizabeth Walker, bond and tax attorney at the Indianapolis office of Hall, Render, Killian, Heath & Lyman, the nation's

largest health care-focused law firm.

Walker, who says 90% of her work deals with hospitals and health care systems, described the agreements as “the norm around the country.’’

Alexios Hadji, an attorney for Squire Patton Boggs in Columbus, Ohio who posted a commentary on the IRS letter on his law firm’s public finance blog last week, said the letter ruling was the first involving hospital management contracts since IRS Revenue Procedure 2017-13 took effect.

“If those students are coming from a school there has to be an agreement to allow them access to the facilities of the hospital,” Hadji said on Monday, emphasizing the importance of the agreements to teaching hospitals.

Walker said she is reassured that agreements in which no money is exchanged are still considered management contacts by the IRS.

Walker advises clients that agreements with for-profit medical schools, which are often based in the Caribbean, constitute a private use when the school makes a payment to the hospital to place a graduate into the hospital’s clinical rotation.

“A plumber doesn’t pay me to come do my plumbing,’’ Walker said, making an analogy. “That’s where I have come across this issue a lot.’’

Hadji said the private use issue comes up when a hospital shares profits with a private business, such as an on-site cafeteria run by a vendor that has an incentive measure in the contract.

The IRS cautions that PLRs cannot be relied on by other parties.

The Bond Buyer

By Brian Tumulty

Published July 31 2017, 4:08pm EDT

IRS FY2018 Update: Effect of Sequestration on State & Local Government Filers of Form 8038-CP.

Pursuant to the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, refund payments to certain state and local government filers claiming refundable credits under section 6431 of the Internal Revenue Code applicable to certain qualified bonds are subject to sequestration.

Refund payments processed on or after October 1, 2017 and on or before September 30, 2018 are reduced by the fiscal year 2018 sequestration rate of 6.6 percent, regardless of when the amounts claimed by an issuer on any Form 8038-CP was filed with the IRS. The sequestration reduction rate will be applied until a law is enacted that cancels or otherwise impacts sequestration.

These reductions apply to Build America Bonds, Qualified School Construction Bonds, Qualified Zone Academy Bonds, New Clean Renewable Energy Bonds, and Qualified Energy Conservation Bonds for which the issuer elected to receive a direct credit subsidy pursuant to section 6431.

Issuers should complete Form 8038-CP in the manner provided by the Form 8038-CP Instructions, and will be notified through correspondence that a portion of their requested payment was subject to the sequester reduction.

Issuers with any questions about the status of refunds claimed on Form 8038-CP, including any sequester reduction, should contact IRS Customer Account Services at 1-877-829-5500.

Yearly Sequestration Rate Reduction

Fiscal Year (October 1 thru September 30) Sequestration Rate Reduction

2018 6.6%
2017 6.9%
2016 6.8%
2015 7.3%
2014 7.2%
2013 8.7%

IRS Says $26.5M of Bonds for Statler Hilton Redevelopment Project in Dallas are Taxable.

WASHINGTON – The Internal Revenue Service has preliminarily concluded that $26.5 million of zero coupon bonds issued by a Wisconsin authority for a project to redevelop the old Statler Hilton Hotel in Dallas are taxable.

A material event notice posted on the Municipal Securities Rulemaking Board's EMMA website says the issuer — the Public Finance Authority in Wisconsin — received a Notice of Proposed Issue from the IRS on July 17 stating its initial finding is that the bonds are taxable.

The notice doesn't give the basis for the IRS finding, but says the issuer "disagrees with the legal conclusion set forth in the Notice and intends to engage in discussions with the IRS."

The IRS began auditing the bonds in January, less than five months after they were issued. Local newspapers in Dallas published articles quoting sources raising questions about the unusually complex financing and the incentives being provided to the developer – Commerce Statler Development, LLC, according to the official statements for the bonds. That company was created by Mehrdad Moayedi, an Iranian who reportedly came to the U.S. in the late 1970's and became a U.S. citizen n the early 1980's.

"For the IRS to jump into something that quickly is unusual," said Mark Scott, former head of the tax-exempt bond office at the IRS.

The quick action on the audit seems to suggest that the IRS had problems with the structure of the deal, rather than post-issuance compliance.

There are some curious aspects about the financing. First, the bonds were issued by the Public Finance Authority in Wisconsin, which can sometimes mean that transaction participants are trying to avoid state or local restrictions where the project is located.

The event notice said the IRS is not calling into question whether the issuer can issue tax exempt

debt inside or outside the state of Wisconsin. The PFA is a governmental entity established under Wisconsin law and authorized to issue tax-exempt, taxable and tax credit conduit bonds for public and private entities throughout all 50 states, according to its website.

Also, questions have been raised about the developer. According to the OS, Moayedi's company Centurion American and various subsidiaries are involved in roughly 70 master planned residential community projects in Texas valued at about $2 billion (at build out). Roughly 40% of those projects have been developed using funding by various entities associated with United Development Funding, a large sponsor of real estate investment trusts based in Grapevine, Texas.

UDF's headquarters was raided by the FBI in February 2016 following allegations by Kyle Bass, who runs Dallas-based hedge fund Hayman Capital Management and bet against one of UDF's fund's shares, that that UDF involved in a Ponzi scheme. Bass alleged that UDF was using new investor money to repay earlier investors.

UDF claimed in May 2016 that a law firm it hired to investigate the allegations found no evidence of fraud or misconduct.

The OS for the Statler Hilton bonds says UDF is not associated with the funding of the project.

But it also says the developer and authority cannot predict the results of the FBI investigation and its effect, if any, on the developer or its ability to continue or complete project funding.

Finally, the structure of the financing is very complex and difficult to grasp, but it shows a lot of money flowing to Moayedi from both the city of Dallas and the bond financing. The structure involves a slew of companies connected to Moaydei.

And the public offering for the project consisted entirely of capital appreciation or zero coupon bonds, which pay no interest until maturity.

Moaydei's plan was to develop the former Statler Hilton Hotel, which has been vacant since 2001 as well as the old Dallas Central Library on Main Street into a luxury residential tower with restaurants, offices and a move theatre, according to the website of the development company, Centurion American, for which Moayedi is president and CEO, and statements Moayedi made back in April 2014.

Construction of the project was slated to start in 2015 and to be completed in 2017.

In 2014, the Dallas city council approved $46.5 million in tax increment financing for the project.

The $26.5 million of tax increment finance grant revenue bonds were issued August 2016 "to provide funds to finance the cost of the acquisition of a portion of the Economic Development Tax Increment Financing Grant" made by the city of Dallas, according to the official statement for the offering.

The OS says the developer planned to transfer the TIF grant funds to Ctmgt, LLC, another company owned by Moayedi, "on behalf of the developer to be treated as a non-shareholder contribution to capital."

A detailed description of the funding plan in the OS says that initial funding for the project was to be comprised of loans and contributions.

Statler 1900 Commerce, LLC, owned by Moayedi, committed to up to $85 million pursuant to a loan agreement secured by a deed of trust on the property and by a personal guarantee from Moayedi.

According to the OS, $50 million of the loan was released and $35 million was put into escrow.

Another equity contribution of $10.7 million was made to the developer by 1914 Commerce GM, LLC,
also owned by Moayedi.

In addition, 1914 Commerce Investments, Inc., a company registered by Moayedi, received a $29.13 million state housing tax credit bridge loan from Octagon, a company not described in the OS.

And loans were to be made to 1914 Commerce Investments in connection with two federal housing tax credit bridge loans from Octagon, one for $15 million and one for $7.5 million.

The OS says the developer was to receive a fee of more than $17 million, but deferred it. That's almost 8% of the estimated project cost in the OS of $221.59 million.

The OS, which was dated Aug. 16, 2016, then states that as of July 31, 2016, the supplemental budget is anticipated to be funded by several modified or additional amounts, including a deferred developer fee of $4.4 million.

A sources and uses table in the OS shows that of the almost $221.59 million cost of the project, almost $22.9 million is for land costs, $135.6 million is for construction and hard costs, and $63.1 million is for soft costs.

The OS states the bonds are to be paid in part by the Economic Development Tax Increment Financing Grant that was provided to the developer by the city and interest and other income from investments.

The bonds were underwritten by Jefferies. Orrick, Herrington & Sutcliffe was bond counsel and counsel to the authority. Underwriter's council was Winstead PC.

Sarah Dodd, a spokeswoman for Centurion American, one of Moayedi's companies, which she said is developer of he project, said: "We sold our rights to a portion of the TIFF. The Wisconsin Public Finance Authority and its legal counsel Orrick made determinations on all tax matters. We will follow whatever ruling is ultimately decided by the IRS. But, at this time the WPFA and Orrick are protesting the preliminary ruling of the IRS on this matter. They expect this to be a six to twelve month process to reach resolution."

Neither Orrick's lawyers, a spokeswoman for one of Moayedi companies, or staff of the Public Finance Authority could be reached for comment.

The Bond Buyer

By Lynn Hume

Published July 25 2017, 1□21pm EDT

Audits Of Multifamily Housing Bonds Triggered By Failure To File Form 8703: Orrick

IRC Section 142(d) requires operators of qualified residential rental properties to file Form 8703,

Annual Certification of a Residential Rental Project annually. A number of recent audits of multifamily housing bonds appear to have been triggered by missing or incorrectly filed Form 8703s.

In discussions regarding those audits, the IRS has highlighted the importance of filing Form 8703 to demonstrate that the project continues to meet the qualified residential rental project requirements. While the statutory penalty for non-filing is only $100, the real cost may be much greater in the event of an audit triggered by failure to make timely, complete and accurate filings. Borrowers are therefore encouraged to take special care in preparing and filing Form 8703 as required by the Code.

Last Updated: July 24 2017

Article by Justin S. Cooper and Richard J. Moore

Orrick

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

PLR 201726007 – Insights into the Facts & Circumstances Test for Private Business Use after Rev. Proc. 2017-13.

The IRS recently released PLR 201726007, the first private letter ruling to interpret the revised management contract safe harbor in Rev. Proc. 2017-13. On one level, the PLR is quite straightforward – it concludes that a teaching agreement between a hospital and a school to provide clinical practice for pharmacy students does not result in private business use. On another level, it's somewhat surprising that such a PLR was issued and the analysis takes some interesting turns. Read below for more information.

Continue Reading

The Public Finance Tax Blog

By Alexios Hadji on July 28, 2017

Squire Patton Boggs

IRS PLR 201726007 - Revised Management Contract Safe Harbor in Rev. Proc. 2017-13.

The IRS recently released PLR 201726007, the first private letter ruling to interpret the revised management contract safe harbor in Rev. Proc. 2017-13.

TAX - MAINE

Roque Island Gardner Homestead Corporation v. Town of Jonesport

Supreme Judicial Court of Maine - July 11, 2017 - A.3d - 2017 WL 2951692 - 2017 ME 152

Taxpayer, a nonprofit homestead entity that owned a 1,242-acre island with five houses and numerous outbuildings, sought review of town board of appeals' denial of its request for a municipal property tax abatement.

The Superior Court affirmed. Taxpayer appealed.

The Supreme Judicial Court of Maine held that application of a 200% economic obsolescence factor to taxpayer's property, which had the effect of raising its valuation, was not unjust discrimination.

Application of a 200% economic obsolescence factor to taxpayer's property, a 1,242-acre island with five houses and numerous outbuildings, which had the effect of raising its valuation, was treatment given to similarly situated properties, and thus it did not amount to unjust discrimination by town, as prohibited by the equal protection clause of the U.S. Constitution and the equal apportionment and assessment clause of the state constitution, despite argument that island structures were similarly situated to those on mainland property, to which the obsolescence factor was not applied. Structures on all developed islands in the town were subject to the obsolescence factor, and the higher assessment of island structures was due to their higher building costs.

TAX - MICHIGAN

Baruch SLS, Inc. v. Tittabawassee Township

Supreme Court of Michigan - June 28, 2017 - N.W.2d - 2017 WL 2818133

Taxpayer, which was nonprofit corporation that operated adult foster care facility, appealed decision of Tax Tribunal denying taxpayer charitable exemption from real and personal property taxes.

Court of Appeals affirmed in part and reversed in part. Taxpayer appealed.

The Supreme Court of Michigan held that taxpayer was not required to offer its services for free or to select its recipients using only arbitrary criteria to satisfy charitable institution test for real and personal property tax exemption.

Taxpayer, which was nonprofit corporation that operated adult foster care facility, was not required to offer its services for free or to select its recipients using only arbitrary criteria to satisfy charitable institution test for real and personal property tax exemptions, since excluding taxpayer from exemptions simply because it charged fees for its services conflicted with factor of charitable institution test that allowed taxpayer to charge amount for its services that was necessary to remain financially stable, requiring taxpayer to provide its charitable services entirely for free was unrealistic and unsustainable, and taxpayer could have restrictions that limited or selected who was entitled to receive its services, if such restrictions reasonably related to its charitable goal.

IRS Rules Against $26.5 Million Bond Sale for Downtown Dallas' Historic Statler Hotel.

An IRS ruling could imperil a move to fund part of the historic Statler Hotel renovations with a

special bond sale.

Developers revamping the historic downtown Dallas hotel sold the city financial incentives for the project that were used to back tax-exempt municipal bonds.

The deal allowed builder Centurion American Group to access the funds years before they would normally have been paid.

The city of Dallas agreed to provide the developers $46.5 million in city incentives that would be paid through tax increment finance district funds. Those TIF funds were used to finance the sale of $26.5 million in bonds.

In a preliminary ruling, the IRS said that the bonds don't meet its requirements to be "excluded from gross income for federal income tax purposes."

The Wisconsin Public Finance Authority, which issued the bonds last August, said it will appeal the decision and will continue to negotiate with the IRS.

If the ruling stands, it could affect not only the Statler project but also dozens of other real estate developments that were contemplating a similar sale of their incentives.

The IRS decision is unlikely to affect the completion of the Statler redevelopment.

The Statler developers said it could be some time before the issue is resolved.

"We sold our rights to a portion of the TIF," Centurion American's spokeswoman said in a statement. "The Wisconsin Public Finance Authority (WPFA) and its legal counsel (Orrick, Herrington & Sutcliffe LLP) made determinations on all tax matters.

"We will follow whatever ruling is ultimately decided by the IRS," the company said. "But, at this time the WPFA and Orrick are protesting the preliminary ruling of the IRS on this matter. They expect this to be a six- to 12-month process to reach resolution."

The sale of the bonds is just part of the mix of funding developer Centurion American is using for the $230 million renovation of the 61-year-old Commerce Street hotel and the adjoining former Dallas Public Library building.

The 19-story midcentury modern hotel is being converted into a combination of apartments, hotel rooms and retail space.

Tenants have already begun moving into the rental units. And the Hilton Curio Hotel is scheduled to open in early 2018.

The Dallas Morning News is relocating its downtown offices to the former library this fall.

When the sale of the Statler bonds was disclosed last year, it was considered a creative way to provide funding for one of downtown Dallas' largest historic renovation projects.

Since then, developers of other local real estate projects have said they plan to explore similar bond sales to help fund their deals. The IRS ruling, if it stands, could quash those efforts.

Investors who bought the bonds were motivated by the tax-free treatment of the income. Those bondholders could be required to pay back taxes on that income if the exemption is withheld. The IRS did not contest the Wisconsin authority's sale of the bonds, just the tax-free provision.

Tax increment finance grants are a popular way for cities to help developers pay for projects. The incentives designate funds from property taxes in the neighborhood to pay the builders for part of the construction.

The TIF grants are always paid after the development is complete and are typically given in payments over several years.

By selling the TIF incentive for bonds, the developers would be able to access needed upfront money for their projects.

Redevelopment of the landmark Statler Hotel is being financed with a combination of loans, funding from foreign investors and the sale of historic tax credits for the project.

Dallas News

By Steve Brown

Copyright © 2026 Bond Case Briefs | bondcasebriefs.com