
Local Opposition Halts Planned Minor League Stadium Subsidy.

Another win for taxpayers as $35 million minor league ballpark proposal is canned by Prince William County.

County officials in Virginia have cancelled plans to build a minor league baseball stadium that could have ended up costing taxpayers as much as $35 billion, but the team might soon be looking for a hand-out somewhere else.

Art Silber, owner of the single-A Potomac Nationals, a minor league affiliate of the nearby Washington Nationals, asked Prince William County officials to withdraw the stadium proposal last week. A planned vote on the stadium deal never materialized in the face of opposition from local taxpayers and two members of the county board of supervisors, according to Inside NoVa, a regional online news platform.

Continue reading.

Reason.com

Eric Boehm | Jul. 29, 2017 11:01 am

TAX - PENNSYLVANIA

Green Acres Contracting Company, Inc. v. Commonwealth

Commonwealth Court of Pennsylvania - June 13, 2017 - A.3d - 2017 WL 2544298

Taxpayer sought judicial review of decision of the Board of Finance and Revenue (BFR) that rejected taxpayer's challenges to an assessment of state use taxes on certain items purchased and used by taxpayer in its business.

The Commonwealth Court affirmed in part and reversed in part. Taxpayer filed exceptions.

The Commonwealth Court held that nuts, bolts, washers, and guardrail blocks were guardrails exempt from sales and use taxes as building machinery and equipment (BME).

Term "guardrails" referred to the entire guardrail system, with the exception of guardrail posts, which were specifically excluded, and, as such, nuts, bolts, washers, and guardrail blocks, which were necessary for the construction of the guardrails, constituted building machinery and equipment (BME) exempt from sales and use taxes. Definitions and common usage of the term "guardrails" referred to more than the horizontal elements and included the entire guardrail system as it was constructed and installed along a road and/or highway.

Why a Border Adjustment Tax Would Be a Bad Deal for States and Localities.

It would slam the insurance industry, bringing downturns in the bond market and tax revenues.

State and local governments are no strangers to dealing with the unintended side effects of federal policies. This year's congressional tax-reform efforts could leave them scrambling again.

That's because a central part of the House Republicans' expected proposal, a "border-adjustment tax" (BAT), would deal a heavy financial blow to states' and localities' single largest source of municipal bond and other long-term debt funding as well as to one of their most substantial sources of tax revenue: the insurance industry.

It isn't that a BAT would directly force financial hardship on state and local governments. Rather, it would raise the cost and constrict the supply of insurance products in ways that would be expected to lead to downturns in the muni bond market, real-estate investments and tax revenue while adding to pressure for increased spending on social services.

According to a recent study by the R Street Institute, the costs of typical life insurance and annuity policies would rise by $59 billion, which would lead to a $24.6 billion drop in sales of these products over the next two decades. Separate research by the Brattle Group finds similarly large effects for the property and casualty insurance industry, with a $5 billion increase in the cost of insurance and an annual reduction in sales of $9.3 billion.

The trouble with the BAT comes from the way in which it is likely to be structured. It's a system that taxes imports but not exports, in a fashion designed to favor domestic production and supply. Yet when it comes to risk, international diversification is a vital tool to keep insurance prices down and policy coverage broad.

If financial services like insurance were subject to a BAT, the supply of international capital available to U.S. insurers in the form of reinsurance — essentially insurance for insurance companies — would become more limited and therefore more expensive. The immediate effects would be higher premiums for the 60 percent of Americans who hold life insurance policies.

But for states and municipalities, even more significant effects would follow. U.S. life insurers invest about 75 percent of every new premium dollar in fixed-income debt markets, and often are the only buyers for some kinds of bonds, particularly long-term debt. In fact, municipal bonds are among insurers' most significant long-term investments: Property and casualty insurers held $326.8 billion in municipal bonds at the end of 2012, according to the National Association of Insurance Commissioners, while life insurers tripled their muni holdings from $47.1 billion in 2008 to $131.2 billion in 2012.

By driving down insurers' bond investments, a BAT would harm the ability of state and municipal governments to borrow long-term. Other budget problems could stem from how reliant states are on the gross premium taxes paid by insurers, which totaled $19.2 billion in 2016. These taxes are among some states' top five sources of revenue and are often levied as an alternative to income taxes.

Finally, a BAT would further stretch limited state and local resources because it would push financial-planning products such as insurance beyond the reach of many of those teetering on the brink of public assistance. While the federal government might be called upon to support some of

those needs, most of that extra load would need to be carried by state and local authorities.

While the political destiny of tax reform in Congress is uncertain, the policy effects of a BAT are already known. State and local governments have a stake in this debate because they have lots to lose.

Governing.com

By Ian Adams | Contributor
Associate vice president of the R Street Institute

JULY 17, 2017

TAX - WISCONSIN

Voters with Facts v. City of Eau Claire

Court of Appeals of Wisconsin - May 31, 2017 - N.W.2d - 2017 WL 2349163 - 2017 WI App 35

Taxpayers brought declaratory judgment action against city, seeking declaratory judgment invalidating city's creation and amendment of tax increment districts (TID) to finance redevelopment.

The Circuit Court granted city's motion to dismiss on the basis that taxpayers lacked standing. Taxpayers appealed.

The Court of Appeals held that:

- Taxpayers failed to sufficiently allege that city failed to follow statutory requirements when approving creation and amendment of TID;
- Statute governing creation of TID precluded taxpayers' claim that TID area was not blighted;
- Taxpayer's challenge was cognizable on certiorari, rather than as a declaratory judgment claim;
- Taxpayers failed to sufficiently allege that city funds related to TID were used to pay for demolition of historic buildings;
- Taxpayers failed to sufficiently allege that reimbursements to developer violated uniformity clause of Wisconsin constitution; and
- Taxpayers failed to sufficiently allege that city's resolutions violated the public purpose doctrine.

Taxpayers failed to sufficiently allege that city failed to follow statutory requirements when approving creation and amendment of tax increment districts (TID) to allow tax increment financing (TIF) for redevelopment, as required to establish standing to assert declaratory judgment claim against city. While taxpayers alleged that city was incorrect in finding blight to support of creation of TID, statutory language merely imposed procedural hurdles to TIF use, which included approval of a TID by a democratically-accountable body who asserts the requisite findings.

Statute governing creation of tax increment districts (TID) by municipalities precluded taxpayers' declaratory judgment claim against city, based upon taxpayers' allegation that area city established as a TID was not blighted. City's determination as to whether area was blighted was a matter of its legislative discretion, a challenge to this finding in a declaratory judgment action would have resulted in factfinder substituting its judgment for that of city, and even if "blight" had been defined by an objective standard, language used in tax increment financing (TIF) statute did not require

court to determine whether area was in fact blighted.

City's decision to establish tax increment district (TID) in area it concluded was affected by blight was cognizable on certiorari, rather than as a declaratory judgment claim. While city asserted that its legislative acts were immune from judicial review, statute governing creation of a TID did not expressly bar review, and certiorari review would have prevented lengthy and detailed discovery, constituted a speedy alternative to a declaratory judgment action, and would have prevented improper transfer of legislative power from city to courts.

Taxpayers failed to sufficiently allege that city funds related to tax increment district (TID) were used to pay for demolition of historic buildings, which was prohibited by statute, as required to establish that they had standing to bring declaratory judgment claim against city. Taxpayers' complaint did not allege anything unlawful had occurred, or was likely to occur, and alleged no facts connecting any past or future payment to the developer's action in demolishing historic buildings.

Taxpayers failed to sufficiently allege that city's reimbursements to developer performing project in tax increment district (TID) constituted an advance tax rebate or credit in violation of the Wisconsin constitution's uniformity clause, as required to establish standing on their declaratory judgment claim that city's expenditures were unlawful. Statute under which payments were made limited them to reimbursement for "project costs," which were defined to be those associated with a public work or improvement, so reimbursements did not require taxpayers to pay disproportionate amounts of taxes, nor did it change individual tax burden by granting a partial exemption, as taxpayers' allegations did not support characterizations of payments to developer as unlawful tax rebates or credits.

Taxpayers failed to sufficiently allege that city's resolutions, establishing and amending tax increment districts (TID), violated the public purpose doctrine, and thus taxpayers lacked standing to prosecute that constitutional claim in declaratory judgment action. While taxpayers asserted that establishment of TIDs did not serve to eliminate blight so they served a private rather than public purpose, tax increment law, and city's resolutions on their face, had a valid public purpose.

SIFMA Submits Tax Reform Recommendations to Senate Finance Committee .

Washington, DC, July 18, 2017 – SIFMA submitted recommendations for tax reform to the Senate Finance Committee in response to Chairman Orrin Hatch's (R-UT) request for comments issued on June 16, 2017.

"SIFMA strongly supports tax legislation that will enhance economic opportunities for individual Americans, promote savings and encourage investment, and lower the tax rate for American businesses that compete in a global marketplace," said Kenneth E. Bentsen, Jr., SIFMA president and CEO. "SIFMA commends Chairman Hatch, his staff, and the members of the Senate Finance Committee for making tax reform a priority. We look forward to working with the Committee to improve the climate for economic growth and prosperity for all Americans,"

SIFMA's recommendations include:

SIFMA Supports Pro-Growth, Comprehensive Tax Reform:
SIFMA supports movement to a territorial tax system that recognizes the unique characteristics of the financial services industry, that is fair and equitable for U.S. financial services companies and investors, and has tax rules for inbound investment that encourage foreign investment in the U.S.

and does not discriminate against non-U.S. financial services companies seeking to compete in U.S. markets.

International Tax Reform:
The U.S. is one of the only remaining countries that continue to tax its residents on income derived from the active conduct of a foreign business. Most of our trading partners have moved toward a more competitive exemption or partial exemption system, under which business income earned by foreign subsidiaries is taxed primarily in the country where it is earned and anti-base erosion regimes serve to protect the home country tax base. SIFMA believes that a well-crafted exemption system, with appropriate safeguards against base erosion, would be strongly beneficial to the United States economy.

Federal Tax Exemption for Municipal Bond Interest:
State and local governments benefit from the tax exemption through significantly lower borrowing costs. Municipal bonds are used to finance a wide variety of infrastructure like schools, roads, bridges, airports, water and sewer systems, hospitals and many others. The tax exemption lowers the cost of financing these projects and encourages more infrastructure investment. The tax exemption is better than direct subsidies for infrastructure investment because bonds must be repaid, forcing a market test of the project's viability.

Tax Incentives for Retirement Savings:
Because of their tax-deferred status, retirement plans may come under scrutiny as a way to reduce the deficit. SIFMA participates in a coalition of service providers, plan sponsors and HR professionals – the Coalition to Protect Retirement – with the goal of preserving the tax incentives that are critical to encouraging Americans to save for retirement and to businesses sponsoring plans for employees.

Capital Gains and Dividends:
SIFMA and its members consistently have advocated for low federal income tax rates on savings and investment and supports low capital gains rates and parity between the rates for capital gains and qualified dividends. We believe that these preferential rates provide a necessary and powerful incentive for investments that benefits retail investors and strengthens the U.S. economy, and that Congress and the Committee should be mindful of preserving these incentives as discussions about tax reform unfold.

Financial Transaction Tax:
SIFMA is opposed to the imposition of any financial transaction and encourages lawmakers to consider the lessons of past efforts to implement FTT laws in other nations. SIFMA believes an FTT would raise the cost of capital needed by businesses and would amount to a new sales tax on retirees and middle-class investors.

The full document submitted to the Senate Finance Committee can be read here.

Release Date: July 18, 2017
Contact: Carol Danko, 202-962-7390, cdanko@sifma.org

MBFA Submits Comment Letter to SFC Chair Hatch on Tax Reform.

On Monday, July 17th, the Municipal Bonds For America Coalition submitted its comment letter and

policy recommendations in response to Senate Finance Chairman Orrin Hatch's (R-UT) request for expert and stakeholder input on tax reform. You can view MBFA's letter here.

The comments that the MBFA submitted were endorsed by local leaders from Utah including, Mayor Ben McAdams (Salt Lake County), Deputy Mayor Darrin Casper (Salt Lake County), and Amy Rowland (Utah Director – National Development Council).

CDFA Submits Tax Reform Recommendations to U.S. Senate.

—Submission Defends Development Finance Industry Interests —

Columbus, OH – The Council of Development Finance Agencies (CDFA) has submitted tax policy recommendations to the Senate Committee on Finance as the Committee takes its initial steps toward comprehensive tax reform. The submission of recommendations comes following a request from Committee on Finance Chairman Orrin Hatch for advice and suggestions on ways to improve the U.S. tax code from tax policy stakeholders.

"We're thankful that the Finance Committee offered national organizations like CDFA a chance to weigh in on tax reform," stated Toby Rittner, President & CEO of CDFA. "It's been more than 30 years since the last major tax overhaul, and we need to ensure that any future tax system enables the development finance industry to flourish."

Senator Hatch (R-UT) requested in a June 16 release that interested stakeholders and policy experts submit recommendations that address any or all of four key issue areas. The issue areas outlined by Senator Hatch are:

1. Providing much-needed tax relief to middle-class individuals and families through reforms to the individual income tax system.
2. Strengthening businesses – both large and small – by lowering tax rates and broadening the relevant tax base in order to put the economy on a better growth path and create jobs.
3. Removing impediments and disincentives for savings and investment that exist in the current tax system.
4. Updating our international tax system in order to make our nation more competitive in the global economy and preserve our tax base.

The recommendations submitted by CDFA follow the proposals outlined in the Administration Transition Paper, and the 2017 CDFA Policy Agenda. The recommendations consist of four carefully crafted, actionable items that are borne out of CDFA's 35 years as a leader in the development finance industry. The recommendations are:

1. Preserve and Protect Tax-Exempt Bonds
2. Reform Manufacturing Bonds through the Modernizing American Manufacturing Bonds Act
3. Permanently Authorize and Fund the New Markets Tax Credit Program
4. Launch a Federal Urban Tax Increment Finance Program

CDFA wishes to thank Senator Hatch for the opportunity to submit recommendations for comprehensive tax reform. CDFA will be working hard over the coming months to protect development finance industry interests as the tax reform debate continues in Congress. Development finance agencies are encouraged to let their voice be heard on tax reform by working with CDFA. To get engaged and learn more about CDFA's work, contact Tim Fisher.

The Council of Development Finance Agencies is a national association dedicated to the advancement of development finance concerns and interests. CDFA is comprised of the nation's leading and most knowledgeable members of the development finance community representing public, private and non-profit entities alike. For more information about CDFA, visit www.cdfa.net.

July 20, 2017

The Latest Attack on Stadium Financing – Keeping the Debate Honest.

On June 13, 2017, U.S. Senators Cory Booker (D-NJ) and James Lankford (R-OK) introduced the latest bill (S. 1342) ("Senate Bill") intended to end tax-exempt financing of professional sports stadiums. The Senate Bill mirrors the bill (H.R. 811) introduced by Rep. Steve Russell (R-OK) on February 1, 2017, reported in this blog by Johnny Hutchinson (link). Tax-exempt financing of professional sports stadiums has long been a controversial subject and was the subject of my post on April 14, 2016 (link). The debate prompted by the introduction of legislative bills is a healthy exercise. However, arguments that are misleading or inaccurate don't further but impede that debate. When the bills' advocates get off track of a productive and thoughtful debate, the misleading arguments need to be called out. That is the subject of today's post.

Continue Reading

The Public Finance Tax Blog

By Bob Eidnier on July 18, 2017

Squire Patton Boggs

Reverse Property Assessment Appeals: Commercial Properties Owners Have A Friend In The Pennsylvania Supreme Court.

In a landmark case titled Valley Forge Towers Apartments N, LP, et al. v. Upper Merion Area School District & Keystone Realty Advisors, LLC, No. 49 MAP 2016, issued July 5, 2017, the Pennsylvania Supreme Court (the "Court") constitutionally curbed the rights of taxing jurisdictions to file selective appeals often called reverse tax appeals under Pennsylvania's Consolidated County Assessment Law. This law is applicable to all counties in the commonwealth except Allegheny and Philadelphia Counties. At issue in Valley Forge was the practice of a number of Pennsylvania school districts to exercise their tax assessment appellate rights solely against large commercial properties, while excluding from reverse appeal all residential properties within the same jurisdiction. Typically under this practice, the school districts employ a third-party tax consultant who selects the commercial property targets and receives compensation based on a percentage of the increased tax revenue gained under the reverse appeal.

In Valley Forge, a group of apartment owners filed a declaratory judgment action seeking to establish that the Upper Merion Area School District's practice of exclusively targeting high-value, commercial properties selected by their tax consultant, Keystone Realty Advisors, LLC, violated the Uniformity Clause of the Pennsylvania Constitution. The trial court dismissed their complaint. The apartment owners saw another setback in the Pennsylvania Commonwealth Court. That court

reasoning that the school district's economic desire to increase taxes provided a rational and lawful basis for exercising its appellate rights selectively against commercial taxpayers.

The apartment ownership group then appealed to the Pennsylvania Supreme Court. In Court, both sides sought out other interested parties to file briefs in support of their positions. Reed Smith represented a client supporting the apartment owners.

The Court unanimously reversed, finding that under the Uniformity Clause, all real property within a taxing jurisdiction of the commonwealth of Pennsylvania is a single class, and the Uniformity Clause does not permit the taxing jurisdictions, including school districts, to treat different real property sub-classifications within their jurisdictions in a disparate manner. The Court found that the Commonwealth Court misapplied the law in allowing taxing jurisdictions to disparately treat sub-classifications of real property if a rational basis for such treatment existed. The Court clarified that prohibition against disparate treatment of any sub-class of real property applies to any intentional or systematic enforcement of the tax laws and is not limited to wrongful conduct, as the Commonwealth Court had previously suggested. The Court agreed with the apartment owners that a Uniformity Clause violation exists if the taxing jurisdiction intentionally or systematically subjects only commercial property within its jurisdiction to a reverse tax assessment appeal. The Court also held that a taxpayer aggrieved by such conduct is not limited to raising the constitutional violation as a defense to an appeal. Rather, a taxpayer may bring an affirmative action to curb the unlawful conduct of a taxing jurisdiction.

This is big. Under this decision, a number of taxing jurisdictions in Pennsylvania are in violation of the Uniformity Clause, as they have also targeted large commercial properties for reverse appeals. For property owners in Allegheny and Philadelphia Counties, it is likely that the rationale of Valley Forge will be equally applicable.

This decision doesn't mean that taxing jurisdictions are giving up their efforts to raise tax revenue from commercial properties. The Court left open the possibility that a taxing jurisdiction may set a monetary threshold applicable to all classes of real estate for filing a reverse appeal. That said, a monetary threshold that disparately impacts a sub-classification of real property, such as large commercial properties, may be equally suspect under the Uniformity Clause. Still, the decision reached by the Pennsylvania Supreme Court is a victory for fairness in assessments, an area where that term is often found lacking.

Last Updated: July 7 2017

Article by Jeffrey G. Wilhelm and Brittney Wozniak

Reed Smith

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

Seattle Passes Municipal Income Tax; It is Almost Certainly Illegal.

Washington is one of the seven states that goes without an individual income tax, and most residents are pretty proud of that. In fact, voters in the state have voted down a constitutional amendment to allow a graduated income tax five times.

That could change though, as the Seattle City Council this week passed a local ordinance to enact an income tax on Seattle residents. The tax, which is 2.25 percent on income above $250,000 for single filers and above $500,000 for married filers, was unanimously adopted by the council on Monday.

The only problem is that the tax is almost certainly illegal under the state constitution and under state statute. As my colleagues Jared Walczak and Kari Jahnsen wrote in June, the tax would face some "serious legal hurdles":

1. ***The Constitutional Uniformity Clause.*** Article VII of the Washington constitution stipulates that all taxes must be "uniform upon the same class of property," and adopts an unusually broad definition of property that has been held to include income. The constitution also imposes a maximum combined rate of 1 percent. Seattle officials do not deny that their ordinance conflicts with current caselaw; the municipal income tax is seen as a test case to challenge the current interpretation of the uniformity clause.
2. ***A Ban on Local Net Income Taxes.*** Further compounding the city's challenges, there is a statutory prohibition against Washington localities adopting taxes on net income. The "net income" terminology was likely to exclude the local B&O gross receipts tax from the prohibition. But advocates of a Seattle municipal income tax argue that by imposing the tax on gross income rather than adjusted gross income, it cannot be said to fall on net income. This is arguably a strained interpretation of the statute. Net income is undeniably a subset of gross income, and thus subject to tax under the proposed ordinance.
3. ***Restrictions on Creating Local Taxes Not Expressly Authorized.*** The courts have held that localities must have an express grant of authority to levy a given tax, and of course, no statutes specifically authorize a local income tax. The Seattle City Council justifies the proposed income tax under statutory authority to establish licenses and permits, which may be too novel for the courts, not least because it is unclear that a right of residency could be subject to a licensing process.

For now, this tax looks to be a signaling stunt, as the Seattle Times reports that "proponents say the measure was intended to open a broader discussion about tax fairness." Councilmember Kshama Sawant even seems to recognize the unsteady legal footing of the measure, telling supporters, "If we need to pack the courts, will you be there with me?"

It of course goes without saying that purposefully enacting an illegal tax is poor policy. But as the Washington Policy Center notes, it is also likely to be an expensive exercise as the city will have to spend revenue defending the policy in court.

So, in the textbook sense, enacting an illegal tax violates the public finance principle of stability because you are creating business uncertainty about future tax burdens. But even on a more basic level, this charade invites some head-slapper questions like: if you say you need more revenue for government programs, why would you willfully set yourself up to spend revenue on a legal battle?

Tax Foundation

by Scott Drenkard

July 14, 2017

2017 NMTC Progress Report.

Below find the NMTC Coalition's 2017 NMTC Progress Report, our annual report documenting the impact of the NMTC program.

WASHINGTON, June 7, 2017 — The New Markets Tax Credit Coalition today released its 2017 New Markets Tax Credit (NMTC) Progress Report the thirteenth edition of the report—providing a survey of NMTC activities in 2016. As in the past, the report documents the flexibility and impact of the NMTC in meeting the needs of the distressed communities where it is deployed and helping to create jobs and grow business opportunities, from more traditional industry and community sectors to new and cutting-edge technology. Projects which benefitted from the Credit in the past year include rural and urban incubators, small business loan funds, main street tourism, health clinics, manufacturing, schools and even robotics.

"Maybe it was the breathing room provided by the five-year NMTC extension enacted in December of 2015, or maybe it is the stiff competition for NMTC allocation," said Robert W. Davenport, NMTC Coalition president and special advisor at National Development Council, "but last year's crop of NMTC projects bests any previous year."

The report was prepared for the NMTC Coalition, a national membership organization of Community Development Entities (CDEs) and investors organized to advocate on behalf of the NMTC. Every year since 2005, the NMTC Coalition surveys CDEs on their work delivering billions of dollars to businesses, creating jobs, and rejuvenating the parts of the country that have been left behind. The annual NMTC Progress Report presents the findings of the CDE survey and provides policymakers and practitioners with the latest trends and successes of the NMTC.

"The Coalition's annual survey asks CDEs to report on the deployment of their allocation, investor trends, and a variety of community impact metrics," said Coalition spokesperson Bob Rapoza. "The findings clearly demonstrate that the NMTC continues to deliver capital to the communities left behind by the changing economy, with 76 percent of projects in severely distressed communities in the last year—far exceeding statutory requirements. Moreover, the program is delivering a significant 'bang for the buck' for taxpayers in terms of the jobs, amenities, community facilities, and tax revenue it generates."

Eighty-seven CDEs participated in the 2017 survey and provided data on their progress raising capital, lending, and investing in 2016 with the NMTC. Survey participants ranged from large, mission-driven national nonprofits to locally-focused community development organizations. The survey findings show that competition for credits continues to drive gains in efficiency. The data collected shows that CDEs used $1.8 billion in NMTC allocation in 2016 to financed 171 NMTC projects, amounting to $3 billion in total project costs, which created over 36,000 jobs in areas with high rates of poverty and unemployment.

"When Congress enacted the NMTC back in 2000, the purpose of the program was simple: to deliver private sector investment to low income communities," added Rapoza. "Nearly two decades later, the NMTC has unleashed an unprecedented amount of investment in areas struggling with high unemployment and poverty, but more than that, it has created economic opportunity in every corner of the nation."

Further demonstrating support for the NMTC, some 2,000 businesses, nonprofit organizations, banks and community leaders signed a letter in support of the NMTC that was delivered to the House and Senate tax-writing committees in early February of this year. A week later, Senators Roy Blunt (R-MO) and Ben Cardin (D-MD) introduced legislation in the Senate (S. 384), and Representatives Pat Tiberi (R-OH), Richard Neal (D-MA), and Tom Reed (R-NY) introduced a companion bill the House (H.R. 1098). The legislation provides a permanent authorization for

NMTC, increases annual credit authority with inflation adjustments in future years, and exempts NMTC investments from the Alternative Minimum Tax. For examples of how the NMTC is making an impact in each state, see the NMTC Coalition's NMTC at Work in Communities report or check out its Project Profile Map.

About New Markets Tax Credit Program
The New Markets Tax Credit was enacted in 2000 in an effort to stimulate private investment and economic growth in low income urban neighborhoods and rural communities that lack access to the patient capital needed to support and grow businesses, create jobs, and sustain healthy local economies. The NMTC is a 39 percent federal tax credit, taken over seven years, on investments made in economically distressed communities. Today due to NMTC, more than $75 billion is hard at work in underserved communities in all 50 states, the District of Columbia, and Puerto Rico.

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TAX - CALIFORNIA

Jacks v. City of Santa Barbara

Supreme Court of California, California - June 29, 2017 - P.3d - 2017 WL 2805638

Utility consumers, who incurred one percent surcharge on their electricity bills collected by electric company and remitted to city, filed class action complaint against city, seeking order declaring that surcharge was invalid as a tax imposed without voter approval, enjoining city from further collection of surcharge, and requiring city to repay revenues already collected.

The Superior Court granted city summary judgment. Consumers appealed. The Court of Appeal reversed and remanded with directions. City petitioned for review. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that city's surcharge on electric company's gross receipts was compensation for use of government property rather than a tax subject to voter approval, if it bore a reasonable relationship to the value of the property interest.

Sums paid for the right to use a jurisdiction's rights-of-way are fees rather than taxes under the Right to Vote on Taxes Act, but to constitute compensation for the value received, the fees must reflect a reasonable estimate of the value of the franchise, and fees are taxes to the extent the fees exceed a reasonable amount in relation to the benefits or costs underlying their imposition.

City's surcharge on electric company's gross receipts was compensation for use of government property rather than a tax subject to voter approval under the Right to Vote on Taxes Act, if it bore a reasonable relationship to the value of the property interest, even though the electric company passed the surcharge on to customers by including part of it in the rates paid by customers and separately stating the rest on the bill, since the surcharge was a payment made in exchange for a property interest that was needed to provide electricity to city residents.

TAX - CALIFORNIA

926 North Ardmore Avenue, LLC v. County of Los Angeles

Supreme Court of California - June 29, 2017 - P.3d - 2017 WL 2806261

Single member limited liability company (LLC) apartment building owner brought action for tax refund after it was required to pay a documentary transfer tax, based on the value of the apartment building, when its single member partnership sold approximately 90% of its partnership interests to two trusts.

The Superior Court entered judgment for county. LLC appealed, and the Court of Appeal affirmed. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

The Supreme Court of California held that:

- Transfer tax is not a fee paid in connection with the recordation of deeds or other documents evidencing transfers of ownership of real property, but rather is an excise tax on the privilege of conveying real property by means of a written instrument, disapproving *City of Cathedral City v. County of Riverside*, 163 Cal.App.3d 960, 210 Cal.Rptr. 60;
- Written instrument conveying an interest in a legal entity that owns real property may be taxable under the Documentary Transfer Tax Act, even if the instrument does not directly reference the real property and is not recorded; and
- Transfer was subject to documentary transfer tax.

Apartment building owned by limited liability company (LLC) had changed ownership when partnership interest were transferred and thus was subject to documentary transfer tax. Building initially was owned by trust beneficiary, who maintained beneficial interest when building was transferred to trust, trustees established LLC, with trust as sole member, to acquire and hold building, trust transferred its membership interest in LLC to partnership and divided partnership interest among four subtrusts established for beneficiary's benefit such that beneficiary maintained beneficial interest, but three of those four subtrusts subsequently transferred their interests to trusts maintained for beneficiaries sons such that they obtained an interest in building.

SIFMA Submits Comments to the IRS on Proposed Regulations Defining Political Subdivisions.

SIFMA provides comments to the Internal Revenue Service (IRS) on proposed regulations defining political subdivisions. The Proposed Regulations provide guidance re-defining the definition of political subdivision for purposes of entities that may qualify as issuers of tax-exempt bonds under section 103 of the Internal Revenue Code of 1986.

Read the comments.

May 23, 2016

Market Groups Likely to Urge Agencies to Scrap Political Subdivision Rules.

WASHINGTON – Municipal market participants will most likely recommend the Treasury Department and the Internal Revenue Service scrap their controversial proposed rules that seek to

redefine which political subdivisions can issue tax-exempt bonds, several attorneys said on Monday.

The rules were listed among eight tax regulations that were either proposed, issued as temporary, or finalized between Jan. 1, 2016 and April 21, 2017 and found by Treasury to be significant and to warrant abandonment or major modifications under an executive order President Trump issued on April 21.

The list of eight was announced by the IRS on Friday in Notice 2017-38, which is to be published in the Internal Revenue Bulletin on July 24. Treasury asked market participants to submit public comments to it by Aug. 7 on whether the regulations "should be rescinded or modified."

The political subdivision rules were proposed in February 2016 by Treasury and the IRS to redefine what constitutes a political subdivision that can issue tax-exempt bonds.

Under longstanding federal law and rules, an entity is a political subdivision that can issue tax-exempt bonds if it has the ability to exercise a substantial amount of at least one of three sovereign powers – taxation, eminent domain and policing.

But Treasury and the IRS, which became concerned that some political subdivisions were controlled by private developers, proposed adding two more requirements to that definition. They said a political subdivision must also be governmentally controlled and serve a governmental purpose "with no more than an incidental private benefit."

"I think that practitioners will be happy to see that rule withdrawn," said Dee Wisor, a lawyer at Butler Snow in Denver. "Practitioners would prefer to go back to what the rule was."

Both the National Association of Bond Lawyers and the American Bar Association's Taxation Section have urged Treasury and the IRS to withdraw the proposed rules. The ABA group warned the proposed rules are over-reaching, ignore congressional intent, run counter to decades of practice, and cast doubt on many legitimate entities that currently issue tax-exempt bonds.

Tom Vander Molen, a lawyer with Dorsey & Whitney in Minneapolis who heads NABL's tax law committee, said the notice on the eight regulations was "a positive development" and that he expects NABL to reiterate its call for Treasury and the IRS to withdraw the proposed rules on political subdivisions. But he cautioned that NABL has not made any decision yet.

John Vahey, managing director of federal policy for Bond Dealers of America, said, "BDA agrees with Treasury's assessment that the proposed political subdivision rule represents an undue increase in both complexity and regulatory burdens. The rule, as proposed, is overly broad and would result in government entities being unnecessarily denied the ability to finance economically beneficial public projects in the tax-free municipal market and BDA looks forward to submitting additional comments in August."

The Securities Industry and Financial Markets Association also urged the IRS in previous comments to withdraw the proposed rules.

Emily Brock, director of the federal government liaison center for the Government Finance Officers Association, said the group previously recommended withdrawal of the proposed regulations due to the far-reaching scope and potential impact to political subdivisions and the essential public services they provide across the US.

She said also that a coalition of issuers joined together to explain to Treasury and IRS officials that the determination of a subdivision's governmental purpose is made during the consideration of state

legislation that authorizes the creation of the political subdivision. The group noted that if a political subdivision does not serve the purpose of the authorizing legislation, it is operating ostensibly against the law of that state and that this is an issue for the state, not the U.S. Treasury.

The list of eight regulations stem from Trump's Executive Order 13789, which was issued on April 21 and directed the Treasury secretary and administrator of the Office of Information and Regulatory Affairs to identify regulations issued as temporary, proposed, or finalized during the almost 16 months that: impose undue financial burdens on U.S. taxpayers; add undue complexity to federal tax laws; or exceed the statutory authority of the IRS.

Treasury said it found 105 regulations during that period, 52 of which were considered to be potentially significant, and identified eight of them as needing a reduction of tax burdens.

The IRS notice asked any commenters that want the rules to be modified rather than withdrawn, to describe the modifications that would "reduce burdens and complexity."

The IRS said that in opposing the proposed political subdivision rules, the "commenters stated that the longstanding 'sovereign powers' standard was settled law and had been endorsed by Congress, and additional limitations were unnecessary."

"Commenters also stated that the proposed regulations would disrupt the status of numerous existing entities and that it would be burdensome and costly for issuers to revise their organizational structures to meet the new requirements of the proposed regulations," the agency said.

The Bond Buyer

By Lynn Hume

Tens of Billions in 'Corporate Welfare' Tax Deals About to be Exposed Like Never Before.

- Special deals given by states to companies, including Apple, Google, Facebook, Microsoft and Amazon, can cost as much as $2 million per job.
- One analysis of Mississippi's deal to land a Nissan auto plant found it four times more expensive as was known, and the costliest deal ever to bring in a foreign manufacturer.
- A new accounting rule, GASB 77, will reveal to taxpayers tens of billions of dollars in spending never before disclosed and should result in a new debate about "corporate welfare."

Continue reading.

CNBC

by Greg LeRoy, director of Good Jobs First

Tuesday, 11 Jul 2017 | 4:40 PM ET

The Constitution Prevails as the Political Subdivision Regulatory Project Gets

Trumped.

July 7, 2017 witnessed a once-in-a-career moment for any tax practitioner. On that date, the Treasury Department released Notice 2017-38, which acknowledged that eight regulatory projects are unduly burdensome and should be reconsidered for modification or repeal – a rare display of administrative modesty. Included in the list of burdensome regulations are the proposed regulations that would re-define the term "political subdivision" for purposes of which entities can issue tax-exempt bonds under Section 103 of the Internal Revenue Code (the "Political Subdivision Proposed Regulations," which we have previously analyzed here, here, here, here, here, and here).

The Political Subdivision Proposed Regulations are indeed unduly burdensome and therefore merited inclusion in Notice 2017-38. As discussed below, the Political Subdivision Proposed Regulations are also of dubious constitutionality.

Continue reading.

The Public Finance Tax Blog

by Michael Cullers

July 12 2017

Squire Patton Boggs

Treasury: Proposed Political Subdivision Regulations are "Burdensome," Issue Price Regulations are "Insignificant."

The noise that you just heard may be another blessed nail in the coffin of Treasury's proposed regulations that would have made it more difficult for an entity to qualify as a political subdivision so that it can issue tax-exempt bonds on its own behalf. Treasury just issued Notice 2017-38, which sends 8 regulatory projects, including the proposed political subdivision regulations, to the President in response to his order to identify and pare back or eliminate regulations that add undue financial burden or undue complexity.

Issue Price Regulations Sneak Past the Guards

The fact that Treasury included the proposed political subdivision regulations among the list of burdensome regulations that are now on the chopping block will get all of the headlines, but there's another story here, too. Treasury somehow concluded that the issue price regulations were not a "significant" tax regulation (apparently they aren't regular readers of this blog). **In other words, Treasury didn't even consider whether the new issue price regulations might be burdensome.** In fact, Treasury says that the issue price regulations were "minor or technical in nature," and – you'll love this – "generated minimal public comment."

Continue reading.

The Public Finance Tax Blog

by John W. Hutchinson

July 7 2017

Squire Patton Boggs

The Impact of Eliminating the State and Local Tax (SALT) Deduction.

As part of its tax reform efforts, Congress has discussed whether to eliminate the ability for taxpayers to deduct state and local taxes (SALT). On July 11, 2017, Government Finance Officers Association's (GFOA) Executive Director, Chris Morrill, will moderate a panel discussion with The Big Seven before Congress about state and local tax (SALT) deduction.

The SALT deduction reflects a partnership between the federal government and state and local governments. The deduction is fundamental to the way states and localities budget for and provide critical public services, and a cornerstone of the U.S. system of fiscal federalism. It reflects a collaborative relationship between levels of government that has existed for over 100 years. Currently, the SALT deduction is an accepted part of the tax structure that is critical to the stability of state and local government finance.

Download Report – The Impact of Eliminating the State and Local Tax Deduction Report

What is the SALT Deduction
Taxpayers in the United States are granted a range of tax preferences from the federal government. The Revenue Act of 1913, which introduced the federal income tax, states that "all national, state, county, school, and municipal taxes paid within the year, not including those assessed against local benefits," can be deducted. The Revenue Act of 1964 later named specific state and local taxes that could be deducted, which included: real and personal property, income, and general sales taxes. These tax preferences serve two important goals. First, by allowing taxpayers the ability to deduct state and local taxes (SALT), taxpayers avoid being taxed twice on the same income. Additionally, the deduction on property taxes, along with deduction on mortgage interest, provides a strong incentive for homeownership. The sales tax deduction provides similar incentives for encouraging spending — which facilitates economic growth.

Compared with other common deductions, the state and local tax deduction has a larger impact than the deductions for both charitable giving and mortgage interest. In recent years, 29.5% of tax units used the SALT deduction. Only 21% used the SALT deduction for mortgage interest, and 15% used the deduction for charitable donations.

How Do Taxpayers Benefit from the SALT Deduction?
Everyone in the United States benefits from SALT, but the SALT deduction is used directly by around 30% of all taxpayers. Currently, taxpayers are given the option of deducting real estate taxes as well as either income taxes orsales taxes paid to state and local governments. While the SALT deduction is used across all income levels, the actual amount of property versus income versus sales tax deducted by lower, middle, and upper income taxpayers provides insight into how those taxpayers benefit. For example, while over 70% of SALT deductions for tax units with an AGI of more than $200,000 are from income taxes, over 60% of deductions from taxpayers with less than $50,000 in income come from property tax. This highlights how important the property tax deduction is for middle class homeownership.

In addition to its effect on taxpayers who itemize, regardless of adjusted gross income, the SALT

deduction also benefits taxpayers in all 50 states. **The tax deduction is used by Americans living in urban, suburban, and rural locations and across all congressional districts.** The states with the highest percentage of taxpayers using the SALT deduction are in the East and Northeast regions. However, states in the West and Midwest also take advantage of the deduction. Overall, use of the SALT deduction is widespread among all states. The average deduction per tax unit in Connecticut, New York, and New Jersey are all over $7,000, and close to $6,000 in California. If the SALT deduction were eliminated, assuming a 25% marginal tax rate, an average taxpayer in New York who currently itemizes SALT would face a tax increase of almost $1,800.

Click Here to View State and Local Tax Deduction by Congressional District.

Government Finance Officers of America

July 11, 2017

California's Tax Board of Confusion.

The state has more tax agencies than most — and one in particular is badly mismanaged.

No other state has a tax collection system like California's. No other state would want one.

Rather than a single revenue department, California uses three separate agencies to manage different taxes. One of those agencies, the Board of Equalization (BOE), collects sales and property taxes, along with many smaller revenue sources such as levies on jet fuel. Now it's taking on the new role of collecting marijuana taxes. But even as its mission continues to expand, the BOE appears to be badly mismanaged.

A recent audit from the state Finance Department found that the BOE's elected board members have been directing civil servants to work on pet political projects. It also found that those board members, who aren't supposed to receive political contributions exceeding $250, have been known to accept thousands in bundled donations of $249 from companies who have business before them. And although the BOE is supposed to meet in open, quasi-judicial hearings, recent legislative testimony revealed members have met privately with parties who were appealing their tax assessments, never reporting the content of those conversations. "The testimony indicated that board members were inappropriately influencing staff members in the performance of their duties," says state Sen. Steven Glazer.

The audit prompted Gov. Jerry Brown to temporarily block the board's ability to hire or make large purchases. He's also requested a fresh investigation from the state's Justice Department, and called on legislators to find a way to overhaul the BOE. Meanwhile, members of the board have joined with outsiders in putting forward their own proposals to revamp parts of the agency. "Clearly it needs to be run significantly better," says state Rep. Phil Ting. "They have trouble answering even the most basic budget and systems questions."

For all its faults, however, no one in Sacramento is convinced that big changes are about to hit the agency. Many powerful interests in the state like things the way they are. Those with inroads to the board are able to wheedle favorable opinions on behalf of their clients. Board members enjoy pretty good perks, including sizable staffs. The state controller sits on the board, but other members, who are elected directly by voters in four separate districts, include ex-legislators who have chummy relations with their former colleagues. "It's those relationships, I believe, that have kept reforms

from happening," says state Sen. Jerry Hill.

The Board of Equalization was set up back in the 19th century as a way of dealing with problems caused by county assessors. Back in those days, taxes were proportionately higher in mining counties than grazing counties. Hence the need to "equalize" taxes.

That function long ago ceased to be important, but the board kept taking on more work. Collection of income taxes, for example, falls under the Franchise Tax Board, but the BOE still adjudicates disputes about those taxes. "With this elected tax board, you've got a group of people with really very little knowledge or expertise about taxes, who don't create any useful body of precedent for people to understand taxation," says Daniel Simmons, an emeritus law professor at the University of California, Davis. "There's really no way to fully know how the law will be interpreted and applied."

Over the years, countless commissions and studies have recommended that state tax collection be consolidated into a single revenue department accountable to the governor — which is how most states do it. But killing off the BOE would require a constitutional revision approved by voters. That isn't likely.

Still, a summoning of political will could create some meaningful changes to the agency. The board, if it were so inclined, could even fix things, says Sen. Glazer. "This could be resolved with better board policies and a CEO who insists on respect for the chain of command of his office," he says. "But it's a big question."

GOVERNING.COM

BY ALAN GREENBLATT | JULY 2017

Tax Court Strains to Disallow Charitable Contribution Deduction.

Not unlike the American Broadcasting Company's Wide World of Sports, our blog attempts to provide you the reader with blogs covering a wide variety of topics directly and indirectly related to tax-exempt bonds. In the category of topics indirectly related to tax-exempt bonds, this blog will address a recent Tax Court Memorandum (*Fakiris, George v. Commissioner*; No. 18292-12; T.C. Memo 2017-126) in which the Tax Court upheld an IRS notice of deficiency based on a disallowed charitable contribution deduction. The Memorandum isn't the topic of this week's blog because it is rare for a charitable contribution deduction to be disallowed in full or in part; rather, the Tax Court's decision is noteworthy because of the incredible effort that the Tax Court went through to reach its conclusion!

Continue Reading

The Public Finance Tax Blog

By Joel Swearingen on July 7, 2017

Squire Patton Boggs

TAX - WYOMING

Thomas Gilcrease Foundation v. Cavallaro

Supreme Court of Wyoming - June 7, 2017 - P.3d - 2017 WL 2464949 - 2017 WY 67

Taxpayer, which was trustee of trusts that owned eight parcels of property, brought action against county assessor seeking declaratory judgment that trusts were charitable trusts exempt from property taxation.

The District Court dismissed complaint on basis of primary jurisdiction. Taxpayer appealed.

The Supreme Court of Wyoming held that:

- Taxpayer was required to exhaust administrative remedies prior to bringing action, and
- Primary jurisdiction doctrine warranted dismissal in favor of review through administrative process.

Taxpayer, which was trustee of trusts that owned eight parcels of property, was required to exhaust administrative remedies prior to bringing action against county assessor seeking declaratory judgment that trusts were charitable trusts exempt from property taxation, since taxpayer was not asking court to interpret statutes defining charitable trusts and setting forth charitable trust exemption, but was asking court to determine whether trust was charitable trust exempt from taxation, and such determination was precise function of county assessor and administrative process.

Primary jurisdiction doctrine warranted dismissal in favor of review through administrative process of action by taxpayer, which was trustee of trusts that owned eight parcels of property, against county assessor seeking declaratory judgment that trusts were charitable trusts exempt from property taxation, even if taxpayer was seeking interpretation of phrase “directly beneficial” in statute setting forth charitable trust exemption, since such interpretation did not simply require answer to legal question, but involved significant questions of fact, and determining whether factual situation of trust fell within exemption was best left to expertise of county assessor.

Scoreboard: What If Congress Nixed Federal Stadium Subsidy?

What would happen if Congress eliminated a popular federal tax break used to build sports stadiums?

A bipartisan group of House and Senate lawmakers want Congress to take a second look at recently reintroduced legislation that would eliminate the tax exemption for municipal bonds used to finance construction of professional sports stadiums. The issue has been a hot topic of late, with Nevada embarking on a $1.9 billion stadium in Las Vegas for the National Football League’s Raiders—funded in part with the largest public subsidy for a stadium in the league’s history.

The bills—introduced in the House (H.R. 811) by Rep. Steve Russell (R-Okla.) and the Senate (S. 1342) by Sens. Cory Booker (D-N.J.) and James Lankford (R-Okla.)—would eliminate the subsidy by creating a special rule under tax code Section 141(b).

“If a community wants to vote and tax themselves to improve their city or to do something to bring a sports team in, that is up to those local citizens,” Russell told Bloomberg BNA. “But you shouldn’t have people in Nevada asking for Oklahoma or New York tax dollars to fund their stadium,” he said.

A September 2016 report from the Brookings Institution found that 36 NFL, National Basketball Association, National Hockey League, and Major League Baseball stadiums that were newly built, extensively renovated, or under construction from 2000 through September 2016 were—at least in part—funded with tax-exempt municipal bonds, costing the federal government $3.2 billion when calculated using a 3 percent discount rate.

Russell, who has met with House Ways and Means Committee Chairman Kevin Brady (R-Texas) about the bill, said the measure is designed to be included in the tax reform package currently being crafted by Republican lawmakers and the White House. Booker told Bloomberg BNA he would rather see the measure enacted on its own.

The NFL is monitoring the legislation, said Jocelyn Moore, the league's senior vice president of public policy and government affairs. But a similar bill introduced by Russell last session (H.R. 4838) failed to gain traction, she noted. As far as the new legislation is concerned, "I don't think that either bill has garnered a significant amount of bipartisan cosponsors," Moore told Bloomberg BNA.

The bill's passage may be a long shot, but just how valuable are tax-exempt municipal bonds to the state and local governments and teams that rely on them to build new stadiums?

Costs Shifted to States

The average cost of debt service on the state and local level would increase 25 percent if stadiums lost the ability to use the bonds, said Dennis Zimmerman, director of projects at the American Tax Policy Institute and a former Congressional Research Service analyst who wrote a series of frequently cited reports on tax-exempt stadium financing in the 1990s. "That's generally the value of the tax subsidy."

The amount local taxpayers currently pay for the stadiums is equal to the total principal of tax-exempt bonds issued, which was $13 billion for the 36 stadiums surveyed in the Brookings report, said co-author Austin J. Drukker, a project coordinator and research assistant at the think tank.

"Assuming localities would switch from tax-exempt bonds to taxable bonds with the same principal value and other characteristics, the additional cost to local taxpayers would be equal to the federal subsidy"—$3.2 billion total—Drukker said in an email. Dividing $3.2 billion by $13 billion roughly equals a 24.6 percent increase in debt service, very close to Zimmerman's estimate.

"However, if localities used other financing options that were cheaper than taxable bonds (which have to pay interest to investors at the expense of the local taxpayers), the expense to the local taxpayer might be lower," he said.

Worth the Investment?

The NFL's Moore said stadiums shouldn't be treated differently than opera houses, cultural centers, or education facilities that states and localities vote to build.

Federal investment in infrastructure is designed to bring in private dollars for local projects that will lead to economic development, "which our stadiums certainly do," Moore said.

Brett Bolton, principal associate for finance and intergovernmental relations at the advocacy group National League of Cities, echoed Moore's comments about flexibility in an emailed statement. "If a referendum passes or a council votes to build a large public project, we believe the city should be able to use every tool in the tool chest to finance and advance the project," he said. "That would include tax-exempt municipal bonds."

But the Brookings study, citing several research papers, said: “Academic studies consistently find no discernible positive relationship between sports facility construction and local economic development, income growth, or job creation.” Among other explanations, the report said the money people spend attending a game at a newly constructed stadium is largely offset by reduced spending at other local venues.

The NFL provided Bloomberg BNA with reports from the late 2000s that projected stadiums recently built in California, Minnesota, and Georgia—for the 49ers, the Vikings and the Falcons, respectively—would generate hundreds of millions in economic output. The league referred Bloomberg BNA to the individual cities to obtain the actual economic figures now that the first two stadiums are in service and the last one is nearing completion.

The mayor’s office in Santa Clara County, Calif., didn’t return requests for comment; the mayor’s office in Minneapolis referred Bloomberg BNA to the Minnesota Sports Facilities Authority, which didn’t respond; and the mayor’s office in Atlanta said the city uses the Bureau of Economic Analysis for information on economic growth but hadn’t verified the projected numbers.

In general, the tax exemption “has been a cost-effective way for state and local governments to finance infrastructure, and if the tax exemption broadly for municipal bonds were to be eliminated, it would likely result in less infrastructure investment,” said Robin Prunty, a managing director in the Public Finance Ratings Group at S&P Global Ratings. “I think that would follow through for stadiums.”

Demand Exceeds Supply

If legislation eliminating the tax exemption becomes law, “[w]ill it have an effect on the amount of sports economic activity?” Zimmerman asked. “I think we can say with great assurance, it will not.”

The federal subsidy isn’t the main driver for states and localities looking to finance professional sports stadiums, said Ted Gayer, vice president and director of Brookings’ economic studies program and a co-author of the 2016 report. Other factors play a role, including a local community’s desire to have a team and local politicians who want to bring in a team as part of their legacy, he said. And “most importantly, if you want a football team, you can’t create a football team, you have to go to the NFL,” he said.

The demand for franchises far exceeds the supply, Zimmerman said. “It’s that excess demand that gives them the leverage to extract subsidies from the local and state governments.”

Moore, at the NFL, disagreed with the assessment that the league would be unharmed by the stadium bills. “I think it’s a concern for all sports leagues that build stadiums,” she said, adding that the public financing is used not only for stadium construction, but also for security and technology upgrades.

The NHL, NBA, and MLB didn’t return requests for comment.

Controversial Corner

The tax-exempt bond market probably would fare well if the stadium bills were enacted, according to Matt Fabian, a partner at Municipal Market Analytics Inc.

Tax-exempt stadium financing is a controversial corner of the municipal market. “It accounts for less than 1 percent of the bond market and yet it probably draws 25 percent of the criticism,” Fabian

said. Eliminating that small, problematic corner would legitimize the remainder of the market and reduce the risk of other areas losing their tax exemption, he said.

Any negative effects of killing the stadium-bond exemption would likely be felt by public finance bankers, he said.

Cutting stadium financing out of the tax-exempt space would mean that those bankers could no longer charge fees for their underwriting services on stadium bond issues. And while there aren't a lot of these bond issues in the market, they are generally lucrative for banks to bring in, Fabian said.

Stadium bond issues are complex and tend to be controversial, so an investment bank can generally get a larger spread for selling those bonds than general obligation bonds, he said. "These are harder transactions to structure and complete, which is a welcome change from the low-spread world of GO bond issuance."

Bloomberg BNA

By Allyson Versprille

July 3, 2017

With assistance from Kaustuv Basu in Washington.

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NABL: Political Subdivision Regs on List of Burdensome Regs.

The IRS has issued Notice 2017-38 which responds to Executive Order 13789 that required the IRS and Treasury to review significant tax regulations issued on or after January 1, 2016 and report on those regulations that (i) impose an undue financial burden on U.S. taxpayers; (ii) add undue complexity to the Federal tax laws; or (iii) exceed the statutory authority of the Internal Revenue Service (IRS).

Eight regulations were identified, including the proposed regulation on the definition of political subdivisions. In discussing that regulation, the Notice states: "Commenters stated that the longstanding 'sovereign powers' standard was settled law and had been endorsed by Congress, and additional limitations were unnecessary. Commenters also stated that the proposed regulations would disrupt the status of numerous existing entities and that it would be burdensome and costly for issuers to revise their organizational structures to meet the new requirements of the proposed regulations."

Comments are requested on whether the regulations identified in the report, including the proposed regulation on political subdivisions, should be rescinded or modified. Comments are due by August 7, 2017. Treasury must submit a report to the President by September 18, 2017 recommending specific actions to mitigate the burdens identified.

The proposed regulations are available here.

NABL's comments on the proposed regulations are available here.

TAX - PENNSYLVANIA

Valley Forge Towers Apartments N, LP v. Upper Merion Area School District

Supreme Court of Pennsylvania - July 5, 2017 - A.3d - 2017 WL 2859007

Taxpayers brought action against school district, as a taxing district, seeking declaratory and injunctive relief on the theory that the district violated the Uniformity Clause of the Pennsylvania Constitution by systematically appealing only assessments of commercial properties.

The Court of Common Pleas sustained district's preliminary objections and dismissed the complaint with prejudice. Taxpayers appealed. The Commonwealth Court affirmed. Taxpayers appealed.

The Supreme Court of Pennsylvania held that:

- Taxpayers could invoke equity jurisdiction of Court of Common Pleas to seek declaratory and injunctive relief based on theory that school district violated Uniformity Clause, and
- Uniformity Clause did not permit school district to selectively appeal only assessments of commercial properties, such as apartment complexes, while choosing not to appeal assessments of other types of property, such as single-family residential homes.

Taxpayers could invoke equity jurisdiction of Common Pleas Court to seek declaratory and injunctive relief based on theory that school district, as taxing district, violated the Uniformity Clause of the Pennsylvania Constitution by systematically appealing only assessments of commercial properties. Statutory appeals process was not designed to provide declaratory or injunctive relief, strict adherence to the process would implicate concerns relating to piecemeal litigation and inadequacy of statutory remedy, and adjudicatory process by board of assessment appeals was solely directed at ascertaining the subject property's value and applying ratio to that value.

Uniformity Clause of the Pennsylvania Constitution did not permit school district, as taxing district, to selectively appeal only assessments of commercial properties, such as apartment complexes, while choosing not to appeal assessments of other types of property, such as single-family residential homes. All property in taxing district was single class, Uniformity Clause did not permit government to treat different property sub-classifications in disparate manner, and nondiscriminatory methods of deciding which properties to appeal existed.

Who Pays the Local Tax Bill?

There's disagreement over who bears the biggest burden: the poor or the wealthy.

For the past 15 years, cities have focused on attracting the creative class. The idea is that if you build a thriving creative culture — vibrant communities of artists, writers, musicians and so on — a thriving economy will follow. It's a strategy that's worked well, especially in places like Asheville, N.C.; Denver; and Seattle.

In many cities, it's worked too well. Some creative-class cities have become victims of their own success, unable to keep up with demand for housing, local public services and livable-wage jobs for the lower-middle class. The result is a crisis of affordability driven by huge spikes in home prices, rents and homelessness.

Local leaders have taken steps to respond. In the past 18 months, Los Angeles, San Francisco, Seattle, Silicon Valley in Santa Clara County, Calif., and other localities have proposed new local taxes to expand affordable housing and bolster services for the homeless. As they grapple with this new challenge of affordability, they must also confront an old question at the heart of local public finance: Who actually pays local taxes?

There are two ways to think about who pays. One is the “statutory incidence,” or who is required to remit a tax to the government. The other is the “economic incidence,” or who pays a tax because they’re unable to avoid it. The former is easy to measure. The latter is not.

Most local governments have access to the sales tax and the property tax. There’s good evidence that the economic incidence of the sales tax is on consumers. Merchants collect and remit the tax, but consumers pay it because there’s really no way around buying basic items like clothing. If the goal is for tourists to help pay for local affordability, then the sales tax makes sense. However, for that same reason poor and middle-income people also pay a larger share of their incomes in sales taxes compared to the rich because the sales tax is regressive. For many affordability advocates, that’s unacceptable. Why pay for affordability with a tax that falls disproportionately on the poor?

That’s why affordability advocates have warmed to the property tax. Middle- and upper-income people are more likely to own property and pay property taxes, so the statutory incidence is inherently less regressive. But if we care about economic incidence, the reality is unclear at best. In fact, for more than 50 years public finance experts have argued over who actually pays the property tax.

One school of thought says it’s really a tax on wealth. But higher property taxes might work against affordability by reducing the demand for housing and discouraging density. Why? It’s easy to imagine a homeowner who decides not to add on a new guest room because that will increase property value and the subsequent property tax bill. The same might apply to a landlord who opts against building a new rental property.

Another view says local property taxes are what you pay for the services your local government delivers. This is especially true for zoning, public safety and other services that benefit all property owners in roughly the same way. If that’s true, then property taxes are neither progressive nor regressive. Everyone pays a proportional amount for a proportional share of benefits.

Yet another view says the property tax is a tax on the service called housing. In that case, the property tax is like the sales tax. Since lower-income people cannot escape paying for housing (usually as renters) then property owners can send much of the property tax burden down the income ladder.

We’re not likely to settle this question any time soon. So for now, the question of who should pay for affordability will be about perceptions, priorities and politics, and not about public finance.

GOVERNING.COM

BY JUSTIN MARLOWE | JUNE 2017

Tax-Exempt Financing of Churches, Parochial Schools and Other Sectarian Institutions After Trinity Lutheran Church: Permitted? Required? Let us Pray

for Answers.

The U.S. Supreme Court's June 26 opinion in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, precluding states from discriminating against churches in at least some state financing programs, raises anew the question of whether states may, or are required to, provide tax-exempt conduit bond financing to churches and other sectarian institutions. The Supreme Court's decision further complicates an already complicated analysis of that question by bond counsel, and in some instances may tip bond counsel's answer in favor of green-lighting tax-exempt financing of some capital projects of sectarian institutions.

The First Amendment to the U.S. Constitution precludes Congress and, via the Fourteenth Amendment, states from legislating the establishment of religion (the "Establishment Clause"), or prohibiting the free exercise thereof (the "Free Exercise Clause"). Under a line of Supreme Court cases that has been cast into doubt but never expressly repudiated by a majority of the U.S. Supreme Court, the Establishment Clause has been held to prohibit state financing of "pervasively sectarian" institutions, i.e. institutions that "are so 'pervasively sectarian' that secular activities cannot be separated from sectarian ones." *Roemer v. Board of Publ. Works of Maryland* (1976).

Continue Reading.

By Len Weiser-Varon on June 27, 2017

Mintz Levin

TAX - FLORIDA

Treasure Coast Marina, LC v. City of Fort Pierce

Supreme Court of Florida - June 15, 2017 - So.3d - 2017 WL 2590803

After city was granted exemption from ad valorem taxes on two marinas it owned and operated, owner of private marina, which was not exempted, brought suit seeking declaratory and injunctive relief against application of exemption to city's marinas.

Parties moved for summary judgment. The Circuit Court granted summary judgment to owner. City appealed. The District Court of Appeal reversed and certified question.

The Supreme Court of Florida held that marinas were exempt from ad valorem taxation as property owned and used exclusively by municipality for municipal or public purposes.

Marinas that were owned by municipality were exempt from ad valorem taxation as property owned and used exclusively by municipality for municipal or public purposes, even though locks were placed on some of the docks. Protection of boats and other property from vandalism and crime was entirely consistent with operation of a marina, marinas were open to public, and marinas did not charge any fee for boaters who wished to dock for the day.

TAX - NEW HAMPSHIRE

Appeal of Public Service Company of New Hampshire

Supreme Court of New Hampshire - June 2, 2017 - A.3d - 2017 WL 2392541

Taxpayer appealed order of Board of Tax and Land Appeals denying 77 of its 86 individual tax abatement appeals on its property.

The Supreme Court of New Hampshire held that:

- Taxpayer failed to meet burden of providing evidence that utility regulatory environment in which it operated impacted market value of property to such degree to make assessments disproportional;
- Findings by Board that appraisals of property presented by taxpayer did not result in credible opinions of market value were supported by record;
- Judicial estoppel did not apply to bar municipalities from assessing property at value greater than
- Department of Revenue Administration's assessed value; and
  Board's decision did not violate state constitutional requirement that taxation be uniform and proportional.

Taxpayer failed to meet its burden of providing sufficient probative evidence that utility regulatory environment in which it operated impacted market value of its utility property to such degree as to make municipal assessments disproportional in Board of Tax and Land Appeals' denial of 77 of its 86 individual tax abatement appeals. While taxpayer relied upon impact that regulation had upon its ability to set rates and impact that regulation would have upon sale of utility, as, in such sale, Public Utilities Commission approval was required, fact that Commission disfavored passing on acquisition costs to customers did not mean practice was forbidden, as it could approve sale and pass costs to customers provided that it found such sale to be for public good, and identifying regulation that might impact market value of property was insufficient.

Findings by Board of Tax and Land Appeals that appraisals of utility property presented by taxpayer did not result in credible opinions of market value were supported by record in its denial of 77 of taxpayer's 86 individual tax abatement appeals on property. First appraiser did not consider possibility of sale of any of key components of property, but Public Utilities Commission concluded that taxpayer's hydroelectric plants could be sold separately and for higher value, first appraiser used flawed income approach, as he did not have specific revenue or expense information, second appraiser shifted how much weight he placed upon his approach for differing years but provided no support for deduction for what he called non-taxable, pollution control items, and second appraiser did not provide independent opinion of market value of property in individual towns.

Judicial estoppel did not apply to bar municipalities from assessing taxpayer's utility property at value greater than Department of Revenue Administration's assessed value, even though municipalities did not challenge Department's assessment before Board of Tax and Land Appeals denied 77 of taxpayer's 86 individual tax abatement appeals. Department's equalization process was not legal proceeding in which municipalities were litigants, and taxpayer did not show that municipalities took inconsistent positions, as municipalities submitted their local assessed values to Department, which unilaterally substituted allocated values from its appraisal for local assessed values supplied by municipalities and, thus, position municipalities were asserting was that their local assessed values represented correct market value of property, which was consistent with assessing taxes based upon those values.

Board of Tax and Land Appeals' decision to deny 77 of taxpayer's 86 individual tax abatement appeals on its utility property did not violate state constitutional requirement that taxation be uniform and proportional, despite claim that it allowed local municipal assessments to be significantly greater than Department of Revenue Administration's assessments used to determine municipality's share of county taxes. Taxpayer paid same proportion of local taxes, regardless of value of county taxes owed by municipality, and, thus, it was not being taxed disproportionately

compared to other municipal residents, and taxpayer could not show that it was harmed, as Department's valuations of property did not yield accurate opinion of market value and, thus, property was effectively being value disproportionately lower at county level.

TAX - NEW HAMPSHIRE

SegTEL, Inc. v. City of Nashua

Supreme Court of New Hampshire - June 9, 2017 - A.3d - 2017 WL 2511319

Telecommunications provider, which used poles and conduits on city's right of way pursuant to pole attachment agreements with utility providers, brought action against city seeking declaratory judgment that city was not entitled to impose property taxes and seeking to strike city's tax assessment.

The Superior Court granted summary judgment to provider. City appealed.

The Supreme Court of New Hampshire held that city lacked authority to tax telecommunications company for use of poles and conduits over rights of way owned by city, where company did not own any poles or conduits within city, did not have its own license from city authorizing its occupation of city's rights of way, and used poles and conduits pursuant to pole attachment agreements with utility providers that did not require company to pay property taxes assessed by city.

Will It Soon Be Game over for Tax-Exempt Financing of Professional Sports Stadiums?

Public financing, including tax-exempt bond financing, of facilities used by professional sport teams has long been a controversial topic, with advocates and opponents disagreeing over whether the public benefits sufficiently to justify public subsidies. Since 2000, over $3.2 billion of tax exempt bonds have been issued to finance the construction and renovation of 36 sports stadiums.

A bill has been introduced that would eliminate the availability of federally tax-exempt bonds for stadium financings. Under existing tax law, use of a stadium by the applicable professional sports team constitutes "private use," but taxable "private activity bond" status, which is triggered by "private use" of the financed facility combined with the presence of "private security or payment" for the applicable bonds, can be avoided by structuring the bonds to be payable from tax or other revenues unrelated to the financed stadium.

The bill would amend the Internal Revenue Code to treat bonds used to finance a "professional sports stadium" as automatically meeting the "private security or payment" test, thus rendering any such bonds taxable irrespective of the source of payment.

This bill is identical to a version introduced in the House of Representatives in February and a slight departure from prior versions in the House that extended the exclusion from tax-exempt financing to a broader category of "entertainment" facilities.

What's new this time? There are versions of legislation intended to terminate tax-exempt financing of professional sports stadiums in both the House and Senate, arguably evidencing an increased likelihood of advancement.

The National Law Review

Wednesday, June 21, 2017

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S&P Credit FAQ: Proposed Criteria For U.S. And Canadian Not-For-Profit Acute Care Health Care Organizations.

On June 8, 2017, S&P Global Ratings published a request for comment (RFC) on revised criteria for U.S. not-for-profit health care organizations ("U.S. And Canadian Not-For-Profit Acute Care Health Care Organizations").

Continue Reading

Jun. 8, 2017

Issue Price: Notes from the Field.

We are two weeks into the new issue price regulations. Here are a few more observations from the field. As expected, most of the action flows from the hold the offering price rule.

Continue Reading

The Public Finance Tax Blog

By Johnny Hutchinson on June 22, 2017

Squire Patton Boggs

TAX - CALIFORNIA

Williams & Fickett v. County of Fresno

Supreme Court of California, California - June 5, 2017 - 2017 WL 2417300 - 17 Cal. Daily Op. Serv. 5224

Taxpayer brought action against county for refund of personal property taxes.

The Superior Court sustained demurrer without leave to amend and dismissed the complaint. Taxpayer appealed. The Court of Appeal reversed.

The Supreme Court of California held that:

- Administrative exhaustion of a claim for refund on the basis that the taxpayer does not own the affected property requires the taxpayer to file an application for assessment reduction, overruling *Parr-Richmond Industrial Corp. v. Boyd*, 43 Cal.2d 157, 272 P.2d 16;

- Administrative exhaustion of a claim for refund on the basis that the taxpayer does not own the affected property requires the taxpayer to certify under penalty of perjury that the taxpayer is the "owner" of the property; and
- Supreme Court's holding requiring administrative exhaustion would apply prospectively only.

To satisfy the exhaustion of administrative remedies requirement for a court action for a refund of tax on nonexempt assessed property based on the taxpayer's nonownership of the property, a taxpayer must seek an assessment reduction through the assessment appeal process before the county board of equalization or a county assessment appeals board, or obtain a stipulation that such proceedings are unnecessary, since such an action seeks a "reduction in an assessment" on the local roll; overruling *Parr-Richmond Industrial Corp. v. Boyd*, 43 Cal.2d 157, 272 P.2d 16.

A taxpayer who erroneously has been assessed tax on nonexempt property the taxpayer does not own may certify or declare under penalty of perjury that the taxpayer is the "owner" of the property within the meaning of the Revenue and Taxation Code, as required to satisfy the exhaustion of administrative remedies requirement for a court action for a refund of tax based on the taxpayer's nonownership of the property, since the taxpayer is a "person having a direct economic interest in the payment of the taxes on that property."

Supreme Court would apply its holding in the present case, that administrative exhaustion of a claim for refund on the basis that the taxpayer does not own the affected property requires the taxpayer to file an application for assessment reduction, prospectively only, since taxpayers like the plaintiff in the present case might have reasonably relied on a prior Supreme Court decision to believe it was unnecessary to timely exhaust administrative remedies through the assessment appeal process.

TAX - NEW HAMPSHIRE

Appeal of New Hampshire Electric Cooperative, Inc.

Supreme Court of New Hampshire - June 2, 2017 - A.3d - 2017 WL 2407213

Electric cooperative appealed an order of the Board of Tax and Land Appeals (BTLA) denying 16 of cooperative's 23 individual tax abatement appeals regarding its property located in 11 municipalities for one tax year and 12 municipalities for the subsequent tax year.

The Supreme Court of New Hampshire held that:

- BTLA was not required to find that market value equaled net book value;
- BTLA had sufficient evidence to properly reject Department of Revenue Administration (DRA) appraisals;
- Evidence was sufficient to support BTLA determination that cooperative's appraisals were not credible;
- Cooperative did not present sufficient credible evidence to prove disproportionality;
- Doctrine of judicial estoppel did not apply to prevent municipalities from using local assessment values; and
- BTLA did not violate requirements that taxation be uniform and proportional.

Board of Tax and Land Appeals (BTLA) had sufficient specific evidence in electric cooperative's tax abatement claim that, notwithstanding impact of regulation, market value of cooperative's property was not limited to its net book value, and thus BTLA was not required to find that market value equaled net book value, despite contention that Public Utilities Commission (PUC) would limit any

utility purchaser to return based on net book value. Even though PUC disfavored passing acquisition costs to customers, PUC had approved sales above net book value, regulations on cooperative provided benefits, and BTLA heard expert testimony that cooperative's market value exceeded its net book value.

Board of Tax and Land Appeals (BTLA) had sufficient evidence from which it could properly reject Department of Revenue Administration (DRA) appraisals and allocated values in electric cooperative's tax abatement claim. BTLA examined DRA's appraisals, heard testimony from DRA's appraiser, and heard testimony from municipalities' experts that criticized DRA's procedures, assumptions, calculations, and conclusions, and BTLA was not required to accept testimony from DRA's appraiser that his allocation procedure based on original cost was proper.

Evidence was sufficient to support Board of Tax and Land Appeals (BTLA) determination in electric cooperative's tax abatement claim that cooperative's appraisals did not result in a credible opinion of market value. Appraiser limited his income analysis to simple arithmetic average of previous three years of expenses, and appraiser's opinion that buyer would not pay more for utility property than rate base was contradicted by seven of 11 sales that appraiser cited.

Board of Tax and Land Appeals (BTLA) made specific factual findings that supported its conclusion that electric cooperative had not presented sufficient credible evidence to meet its burden of proving disproportionality in its tax abatement claim, and thus there was no error in BTLA's statement that cooperative's remaining criticisms of municipal assessors' appraisal methods could not, standing alone, carry cooperative's burden; BTLA's explanations for why it rejected cooperative's testimony and appraisals were supported by record, and evidence upon which cooperative relied to challenge other appraisals was primarily methodological.

Doctrine of judicial estoppel did not apply to prevent municipalities from assessing electric cooperative's property at local assessment values that were greater than Department of Revenue Administration's (DRA) assessed values; DRA equalization process was not legal proceeding, and municipalities did not take inconsistent positions, as they submitted local assessed values as correct market value of property to DRA.

Board of Tax and Land Appeals (BTLA) did not violate principles of uniform and proportional taxation by refusing to apply doctrine of judicial estoppel to prevent municipalities from assessing electric cooperative's property at local assessment values that were greater than Department of Revenue Administration's (DRA) assessed values. Purpose of doctrine was to protect integrity of judicial process by prohibiting parties from deliberately changing positions according to exigencies of moment, and purpose was not implicated.

The Professor and the Madman on Bonds.

This post is for those of you who like reading dictionaries (or about the making of dictionaries). Have you ever wondered why bonds are called bonds? To (try) to answer this question, let's review what the Professor and the Madman have to say.

Continue reading.

By Alexios Hadji on June 14, 2017

The Public Finance Tax Blog

Squire Patton Boggs

Early Tax Abatement Disclosures Under GASB 77: Incomplete, Mislabeled - and Occasionally Spectacular.

Tax Policy

The Government Accounting Standards Board establishes accounting rules used by state and local governments. In this article, Greg LeRoy of Good Jobs First discusses state and local disclosures under the Board's new accounting rule.

As of early June, more than a dozen local governments have issued Comprehensive Annual Financial Reports (CAFRs) reporting for the first time how much revenue they lost to economic development tax break programs. Some of these early disclosures are overly narrow, others are needlessly difficult to decipher—and a few go far beyond the basic requirements, providing taxpayers and investors outstanding new information.

The new reporting is pursuant to GASB Statement No. 77 on Tax Abatement Disclosures (see Weekly State Tax Report, January 27, 2017: "2017: A Landmark Year for Transparency on State and Local 'Corporate Welfare'"). This is the first time GASB has ever set forth a Statement on any kind of tax expenditure. The 2014 Exposure Draft for what became Statement 77 in 2015 drew almost 300 comments, making it one of GASB's most heavily-debated proposals ever.

Tale of Two Cities: Columbus and Birmingham

Emblematic of the two extremes seen so far under Statement 77 are two big cities, each confounding our expectations.

Columbus is Ohio's biggest city and capital of the state that was by years the first to disclose company-specific tax abatement records online— in 1999! Columbus is also home to State Auditor David Yost, who fought publicly several years ago with fellow Republican Gov. John Kasich over his office's right to audit Kasich's privatized JobsOhio agency.

Yet when it came to complying with GASB 77, Yost's office overruled Columbus City Auditor Hugh Dorrian (D), ordering a degraded Note that failed to capture the city's three largest economic development tax abatements. Courageously, Dorrian (an iconic figure in Ohio auditing circles who is soon to retire at age 81 after winning election 12 times) pushed back by inserting a second passage in the CAFR, also labeled "Tax Abatements." It references Statement 77, directs readers to the degraded Note, and then proceeds to disclose three abatement program payments totaling $14.6 million (mostly rebates of municipal personal income taxes to downtown employers).

Birmingham is Alabama's largest city and that state has been both exceedingly generous and quite opaque in its economic development spending, only recently issuing its first state tax expenditure report, for example. It has also been far behind other states in failing to disclose company-specific incentive records (ranking 44th in Good Jobs First's most recent "report card" study on transparency).

Yet in its FY 2016 CAFR issued in November 2016, for which it was not yet subject to Statement 77, the "Pittsburgh of the South" published an astoundingly complete set of data. Taking up six pages, Birmingham's Note does not just state the aggregate cost of each abatement program. It also names

every corporate recipient of more than $1 million, details the cost of each such deal, and even includes the projected future-year costs of each agreement.

None of these additional records is required by GASB 77, and the future-year liabilities are not even mentioned by GASB as an optional possibility (although some commenters argued that if public employee pension and health care future liabilities are to be disclosed, so should future abatement charges).

New Mexico: Most-Advanced Disclosure Plan Will Facilitate Analysis

New Mexico State Auditor Tim Keller (D) has ambitious plans for putting GASB 77 on steroids. He has considerable statutory authority and is using it aggressively. (His zeal may reflect the fact that as a state senator, his two incentive disclosure bills passed the legislature unanimously only to be vetoed by Gov. Bill Richardson (D) and Gov. Susanna Martinez (R)).

Keller has issued electronic reporting templates to every locality and state body, instructing them to provide the names of every abatement recipient, as well as the cost of every deal. His office will then collect all of the spreadsheets, combine them, and publish all of the data online in a downloadable form. No other state official has moved to make GASB 77 data so unified, comprehensive and accessible.

Keller's office is also ensuring that governments faithfully report the inter-governmental revenue harms caused by abatements. For example, a $1,000 property tax abatement by Bernalillo County (which includes and surrounds Albuquerque) will trigger GASB 77 reporting obligations by six governments (see chart).

GASB Seeks to Clarify Tax Increment Financing Coverage

Close observers of the Statement 77 process have long predicted that one very large kind of tax abatement—tax increment financing, or "TIF"—would become embroiled in controversy. That prediction proved accurate and GASB finally moved to rectify the matter in late April.

The nub problem is that TIF—and some other kinds of abatements—involve tax *diversion*s or tax *rebates* rather than tax *exemptions* or tax *reductions*. By every other measure, they meet GASB's definition of an abatement: they occur pursuant to an agreement between a government and a taxpayer; government agrees to receive less revenue; and the taxpayer agrees to perform a quid pro quo (e.g., hiring or capital investment).

TIF effectively works three ways when a new development results in higher property values and therefore higher property-value assessments and taxes owed. Either the increase—the so-called "tax increment"—is applied to debt service on bonds that directly benefit the development; or the increment is simply rebated; or it is refunded to the company on a "pay as you go" reimbursement basis as the company builds public or private structures as agreed per the terms of the deal.

Some states and localities use variations of this scheme to divert, rebate or refund various incremental sales, admissions or even personal income taxes. Many commenters on GASB's original Exposure Draft explained such programs, arguing that they belonged "inside the fence."

But some public officials disagreed, and even the American Institute of Certified Public Accountants challenged TIF's inclusion in a formal comment to GASB. Essentially, it argued that since taxpayers remit the increment, the tax isn't abated (even if it is soon returned). In the same vein, when Ohio

State Auditor Yost advised Columbus and other Ohio localities, his initial written advice indicated TIF likely wouldn't be covered.

However, GASB in late April resolved the matter, issuing its 2017 Implementation Guide (its annual Q & A document to answer unresolved interpretation questions about its Statements). In lucid, decisive language, it ruled (answering a hypothetical example):

> The developer is promising to take the specific action of constructing a building for purposes of economic development, and the government is forgoing tax revenues to which it is otherwise entitled by providing some or all of the additional property tax revenues above the baseline to the developer. **Although many tax abatements directly reduce the amount of taxes paid and do not involve the actual collection and return of taxes, the mechanism used to conduct the transaction is not relevant to determining whether a transaction meets the definition of an abatement.** Therefore, the fact that the developer pays property taxes and subsequently receives amounts from the government related to the additional property tax revenues means that the government did, in substance, forgo tax revenues. [Emphasis added]

In other words, if incremental tax revenues are repaid or rebated, and not used for debt service, they are covered by Statement 77. (TIF debt service payments, GASB has always held, are already discernible in CAFRs, and therefore don't need further disclosure.)

Unfortunately, the Implementation Guide only applies to CAFRs whose budget years start July 1, 2017 and beyond. So it does not apply to any of the first year's records. Hence it will sometimes be difficult or even impossible to compare the first and second year of data in some jurisdictions.

Denver's Incomplete Disclosure Suggests TIF Issue May Be Unresolved

As noted above, GASB has maintained that debt-based TIFs are not subject to Statement 77 because the debt service paid for by these tax diversions can be found in existing CAFR passages covering municipal debts. But one early disclosure suggests that this may result in undisclosed revenue losses. Denver lost $96 million in revenue to TIF in 2015, but this information was not found in its recently-issued CAFR. Instead, that figure appears in the CAFR of the Denver Urban Renewal Authority (DURA), a separate governmental body jointly controlled by the City and County of Denver.

If under Statement 77, DURA is to be treated as the actively abating government (because it technically creates and manages the TIF districts), then the revenue loss suffered passively by the City of Denver should have appeared in its Statement 77 Note (as in the New Mexico examples cited above). However, it does not, so taxpayers seeking to determine the impact of TIF on Denver's tax base would have to read the DURA CAFR and then impute the city's loss, as we do here.

The use of redevelopment agencies or other special authorities to administer TIF is not unusual, so this Denver-DURA disclosure problem may foreshadow more Statement 77 compliance problems.

Compliance Snags Not Surprising; Resistance Would Be Disappointing

Based on our experience with past Statements, we expect that the first year of Statement 77 data will be uneven. GASB's Implementation Guide clarification should improve TIF and other disclosures. Private accounting firms will hopefully propagate best practices among their clients; indeed, by mid-2018, we expect to be able to discern which accounting firms are taking Statement

77 seriously and which are not. They and governments will likely copy each other and develop more standardized reporting formats. Hopefully, some state officials will follow New Mexico's lead to make the data downloadable. And to promote the use and analysis of the new data, Good Jobs First will soon unveil Subsidy Tracker 2, designed to compile Statement 77 data nationally.

However, to the extent any public officials intentionally resist Statement 77, we are reminded of some localities' condescending and exclusionary histories against public participation. Gone are the days of economic development dockets "announced" only in six-point type in the Legal Notices of the Saturday newspaper. Gone are "public hearings" held with no public in attendance, no advance release of the hearings' content, and active government resistance to the disclosure of project details.

Gone now too, thanks to Statement 77, are financial reports that fail to clearly report the costs: how much revenue is lost to tax-break programs. Politicians have and always will tout their benefits; now the debate is gaining sorely-needed balance.

Bloomberg BNA

By Greg LeRoy

June 14, 2017

Greg LeRoy is executive director for Good Jobs First, a national policy resource center in Washington, D.C.

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Fitch: Slow US State Tax Revenue Growth Pressuring Budgets.

Fitch Ratings-New York-14 June 2017: Tepid revenue growth is pressuring state budgets, leading to mid-year budget cuts and reserve draws, which is unusual eight years into a national economic expansion, Fitch Ratings says.

This may become a more significant issue for state governments if tax revenue growth continues to lag economic growth and continued divergence could pose long-term credit challenges for states. States have used the growing revenue typically accompanying economic expansions to restore structural budget balance, fund new priorities and build-up reserves. A permanent decoupling of this link could gradually pressure the typically robust revenue frameworks for states.

The median year-over-year (YoY) revenue growth for the 35 states reviewed by Fitch – those states that have reported monthly revenue data through April – was just 1.8%. April is typically a large month for income tax collections. This was below the 2.2% annual rate of inflation in April. Revenue growth also trailed growth in personal income at 3.7% and wages and salaries at 3.8%, which were both up solidly on an annual basis through March, the most recent month available.

Median sales tax collections grew at just 1.8%. The shift to online sales could be one cause as sales taxes are not always collected on those transactions. State and local governments may have missed out on as much as $26 billion in sales tax revenue from e-commerce and other remote sales in 2015 alone, according to the National Conference of State Legislatures and the International Council of Shopping Centers.

Personal income tax (PIT) revenues were somewhat better at a median growth rate of 2.7% YoY through April. PIT includes both paycheck-withholding revenues, which continue to generally track economic performance, and non-withholding revenues which tend to be linked to capital gains and are much more volatile.

In the limited states where non-withholding data is available, Fitch noted widespread sharp YoY declines as of April. The steepest declines were in Connecticut, which posted a nearly 14% decline and Massachusetts reporting a more than 6% drop off. Connecticut's shortfall contributed to the state's revision of its projection to a nearly $400 million operating deficit in the current year.

Pennsylvania's relatively smaller 4% decline in non-withholding revenues added to pressure from steep declines in business tax collections and softness in sales tax collections, leading the state to project an approximately $1 billion overall general fund shortfall for the current fiscal year.

States reported one possible driver of the declines in non-withholding personal income tax revenue could be taxpayers who shifted income to the 2017 tax year in anticipation of large federal tax cuts. If that is a key driver, states may see a rebound in revenues in the next fiscal year.

A closer look at historical data indicates a more fundamental shift may be underway. Based on a review of quarterly state and local tax receipt data from the US Bureau of Economic Analysis, Fitch notes a recently widening gap between growth rates for tax collections versus key economic indicators including personal income and wages and salaries.

Between third-quarter 2015 and first-quarter 2017, annual growth in quarterly state and local tax receipts averaged 1.9% while growth in quarterly personal income averaged 3.6% and growth in wages and salaries averaged 4.2%. Behavioral changes or ongoing consumer shifts to untaxed activity as described above may be factors. In the preceding decade, average growth rates in quarterly tax receipts, wages and salaries, and personal income were much closer.

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Asian Insurers Developing Appetite for Taxable Munis.

A growing number of insurance companies in Tokyo, Seoul and Taipei are doing their part this year to make American infrastructure great again.

Their investment vehicle of choice: U.S. taxable municipal bonds, growing but still less than 15% of the $3.8 trillion U.S. muni market. That market — a focus for U.S. retail investors — remains dominated by tax-exempt bonds state and local governments issue for public-interest-related infrastructure investments.

Taxable muni bonds, by contrast, help fund projects with a private-interest element, such as retail concessions at airports. They typically offer healthy spreads over the yields on tax-exempt bonds, which could be used to fund the construction of runways, for example.

In a March interview, Atsushi Tachibana, Japan Post Insurance's managing executive officer in charge of investments, said his team invested in taxable U.S. munis in the fiscal year ended March 31, favoring them over lower yielding tax-exempt munis. Mr. Tachibana declined to comment on talk that Kampo, as his organization is known, issued $1 billion in taxable muni mandates.

At Dongbu Insurance, a fixed-income representative confirmed in April that Eaton Vance (EV) Management (EV) was awarded a $100 million taxable municipal bond mandate.

Other insurers in Asia — including Korean Reinsurance Co. and Kyobo Life Insurance Co. Ltd, both of Seoul — have issued RFPs for U.S. taxable munis in recent months, according to money management executives who declined to be identified. A Korean Reinsurance spokesman declined comment. And a source familiar with Kyobo Life, who declined to be identified, said the insurer is looking to award U.S. taxable muni mandates to two managers at the end of June. He didn't offer details on the size of the mandates.

A spokeswoman for Standish Mellon Asset Management said the firm recently won a taxable muni bond mandate from a Korean institution but declined to elabo details.

Growth predictions

Executives with global money management firms predict continued interest in taxable U.S. muni allocations from insurance companies and other long-term investors in Europe and Asia, even as the latest U.S. Federal Reserve data showed outflows of $17.2 billion for the first quarter, leaving outstanding foreign holdings of U.S. taxable munis at $90.4 billion. The outflows largely offset combined inflows of $19.3 billion over the prior two quarters.

Thomas McLoughlin, New York-based managing director and head of fixed income, Americas, with UBS Financial Services, said the case remains intact for expected increases in foreign investor flows to taxable munis. The latest quarter's data might reflect an apparent bout of profit-taking on the back of a powerful recent market rally, which saw valuations swing quickly to rich in the months following the U.S. presidential election, he said.

Bernhard Fischer, New York-based senior fixed-income analyst (municipal bonds) with Principal Global Investors, said despite first quarter outflows, "we can say with certainty that interest has increased significantly," judging by international RFP inquiries. Interest from Asian investors, which was focused in Japan last year, broadened to the rest of Asia in 2017, said Mr. Fischer. Plus, European insurers also set out several RFPs, and PGI's sales team in Australia is likewise seeing growing prospects, he said.

James Welch, a New York-based taxable muni portfolio manager with PGI, tied the prospect of

continued growth by foreign investors to their efforts to familiarize themselves with the asset class since yields went negative for large swaths of developed market sovereign bonds.

Over the past 12 to 18 months, institutional investors outside of the U.S. have been putting considerable time and effort into learning about the taxable muni market, and now a growing number are ready to take advantage of opportunities the market presents, agreed Cynthia Clemson, Boston-based co-director of municipal investments with Eaton Vance (EV) Management (EV).

A combination of factors — including superior yields, high credit quality and relatively low correlations with other major asset classes — is coming together now to make taxable U.S. muni bonds a viable asset class for institutional investors around the globe, Ms. Clemson said. And with annual issuance of more than $30 billion a year, the taxable market, at roughly $470 billion today, is fast approaching the $500 billion mark, a scale that should provide further psychological comfort, she said.

Long duration

Another charm of the taxable muni market for insurers in Asia is the securities' relatively long duration, which helps the insurers immunize their liabilities, noted Jeffrey Burger, a Boston-based senior portfolio manager on Standish Mellon's taxable muni team.

Data from Barclays Capital show the average maturity of the bonds in the Barclays Taxable Municipal index is 17.7 years, while the corresponding figure for the tax-exempt index is 12.8 years.

While being able to tap bonds with maturities that extend well beyond other credit alternatives is an attraction for insurers across the region, recent changes to regulations in Korea could add further incentives for insurers there.

Stella Ng, a Hong Kong-based analyst with Moody's Investors Service, said amended risk-based capital requirements for Korean insurers announced May 31 by the country's regulators will raise the maturity cap on insurance liabilities to 30 years from 20 by the end of 2018. That will leave insurers under pressure to better match their assets and liabilities or risk weakening their risk-based capital ratios. "We expect the trend of increasing overseas investments" — including investments in U.S. municipal bonds — "will continue because insurers are seeking more long-dated securities to match their insurance liabilities," said Ms. Ng, in an email.

Mr. Burger, who was in Asia the week of May 29 to visit clients in Japan, Korea, Hong Kong and Australia, said still another advantage of taxable muni bonds now is their more defensive nature in a rising rate environment. The yield for the benchmark Bloomberg Barclays Taxable Municipal Bond index ended 2016 at 3.78%, besting the tax-exempt Bloomberg Barclays Municipal Bond index's 2.65% and the benchmark 10-year Treasury's yield of 2.48%.

PENSIONS & INVESTMENTS

BY DOUGLAS APPELL · JUNE 12, 2017

TAX - NEW HAMPSHIRE

DirecTV, Inc. v. Town of New Hampton

Supreme Court of New Hampshire - May 26, 2017 - A.3d - 2017 WL 2323088

Taxpayer, a provider of satellite television service, filed petition for property tax abatement for satellite antennas and batteries used by taxpayer at its satellite uplink facility.

The Superior Court denied the petition.

The Supreme Court of New Hampshire held that:

- In determining whether personalty constituted a fixture subject to property tax, proper focus was relationship of the personalty to the realty itself, abrogating *Despatch Line of Packets v. Bellamy Man. Co.*, 12 N.H. 205, *Automatic Sprinkler Corp. v. Marston*, 94 N.H. 375, and *Lathrop v. Blake*, 23 N.H. 46;
- Satellite antennas were personalty, rather than fixtures; and
- Batteries were personalty, rather than fixtures.

Satellite antennas used by taxpayer at its satellite uplink facility in connection with its satellite television service were personalty, rather than fixtures, and, thus, were not subject to property tax. Antennas were readily removable and transportable without affecting the utility of the underlying land or buildings, nothing about the land rendered the antennas unfit for other commercial or professional uses if they were removed, and, had the antennas been removed, the only articles associated with the antennas that would have remained on the land would have been concrete pads and underground wiring, neither of which would have detracted from the fitness of the property for other uses.

Batteries used by taxpayer to provide backup power at its satellite uplink facility in connection with its satellite television service were personalty, rather than fixtures, and, thus, were not subject to property tax. Batteries were not affixed to a building, but were stored in steel racks and were easy to install and remove, removal of batteries would not have impaired function of building on the property, and batteries could be used at other facilities

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TAX - NEW HAMPSHIRE

Carr v. Town of New London

Supreme Court of New Hampshire - May 17, 2017 - A.3d - 2017 WL 2193454

Taxpayers sought review of town's denial of their application for an abatement of the tax assessment on property on which the house burned down.

The Superior Court granted summary judgment to taxpayers. Town appealed.

The Supreme Court of New Hampshire held that fire-related building loss occurring after April 1 may constitute "good cause" under tax abatement statute.

Fire-related building loss occurring after April 1 may constitute "good cause" under tax abatement statute allowing a taxpayer to seek relief under that statute as an alternative to relief under statute that governs prorated assessments for damaged buildings and that sets forth a 60-day window for seeking relief following the destruction of property.

TAX - PENNSYLVANIA

Upper Moreland Township v. 7 Eleven, Inc.

Commonwealth Court of Pennsylvania - April 13, 2017 - A.3d - 2017 WL 1365591

Taxpayer, a Texas corporation that maintained a regional corporate office in the township for division of its franchise convenience stores that operated inside and outside of Pennsylvania, appealed township's assessment of business privilege tax.

Following a bench trial, the Court of Common Pleas invalidated assessment. Township appealed.

The Commonwealth Court held that:

- Taxpayer demonstrated that charges paid by Pennsylvania franchise stores resulted from interstate activities, and thus were subject to apportionment under Commerce Clause;
- Trial court acted within its discretion in admitting taxpayer's organizational chart; and
- Proper remedy was remand to township for constitutional assessment of business privilege tax, rather than invalidation of assessment.

Taxpayer, which was Texas corporation that maintained regional office in township for division of franchise and corporate convenience stores, demonstrated that charges Pennsylvania franchise stores paid to taxpayer in exchange for various services resulted from interstate activities, and thus were subject to apportionment under Commerce Clause in township's assessment of business privilege tax. Taxpayer presented evidence that many services provided to Pennsylvania franchise stores were product of interstate commerce, including that marketing department which managed nationwide advertising and information systems department were located in Texas and that employee in Massachusetts was responsible for providing technology to all stores in division, including Pennsylvania stores.

Trial court acted within its discretion in admitting organizational chart of taxpayer, which was Texas corporation that maintained regional office in Pennsylvania for corporate and franchised convenience stores, in taxpayer's appeal challenging township's assessment of business privilege tax on charges paid by franchise stores, though chart was not identified in discovery or produced until after pre-trial conference; trial court admitted chart to aid in understanding of testimony by taxpayer's division vice president regarding company's operations, and vice president was subject to cross-examination about chart by township.

Proper remedy following trial court's determination that township violated Commerce Clause in its assessment of business privilege tax by failing to apportion charges paid to taxpayer, which was Texas corporation that maintained regional office in township for division of franchise and corporate convenience stores, by franchise stores in Pennsylvania that resulted from interstate commerce, was remand to township for constitutional recalculation of the assessment, rather than invalidation of assessment. Township could constitutionally tax the charges, provided that the taxed receipts were validly apportioned, taxpayer had not paid those taxes, and remand for recalculation was in interest of fairness to other taxpayers in township.

Hartford's Finances Spotlight Property-Tax Quandary.

Despite top property-tax rate in Connecticut, the state's capital teeters on bankruptcy

For capital cities like Hartford, much of the real estate is held by nontax paying government departments.

Hartford, Connecticut's capital city and hub of the state's insurance industry, is edging closer to joining a small club of American municipalities: those that have sought bankruptcy protection.

The city's $49.6 million budget hole and the impending departure of one of its biggest employers, Aetna Inc., have shined a light on its unusual predicament: Half of the city's properties are excluded from paying taxes because they are government entities, hospitals and universities.

It has less taxable property than the neighboring suburban community of West Hartford, which has less than half of the population than its urban neighbor. And Hartford's total property-tax receipts are about 25% below that of the tony community of Greenwich.

"The root of the problem is you have a city built on a tax base of a suburb," said Mayor Luke Bronin.

The mayor said the small tax base along with growing fixed costs produced structural budget deficits that prior administrations sought to deal with through asset sales, short-term debt restructuring and property-tax increases.

Mr. Bronin is now asking for financial help from the state. "My goal and my hope is that legislators from around the state of Connecticut will recognize that Hartford cannot responsibly solve a crisis of this magnitude at the local level alone," he said.

Around the U.S. the main source of funding generated by municipalities is property-tax revenue, contributing 47% of the money raised by local governments, according to the Lincoln Institute of Land Policy.

For capital cities such as Hartford, much of the real estate is held by government departments that don't pay taxes. Hartford, with a population of about 125,000, is home to the University of Connecticut School of Law, Trinity College, Hartford Seminary and the state Supreme Court.

Other cities in similar situations include Boston, where just over half of the property in the city is tax exempt. In Baltimore, about 32% of the property is tax exempt, and in Philadelphia it's 27%.

While most U.S. cities are reporting healthy budget reserves that have returned to prerecession levels, Hartford is among a small but growing group of municipalities that are confronting rising levels of fiscal stress, according to Moody's Investors Service.

Other areas grappling with long-term financial problems driven by poor revenue growth and rising fixed costs include Jackson, Miss., and Wayne County, Mich.

Only 64 bankruptcies have been filed by cities, counties, towns and villages since 1954, according to James Spiotto, an attorney who tracks municipalities' bankruptcies. In 2013, Detroit became the largest-ever U.S. municipal bankruptcy case.

Victor Medeiros, a public-finance ratings analyst with S&P Global Ratings, which downgraded Hartford last month, said the city could face additional downgrades of several notches.

The credit-ratings firm will be watching whether Connecticut can reach a timely budget agreement and what level of financial assistance the state will be able to offer the city, he said.

Aetna and the other four biggest taxpayers in the city contribute nearly one-fifth of the city's $280 million of property-tax revenue. Property-tax receipts make up nearly half of the city's general-fund revenues.

Aetna, Hartford Financial Services Group Inc. and Travelers Cos. Inc., also Hartford's biggest employers, have said they would collectively give the city a voluntary payout of $10 million annually over the next five years to help avoid bankruptcy. But the companies have said they want to see comprehensive changes that allows the city to stabilize its finances.

The bigger concerns "are getting the city turned around where we can attract private-sector investment here to ultimately begin to drive" property taxes down, said Oz Griebel, chief executive of MetroHartford Alliance, a regional business group.

Since 2000, Hartford has increased its property-tax, or millage, rate seven times. The rate is now more than 50% higher than it was in 1998.

At the current level, a Hartford resident who owns a home with an assessed value of $300,000 currently pays an annual tax bill of $22,287, at rate of 7.43%. A West Hartford homeowner with a similar house pays $11,853 at a rate of 3.95%.

The city must pay nearly $180 million on debt service, health care, pensions and other fixed costs in the coming fiscal year beginning July 1. That is more than half of the city's budget, excluding education.

Mr. Bronin said one-time budget fixes and tax increases won't cut it anymore. After cutting 15% of the city's nonuniformed workforce, he said he won't reduce the number of police officers or firefighters and added that further trimming of city services would be irresponsible.

Democratic Gov. Dannel Malloy last week said Hartford and the state Legislature would have to accept more oversight of the city's finances in exchange for state assistance. "I do not support additional moneys going to our challenged urban environments without a review process," Mr. Malloy said.

Connecticut House Majority Leader Matt Ritter, a Hartford Democrat, said everyone in the capital understands that it is in the state's best interest to make sure the city has a sustainable future.

Bankruptcy "doesn't just affect Hartford," Mr. Ritter said. "It would affect neighboring communities, it would affect the state, it would probably affect our credit ratings."

The Wall Street Journal

By Joseph De Avila

Updated June 6, 2017 4:18 p.m. ET

Write to Joseph De Avila at joseph.deavila@wsj.com

SIFMA Statement on 'Move America Act of 2017'

Washington, DC, June 2, 2017 — SIFMA today issued the following statement from Michael Decker, SIFMA Managing Director, Co-Head of the Municipal Securities Division on the Move America Act of 2017, introduced by Senators Ron Wyden (D-OR) and John Hoeven (R-ND), which would expand tax-exempt private activity bonds and create a new infrastructure tax credit:

> "We commend Senators Wyden and Hoeven for seeking a bipartisan path to bridge the gap between infrastructure funding needs and available resources. The Move America Act leverages the existing and well-proven tax-exempt bond market, which we believe will be the most crucial funding pillar in the upcoming infrastructure package. Congress should seriously consider proposals like this one that help our cities and states secure funding for projects that create jobs and drive economic growth."

IMMUNITY - TEXAS

Jamro Ltd. v. City of San Antonio

Court of Appeals of Texas, San Antonio - March 15, 2017 - Not Reported in S.W.3d - 2017 WL 993473

On September 8, 2005, the City of San Antonio adopted a resolution expressing an intent to consider the creation of a tax increment reinvestment zone ("TIRZ") to finance public improvements in the Palo Alto Trails Development (the "Project").

On May 18, 2006, the City adopted an ordinance designating the Project area as a TIRZ, noting the City's desire to support revitalization activities for the Project. On June 20, 2013, the City adopted an ordinance terminating the TIRZ.

On December 30, 2015, JAMRO, Ltd. filed the underlying lawsuit against the City alleging claims for breach of contract, quantum meruit, promissory estoppel, fraud, negligent misrepresentation, and negligence. JAMRO alleged it was in the process of developing property when City officials and agents approached JAMRO and asked it to apply to have the area being developed declared a reinvestment zone. JAMRO further alleged it complied with the request and made changes to JAMRO's plans and specifications at the City's request and completed the construction but was never notified the TIRZ had been terminated. JAMRO sought compensatory and punitive damages.

The City filed a plea to the jurisdiction asserting it was immune from the lawsuit because it never entered into a contract with JAMRO and immunity is only waived for contractual claims not for quasi-contractual claims like quantum meruit and promissory estoppel. The City further asserted immunity is not waived for intentional torts like fraud, and immunity is only waived for negligence claims for damages arising from an employee's use of a motor vehicle.

JAMRO responded to the City's plea, asserting the City was not entitled to immunity because the City was performing a proprietary function. JAMRO asserted "the City was acting as a Developer and private citizen seeking to finance for one company and individual a portion of their construction" and the City's actions "could not be more proprietary in nature."

After a hearing, the trial court signed an order granting the City's plea. JAMRO appealed.

In its brief, JAMRO argued that the City's actions were proprietary because it sought out a specific private developer "to spur development in a specific area of town for the benefit of only those inhabitants and the City itself." JAMRO asserted the City "asked [JAMRO] to alter an existing subdivision plan to meet the City's guidelines and [in] return promised tax benefits to [JAMRO]." The City responded that its actions were governmental functions.

The Court of Appeals affirmed the trial court's order granting the City's plea to the jurisdiction, finding that the City's actions with regard to the TIRZ were governmental functions.

The Court noted that the City's actions with regard to the TIRZ met the definition of a governmental function because Chapter 311 enjoined on the City the authority to create the TIRZ to serve a public purpose in the interest of the general public. The City's actions with regard to the TIRZ were directed at financing public improvements which meet the definition of governmental functions.

TAX - MISSOURI

Armstrong-Trotwood, LLC v. State Tax Commission

Supreme Court of Missouri, en banc. - May 16, 2017 - S.W.3d - 2017 WL 2118656

Taxpayers sought review of State Tax Commission's dismissal of their challenge to the property tax assessments on their residential properties, which were part of multi-county taxing districts, and sought a declaratory judgment that their assessments were discriminatory and that the State Tax Commission failed to carry out its duty to equalize property assessments as between counties.

The Circuit Court dismissed. Taxpayers appealed.

On transfer from the Court of Appeals, the Supreme Court of Missouri held that:

- Taxpayers failed to state a claim that their tax assessments violated the uniformity clause of the state constitution, and
- State Tax Commission lacked jurisdiction to hear taxpayers' appeal.

Taxpayers' challenge to their property tax assessments on the grounds that their assessments were discriminatory and that the State Tax Commission failed to carry out its duty to equalize property assessments as between counties did not concern the "construction of the revenue laws of this state," and thus the Supreme Court did not have exclusive appellate jurisdiction; the constitutional and statutory provisions at issue did not impose, amend, or abolish a tax or fee, and the taxes at issue were paid to a multi-county taxing district rather than the state treasury.

Taxpayers' challenge to their property tax assessments on the grounds that their assessments were discriminatory and that the State Tax Commission failed to carry out its duty to equalize property assessments as between counties presented important questions regarding the application of sections on state constitution concerning the levying of taxes, and thus the Supreme Court could transfer the case on its own motion, even through the Court did not have exclusive appellate jurisdiction; the Court could take transfer of a case before its disposition by the Court of Appeals if it presented a question of general interest or importance.

Taxpayers who alleged that other counties in multi-county taxing districts undervalued properties such that the tax assessments on taxpayers' residential properties caused taxpayers to bear a disproportionate share of the cost of operating the multi-county taxing districts failed to state a claim that their tax assessments violated the uniformity clause of the state constitution; the uniformity clause did not pertain to the valuation of property, and each multi-county taxing district at issue levied a tax rate that was uniformly applied to the same class or subclass of property within the territorial limits of the taxing authority.

State Tax Commission lacked jurisdiction to hear taxpayers' appeal of county board of equalization's denial of their claim that other counties in multi-county taxing districts undervalued properties such that the tax assessments on taxpayers' residential properties caused taxpayers to bear a disproportionate share of the cost of operating the multi-county taxing districts in violation of the uniformity clause of the state constitution; county board did not have the power to conduct

intercounty equalization, and the Commission's jurisdiction was derivative of the county board when it reviewed appeals from the county board.

State Tax Commission's intercounty equalization orders affect counties and classes of taxpayers, not the individual rights and interests of specific parties, and, consequently, are not subject to review in either a contested or non-contested case before the Commission on appeal from a county board's decision.

TAX - MONTANA

Mountain Water Company v. State , Department of Revenue

Supreme Court of Montana - May 16, 2017 - P.3d - 2017 WL 2123151 - 2017 MT 117

Property owner brought declaratory judgment action seeking determination that city was responsible for property taxes accruing on property during pendency of city's condemnation action.

The District Court granted summary judgment in favor of property owner. Department of Revenue appealed.

The Supreme Court of Montana held that city was not statutorily responsible for property taxes accruing on property during pendency of city's condemnation action. Statute at issue provided that property taxes were prorated once condemnor actually took possession of property, and property owner continued to possess property during pendency of condemnation action.

Mnuchin: Administration Wants to Preserve Muni Bond Tax Exemption.

WASHINGTON – The administration "strongly" supports the preservation of the tax exemption for municipal bonds, Treasury Secretary Steven Mnuchin said during a Senate Finance Committee hearing on Thursday.

At a hearing on the fiscal 2018 budget and tax reform, committee member Sen. Sherrod Brown, D-Ohio, on tax reform, asked Mnuchin a series of questions on tax reform, including whether the administration supports the tax exemption for municipal bonds.

"Our preference is strongly to keep the interest deductibility of state and local bonds," Mnuchin said.

The administration wants to maintain the mortgage interest deduction, he also said in response to Brown's rapid fire questions. But he declined to answer several other specific questions about what the tax reform plan would or would not include, saying negotiations are still ongoing.

During the hearing, committee Democrats accused the administration of "double counting … Bernie Madoff math … anomalies … and fuzzy math" in its budget, which shows $2 trillion of revenues from 3% economic growth being used to pay down the deficit when administration officials have said those revenues are going to help pay for tax cuts in the forthcoming tax reform plan.

"Your budget assumes 3% growth, which you claim adds $2 trillion to revenues. That's kind of a dubious proposition to me," said Sen. Ron Wyden from Oregon, the top committee Democrat. "You

told us last week that this economic growth is what pays for tax reform, but the Trump budget doesn't include tax reform. So, unless you make this clear to us, aren't you double counting the same $2 trillion to pay down deficits that you claim will pay for tax reform? I mean this is kind of Bernie Madoff math, but maybe I'm missing something. Tell me how it works."

Mnuchin said, "We're absolutely not double-counting. When the president's budget was done, we were not ready to have a full-blown tax reform plan that we could model into the budget."

Later Sen. Claire McCaskill, D-Mo., made the same point. "You can't have tax reform paid for by growth and then count that growth against the deficit," she said. "You can't have both. That's beyond fuzzy math, that's double counting," she said.

Mnuchin said economic growth comes from lots of things besides just tax cuts, such as regulatory reforms.

"It just defies understanding that you're going to project what the growth is going to be based on a tax cut but you can't put anything in the budget about what the lack of revenues are going to be because of the tax cut," she said. "That doesn't even make sense. How can this document even be taken seriously?"

Sen Mark Warner, D-Va., said the proposed fiscal 2018 budget would take discretionary funding down to 3% of gross domestic product -- the lowest it has ever been.

He also noted that the bipartisan Committee for a Responsible Federal Budget has projected the tax plan will result in a revenue loss of $5.5 trillion over a decade. If that's the case, the administration will have to go after most of the big tax preferences, including the deductibility of employer health care plans.

Mnuchin said it is absurd for groups to score the revenue impacts of the tax reform plan since they have no details about it yet.

The Bond Buyer

By Lynn Hume

Published May 25 2017, 12:32pm EDT

Federal Infrastructure Tax Credit Legislation Makes Key Changes from 2015 Proposal.

Sens. John Hoeven, R-N.D., and Ron Wyden, D-Ore., reintroduced bipartisan legislation May 25 to establish a program to spur infrastructure investment through the creation of Move America Bonds and Move America Credits. The major benefit of the Move America Act of 2017 is that it includes the use of public-private partnerships, or P3s, to assist in financing infrastructure. The primary benefits of using P3s include:

- Private equity providers will generally be sophisticated institutional investors exercising a high level of asset management.
- In-depth financial underwriting of projects before development.
- Construction and/or reconstruction risk borne by private equity investors.

- The performance risk transfers to private parties.

The two concepts behind the bill include expanding the available tax-exempt financing for infrastructure and creating credits to harness additional private sector investment. In this bill (revised from a 2015 version), the Move America Bond volume cap will be 50 percent of the state ceiling under cap for tax-exempt private activity bonds. In order to receive Move America Credits, states may elect to trade in all or a portion of their Move America Bonds for Move America Credits at a 25 percent rate. In other words, the credit limitation for each state for each calendar year is a dollar amount equal to 25 percent of the Move America Bond volume cap. For example, if a state has $100 in Move America Bonds, it may trade that $100 for $25 in Move America Credits. According to Sen. Hoeven, about $226 billion would be the annual volume cap for Move America Bonds over the next 10 years. That means that up to $56 billion, or 25 percent of the Move America bond cap, would be available annually for Move America Credits over the next 10 years.

This bill was first introduced by Sen. Wyden in 2015 as the Move America Act of 2015. With the reintroduction, there are a number of changes to the bill, discussed below.

The overall structure borrows heavily from both the Low-Income Housing Tax Credit (LIHTC) program and the New Markets Tax Credits (NMTC) program. Permitting these alternative structures provides greater flexibility in matching the right financing mechanism with the needs of individual infrastructure project.

Summary of Revisions

Expanding a List of Qualifying Infrastructure Projects

The previous version of the bill included airports, mass transit, freight and passenger rail, roads, bridges, flood projects, and inland and costal waterway improvements. The new version includes everything that was previously included, as well as water and sewage projects and rural broadband.

Traditional Investment Credit Structure

The revised provision dealing with Move America Credits would follow a structure similar to the LIHTC for equity investments in infrastructure projects. Investors would be able to directly invest in a qualified project, meaning that the investor's credit would equal the percentage of the direct investment in a qualified project, subject to limitation discussed below. The investors would receive tax credits equal to 10 percent of their equity investment each year over a 10-year tax credit period.

Credit Levels

The credits available for equity investments in an infrastructure project cannot exceed 20 percent of the qualified project's total costs, which is retained from the previous version. However, the cap related to private investment would be eliminated. In the revised draft, designated state agencies are also required to set the credits allocated to each project at the minimum amount for the project to achieve financial viability.

Capitalizing Infrastructure Funds

The 2017 Move America Act also provides that if states wanted to set up a structure that mirrors the NMTC, states would be permitted to use the credits to capitalize a state infrastructure bank or other infrastructure loan funds. States would be permitted to allocate credits to entities (e.g., state infrastructure banks, which are typically difficult to capitalize) and the entities could offer the credits to investors in order raise capital necessary to fund qualified projects. This is similar to the

structure of community development entities (CDEs) in the NMTC program, and indeed, if designated by the state, CDEs could receive Move America credits to establish infrastructure funds. Under this option, the investors would be eligible to claim a tax credit equal to 5 percent of their equity investment in the Infrastructure Fund. There would be compliance requirements that share similarities to the NMTC compliance requirements.

Conclusion

This bill provides a mechanism to encourage more P3s to be used for infrastructure investment. President Donald Trump campaigned on using a federal infrastructure tax credit and this bill may also gain additional traction with White House support.

Novogradac & Company LLP is working on a white paper exploring the various design specifics of a federal infrastructure tax program. We have also authored posts related to the reasons to hope for a federal infrastructure tax credit and the benefits of a federal infrastructure tax credit. Additionally, please be sure to keep an eye on our infrastructure credit page.

Novogradac & Company LLP

Published by Owen P. Gray on Thursday, May 25, 2017 – 12:00am

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MBA to House Tax Panel Members: Support Tax-Exempt Bonds.

WASHINGTON – The Municipal Bonds for America coalition is urging members of the House Ways and Means Committee to support tax-exempt bonds, including private activity bonds.

“The investments financed with these bonds have a proven track record to help our economy grow and create jobs,” 12 state, local, investor and other MBA groups told committee members in a letter sent to them on Monday after the start of their tax reform hearings.

The groups said that while some have suggested that a surtax or cap on bond interest could raise revenue for the federal government without increasing the interest rates demanded by investors, such a tax or cap, would actually reduce the value of all bonds in the secondary market by as much as $200 billion.

“It would also disproportionately hurt seniors,” they wrote. “About three-fifths of bond interest paid to individuals is paid to those aged 65 years and older and 84 percent is paid to those aged 55 and older.”

In addition, they wrote, investors would demand higher rates of return to: accommodate the surtax; reflect the bond’s loss of value in the secondary market; and compensate for the risk that Congress will expand the tax to hit more bondholders, increase the tax rate imposed, or both.

One need look no further than qualified private activity bonds, most of which are subject to the alternative minimum tax, to see an example of this. The AMT “is effectively a surtax beyond the regular income tax that is paid by taxpayers above a certain minimum income level,” the coalition said, and it costs issuers as much as 50 basis points more in interest rates than another non-AMT similarly rated tax-exempt bond.

The groups pointed to the Dallas/Fort Worth International Airport, which used tax-exempt PABs

subject to the AMT to help finance $3.1 billion of its massive terminal improvement project. The airport paid $268 million more than if it had used fully tax-exempt bonds, they said.

During the last decade state and local governments made about $2 trillion in bond-financed infrastructure investments and they are expected to invest $2 trillion to $3 trillion in infrastructure over the next decade, the groups wrote. States and localities build nearly three-quarters of the nation's core infrastructure, using tax-exempt bonds for most of the financing, they added.

"It is vital that [tax reform] not impose an unprecedented federal tax – in any form – on these investments," the groups told the lawmakers.

State and local governments issued about $400 billion of muni bonds in 2015. Of those, about $85 billion were used for primary and secondary schools, $39 billion financed investments in colleges and universities, $50 billion were used for roads, bridges, ports, airports, mass transit and other transportation facilities, $38 billion financed water and sewer projects, $27 were used for hospitals and clinics and $18 billion financed electric utility projects, the groups said.

"These are investments that make commerce possible and our communities strong and livable," they added.

The groups said that private activity bonds were also used to finance public-private projects. In 2015, they said, about $8 billion were used to finance transportation-related projects such as airport terminals and port facilities. Another $6.7 billion was used for rental housing and $4.6 billion for affordable mortgages. In addition $700 million of PABs helped finance state and local student loan programs, and $250 million was used for industrial development projects and farm facilities.

The groups told the lawmakers that while alternatives to tax exempt bonds exist, each has substantial shortcomings — primarily increased borrowing costs, added complexity, and a lack of access for smaller issuers. Public-private partnerships may supplement tax-exempt bonds, but these and other alternatives can't replace them, they said.

The Bond Buyer

By Lynn Hume

Published May 24 2017, 4:00pm EDT

Municipalities Grapple With Whether Nursing Homes Should Be Taxpayer-Funded.

NANTUCKET, Mass.—The 11,000 year-round residents of this summer colony off Cape Cod are confronting an emotional question: whether the island is a place where they can grow old.

Nantucket, a ritzy vacation destination whose permanent community is of more modest means, has one nursing home: Our Island Home, a 45-bed facility that is owned and run by the town and with a history that goes back to 1822. It sits on prime town-owned real-estate where its residents can watch boats on Nantucket Harbor. But it runs an annual deficit of about $3 million, needs major repairs and is pressuring the town's coffers at a time when Nantucket needs other infrastructure to accommodate growth.

“The town is getting to the point where it’s just taking on way too much,” said Donna Hamel, chairwoman of the Nantucket Republican Town Committee. “Should the town be in the nursing-home business? No. They don’t know anything about it.”

Our Island Home is one of roughly 1,100 of the U.S.’s 15,600 nursing homes that are government-owned, a vestige of an era when municipalities ran sanitariums and homes for the indigent. Nantucket now joins cities and towns from New Jersey to Tennessee in wondering whether nursing homes are an essential municipal service like fire, sewers and schools.

As baby boomers turn 65 at an estimated pace of 10,000 people a day, communities are increasingly confronting the questions of how and where to care for the elderly.Some are deciding they don’t expect nursing homes to befinancially independent.

Over the past five years, most New Hampshire counties have rolled their publicly owned nursing homes from the “enterprise” budget column, where services are supported by user fees, to the general fund, said Nicholas Lehman, an analyst with Moody’s Investors Service. In these places, “residents want a nursing-home option for themselves in the future, and they’re willing to pay taxes to support that,” he said.

In these places, “residents want a nursing-home option for themselves in the future, and they’re willing to pay taxes to support that,” he said.

But government-owned and -run facilities often have deficits and have outdated institutional styles that don’t attract the wealthier private-pay customers that offset Medicaid patients, said Jeff Binder, managing director of Senior Living Investment Brokerage Inc. Medicaid payments also face uncertainty, with the new White House budget proposing heavy cuts to the federal-state health program for the poor.

Financial pressures led New Jersey counties to sell their nursing homes to private companies, a move that saved some facilities, according to John Donnadio, executive director of the New Jersey Association of Counties. Only seven New Jersey counties still run nursing homes, down from 14 about five years ago, and “that number is going to drop more,” he said.

But privatizing doesn’t always go smoothly. Three years ago, Nashville began to shift two city-owned long-term-care facilities to private operators after deciding it couldn’t continue chipping in $10.5 million annually for their operation.

The plan hit snags. Local elected officials heard complaints about the conditions and food, and the city cut ties with the for-profit operator that ran one complex. In January, the city brought in an emergency operator to run the assisted-living center. Officials say that despite challenges, conditions have improved and the shift to private operators ultimately saved millions.

For Nantucket, the debate has extra resonance because without a nursing home on the island, residents might have to move.

While the island has swanky shops lining cobblestone streets and multimillion-dollar vacation homes that sit empty for many months of the year, Nantucket Town Manager Elizabeth Gibson says there are year-round residents who are “really struggling,” in part because of the high cost of living.

Elderly year-rounders tend to live at home for as long as possible, but they complain that home-health workers are costly and in short supply. There are fewer options for assisted living or services like memory care. Some seniors move to the mainland, but most don’t want to leave their spouses or community. That leads the elderly who need skilled nursing care to seek out the island’s only

nursing home. Even some well-to-do year-round residents find that Our Island Home is their only option.

When Yvonne DuMont Stelle decided she could no longer care for her husband, Donald, who suffers from dementia, the painful decision was made easier knowing that he would be a five-minute drive away.

“It’s a horrible thought to think we wouldn’t have this here,” said Ms. Stelle, who regularly checks in on Donald, 90, and is part of a local group that bring extras, from art classes to live music, to the nursing home.

Ms. Gibson, the town manager, said she doubts many residents would say the nursing home doesn’t belong in the community, but the tension is taxpayers are being asked to support a service that is bleeding money while the community pays heavily for other services.

“It’s probably going to come down to, Can we keep affording it?” Ms. Gibson said.

A nearly completed school was a $40 million-plus project, Ms. Gibson said, and the town has appropriated another $40 million toward sewers and $17 million for a fire station. Town officials also are discussing whether they may have to subsidize housing to recruit employees who can’t afford Nantucket’s high housing prices.

At the annual town meeting in April, taxpayers voted 264-253 against a $30 million proposal to construct a new, modern campus for Our Island Home. Concerns ranged from the cost to the new location to suspicion about a march toward privatization.

But local residents cherish the care that the elderly get at Our Island Home—such as when two staff members drove 91-year-old resident Gladys Soverino and her husband, Malcolm, last October to renew their vows at the Nantucket church where the couple had married 70 years earlier.

“We’re an island,” said Allison Forsgren, a local real-estate broker whose late father lived in the town-owned nursing home. “You have to sort of watch out for people and not let them fall through the cracks.”

The Wall Street Journal

by Jennifer Levitz

May 28, 2017 7:00 a.m. ET

Write to Jennifer Levitz at jennifer.levitz@wsj.com

TAX - COLORADO

Colorado Department of Revenue v. Creager Mercantile Co., Inc.

Supreme Court of Colorado - May 15, 2017 - P.3d - 2017 WL 2106241 - 2017 CO 41

Corporate taxpayer that distributed tobacco and other products to convenience stores sought judicial review of the decision of the Department of Revenue to impose a tobacco products tax on wrappers consisting of pulverized, homogenized tobacco leaves that contained 30% to 48% tobacco.

The District Court affirmed. Taxpayer appealed. The Court of Appeals reversed and remanded. Department petitioned for a writ of certiorari, which was granted.

The Supreme Court of Colorado held that wrappers were a "kind" or "form" of tobacco and were "prepared in such manner as to be suitable … for smoking," and thus wrappers were a taxable "tobacco product."

Wrappers consisting of pulverized, homogenized tobacco leaves that contained 30% to 48% tobacco were a "kind" or "form" of tobacco and were "prepared in such manner as to be suitable … for smoking," and thus wrappers were "tobacco products" that were taxable under statute defining "tobacco products" as "other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or for smoking in a pipe or otherwise"; wrappers were designed and intended to be filled with tobacco, marijuana, or other smoking material and smoked, wrappers were consumed as they were smoked, and each inhalation from a wrapper burned and delivered additional tobacco in the wrap itself to the user.

When Should an Issuer of Tax-Advantaged Bonds Use the Hold-the-Offering-Price Method to Establish the Issue Price of the Bonds?

Three score and thirteen years (and one day) after D-Day (June 7, 2017, for the non-history-buffs), the new regulations that prescribe the methods for determining the issue price of tax-advantaged bonds take effect. Of the various methods for determining the issue price of tax-advantaged bonds, the hold-the-offering-price method is the only one that allows an issuer of such bonds in an underwritten transaction to know with certainty in advance of the sale date of the bonds that the issue price of the bonds will be established on the sale date. As discussed below, however, this method will come at a cost to issuers of tax-advantaged bonds.

The question thus becomes, which federal tax circumstances warrant the increased cost of the hold-the-offering-price method to be assured that the issue price of the bonds will be established on the sale date? For the answer, read on.

Continue reading.

The Public Finance Tax Blog

By Michael Cullers on May 24, 2017

Squire Patton Boggs

TAX - OREGON

Boardman Acquisition, LLC v. Department of Revenue

Supreme Court of Oregon - May 11, 2017 - P.3d - 361 Or. 440 - 2017 WL 1957144

Taxpayer, a port, sought review of county assessor's denial of its request for a refund of additional taxes paid per sales agreement on land that port sold to a private entity after port and tenant agreed to end a lease on the land and the land was accordingly disqualified from the special assessment as nonexclusive farm use zone farmland.

The Tax Court, Regular Division, granted summary judgment for the Department of Revenue. Port appealed.

The Supreme Court of Oregon held that:

- The date the disqualification from special assessment is "taken into account on the assessment and tax roll" means the date the disqualification becomes effective on the assessment and tax roll, and
- Land was subject to additional taxes, which were based on prior years' taxes avoided via the then-ended special assessment.

As used in the statute governing the assessment of additional taxes on land that has been disqualified from special assessment, the date the disqualification from special assessment is "taken into account on the assessment and tax roll" means the date the disqualification becomes effective on the assessment and tax roll, such that a disqualification that occurs between January 1 and June 30 becomes effective on the assessment and tax roll as of July 1, and a disqualification that occurs between July 1 and December 31 will not affect the taxes due until the following July 1.

Land that had been specially assessed as nonexclusive-farm-use-zone farmland and that taxpayer, a port, sold to a private entity on August 10 after taxpayer and tenant had agreed to end tenant's lease on land a few days prior, was subject to additional taxes, which were based on prior years' taxes avoided via the then-ended special assessment, and thus taxpayer was not entitled to a refund of the additional taxes that it paid via the sales agreement with the private entity. The disqualification from special assessment became effective on the assessment roll on the following January 1, and on that date the land was not "public property that was leased or rented to a taxable owner," as required by statute imposing additional taxes on land disqualified from special assessments.

Trump Tax Reform Unlikely to Impact Municipal Bonds, BofA Says.

- **'Price independently of the top federal income tax rates'**
- **Political turmoil in administration may derail tax reform**

Tax reform will have little impact on the value of municipal bonds, according to Bank of America Merrill Lynch strategists Philip Fischer and Celena Chan.

Looming tax reform has some investors worried that slashing the nation's top individual tax rates may send demand for the securities tumbling. Municipal bonds are often purchased by wealthy investors seeking to lessen their tax burdens.

The trend has reversed recently as political turmoil has derailed President Trump's legislative agenda, including tax reform. Yields on state and local bonds hit a 2017 low last week.

An analysis shows that municipal bonds "price independently of the top federal income tax rates and have done so for decades." The strategists said the reason for this is that state and local bonds are not well connected to other capital markets.

Corporate tax reform may happen by year-end, according to the analysts, but it's unlikely "P&C and bank taxes will fall sufficiently to distort muni pricing and flows."

Bloomberg

by Rebecca Spalding

May 22, 2017, 8:38 AM PDT

TAX - WYOMING

Brock v. State ex rel. Wyoming Workforce Services, Unemployment Insurance Division

Supreme Court of Wyoming - May 3, 2017 - P.3d - 2017 WL 1710610 - 2017 WY 47

Lien holders, who had a lien on property created by a certificate of purchase for delinquent taxes, filed an action against the Department of Workforce Services and the Internal Revenue Service (IRS) that sought to foreclose on their lien and a declaration that their lien was superior to all other encumbrances against the property.

The IRS removed the case to federal district court. The United States District Court certified a question to the state Supreme Court.

The Supreme Court of Wyoming held that lien held by lien holders, who had a lien on property created by a certificate of purchase for delinquent taxes, was superior to lien held by the Department of Workforce Services for unpaid contributions to the unemployment compensation fund.

Lien holders obtained a certificate of purchase on the property by purchasing the property for the delinquent taxes assessed against the property, after passage of the required time, "Holders of certificates of purchase of real property sold for delinquent taxes" may apply for a tax deed, and thus lien holders' lien was a claim for taxes, which would give it priority over a claim for contributions to the unemployment compensation fund pursuant to statute.

TAX - NEW JERSEY

White Oaks Country Club, Inc. v. Township of Franklin

Tax Court of New Jersey - March 7, 2017 - 2017 WL 931393

State Department of Environmental Protection ("DEP") alleged that its property – on which a for-profit entity operated a golf course and related amenities – was exempt from local property taxes.

The Tax Court concluded that the statutory requirements for an exemption set forth in N.J.S.A. 54:4–3.3 were satisfied for the subject property for tax year 2012.

"The exemption at issue here is established in N.J.S.A. 54:4–3.3, and does not require charitable use of the subject property. It is, instead, a public use, consistent with the statutory mandate of the agency that owns the property, that determines whether an exemption applies. The fact that plaintiff does not engage in charitable activity—indeed, there is no dispute that plaintiff is a for-profit

business enterprise—does not defeat the exemption in this case. Plaintiff's use of the property furthers the public purpose of the DEP by providing recreational opportunities to the public on land purchased with Green Acres funds."

The Countdown to June 7, 2017….. Are You Ready?

On June 7, 2017, the Final Issue Price Regulations (the "**Final Regulations**") become effective. More specifically, the Final Regulations apply to bonds sold on or after June 7, 2017 and without regard to the bonds' issuance date. Suffice it to say, if you have read our blog or been practicing in the area of municipal finance for any period of time, you know that June 7, 2017 is a date that is YEARS in the making.

Continue reading.

The Public Finance Tax Blog

By Joel Swearingen on May 19, 2017

Squire Patton Boggs

Tax-Exempt Financing For Waste Disposal/Recovery And Wastewater Treatment.

Introduction

Tax-exempt bond financing is available for certain water and sewage, solid waste disposal/recovery project, waste-to-energy projects, and wastewater treatment projects. Bond financing may be available for public, private and public-private partnership projects. Bonds might be issued directly by a city or a county for government-owned project pursuant to Georgia's Revenue Bond Law. A privately owned and operated project might be financeable through Georgia's Development Authorities Law. A government-owned project or a public-private partnership project might be financed with Georgia's Resource Recovery Development Authorities Law or Georgia's Regional Solid Waste Management Authorities Law. In order for the bonds to be issued to qualify for tax-exemption, additional requirements will apply. This memorandum provides a brief overview.

Revenue Bond Law

The Revenue Bond Law authorizes every city and county to issue revenue bonds for the purpose of financing various government-owned undertakings, including projects for the collection, treatment and distribution of water, the collection, treatment, re-use or disposal of solid waste, and for the collection, treatment and disposal of sewage, waste and storm water. Such projects are to be operated by the city, county or authority on a revenue-producing basis, and bonds issued for such purpose may be secured only by revenues of such a project, or other revenue-producing undertakings of the city, county or authority.

Development Authorities Law

The Development Authorities Law creates a development authority that can be activated for any city or county to issue revenue bonds for projects including water pollution control facilities and solid waste disposal facilities. A water pollution control facility is any property used to abate or control water pollution or contamination by removing, altering, disposing or storing pollutants, contaminants, wastes or heat, including the necessary pumping, power and other equipment, sewers, holding ponds, lagoons and related facilities, if such facilities are in furtherance of applicable federal, state or local standards for the abatement or control of water pollution or contamination. A solid waste disposal facility is any property used for the collection, storage, treatment, utilization, processing or final disposal of solid waste, including garbage, refuse, or other discarded solid materials, and also solid waste materials resulting from industrial and agricultural operations and from community activities, but excluding domestic sewage.

No project financed under the Development Authorities law may be operated by a development authority or by any city, county or other governmental subdivision, but must be leased or sold to one or more persons, firms or private corporations. The lessee or purchaser must be required to pay all costs of operating and maintaining the lease or purchased property and pay rentals or installments in amounts sufficient to pay the principal and interest and premium, if any, on all bonds and other obligations issued for the project.

Resource Recovery Development Authorities Law and Regional Solid Waste Management Authorities Law

The Resource Recovery Development Authorities Law and the Regional Solid Waste Management Authorities Law are two similar pieces of legislation creating in each city or county authorities denominated either a resource recovery development authority or a solid waste management authority. Such authorities have power to issue revenue bonds to finance projects for the collection, transportation, management, storage, treatment, utilization, processing or final disposal of solid waste, or the conversion of solid waste or resources contained therein into steam, electricity, oil, charcoal, gas or other products or energy sources, including any property used in connection with the facility for the extraction, collection, storage, treatment, processing, utilization or final disposal of resources contained in solid waste. Such authorities also have power to finance any property used in the extraction, collection, storage, treatment, processing or utilization of water resources and the conversion of such resources into any useful form of energy. A resource recovery development authority expressly authorizes projects similar to those described above for the sewage sledge. A solid waste management authority or a resource recovery development authority can be activated jointly or on a regional basis by any number of cities or counties.

Distinctive to resource recovery development authorities and solid waste management authorities are their ability to enter into intergovernmental contracts with cities and counties, and thus engage in contract revenue bond obligation financing. One or more cities and counties and one of these authorities can finance a project and avoid the requirement for the holding of a voter referendum to authorize general obligation bonds and the requirement that city or county revenue bonds be secured only by revenue-producing undertakings by engaging in a contract revenue bond financing. The intergovernmental contracts provision of the Georgia Constitution permits two or more public bodies to contract for a term up to 50 years for the provision of services which the contracting parties are authorized by law to undertake or provide. Consequently, one of these authorities can issue its revenue bonds for a project and enter into a contract to provide the use of the project to the city or county, and the city or county can pledge its full faith and credit to that contract. That contract can be pledged to the payment of the authority’s revenue bonds, which are treated in the financial marketplace, in effect, as the general obligations of the city or county.

Resource recovery department authorities also have power to enter into leases of project or contracts with respect to the use of project with private persons, firms and corporation. Thus, all or any part of the use of a project may be transferred to private parties, enabling private-public partnerships for solid waste disposal and reclamation facilities.

Governmental Projects versus Private Activity Projects

If a waste or wastewater project is owned and operated by a government unit, or owned by a government unit and operated by a private company under a qualifying management contract, tax –exempt governmental bonds may be utilized for the financing. For more information on governmental bonds see our "Overview of Governmental Bond Financing." Such financings are not subject to narrow constraints on the types and amounts of property that can be financed, the necessity to obtain an allocation of a limited amount of bond issuing authority (volume cap) available to the State, the need to publish and conduct a public hearing, the limitation on the amount of issuance costs, the applicability of alternative minimum tax to interest earned on the bonds and, in some cases, the tax disadvantages placed on the purchase of such bonds by banks and other financial institutions. However, if the project is to be owned or substantially utilized by private parties, bonds issued will be treated as "private activity bonds" and subject to these restrictions (except that the need to obtain an allocation of volume cap does not apply to a solid waste facility that is government-owned but used by private parties).

If a facility is privately owned, any bonds issued would be treated as private activity bonds. Also, bonds are private activity bonds if the project financed is to be used more than 10%, directly or indirectly, in a private trade or business and if payments from or property of a private business are to secure or repay, directly or indirectly, 10% or more of the bonds. For example, if a government-owned facility is contracted on a long-term basis to process waste from private companies that would utilize more than 10% of the capacity of the facility, this private use satisfies the "use" portion of the test, and the revenues to be paid under the contract probably satisfy the "security" portion of the test, and bonds issued for the project would be private activity bonds.

Requirements for Private Activity Solid Waste Projects

A solid waste facility must comply with several specific requirements to utilize tax-exempt private activity bonds. Such a facility or portion thereof must be used for the collection, storage, treatment, utilization, processing or final disposal of solid waste. "Solid waste" for this purpose is defined as garbage, refuse, and other discarded solid materials including solid waste materials resulting from industrial, commercial and agricultural operations and from communities activities, but does not include solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents, dissolved materials in irrigation return flows or other common water pollutants. The solid waste must be useless, unused, unwanted or discarded solid material that has no market or other value at the place where it is located. If a person is willing to remove such property at his own expense, but is not willing to purchase such property at its location at any price, such material is treated as waste. The material may be valuable in the hands of the recycler, but retains its classification as waste if it was valueless in its original location, taking collection and transportation costs in account.

Although any governmental recycling and waste-to-energy project may be financeable with tax-exempt bonds, there are limitation on the types of private activity projects that qualify for tax-exempt financing. A facility that disposes of solid waste by reconstituting, converting or otherwise recycling it into material which is not waste is financeable on a tax-exempt basis as a solid waste disposal facility only so long as the solid waste constitutes at least 65% by weight or volume of the

total materials introduced into the recycling process. A recycling facility will not fail to qualify for tax-exempt financing only because it operates at a profit. However, private activity facilities that further process saleable waste-derived products into finished products are not financeable with tax-exempt solid waste bonds (although they might be financeable as tax-exempt manufacturing bonds — See our "Overview of Private Activity Bonds and Incentives). If the facility has both a solid waste disposal function and another function, only the portion of the cost of the property allocable to the solid waste disposal function may be financed with tax-exempt solid waste bonds. For example, metals and glass can be separated from solid waste and then further sorted, sized, cleaned and pulverized. The private activity solid waste bonds cannot be used, however, to finance facilities that would further process the saleable metal or glass into a finished product.

If materials or head are recovered from the solid waste disposal process, the waste disposal function includes processing of such materials or heat into saleable or useable form, but does not include further processing which converts the materials or heat into other products.

Financing for Private Activity Wastewater Projects

A private activity wastewater, pretreatment facility may be financed with tax-exempt bonds only if it is deemed functionally related and subordinate to a government-owned sewage system. Sewage disposal facilities are defined as property used for the collection, storage, treatment, utilization, processing or final disposal of sewage. Facilities tied directly to sewage facilities that pretreat waste, if the waste is required to be treated prior to release into the sewage system, may constitute a functionally related and subordinate facility that is financeable with tax-exempt bonds. Property is not a functionally related and subordinate to a sewage facility if it is not a character size commensurate with the character and size of the sewage facility.

Summary

Georgia law provides a number of issues and methods for issuing tax-exempt bonds for solid waste disposal, recovery, recycling and waste-to-energy projects, and sewage and wastewater treatment and pretreatment projects. However, if the facility is to be privately owned or substantially used in a private trade or business, special federal tax rules come into play to determine whether and to the extent the facility can be financed with tax-exempt bonds. With the proper legal structuring, however, many privately-utilized waste projects, as well as governmental projects, can be financed on a tax-exempt basis.

Article by James P. Monacell

Last Updated: May 4 2017

Smith Gambrell & Russell LLP

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.

U.S. Conference of Mayors to Stress Importance of Tax-Exempt Municipal Bonds During Infrastructure Week.

WASHINGTON, DC–(Marketwired – May 16, 2017) – On the heels of President Trump reaching 100 days in office, U.S. Conference of Mayors (USCM) President Oklahoma City Mayor Mick Cornett will

add his voice to the need for additional infrastructure investment and the preservation of the tax exemption on municipal bonds at events in the nation's capital during Infrastructure Week (May 15-19).

On Wednesday, May 17, Mayor Cornett will join other local as well as state leaders at two events to emphasize the vital importance of protecting tax-exempt bonds as the key tool in supporting local infrastructure investment. In the morning, at 10 am, he will participate in a joint forum of the National Association of Counties, National League of Cities and The United States Conference of Mayors to discuss infrastructure investment and the pressing need to protect tax-exempt bonds. In the afternoon, at 2 pm, Mayor Cornett will join a "Big 7" state and local government organizations briefing on Capitol Hill, where he will further emphasize the importance of tax-exempt bonds for cities. See schedule below.

For more than a century, municipal bonds have enjoyed tax-exempt status and have been the primary method by which state and local governments finance public capital improvements, mostly infrastructure. These projects are engines of job creation and economic growth.

Over the last decade, tax-exempt municipal bonds have been used to finance critical infrastructure including the construction of schools, hospitals, airports, affordable housing, water and sewer facilities, public power and gas utilities, roads and public transit. According to USCM data, local and state governments financed nearly $1.7 trillion in infrastructure projects through tax-exempt municipal bonds from 2003 to 2012. In the absence of such financing, it would have cost cities up to $500 billion more — dramatically increasing the costs borne by taxpayers for critical infrastructure projects.

"As Congress discusses tax reform measures in the coming months, mayors across the country will fight to preserve the tax exemption on municipal bonds so that we can continue to repair crumbling roads, bridges, water systems, and schools," said Mayor Cornett. "If Congress repeals the exemption, it will strangle infrastructure investment causing economic growth to slow, the elimination of hundreds of thousands of jobs and further deterioration of our national infrastructure. When mayors met with President-elect Trump this past December, he assured us that he supported maintaining the exemption. We were encouraged by that assurance and hope that this successful and irreplaceable financing mechanism remains in place."

Throughout Infrastructure Week, Mayors will challenge Washington to accept the fact that Mayors work with the private sector and the federal government to build infrastructure projects from start to finish faster, with more cost efficiencies than other governments. To prove the point, The U.S. Conference of Mayors has released its "On Task, On Time, On Budget" report. The report features city infrastructure projects, including transportation, water, energy, ports and public buildings, citing their financial structures and the many benefits that resulted from them.

As a national infrastructure package is developed, this new report is intended to inform Administration and Congressional leaders on why more infrastructure dollars should be directed to mayors and other leaders who ensure that such projects are implemented more efficiently, with greater economic impact and timeliness.

Mayors participating in Infrastructure Week Activities in Washington, D.C.:

May 17

Oklahoma City Mayor Mick Cornett, USCM President — "Built to Last: A Discussion on the Importance of Local Infrastructure Investment" | A joint forum of the National Association of

Counties, National League of Cities and The United States Conference of Mayors where USCM President Mayor Mick Cornett will emphasize the vital importance of protecting tax-exempt bonds as the key tool in supporting local infrastructure investment | NACo Conference Center: 660 North Capitol Street, NW, Washington, DC (10:00 – 11:00 am)

Oklahoma City Mayor Mick Cornett, USCM President — "State and Local Governments Drive America — A Discussion for the Future of Infrastructure Policy" | A "Big 7" state and local government organizations briefing where USCM President Mayor Mick Cornett will further emphasize the importance of protecting tax-exempt bonds for cities, counties and states | 2154 Rayburn House Office Building, Washington, DC (2:00 – 3:15 pm)

May 18

South Bend Mayor Pete Buttigeg — House Transportation & Infrastructure Subcommittee on Water and the Environment hearing on "Building a 21st Century Infrastructure for America: Improving Water Quality Through Integrated Planning" | 2167 Rayburn House Office Building | Washington, DC (10:00 am)

The U.S. Conference of Mayors is the official nonpartisan organization of cities with populations of 30,000 or more. There are nearly 1,400 such cities in the country today, and each city is represented in the Conference by its chief elected official, the mayor. Like us on Facebook at facebook.com/usmayors, or follow us on Twitter at twitter.com/usmayors.

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Fitch: Not-for-Profit Children's Hospitals Medians High; Medicaid Exposure

Presents Risk.

Fitch Ratings-Chicago-10 May 2017: Children's hospitals' strong 'AA-' median rating reflects their unique credit profile characterized by robust liquidity, solid operating profitability, unique market positions, strong philanthropic support, and specialized clinical services, according to a new Fitch Ratings report. However, operating pressures have resulted in some mild profitability contraction in fiscal 2016.

"Children's hospitals' high exposure to Medicaid and supplemental funding, and their inherent vulnerability to governmental funding cuts, constitutes the primary credit concern for this sub-sector of the industry," said Emily Wadhwani, Director.

"Proposed reductions to Medicaid and other supplemental healthcare funding cuts currently contemplated in Congress are likely to pressure these hospital providers over the longer term if enacted."

Median operating EBITDA margin was 12.6 percent against 14.1 percent the prior year. Median debt service coverage by EBITDA also declined to 6.5x against a more robust 7.8x the prior year.

The year-over-year fluctuation is due to a tapering off of volume and funding growth following Medicaid expansion, weaker investment returns in fiscal 2016 and continued capital outlays that have generally outpaced the broader acute care sector.

Despite tightening cash flow, median days cash on hand improved for the fourth consecutive year to 334 days in fiscal 2016, as did median cash to debt, to 269%. Both remain substantially stronger than the respective median ratios for Fitch's general not-for-profit hospitals.

For more information, a special report titled "2017 Median Ratios for Not-for-Profit Children's Hospitals" is available on the Fitch Ratings web site at www.fitchratings.com.

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Additional information is available on www.fitchratings.com

TAX - LOUISIANA

Jazz Casino Company, L.L.C. v. Bridges

Supreme Court of Louisiana - May 3, 2017 - So.3d - 2017 WL 1787821 - 2016-1663 (La. 5/3/17)

Taxpayer, a casino, petitioned for a writ of mandamus to the Secretary of the state Department of Revenue to compel satisfaction of a judgment by the state Board of Tax Appeals granting it a refund for hotel occupancy taxes paid.

The District Court granted writ. Department appealed. The Court of Appeal reversed and recalled writ. Taxpayer appealed.

The Supreme Court of Louisiana held that:

- Duty of the Secretary of the state Department of Revenue to refund the overpaid taxes was ministerial;
- Taxpayer did not have to show that relief was not available by ordinary means or that the delay involved in obtaining ordinary relief could cause injustice; and
- Writ of mandamus ordering the Secretary to use current collections of hotel occupancy taxes to refund taxpayer did not violate the constitutional prohibition of seizing public funds.

Duty of the Secretary of the state Department of Revenue to refund overpaid hotel taxes to taxpayer in accordance with a judgment of the state Board of Tax Appeals was ministerial, and thus a writ of mandamus ordering the Secretary to refund the taxes was proper. The refund of overpaid taxes was mandatory, and state law expressly authorized the use of mandamus relief to compel the Secretary to promptly make the refund.

Taxpayer, a casino, that was seeking a writ of mandamus to order the Secretary of the state Department of Revenue to refund overpaid hotel occupancy taxes in accordance with a judgment of the state Board of Tax Appeals did not have to show that relief was not available by ordinary means or that the delay involved in obtaining ordinary relief could cause injustice; state law afforded the judiciary authority to issue a writ of mandamus in such a case, and when a writ of mandamus was specifically provided as a remedy by statute, the general rules for a mandamus action did not apply.

The issuance of a writ of mandamus ordering the Secretary of the state Department of Revenue to use current collections of hotel occupancy taxes to refund taxpayer, a casino, for overpaid hotel occupancy taxes in accordance with judgment of the Board of Tax Appeals did not violate the constitutional prohibition of seizing public funds; the legislature specifically authorized a refund procedure out of the current tax collections to provide for the satisfaction of a final judgment against the Secretary to effect the return of money belonging to a taxpayer, and to hold otherwise would have rendered meaningless the constitutional guarantee of a complete and adequate remedy for the prompt recovery of an illegal tax paid by a taxpayer.

TAX - NEBRASKA

County of Douglas v. Nebraska Tax Equalization and Review Commission

Supreme Court of Nebraska - April 27, 2017 - N.W.2d - 296 Neb. 501 - 2017 WL 1532713

County sought review of the decision of the Tax Equalization and Review Commission (TERC) that adjusted the valuation of three areas of residential real property in the county and denied county's motion for reconsideration.

The Supreme Court of Nebraska held that:

- Reappraisal, and not an 8% decrease in area's valuation, was the proper remedy to the lack of uniformity and regressive vertical inequity in one area's property value assessments;
- Sufficient evidence supported TERC's order of a 7% increase in valuations of other two areas;
- As matter of apparent first impression, the abuse-of-discretion standard applies to the Supreme Court's review of the grant or denial of a motion to reconsider by an administrative body; and
- TERC did not abuse its discretion by denying county's motion to reconsider.

Reappraisal, rather than Tax Equalization and Review Commission's (TERC) order of an 8% decrease in valuation, was the proper remedy for the lack of uniformity and regressive vertical inequity in property value assessments in valuation area, and thus TERC's order was arbitrary, capricious, and unreasonable. The median assessment-to-sales ratio for the area of 104.82% and the coefficient of dispersion of 48.43%, which was outside the acceptable range of 15%, meant that a blanket equalization order would not solve the area's lack of assessment uniformity, but would only shift the problem, and the price-related differential of 1.22 showed that the lower-value properties in the area were significantly overassessed while higher-value properties were significantly under-assessed.

Sufficient evidence supported Tax Equalization and Review Commission's (TERC) order of a 7% increase to valuations of areas with median assessment-to-sales ratios of 89.77% and 90.08%, which fell outside the statutory range of 92% to 100%. The quality statistics showed that the median was a reliable indicator of central tendency, the coefficients of dispersion of 15.27% and 12.49% for the areas were within or at the top of the acceptable range of 15%, the price-related differentials for the areas of 1.0571 and 1.0347 were at or slightly above the top of the acceptable range of 0.98 to 1.03, and minor regressive vertical inequity was minimal.

The abuse-of-discretion standard applies to the Supreme Court's review of the grant or denial of a motion to reconsider by an administrative body.

Tax Equalization and Review Commission (TERC) did not abuse its discretion by denying county's motion to reconsider TERC's decision to order the adjustment of three valuation areas of residential real property, despite argument that state Property Tax Administrator's report improperly included sales that county categorized as non-arm's-length transactions and matched sales data to the wrong areas, where county did not allege that the Administrator's report improperly included sales that the county designated in the sales worksheets as non-usable, county could have raised allegations in the show-cause hearing that sales data was matched to the wrong areas, and county provided no information as to the impact of the alleged errors with the mismatched data.

The Growing Threat to Municipal Bonds.

Proposals to cap or eliminate their tax deductibility would be a serious blow to efforts to improve our infrastructure.

Buildings, roads and bridges: These are the Legos that, when snapped together, create the communities we all call home. President Donald Trump has promised to make improving our infrastructure a centerpiece of his administration, and we are eager to work with him to promote

infrastructure investment, job growth and community prosperity. This includes defending a key financing tool that for the past several years has faced growing uncertainty.

For more than a century, tax-exempt municipal bonds have been the single most important means for financing new roads, bridges, schools and hospitals. These are a lifeline without which state and local municipalities would find it far more expensive to finance capital improvements and other infrastructure that benefit everyone.

In Maryland's Baltimore County, for example, municipal bonds have financed capital projects ranging from the restoration of a library after a fire to the expansion of several public parks. In Illinois' Will County, the future of a new courthouse and law-enforcement complex hinges on the bonds' tax-exempt status. Nationwide, the National League of Cities estimates that municipal bonds have financed more than four million miles of roads, 500,000 bridges, 16,000 airports and 900,000 miles of water pipes. In all, municipal bonds support more than 1.5 million civic projects.

But in recent years this bipartisan tool has been under attack, with proposals being floated in Washington to cap the bonds' tax deductibility or eliminate it entirely. Then-President Barack Obama's fiscal 2017 budget proposal would have capped the tax deduction at 28 percent. We believe this would devastate municipalities that rely on the tax exemption, especially amid uncertain state budgeting. Reducing the tax benefits of these bonds would be bad for jobs and for taxpayers; higher project costs would shift to taxpayers through increased property taxes, fees and other means.

The American Society of Civil Engineers estimates that state and local governments have about $3.6 trillion in unmet infrastructure needs through the year 2020. In Illinois, a cap like the one proposed by Obama would have cost the state $6.2 billion if it had been implemented in 2012; for Maryland, the figure would have been $2 billion. For states facing steep budget deficits and rising costs, we can't afford to let precious funding go to waste.

The city of St. Charles, Ill., is a prime example. St. Charles' annual interest payment for its debt currently exceeds $3 million, but it could be far more without the tax exemption for municipal bonds, which has saved the city 25 percent, including $619,000 in interest costs when it built the Red Gate Bridge over the Fox River in 2011. This is real money that makes a real difference to local taxpayers — money that could be used to maintain basic services and programs otherwise on the verge of shuttering.

With tax reform and infrastructure legislation now on the table in Washington, the debate over how to best restore our country's aging infrastructure is in full swing. State and local governments' ability to issue tax-exempt debt is now more important than ever. That is why we have sent a letter to the House leadership asking them to reject any proposal to cap or eliminate the deduction on tax-exempt municipal bonds. More than 150 of our colleagues from both sides of the aisle have joined us. We urge President Trump to similarly reject any such proposal.

We have also launched the bipartisan Municipal Finance Caucus to continue promoting the importance of this tax exemption with our colleagues in Congress. The caucus is a valuable platform that ensures any discussion of comprehensive tax reform includes the needs of municipalities throughout this nation. Answering the call for reliable, proven infrastructure financing means we must protect this vital tool for job growth and economic development in our communities.

GOVERNING.COM

BY RANDY HULTGREN, DUTCH RUPPERSBERGER | MAY 11, 2017

Why Tax Credit Bonds Should Be A Key Part Of Any Federal Infrastructure Policy Initiative.

Major infrastructure investments—especially projects and programs of regional and national significance—can generate major "spillover" benefits to the general public—some, like locks and dams, literally so. This article explains why tax credit bonds should be in the mix of federal infrastructure policy initiatives. Previous generations of tax credit bonds, such as Build America Bonds, were highly successful in broadening the market for infrastructure debt but their authority has expired. We propose creating a new generation of qualified tax credit bonds. A separate article in this issue of Public Works Financing outlines a specific proposal to create "Infrastructure Credit Bonds" (page 12).

While some proposals have focused on the role that equity capital can play in advancing infrastructure projects, it is worth noting that P3 projects have represented just a small fraction of total investment in public infrastructure. For example, CBO reports that in 2014, federal, state and local capital outlays for public infra- structure totalled $181 billion. That same year, according to Public Works Financing, P3 project outlays totalled just $4.2 billion—about 2 percent of the market.

Within the P3 sector, financial equity represents, on average, about 15 percent of the capital sources for P3 projects. Debt capital, on the other hand, represents 60 percent of sources on P3 deals—and for governmental projects debt may fund 90 percent or more of the "capital stack." So clearly, the cost of borrowing has a major impact on project feasibility and financial capacity.

Historically, infrastructure project sponsors have raised debt capital from the following sources:

- Tax-exempt financing (both "governmental" and "private activity" bonds);
- Federal credit assistance (such as TIFIA, RRIF and WIFIA, with loans generally made at the U.S. Treasury rate);
- Bank and other taxable rate debt (especially suitable for P3 project financings);
- State-capitalized loan funds (such as Water Revolving Loan Funds and State Infrastructure Banks)

In more recent years, federal legislation has authorized other forms of tax-advantaged debt:

- Partially-subsidized taxable rate bonds (Build America Bonds) designed to replicate the tax-exempt borrowing rate by offsetting a portion of the interest cost (recently proposed to be 28%) through a refund- able (cash) tax credit for the issuer ("direct-pay" tax credit bonds); and
- Fully-subsidized taxable rate bonds designed to have most or all of the annual interest return provided through an annual (non refundable) tax credit for the investor, which can apply the credit against other tax liability ("investor pay" tax credit bonds).

These programs have been either time-limited (Build America Bonds issuable only in 2009 and 2010) or volume-capped (five separate classes of "qualified tax-credit bonds" totaling about $35 billion for specific purposes such as school construction, energy conservation and clean renewable energy projects.)

Of all the existing and proposed debt instruments, the qualified tax credit bonds offer the greatest present value benefit to the project sponsor per dollar of "scored" federal budgetary cost.

This is not to suggest that other debt instruments aren't helpful. PABs level the playing field between P3 and governmental projects, but their purpose is simply to match the municipal bond market rates available to governmental sponsors. Similarly, "direct pay" tax credit bond programs

like Build America Bonds can broaden the market by attracting taxable fixed-income investors, but are designed to replicate (but not beat) tax-exempt rates. Federal credit can provide greater structuring flexibility in terms of deferrals and prepayments, but may only reduce the effective borrowing cost by ½% or so for investment grade issuers—a savings to be sure, but not enough to dramatically increase a project's debt capacity. And SRF and SIB loans, while potentially offering very low rates, are severely size-constrained by limits on state capitalization grants.

In contrast, qualified tax credit bonds can more than double an issuer's debt capacity. Stated differently, a given local revenue stream pledged for debt service can support twice the amount of tax credit bond principal as tax-exempt financing or federal credit.

From a federal policy viewpoint, tax credit bonds offer additional advantages. Unlike federal grant spending or credit assistance, tax code measures do not require growing the size of the federal government to administer them. Tax incentives also have the advantage over grants of harnessing the market discipline of private capital (bond investors) to ensure that the pro ject's repayment plan is feasible. Unlike federal credit, a tax credit bond does not require the federal government to take any credit exposure on the borrower or the project.

Tax credits attached to bonds can be simpler and more efficient to market than equity-based investment tax credits, provided liquidity concerns are meaning- fully addressed (as discussed in the follow-on article on "Investment Credit Bonds"). And tax credits attached to bonds are "budget-efficient," since they stretch out the fiscal impact over a longer period of time more commensurate with the economic lives of the assets being financed. The scored cost of the program (effectively the first 10 years of tax expenditures under budget rules) relative to the financial benefit to the project sponsor offers the highest "return on fiscal investment."

For these reasons, a tax credit bond proposal should be a key component of any new federal policy initiative.

Article by Elaine Buckberg

Last Updated: May 11 2017

The Brattle Group, Inc.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Taxing Muni Bonds: Excuses, Excuses, and More Excuses.

In politics and policy there are reasons and there are excuses.

The American Public Power Association and other stakeholders have been fighting for several years now to explain the reasons why an unprecedented tax on municipal bonds would be bad. There is ample evidence to indicate that:

- The tax exclusion of municipal bonds is far more efficient than opponents suggest;
- Taxing municipal bonds would be hugely harmful to U.S. infrastructure investment; and
- Proposed alternatives to tax-exempt municipal bond financing would increase the cost of financing core infrastructure investments — and state and local residents will pay the price

I also believe a federal tax on municipal bond interest would be unconstitutional.

What we've spent less time discussing are the excuses – implicit and explicit – for imposing a new tax on municipal bonds. These include dire warnings of tidal waves of municipal bankruptcies, breathless tales of state and local financial struggles, hoary anecdotes implying endless abuses, and pat solutions that fail to address the problems.

I discuss the excuses in a recent article for Tax Notes magazine, Logical Fallacies in the Debate of Municipal Bonds.

For example, in Washington, it's common to cite a handful of municipal bankruptcies to imply that many more have happened or are about to. This alleged symptom of fiscal negligence is taken as an excuse to "rein in" state and local spending by imposing a federal tax on infrastructure investments.

As the article explains, though, in the last three decades there have been just 47 municipal bankruptcies or attempted bankruptcies – from a population of 39,000 municipal governments. In the early nineties the rate averaged roughly one per year, and in the last two decades it has averaged roughly two per year. That's not "nothing," but it's also not a tsunami, and it certainly doesn't justify upending more than a century of tax policy by repealing the federal tax exclusion for municipal bond interest.

If anything, economic data shows that state and local governments are doing a far better job of tackling fiscal challenges than the federal government. There are exceptions — again, two bankruptcies a year is not nothing. However, headlines screaming of budget wars may actually be a good sign that state and local governments are actually fighting to make tough budget choices, rather than simply fiddling while their fiscal houses burn down.

My article also debunks the idea that debate over tax-exempt bonds is somehow a debate over tax-exempt bond financing of sports stadiums (or that the debate over private activity bonds has something to do with private activity bond financing of a Corvette museum).

By John Godfrey, Senior Government Relations Director, American Public Power Association

Posted on May 11, 2017 by John Godfrey

A Requiem for Reasonable Expectations: Squire Patton Bogs

The "reasonable expectations" approach to determining the issue price of a tax-advantaged bond[1] has been the law since 1989. On June 7, it is scheduled to join Betamax tapes and parachute pants as another relic of that bygone decade. Barring intervention (either Divine or as part of the President's executive order to undo recent regulations that "add undue complexity to the Federal tax laws"), the new issue price regulations will take effect for tax-advantaged bonds sold on or after June 7. Though we don't often have to rely on reasonable expectations because underwriters usually actually sell at least 10% of each bond maturity at the initial offering price to the public on the sale date, the reasonable expectations rule has been a useful tool and a dear friend. As it prepares to ride off into the sunset,[2] a eulogy is in order. And bittersweet that eulogy shall be, for the death of the reasonable expectations standard seems senseless.

Continue reading.

By Johnny Hutchinson on May 11, 2017

The Public Finance Tax Blog

Squire Patton Boggs

New IRS Arbitrage Publication and TEB Training Texts Now Available.

Publication 5271, Complying with Arbitrage Requirements: A Guide for Issuers of Tax-Exempt Bonds
This new publication is a basic guide to the yield restriction and rebate requirements (arbitrage requirements) of Internal Revenue Code Section 148 and related regulations. Information in the guide can help issuers and conduit borrowers comply with their obligations and prevent violations of the arbitrage requirements.

Tax Exempt Bonds Phase I Training Text
Basic lessons that examine the rules applicable to tax-advantaged bonds, discuss the appropriate use of bond proceeds and introduce the arbitrage, yield restriction and rebate concepts.

Tax Exempt Bonds Phase II Training Text
Intermediate lessons supplement the basic lessons in Phase I, including advanced topics in arbitrage and rebate.

Tax Exempt Bonds Phase III Training Text
Advanced lessons that examine the rules applicable to refundings, reissuances, pooled financing issues and IRC Section 6700 penalties.

IRS Teeing Up More Flexible Rules for Public Approval of PABs.

WASHINGTON Rules increasing the flexibility of the public approval process for tax-exempt private activity bonds will probably be the next released for municipal bonds by tax regulators, an Internal Revenue Service official recently told lawyers.

“The 2008 regulations permitted quite a bit of flexibility,” IRS Branch 5 chief Vicky Tsilas said during a conference sponsored by Georgetown University Law Center, according to Tax Notes. “I would argue these regulations – as they get finalized or re-proposed, whatever it is – will permit even greater flexibility in response to comments received over the years.”

“The 2008 regulations permitted quite a bit of flexibility,” IRS Branch 5 chief Vicky Tsilas. “I would argue these regulations – as they get finalized or re-proposed, whatever it is – will permit even greater flexibility in response to comments received over the years.”

On the same panel with Tsilas, Mike Bailey, a lawyer at Foley & Lardner in Chicago, noted that the new issue price rules provide no guidance about whether they are to be applied to many tax requirements that bond lawyers have historically complied with using issue price rules. These include the 2% limitation on issuance costs for private activity bonds, the requirement that at least 95% of the net proceeds of qualified exempt-facility bonds be spent on a project’s capital costs, and the 5% limit on private use for 501(c)(3) bonds for nonprofits.

Tsilas told Bailey that those issues will be addressed by another regulatory project, according to Tax Notes.

The public approval requirements for PABs are in the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982. The act said that for PABs, including 501(c)(3) bonds for nonprofits, to be tax-exempt the state or local government issuing the bonds or the borrower of the proceeds would have to approve them. The PABs would be treated as approved if either residents voted for them in a referendum or an elected representative approved them after a public hearing was announced and held. The Treasury and IRS published temporary rules in 1983 to implement the TEFRA provisions.

The tax-writing agencies then proposed rules in September 2008 to update, streamline and simplify those temporary rules. The proposed rules were generally supported at the time and Treasury officials expected them to be quickly finalized. Whereas the existing rules had required a very specific and detailed description of the facility to be bond-financed, the proposed rules would allow a general reference to the type of facility for which bonds were being issued.

The proposed rules also would allow a government or its authority to cancel a hearing if, after timely notice of the hearing, no one had asked to participate in it. They allowed the government to post notice of the hearing on its website. Some community and labor groups claimed the proposed rules claiming they would come close to removing public input from the process of issuing PABs. Nine years later, the proposed rules have still not been finalized.

The National Association of Bond Lawyers in June 2015 submitted recommendations to Treasury and the IRS on ways to further streamline, modernize and clarify the public approval requirements from those proposed in 2008.

“The TEFRA public approval requirement is arguably one of the more burdensome requirements for tax exemption,” NABL said in the letter. “NABL believes that ways in which the requirement may be made less burdensome to issuers and conduit borrowers, while still achieving the underlying objectives of the requirement, should continually be reassessed, with deference given to how state and local governments carry out their day-to-day operations and with recognition of technological advances as tools for implementation.”

NABL made several specific recommendations including that the final rules allow PAB proceeds to be used for working capital without the public notice specifically mentioning that. It also said that the issuer should be allowed to provide a notice of cancellation of a hearing on its website in the same manner that it posts other public notices.

The Bond Buyer

By Lynn Hume

Published May 04 2017, 11:20am EDT

Munis Could Be Hurt by Plan to Slash Corporate Tax Rates.

Banks and insurance companies own about a quarter of all municipal debt.

While President Trump’s plans to reform individual income taxes could result in an increase in demand for some munis, his plans to slash the corporate tax rate could be a negative, points out

Wells Fargo in a new research report from its Investment Institute.

That's because companies — mostly banks and insurance companies — own a big chunk of munis. Their demand for tax-free income would likely fall if their rates go to 15% from the 35% maximum in place now.

In Q&A form, here's how Wells Fargo puts it:

> **What is the potential impact to the municipal market from the proposed cut in business taxes?**
>
> A lower corporate tax rate may impact demand in the municipal market as close to 26 percent of municipal debt ownership has historically come from banks and insurance companies. It is important to keep in mind that we would not expect the demand for municipal bonds to decline dramatically as a result of reduced tax-driven demand from banks or insurance companies, because municipal securities also offer diversification, quality, and yields close to those of Treasury securities.

Muni investors can also take solace because it is unlikely that corporate tax rates will be slashed to the extent Trump has proposed.

John Miller, who runs municipal bond investing at Nuveen Investments, told Barron's Monday that he thought the corporate tax rate would ultimately only be cut to the high-20th percentile, after negotiations with Congress.

Of tax reform in general, he said, "It's going to take longer and be smaller."

So far, munis have shown little reaction to the tax reform proposal. The iShares S&P National AMT-Free Municipal Bond Fund (MUB) has stayed right around $109 since news of the plan started to trickle out exactly a week ago. It was 109.01 at 1 p.m. ET on Tuesday.

Barron's

By Amey Stone May 2, 2017 1:37 p.m. ET

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

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

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

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

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

nation’s bones: taxable municipal bonds.

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

But not all munis have this traditional feature.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MarketWatch

By RACHE KONING BEALS

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

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

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

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

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

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

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

THE UNITED STATES CONFERENCE OF MAYORS

Demys'TIF'ying Tax Incentives.

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

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

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

The Takeaway: Good Jobs First, which tracks government tax incentives, said the clarification bodes well for it and other sunshine groups that want more disclosure about what governments give up to woo corporations. Greg LeRoy, the group's executive director, told Governing this week that Midwestern and Western states make heavy use of this type of financing. "Until California canceled

[the practice], they were TIF-ing $6 billion a year in property tax revenue," he said.

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

GOVERNING.COM

BY LIZ FARMER | MAY 5, 2017

IRS Publication 5271, Complying with Arbitrage Requirements: A Guide for Issuers of Tax-Exempt Bonds.

This new publication is a basic guide to the yield restriction and rebate requirements (arbitrage requirements) of Internal Revenue Code Section 148 and related regulations. Information in the guide can help issuers and conduit borrowers comply with their obligations and prevent violations of the arbitrage requirements.

IRS Publication 5271

Sometimes the Truth is Stranger than Fiction – Update.

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

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

Continue reading.

The Public Finance Tax Blog

By Cynthia Mog on May 5, 2017

Squire Patton Boggs

TAX - NEW HAMPSHIRE

Appeal of Kadle Properties Revocable Realty Trust

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

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

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

TAX - COLORADO

City and County of Denver v. Expedia, Inc.

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

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

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

The Supreme Court of Colorado held that:

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

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

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

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

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

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

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

Here's a look at the major ways it may impact the municipal market if ultimately enacted by

Congress, according to Wall Street analysts and investors, who remained skeptical of its prospects.

Lower Taxes = Lower Demand?

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

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

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

Buying Opportunity

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

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

More Demand, in High-Tax States

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

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

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

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

include municipals and throw municipals in later."

Bloomberg BNA

by Martin Z Braun, Rebecca Spalding, and Molly Smith

April 26, 2017, 3:06 PM PDT

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

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

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

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

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

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

Bloomberg Markets

by Molly Smith

April 26, 2017, 12:09 PM PDT

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

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

"Eliminating or capping federal deductibility for state and local property, sales and income taxes would represent double taxation, as these taxes are mandatory payments for all taxpayers," the groups said in a statement. "We fundamentally believe that Americans' income, property and

purchases should not be taxed twice.

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

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

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

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

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

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

By Elaine S. Povich

BY STATELINE | APRIL 28, 2017

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3 Ways Muni Bonds Could Benefit from Trump Tax Plan.

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

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

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

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

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

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

> municipal interest in this plan.

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

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

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

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

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

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

Barron's

By Amey Stone

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

Trump Tax Effort Could Boost Muni ETFs.

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

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

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

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

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

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

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

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

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

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

ETF Trends

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Bond Buyer

By Lynn Hume

April 26 2017, 5:06pm EDT

Trump's Tax Plan And Munis.

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

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

The plan also calls for the elimination of the Alternative Minimum Tax. The AMT was enacted in 1982 to ensure that individuals paid a certain minimum income tax. The tax limited tax benefits from a variety of deductions (think state and local taxes among other things). One aspect of the bill

mandated that income from certain private-activity municipal bonds (municipal bonds issued by corporations, housing bonds over certain cap limits, and other municipal issues that have a private end user) be included in the calculation of the AMT. **This provision was one of the most poorly designed parts of the AMT,** as individuals who would be subject to the AMT would not buy bonds subject to the AMT. The cumulative amount of tax raised from this aspect of the AMT has been negligible. But the provision has come at a cost to these private issuers. Attached is a Bloomberg graph showing the difference between AA Bonds subject to the AMT and AA bonds *NOT* Subject to the AMT over the past two-plus years. This difference should *DISAPPEAR* over time if the proposed tax plan is passed.

Continue reading.

Investing.com

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

State and Local Governments Express Concerns About Trump Tax Plan.

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

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

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

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

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

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

"We fundamentally believe that Americans' income, property and purchases should not be taxed twice," they said.

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

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

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

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

THE HILL

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

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

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

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

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

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

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

'Extremely Concerned'

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

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

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

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

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

Big Apple Deductions

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

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

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

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

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

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

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

California 'Calculus'

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

"It has changed the calculus tremendously," he said. "It's going to require us to modernize our tax code."

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

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

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

Double Taxation?

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

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

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

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

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

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

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

Pushback Coming

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

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

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

Regressive or Not

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

The issue, for Walczak, is what the deduction incentivizes. The cost of government in wealthier

states is being “subsidized by the rest of the country.”

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

Alternative Minimum Tax

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

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

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

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

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

Municipal Bond Exemption

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

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

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

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

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

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

“In other words, shifting the burden of costs back onto municipalities and counties, you know, local governments, just at a time when the federal government is telling us, ‘Well, you’re going to have to

raise more money to build your bridges and your roads,'" he said. "It doesn't seem wise to me on the surface."

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

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

Bloomberg BNA

By Che Odom

April 28, 2017

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

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

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

Continue reading.

Apr. 24, 2017

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

INTRODUCTION

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

interest, long-term bonds, fundraising can be directed to other purposes, as well as into debt reduction.

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

BOND FINANCING

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

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

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

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

What are "Bank-Qualified Bonds"? Generally, Banks and other financial institutions holding tax-exempt Bonds are not entitled to a tax deduction for their related carrying costs, or "cost of funds", determined by the ratio of the institution's borrowed funds to its equity, and banks and other financial institutions may find it relatively unattractive to hold tax-exempt Bonds. However, most

Issuers that reasonably anticipate issuing not more than $10,000,000 of 501(c)(3) or governmental bonds during any calendar year may designate such Bonds as “Qualified Tax-Exempt Obligations.” Such “Bank-Qualified” Bonds are subject to only a 20% disallowance of the allocable carrying cost and are attractive for Banks to hold. For the purpose of determining compliance with the $10,000,000 limitation, obligations of the Issuer and any subordinate entities must be aggregated, together with some obligations of superior entities. Note that an Issuer’s Bank-Qualified Bonds may count against the ability of the superior entities to issue Bank-Qualified obligations.

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

WHEN A PROJECT IS FINANCEABLE

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

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

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

facilities primarily providing services to third parties: compensation can be based entirely on a percentage of fees charged, or a combination of per-unit-of-services fees and a fixed fee (or during the start-up period, a percentage of gross revenues, adjusted gross revenues or expenses), if the contract has a term of 2-years or less (cancellable by the 501(c)(3) within 1 year).

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

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

BOND ISSUERS

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

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

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

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

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

ARBITRAGE

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

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

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

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

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

Six-Month Exemption. An exemption from the rebate requirement applies if all gross proceeds

(except for proceeds placed in a reasonably required reserve fund) are expended within six months.

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

OTHER LIMITATIONS

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

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

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

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

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

INDUCEMENT

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

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

FORM OF TRANSACTION

General. Because a 501(c)(3) Bond transaction utilizes an Issuer as an intermediary, the transaction

takes a form different from a conventional financing transaction. The exact form to be used depends on the desires of the parties and local requirements. In any transaction the Issuer sells the Bond and makes the proceeds available for the Project. Three forms of transaction commonly are used: loans, leases and installment sales.

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

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

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

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

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

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

PROCEDURAL STEPS

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

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

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

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

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

LIVING WITH A BOND ISSUE

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

BOND COUNSEL

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

SUMMARY

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

Counsel.

Last Updated: April 26 2017

Article by James P. Monacell

Smith Gambrell & Russell LLP

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Availability Of Tribal Economic Development Bond Allocations: Holland & Knight

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

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

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

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

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

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

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

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Article by Kathleen M. Nilles and Randolf A. DelFranco

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

TAX - CONNECTICUT

Fairfield Merrittview Limited Partnership v. City of Norwalk

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

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

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

On remand, the Appellate Court held that:

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

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

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

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

TAX - FLORIDA

Villages of Avignon Community Development District v. Burton

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

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

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

The District Court of Appeal held that:

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

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

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

TAX - KANSAS

Heartland Apartment Association, Inc. v. City of Mission

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

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

The District Court entered summary judgment in favor of city. Associations appealed, and city cross-

appealed. The Court of Appeals reversed and remanded. City petitioned for review, which was granted.

The Supreme Court of Kansas held that:

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

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

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

Counties Grapple with Short-Term Rentals.

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

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

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

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

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

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

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

The Metro Planning Commission there is set to vote on phasing out growth of short-term rentals that

aren't occupied by owners or placing a temporary moratorium on issuing new permits for short-term rentals. The commission has deferred the vote, requested by Airbnb and Homeaway, to April 13.

States attempt to assert control over short-term rentals

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

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

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

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

Virginia hands control to local government

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

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

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

Collecting taxes

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

Miami-Dade County also reached an agreement with the company April 4, voting 10-3 to approve a memorandum of understanding between the county tax collector and the provider. County

Commissioner Joe Martinez, who voted no, argued the county should first come up with regulations before taxing Airbnb users. “It’s putting the cart before the horse,” the Real Deal, a local real estate newspaper, reported him saying. “I know a lot of people in my neighborhood who don’t want it.”

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

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

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

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

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

NATIONAL ASSOCIATION OF COUNTIES

By MARY ANN BARTON

Apr. 17, 2017

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

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

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

North Carolina’s legislature filed a bill to expand and Maine will put Medicaid expansion to a voter referendum in November. Additional expansion bills may be introduced in Nevada and South Dakota, according to media reports. Expansion efforts in four states have failed though, as legislatures in Kansas and Virginia did not pass expansion bills while Georgia and Idaho legislatures

adjourned without considering them.

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

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

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

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

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

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

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

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

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

You Paid Your Taxes. So How About a Receipt?

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

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

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

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

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

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

Whether or not paying these amounts for these services is a good deal is, of course, in the eye of the

beholder. But if you have ever dialed 911 at 3 a.m. and minutes later had a police officer at the door ready to put her life on the line for you, you might well have thought you were getting your money's worth.

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

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

GOVERNING.COM

BY CHRIS ADAMS | APRIL 18, 2017

Taxation Of Municipal Bonds?

Is there a threat to the municipal bond interest deduction?

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

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

Tax-exempt municipal bonds play an important role in our building of infrastructure – we see the results every day in roads and bridges, airports, mass transit systems and affordable housing, hospitals and universities. Tax exemption results in lower interest expense for issuers, thus reducing property or other taxes and fees for residents. Private activity bonds (not to be confused with the internationally utilized public–private partnership model) are a type of municipal bond that helps

fund infrastructure. Some of the revenue for bond repayment derives from the activities of private entities (such as an airport's collecting gate fees from airlines) or accrues when a private developer builds a project, for example a city hall, and leases it back to the municipality. Private activity bonds (PABs) are currently subject to the alternative minimum tax (AMT). If the AMT were abolished, it would result in lower costs and wider market access for PAB funded projects as well. Federal taxation of interest on municipal bonds would drive up funding costs and make projects more expensive.

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

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

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

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

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

post-the election of President Trump.

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

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

Investing.com

by Cumberland Advisors

Apr 20, 2017 09:27AM ET

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

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

Continue reading.

By Bob Eidnier on April 21, 2017

The Public Finance Tax Blog

Squire Patton Boggs

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

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

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

Tax-Exempt IDBs

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

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

What are Taxable Bonds?

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

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

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

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

Advantages of Taxable Bonds

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

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

project in other respects.

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

Form of Transaction: Loan, Lease or Sale

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

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

How to Obtain Taxable Bond Financing

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

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

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

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

Growing Awareness of Taxable Bonds

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

Article by James P. Monacell

Last Updated: April 19 2017

Smith Gambrell & Russell LLP

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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

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

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

Government Finance Officers of America

Wednesday, April 12, 2017

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

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

filing.

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

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

NABL's Model Issue Price Certificates – Some Observations.

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

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

Continue reading.

The Public Finance Tax Blog

By Michael Cullers on April 12, 2017

Squire Patton Boggs

'Trump Trade' Reversal is Afoot as Money Flows to Bonds.

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

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

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

The fortunes of bonds have peaked as investors shift away from risky assets to haven investments, said Michael Hartnett, Bank of America Merrill Lynch's chief investment strategist, in a Friday note.

Even though stocks accrued $6.3 billion of additional cash against the $6.1 billion rushing into bonds for the week ending April 14, the longer-term trend remains firmly in favor of fixed-income assets.

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

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

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

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

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

MarketWatch

by Sunny Oh

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

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

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

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

The promulgation of the New Issue Price Regulations is the culmination of a somewhat contentious process that Treasury began in response to Internal Revenue Service (IRS) beliefs that underwriters were abusing how bonds were priced under the existing issue price definition in Treas. Regs.

Section 1.148-1 (Existing Definition). Treasury published its first proposal to change the issue price definition in the Federal Register on Sept. 16, 2013 (78 FR 56842). This proposal faced significant public criticism, and was withdrawn and replaced with another proposed definition (the 2015 Proposed Regulations) that was published on June 24, 2015 (80 FR 36301). While the 2015 Proposed Regulations were more favorably received, they still generated significant comments, resulting in Treasury making substantive changes from the 2015 Proposed Regulations in the New Issue Price Regulations.

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

Background on Existing Issue Price Definition

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

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

The 2015 Proposed Regulations

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

the initial offering price. The 2015 Proposed Regulations:

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

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

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

Concerns with the 2015 Proposed Regulations

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

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

- Problems applying the rules to competitive sales;
- The desire to use the issue price definition for other tax-exempt bond rules.

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

The New Issue Price Regulations

1. Alternatives for Determining Issue Price:

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

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

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

2. The Initial Offering Price Rule

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

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

3. Competitive Sale Rule

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

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

highest price (or lowest interest cost).

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

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

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

Model Documents to Help Issuers Effectuate the Issue Price Regulations

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

1. NABL's Model Issue Price Certifications

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

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

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

2. SIFMA Draft Model Riders

SIFMA provided draft riders for the master Agreements Among Underwriters, the master Selling Group Agreement, the Retail Distribution Agreement, the Bond Purchase Agreement, and the Notice of Sale. Of particular note are the draft riders for competitive sales. These riders provide rights and obligations when, despite the issuer's reasonable efforts, the competitive bidding process is not met (e.g., the issuer does not receive three bids). One alternative under these riders is the underwriter

may revoke its bid if the issuer determines to apply the hold-the-price-firm requirement for any maturity, in which case the issuer may award the securities to another bidder under the notice of sale. If the underwriter does not revoke its bid, it will have agreed to meet those requirements (and through riders to agreements with other underwriters in the group or syndicate, for those underwriters to also meet the requirements). The draft riders also include an option that does not permit the underwriter to revoke its bid, and requires the underwriter(s) to meet the hold-the-price requirements.

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

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

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

April 11 2017

Greenberg Traurig LLP

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

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

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

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

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

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

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

far more modest than initially advertised."

THE WALL STREET JOURNAL

By CHRIS DIETERICH

Apr 17, 2017 9:06 am ET

Why Bond Investors Should Avoid Big-Box Retailers.

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

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

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

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

What does this have to do with bond investing?

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

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

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

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

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

Forbes

Apr 17, 2017

by Marilyn Cohen, Contributor

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

California Just Did What Trump and Congress Won't.

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

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

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

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

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

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

Brown's skill at legislative deal-making contrasts sharply with the progress of Trump's proposed $1 trillion infrastructure deal, which has been tied up in Republican infighting. Speaker Ryan and a

faction within the Trump administration led by billionaire leverage buyout specialist-turne--Commerce Secretary Wilbur Ross want almost all of the spending to come from tax credits given to private investors who underwrite infrastructure projects such as toll roads. Ross argues that $137 billion in tax credits over 10 years could spur $1 trillion in infrastructure investment, matching Trump's campaign promise. But some conservative economists say the approach doesn't hold water.

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

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

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

MOTHER JONES

JOSH HARKINSON

APR. 7, 2017 2:23 PM

IRS Published Volume Cap Limit for Tribal Economic Development Bonds.

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

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

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

volume cap as of the first day of such period (determined as described in the Notice); or (2) $100 million.

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

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

TAX - OHIO

Nibco Inc. v. City of Lebanon

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

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

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

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

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

State and Local Governments Press Congress on Tax Reform Priorities.

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

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

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

House Republicans are working on legislation based on a blueprint they released last year, which would do away with the state and local tax deduction and does not explicitly mention the municipal

bond tax exemption. Trump told a group of mayors in December that he supports the municipal bond tax exemption, and the most recent version of his campaign tax plan capped itemized deductions for high earners.

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

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

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

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

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

THE HILL

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

State Deduction Among Possible Targets If ACA Taxes Axed.

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

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

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

The taxes include net investment income and medical device taxes.

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

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

additional revenue," Greenberg said.

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

Hard to Predict

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

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

Border Adjustment

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

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

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

Revenue-Neutral Goal

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

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

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

Bloomberg BNA

By Che Odom

April 3, 2017

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

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TAX - LOUISIANA

Filmore Parc Apartments II v. Foster

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

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

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

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

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

Bill Would Ease PAB Restrictions for First-Time Farmers.

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

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

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

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

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

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

Current tax law, in determining whether a farmer is first-time, says he or she must not have previously owned and operated "substantial farmland," defined as land equal in size or larger than 30% of the median size of farms in the same county. The bill would change "median" to "average," which would probably mean an increase in size because very large farms would affect the average

more than the median. One Iowa official said that a number of small “hobby farms” have started up in some states and have been skewing the numbers downward.

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

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

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

The Bond Buyer

By Lynn Hume

Published April 03 2017, 4:56pm EDT

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

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

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

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

The tax equivalent yield just drops closer to 4%.

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

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

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

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

Barron's

By Amey Stone

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

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

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

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

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

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

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

1. Capital gains taxes.

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

2. State income taxes in muni-bonds.

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

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

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

4. Taxation on Social Security benefits.

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

5. Higher Medicare premiums?

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

6. That pesky Alternative Minimum Tax.

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

7. Taxing at the de minimis level.

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

other sites offer details about the de minimis tax rule, and there are warnings that rising interest rates may fuel more concerns on this front.

8. Bond funds versus individual bonds.

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

24/7 Wall St.

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

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

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

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

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

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

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

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

Recurring Target

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

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

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

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

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

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

Bloomberg BNA

By Che Odom

April 6, 2017

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

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Model Issue Price Certificates Released: Squire Patton Boggs

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

Continue reading.

The Public Finance Tax Blog

By Joel Swearingen on April 7, 2017

Squire Patton Boggs

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Bloomberg

by Romy Varghese and Sahil Kapur

April 7, 2017, 6:26 AM PDT

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

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

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

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

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

Last week, three brownfield experts shared how state tax credit programs have helped make

cleanup of abandoned brownfields possible in Denver and Buffalo, New York. Their visit culminated with a lunchtime discussion at the Collaborative Life Sciences Building in Portland's South Waterfront, itself one of the region's ongoing brownfield cleanup stories.

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

Continue reading.

Oregon Metro News

By Craig Beebe

March 29, 2017 10:40 a.m.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Bond Buyer

By Lynn Hume

March 23, 2017

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

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

Formerly, the IRS Tax-Exempt Bonds Branch was divided into a Field Operations division (focusing on examinations) and a Compliance and Program Management (CPM) division (which, among other

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

Continue reading.

By Johnny Hutchinson on April 3, 2017

The Public Finance Tax Blog

Squire Patton Bogs

TAX - OHIO

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

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

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

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

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

The Oakland Raiders Sack the Taxpayers.

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

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

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

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

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

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

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

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

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

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

THE WALL STREET JOURNAL

By STEVE RUSSELL

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

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

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

$750 million.

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

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

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

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

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

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

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

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

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

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

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

Where's the revolt? – Rob Tornoe

FORBES

MAR 30, 2017 @ 09:37 PM

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

WASHINGTON – The analysis used by the Joint Committee on Taxation to show tax-exempts are inefficient is flawed and unfairly hurts municipal bonds, George Friedlander, a managing partner at

Court Street Group Research, said at a conference in Florida last week.

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

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

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

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

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

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

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

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

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

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

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

He also contends that the tax-exempt bond market provides a kind of "sort and selection

mechanism" for infrastructure projects. "There just isn't any easy way to measure the 'right amount' of support for infrastructure projects, unless the recipient of the support is committing to pay for a portion of the project in the form of bond debt service," he said.

The Bond Buyer

By Lynn Hume

March 20, 2017

Bills Seek Infrastructure Funding Through Tax Reform.

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

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

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

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

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

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

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

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

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

The American Infrastructure Fund would be financed by the proceeds from the purchase by corporations of $50 billion of 50-year bonds. The corporations would be allowed to repatriate an

undetermined amount of overseas earnings with no federal tax liability for every $1 invested in the 1% bonds.

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

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

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

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

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

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

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

The Bond Buyer

By Jim Watts

March 22, 2017

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

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

Read the Advisory.

3/21/2017

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

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

SAFE HARBOR REQUIREMENTS

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

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

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

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

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

Risk of Loss: The Service Provider cannot be responsible for replacing the Project if there is a

catastrophic loss. The Service Provider can, however, be responsible for obtaining adequate insurance, so long as the cost of the insurance is a cost reimbursement item.

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

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

PROFESSIONAL SERVICES CONTRACTS

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

EXCLUDED INCIDENTAL SERVICES

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

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

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

CONCLUSION

The Revenue Procedure replaces prior guidance, most notably Revenue Procedure 97-13, and provides a new approach. The old formulaic approach to balancing the contract term and the fixed portion of the compensation is entirely replaced. The main takeaways from the discussion above are (i) except in the context of certain contracts for professional services (e.g., physician contracts),

Services Contracts generally should be structured so that the payments to the Service Provider are split between reimbursement for actual Service Provider costs, subject to an annual budgeting process, and a separate management fee that can include incentives and (ii) most of the tax analysis, even for very long term contracts, will focus on the net profits/losses limitation. Also, when contemplating a repair and maintenance services arrangement for a Project, the first question should be whether the contract is solely for excluded incidental services.

Orrick Public Finance Alert | 03.23.17

by Charles C. Cardall

Partner, Tax

The Regulatory Freeze: Where do we stand now?

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

Continue reading.

The Public Finance Tax Blog

By Alexios Hadji on March 24, 2017

Squire Patton Boggs

TAX - CALIFORNIA

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

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

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

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

The Court of Appeal held that:

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

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

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

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

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

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

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

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

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

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

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

Compliance, Planning and Classification Office

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

TEB Restructuring and Consolidation with ITG

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

IDR Process

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

Under the new process:

1. An agent will mail to the taxpayer the initial contact letter, which the procedures suggest should include the initial IDR.
2. After 10 business days, the agent will contact the taxpayer to discuss the issues being examined and the items being requested in the IDR.
3. The agent may refine the IDR based on that conversation and will attempt to arrive at a mutually agreed upon response date with the taxpayer; the Commissioner made clear that a request for significant time to obtain an attorney would likely not be granted. If a date cannot be agreed upon, the agent is to set a reasonable date.
4. The agent will review the response and notify the taxpayer whether the response is complete or whether additional information is needed.
5. If additional information is needed, the additional material will be also be subject to due dates, some of which are mandated in the procedures and may be as short as 15 business days.
6. If the request is not fully and timely met after a second extension to submit the additional information, the agent is instructed to begin the enforcement process, which could lead to a pre-summons and summons to supply the information.

by Rebecca L. Caldwell-Harrigal

March 15 2017

Greenberg Traurig LLP

Introduction To Tax For Public Finance – Orrick Tax Presentation.

Topics covered:

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

Read Article.

Last Updated: March 9 2017

Article by John Stanley

Orrick

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

TAX - TEXAS

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

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

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

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

The Supreme Court of Texas held that:

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

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

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

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

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

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

TAX - COLORADO

City of Aurora v. Scott

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

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

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

The Court of Appeals held that:

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

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

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

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

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

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

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

Continue reading.

The Public Finance Tax Blog

By Bob Eidnier on March 17, 2017

Squire Patton Boggs

CO Ruling Says Tax-Increment Financing Must Begin Immediately.

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

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

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

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

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

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

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

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

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

Aurora could appeal the case to the state Supreme Court.

THE VILLAGER

BY PETER JONES

March 15, 2017

Bond Documents Being Revised for Issue Price Rules.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Bond Buyer

By Lynn Hume

March 9, 2017

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

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

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

Continue reading.

IRS Reorganizing Tax Exempt Bond Group in May.

WASHINGTON – The Internal Revenue Service's tax exempt bond office will undergo some major changes as part of a reorganization of the Tax Exempt & Government Entities Division in early May, the commissioner of that division told bond lawyers meeting here.

The tax-exempt bond office will be combined with the office of Indian tribal governments to form a new ITG/TEB office within TE/GE, Commissioner Sunita Lough said on panel at the National Association of Bond Lawyers' Tax and Securities Law Institute here on Thursday.

There will no longer be a TEB director as of May 1, Lough said. There has not been a director, only an acting director, of the office since Rebecca Harrigal, now Caldwell-Harrigal, left TEB in December to become a shareholder at Greenberg Traurig here.

The new ITG/TEB office will be chaired by Christie Jacobs, who has been director of ITG, Lough said. Asked by NABL members about Jacobs' municipal bond experience, Lough said she has not practiced in the tax exempt bond area but "is a very smart person" and "very capable."

"You should not be worried about that at all," Lough told the lawyers.

The reorganization is aimed at increasing efficiency, she said.

The TEB part of ITG/TEB will be focused on audits and examinations going forward, Lough said.

IRS tax exempt bond field operations, which will fall the under ITG/TEB office, will be continue to be led by Allyson Belsome who will report to Jacobs. The number of managers for field agents (examiners) will drop to three from five, Lough said, adding that, with attrition, five was "just not sufficient to sustain."

The tax exempt bond field agents will stay in place under ITG/TEB. Arbitrage rebate and refunds will also be a function of the field offices, Lough said.

Steve Chamberlin will head up a technical support group within ITG/TEB that will be responsible for voluntary closing agreements.

A new compliance, planning and classification group that will span across TE/GE will be responsible for identifying issues and cases, as well as doing research, obtaining data, and planning, including for tax exempt bonds.

That CP&C group will determine what issues should be explored and where high levels of noncompliance exist. In the case of tax-exempt bonds, it will give this information to Belsome. She will assign it to agents in the field. The agents will get electronic files or packets of information explaining an issue and the legal analysis for the IRS' concerns.

On Friday, Lough talked about the new Information Document Request (IDR) process that will be put in place for tax-exempt bonds and other areas of TE/GE on April 1. The new IDR program, which has been very successful in the IRS' Large Business and International Division, is aimed at expediting audits and increasing communication with taxpayers.

Under the process, IDR's will be drafted and IRS agents will talk with muni issuers or their lawyers to make sure everyone understands what the issues are and what documents are needed before the

IDRs are finalized.

Richard Chirls, a partner at Orrick, Herrington & Sutcliffe, said he likes the idea of increased effectiveness and communication, but thinks that issuers should think about having their lawyers on hand to talk to the IRS auditors, especially if substantive issues are being discussed.

“I’m a bit concerned about how well this is going to work in some instances in the governmental area,” he said on a TSLI panel.

“We’ll see how it all plays out,” said Brad Waterman, a tax controversy lawyer with his own practice, who was also on the panel.

The Bond Buyer

By Lynn Hume

March 10, 2017

When It Comes to Tax Incentives, How Transparent Is Your City?

A new report highlights major holes in local governments’ online disclosure of how economic development dollars are spent.

When it comes to tax breaks for economic development, following the money has never been easy.

Thanks to new accounting rules, states and localities have to disclose how much revenue they lose to such deals. But a new report finds that most of the nation’s largest local governments fail to reveal other basic information online, like what companies are benefiting, how much money they receive or whether they deliver on promises to create jobs.

The Washington-based watchdog group, Good Jobs First, reviewed disclosure practices for 50 of the largest cities and counties and assigned scores based on how much information was made available on public websites.

Just 35 of the 85 economic development programs identified the companies receiving incentives, while only 19 listed dollar amounts paid to or claimed by businesses.

Continue reading.

GOVERNING.COM

BY MIKE MACIAG | MARCH 13, 2017

Dear Colleague Letter Supports Municipal Tax-Exemption.

Reps. Hultgren (R-IL) and Ruppersberger (D-MD) recently co-authored a letter to the Chair and Ranking Member of the House Ways and Means Committee, urging them to carefully consider any legislative proposal that would increase the cost of infrastructure financing for state and local

governments. The letter was signed and supported by an additional 154 other Members from both sides of the aisle. The MBFA Coalition assisted in the effort to obtain these signatures.

You can view the letter here.

The letter highlights the value of the tax-exemption, including:

Over $400 billion in municipal bonds were issued to finance core infrastructure projects in 2015
Fiscal federalism–local control and local responsibility makes municipal bonds an effective and efficient financing tool
Municipal bonds are on pace to finance upwards of $3 trillion in new infrastructure investments by 2026

The Municipal Finance Caucus is also co-chaired by Reps. Hultgren and Ruppersberger and the MBFA will continue to work with their staffs to obtain support to retain the current law status of the municipal tax-exemption in upcoming measures on tax reform and infrastructure.
For more information on the MBFA please visit www.munibondsforamerica.org

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TAX - FLORIDA

City of Largo v. AHF–Bay Fund, LLC

Supreme Court of Florida - March 2, 2017 - So.3d - 2017 WL 823607

City brought action against property owner, which was exempt from ad valorem taxes as non-profit operator of affordable housing, for failure to make annual payment under payments-in-lieu-of-taxes (PILOT) agreement.

The Circuit Court entered judgment in favor of city. Owner appealed. The District Court of Appeal reversed and remanded and certified question.

The Supreme Court of Florida held that:

- Affordable housing property exemption does not prohibit payment of ad valorem taxes that equal amount of taxes that would be due if property owner waived exemption and entered into contract;
- PILOT agreement was not void as contrary to public policy; and
- PILOT agreement did not violate state constitutional provision providing that cities could only impose taxes as permitted by law.

Statutory affordable housing property exemption does not expressly prohibit the payment of ad valorem taxes or payments that equal the amount of taxes that would be due if a property owner decides to waive the exemption and enter into a contractual agreement.

Payments-in-lieu-of-taxes (PILOT) agreement between city and property owner, under which owner that was exempt from ad valorem taxes as non-profit operator of affordable housing agreed to make annual payments to city in amount equal to portion of ad valorem taxes to which city would otherwise be entitled to receive for property if taxable, was not void as contrary to public policy. City and owner entered into voluntary agreement supported by valid consideration, parties agreed on method of calculating consideration for their agreement and performed their respective obligations for period of time, and contract supported public policy favoring affordable housing for low-income families by enabling owner to procure funding necessary for building of apartment complex.

Payments-in-lieu-of-taxes (PILOT) agreement between city and property owner, under which owner that was exempt from ad valorem taxes as non-profit operator of affordable housing agreed to make annual payments to city in amount equal to portion of ad valorem taxes to which city would otherwise be entitled to receive for property if taxable, did not violate state constitutional provision providing that cities could only impose taxes as permitted by law. Payments negotiated by city and owner were not taxes, as city did not act by sovereign right in entering into agreement, since its decision to accept owner's offer and enter into agreement was proprietary, as opposed to unilateral act by sovereign right for purpose of supporting government functions, and city's obligation under agreement was not citywide.

TAX - VERMONT

Vermont College of Fine Arts v. City of Montpelier

Supreme Court of Vermont - February 10, 2017 - A.3d ----2017 WL 562865 - 2017 VT 12

College brought action against city, seeking declaratory judgment that it was entitled to public schools or public use exemptions from property tax for its building, which was partially leased to the state during the years at issue.

The Superior Court granted summary judgment for city. College appealed.

The Supreme Court of Vermont held that:

- City's board of civil authority was authorized to rule on tax-exempt status, and thus college was required to appeal to board;
- Supreme Court would address merits of college's appeal, despite college's failure to exhaust administrative remedies;
- College was permitted to apply for exemptions under multiple clauses of governing subsection;
- College was not entitled to public schools exemption; and
- College was not entitled to public use exemption.

City's board of civil authority was authorized to rule on tax-exempt status, and thus college, in order to satisfy requirement that it exhaust administrative remedies before seeking a judicial remedy, was required to appeal to the board the city assessor's decision finding college's property did not qualify under public schools or public use exemptions from property tax; statute governing appeals to the board provided that the board would "hear and determine such appeals until all questions and objections [were] heard and decided."

Supreme Court would address the merits of college's claim that it was entitled to exemption from property tax under public schools or public use exemptions, notwithstanding college's failure to exhaust administrative remedies by failing to appeal to city's board of civil authority the city assessor's finding that college was not entitled to exemption, where Court's jurisprudence regarding exhaustion of administrative remedies in challenging the determination of tax exempt status under the public schools and public use exemptions was inconsistent.

College was permitted to apply for exemptions from property tax under multiple clauses of statute's subsection governing public schools and public use exemptions; public schools exemption was separate and independent from public use exemption.

College was not entitled to public schools exemption from property tax for its building for years in which the state leased a portion of the building and the college used another portion for storage of

equipment; neither the fact that the building had been used for educational purposes in the past, nor the possibility that it could be used for such purposes in the future, impacted the analysis, but rather the relevant test was the use of the property during the tax years in question.

College was not entitled to public use exemption from property tax for its building for years in which the state leased a portion of the building, where college's nonprofit ownership and state's use lacked concurrence, such that the two did not have a single mission.

Hawkins Advisory: Modifications to Qualified Management Contract Rules.

The attached Hawkins Advisory summarizes IRS Revenue Procedure 2017-13, which was issued on January 17, 2017. The Revenue Procedure addresses management contracts involving property financed with tax-exempt bond proceeds, and modifies and supersedes recently released Revenue Procedure 2016-44.

Read the Advisory.

IRS Publishes Population Figures for Housing Credit, Private Bonds.

The Internal Revenue Service (IRS) today published Notice 2017-19, which lists its 2017 calendar year resident population figures. These figures are used to determine states' 2017 low-income housing tax credit (LIHTC) ceiling and tax-exempt private activity bond caps. Under Rev. Proc. 2016-55, each state's LIHTC ceiling in 2017 is the greater of $2.35 multiplied by the state population or $2.71 million; a state's tax-exempt bond volume cap will be the greater of $100 multiplied by the state population or $305,315,000.

Tax Reform and the Forgotten Context of the Municipal Tax Exemption: Clark Hill

The municipal bond community views with concern the potential for federal tax reform, with a well-founded fear that tax reform may create an opening for the elimination of the federal tax exemption for municipal bonds. While many members of Congress have expressed support for continuing the municipal tax exemption, the general view is that any expansive reform of the tax code will involve laying all options on the table, and the dynamics of the legislative process will leave the exemption at risk.

The debate over the municipal tax exemption focuses, by and large, on the cost to the federal treasury of foregone tax revenues, the relative economic efficiency of the federal subsidy entailed by tax exemption as compared to direct federal subsidy payments, the distribution of the tax benefit among investors, the central role of states and localities in building and maintaining our nation's core infrastructure, and general notions of federalism. What receives scant attention, however, is the relationship between the origins of the federal income tax and the municipal tax exemption, and the related balance between the municipal tax exemption and the exemption from state tax for many federal debt securities. While, in an economic sense, there is a cost associated with the municipal

tax exemption, such cost can be viewed as an agreed-upon "overhead cost" for maintaining an important component of our federal form of government.

As state and local governments, other municipal market participants and policymakers weigh the role of the municipal tax exemption in a revised federal tax code, they should be mindful that the federal government achieved an understanding with the states on enduring federalist principles of comity and reciprocity through the course of ratifying the 16th Amendment to the US Constitution1 to lay the foundation for the modern federal income tax system.

Municipal Tax Exemption, the 16th Amendment and the Federal Income Tax

The US Supreme Court's decision in *South Carolina v. Baker*2 marked the end of the Court's recognition of a Constitutional basis for the municipal tax exemption, overturning its pre-16th Amendment decision in *Pollock v. Farmers' Loan & Trust Co*.3 *Pollock's* expansive view of the intergovernmental immunity doctrine – that a tax on municipal securities interest "is a tax on the power of the States and their instrumentalities to borrow money, and consequently repugnant to the Constitution"4 – was based on an earlier Supreme Court decision invalidating a city tax on federal debt securities.5 *The South Carolina* opinion observed that this expansive view of the intergovernmental immunity doctrine had been "thoroughly repudiated" by the late 1930s, and that *Pollock* had not yet been overturned prior to 1988 due to "the historical fact that Congress has always exempted state bond interest from taxation by statute, beginning with the very first federal income tax statute."6

The incorporation of the municipal tax exemption as one of the original, and enduring, features of the modern federal income tax was no accident of history. Rather, it was one of the core planks of the bargain struck between the states and the federal government as the state legislatures voted to ratify the 16th Amendment. In explicitly granting authority to Congress to impose a tax on income from whatever source derived, the 16th Amendment eliminated any requirement for the apportionment of direct taxes (such as a tax on municipal securities interest, pursuant to the *Pollock* opinion) among the states based on population.7 While the belief that there was an inherent Constitutional immunity against taxation of interest on municipal securities still had adherents during the ratification process, there were many in state government and in Congress who felt that the 16th Amendment could serve as a basis for imposing such a tax.

For example, during the Congressional debate on the original 1913 income tax legislation, Congressman Charles Bartlett of Georgia observed, in connection with the ratification of the 16th Amendment two months earlier:

It is a fact that in my State and in a number of other States, when this amendment was up before the legislature for adoption, many people opposed the adoption of the amendment because there was nothing specifically said in the amendment that excepted State, municipal, and other subdivisions of State bonds from taxation under the proposed amendment: but the friends of the amendment felt justified in assuring them that except in great stress, except in time of war, Congress would never think it wise to tax the bonds of the State or the subdivisions thereof.8

Thus, a promise to maintain a legislative exemption from taxation for municipal securities served as a critical inducement to the states to ratify a Constitutional amendment that would eliminate state-based apportionment for taxation of investment earnings and permit direct taxation of interest on municipal securities. In fact, the 16th Amendment might never have been ratified without the bargain struck over the municipal tax exemption. True to this promise, the original federal income tax statute included the municipal tax exemption, as one of a very small number of deductions in that landmark tax legislation, and this exemption has existed continuously ever since. That the

municipal tax exemption has been revised, restated and made partially conditional through various tax reform efforts over the years – and is now scored as simply another line-item "tax expenditure" like the large number of other exemptions, deductions, credits and preferences that have since been added – should not obscure the fact that the municipal tax exemption continues to stand as one of the original pillars of the federal tax code.

The Municipal-Treasury Trade-Off

The repudiation of the expansive view of the intergovernmental immunity doctrine cuts both ways, so that the more restricted modern intergovernmental immunity doctrine also no longer forbids, as a Constitutional matter, state taxation of income derived from securities issued by the federal government and its instrumentalities. Instead, such exemption currently is based on a series of statutory provisions exempting US Treasury securities and the securities of many other federal instrumentalities (collectively, "Treasury/federal tax-exempted securities") from most forms of state and local taxation, including income tax.9 In effect, just as the federal government can be viewed as "subsidizing" state and local governments through the municipal tax exemption, so to the federal government can be viewed, with equal justification, as imposing on state and local governments an obligation to subsidize the federal government through the state tax exemption of Treasury/federal tax-exempted securities.

In abiding by the bargain struck by the federal and state governments in connection with the adoption of the 16th Amendment and the enactment of the federal income tax, maintenance of the mutual exemption for municipal securities and Treasury/federal tax-exempted securities would clearly serve to undergird this bargain. Were the bargain to be broken by eliminating the municipal tax exemption in the course of tax reform, it could be argued that the statutory exemptions for Treasury/federal tax-exempted securities also should be eliminated – both to reciprocate the change to the treatment for municipal securities and to partially offset the negative economic repercussions of eliminating the tax exemption by permitting state and local governments to tax earnings on Treasury/federal tax-exempted securities. The elimination of the municipal tax exemption without regard to the likely collateral economic and market dislocations would strongly suggest that Congress should also discount any economic or market dislocations that might be caused by similarly eliminating the state tax exemption for Treasury/federal tax-exempted securities.

In truth, the better approach – from the vantage points of economics, federalism and our current critical need to revitalize America's infrastructure – would be to maintain the current tax-free status of both municipal securities and Treasury/federal tax-exempted securities.

While the ultimate treatment of municipal securities under the federal tax code is a matter for policymakers to decide, that decision should be based on factors important to the American people and their principles rather than merely as one input to be eliminated in a general rebalancing of the federal tax burden. To do otherwise would be to breach the bargain struck by the federal and state governments that characterizes our federalist system of governance.

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1 "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration." US Constitution, Amendment XVI.

2 485 U.S. 505 (1988).

3 157 U.S. 429 (1895).

4 157 U.S. at 586.

5 Weston v. City Council of Charleston, 27 U.S. (2 Pet.) 449 (1829).

6 485 U.S. at 523, referring to Act of Oct. 3, 1913, ch. 16, 38 Stat. 114.

7 US Constitution, Article I, Section 2, Clause 3.

8 63 Cong. Rec. 507 (1913) (statement of Representative Charles Bartlett).

9 See, e.g., 31 U.S.C. 3124. Securities of certain federal instrumentalities or government-sponsored enterprises do not enjoy state tax exempt treatment and are not Treasury/federal tax-exempted securities.

by Ernesto Lanza | Clark Hill PLC

2/28/2017

Potential Changes for Churches and Charities Regarding Political Campaigning.

A few weeks ago, President Trump announced that he would advocate for the repeal of the prohibition against certain religious organizations (i.e., those exempt from paying federal income taxes under Section 501(c)(3)) from engaging in political campaigning. His statement was made at the National Prayer Breakfast to a group of religious leaders. However, since the prohibition applies to all Section 501(c)(3) entities (e.g., 501(c)(3) universities and hospitals), it seems likely that any such repeal would also apply to all Section 501(c)(3) entities.

To be clear, the prohibition on political campaigning does not apply to religious organizations or other charities per se. Rather, the ban only applies to those entities that have obtained Section 501(c)(3) status. A 501(c)(3) organization is exempt from federal income tax on what would otherwise be its taxable income (aside from taxable income derived from a trade or business that is unrelated to the organization's tax-exempt purpose), and donors to a 501(c)(3) organization may, subject to certain limits, claim a federal income tax deduction for contributions made to the 501(c)(3) organization. In other words, under current law, a Section 501(c)(3) organization has chosen to give up its right to engage in political campaigning in exchange for generous federal income tax benefits. The practical impact of the ban (also known as the Johnson Amendment) is that Congress has decided for the past 60 years that the federal government will not subsidize political campaigning by 501(c)(3) organizations.

Continue reading.

The Public Finance Tax Blog

By Cynthia Mog on March 1, 2017

Squire Patton Boggs

TAX - LOUISIANA

Cameron Parish Police Jury v. All Taxpayers

Court of Appeal of Louisiana, Third Circuit - February 21, 2017 - So.3d - 2017 WL 693927 - 2017-55 (La.App. 3 Cir. 2/21/17)

Parish police jury and school board brought action to validate proposed cooperative endeavor agreement and payment in lieu of taxes (CEA/PILOT) agreement with natural gas liquefaction facility operator.

The District Court entered judgment finding proposed agreement legally invalid. Police jury and school board appealed.

The Court of Appeal held that:

- As a matter of first impression, statutes providing for CEA/PILOT agreements did not authorize police jury to enter into an agreement to reduce or effectively exempt ad valorem taxes for a single taxpayer already operating in the area;
- Proposed agreement violated statutes setting forth procedure for assessing and collecting ad valorem taxes; and
- Proposed agreement violated uniformity provision of constitution.

Statutes providing for public-private partnerships in economic development projects, including through cooperative endeavor agreement and payment in lieu of taxes (CEA/PILOT) agreements and through tax increment or bond financing, did not authorize police jury to enter into an agreement to reduce or effectively exempt ad valorem taxes for a single taxpayer already operating in the area.

Proposed cooperative endeavor agreement and payment in lieu of taxes (CEA/PILOT) agreement, by which police jury would accept fixed annual payments from taxpayer, an operator of a natural gas liquefaction facility, in lieu of ad valorem taxes based upon the facility's fair market value, violated statutes setting forth procedure for assessing and collecting ad valorem taxes, which required assessment at percentage of fair market or use value and prohibited omission of taxable property from assessment list.

Proposed cooperative endeavor agreement and payment in lieu of taxes (CEA/PILOT) agreement, providing for taxing authorities to obligate themselves not to collect ad valorem taxes from taxpayer, which operated a natural gas liquefaction facility, in excess of specified amount and for parish to certify fair market value of facility only in such amount as specified by agreement, violated uniformity provision of state constitution; uniformity provision granted exclusive authority to assessor to assess the facility, while police jury's authority was limited to one of review.

Proposed cooperative endeavor agreement and payment in lieu of taxes (CEA/PILOT) agreement, providing for taxing authorities to obligate themselves not to collect ad valorem taxes from taxpayer, which operated a natural gas liquefaction facility, in excess of specified amount and for parish to certify fair market value of facility only in such amount as specified by agreement, violated constitutional provision forbidding exemptions from ad valorem taxes except in enumerated exceptions; agreement operated as partial exemption of a manufacturer's taxes.

375 Key Organizations Sign Letter to Save the Muni-Exemption.

Yesterday, the Municipal Bonds for America (MBFA) Coalition sent a letter to House and Senate Leaders, including House Ways and Means and Senate Finance Committee leaders, urging them to retain the current law status on municipal bonds as a part of their ongoing debate on comprehensive tax reform. The letter is signed by 375 organizations from across the United States, representing almost all 50 states. This letter brings continued attention to the value that municipal bonds provide as the strongest and most proven method of financing ongoing infrastructure needs for state and local governments and ultimately, the constituents of all Congressional representatives.

Specifically, the letter highlights:

- State and local governments have financed infrastructure and other community related projects using tax-exempt municipal bonds for over a century
- Reducing or eliminating the tax exemption for municipal bonds could raise infrastructure costs by 10 to 12 percent, with these costs being passed directly to taxpayers
- Preserving the current law status of municipal bonds is essential in rebuilding our nations economy and infrastructure

The letter will remain open for signatures at the MBFA website here. As we continue to grow support and receive additional signatures on the letter, we will update the website with new numbers.

Thanks again to all of those that helped in obtaining signatures for this very important effort. If you have any questions please feel free to reach out to Justin Underwood at justin@munibondsforamerica.org.

MBFA Chair Featured in The Hill: The Case for Tax-Exempt Municipal Bonds for 21st Century America.

Today, Steve Benjamin, Mayor of Columbia, SC and Chair of the Municipal Bonds for America (MBFA) Coalition, contributed an op-ed in The Hill, advocating for why preserving the current law status of municipal bonds is essential in rebuilding our nations economy and infrastructure. You can read the article online here.

Specifically, the article highlights:

- How municipal bonds play a vital economic role in small towns and large cities all across America
- The impact state and local governments may face if the municipal tax-exemption is capped or removed altogether
- How roughly two-thirds of America’s core infrastructure is built by state and local governments using tax-exempt municipal bonds

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TAX - PENNSYLVANIA

In re Wilson

United States District Court, E.D. Pennsylvania - December 28, 2016 - B.R. - 2016 WL 7450468

Confirmation hearing was held on Chapter 13 plan proposed by taxpayer whose real property had been sold at prepetition tax foreclosure sale. The Bankruptcy Court entered order confirming plan, which provided for payment of redemption amount with interest over course of plan, and taxing authority appealed.

The District Court held that:

- City, in its capacity as taxing authority, was not "person aggrieved," with standing to appeal bankruptcy court order confirming plan that allowed debtor-taxpayer to redeem real property by paying redemption amount in full with interest over the course of plan, and
- City was not "party in interest" with standing to file objection in bankruptcy court to confirmation of proposed plan.

City, in its capacity as taxing authority, was not "person aggrieved," with standing to appeal bankruptcy court order confirming Chapter 13 plan that allowed debtor-taxpayer to redeem real property that had been sold at prepetition tax foreclosure sale by paying redemption amount in full with interest over the course of his debt adjustment plan, as any injury to city was purely speculative.

City, in its capacity as taxing authority, was not "party in interest" with standing to file objection in bankruptcy court to confirmation of proposed Chapter 13 plan that provided for payment of amount necessary to allow debtor to redeem real property that had been sold at prepetition tax foreclosure sale, with interest, over the course of his debt adjustment plan. Any injury to city was purely speculative and did not qualify as kind of concrete and particularized injury needed to make city a "party in interest."

H.R. 811 Would Treat Stadium Financing as Private Activity Bonds

H.R. 811, the No Tax Subsidies for Stadiums Act, introduced by Rep. Steve Russell, R-Okla., would treat sports stadium financing obligations as private activity bonds if the obligations meet the private business use test.

Bipartisan Bill Reintroduced to Ease Tax Curbs on Small Issuer IDBs.

WASHINGTON – House members have reintroduced a bill that would modernize and ease tax law restrictions for small bond issues used to finance manufacturing facilities.

The Modernizing American Manufacturing Bonds Act (H.R. 1115) was introduced on Friday by Reps. Randy Hultgren, R-Ill., Richard Neal, D-Mass., and Jim Renacci, R-Ohio. Neal is the top Democrat on the House Ways and Means Committee and Renacci is also a committee member.

Qualified small issue manufacturing bonds, also called small issue industrial development bonds (IDBs), are private activity bonds used to finance manufacturing facilities and related projects for small and mid -manufacturers. The federal law governing these bonds has not been updated in nearly 30 years.

The bill would expand the number of projects that are eligible for IDB financing. The three

congressmen introduced similar legislation in 2015 but it failed to move forward. Hultgren and Neal offered a bill in 2014 as well.

“Illinois’ manufacturers are ready for the challenge of increasing engagement in our global and technology-based economy,” Hultgren said in a release. “Unfortunately, decades-old policies governing a key tool that manufacturers used to expand operations no longer address today’s challenges, needlessly impeding growth and job creation in the Illinois manufacturing sector.

MAMBA is a bipartisan bill that sensibly reforms these outdated rules without raising taxes.”

“It’s vitally important that Congress does all it can to support the American manufacturing industry,” Neal said. MAMBA “is a commonsense, bipartisan proposal that will ensure the struggling manufacturers in New England and across the country have access to the resources and capital they need to invest in their businesses and hire more workers in their local communities.”

The bill would expand the definition of manufacturing facilities to include those that produce intangible property, such as software and patents, as well as tangible property. It would also allow IDBs to be used to finance facilities that are functionally related and subordinate to the production of tangible or intangible property, such as warehouses that temporarily store materials or laboratories that test raw materials. These provisions were in effect in 2009 and 2010 under the American Recovery and Reinvestment Act but expired.

The bill would increase the maximum size of an IDB issue to $30 million from $10 million. It also would increase IDBs’ six year capital expenditure limit to $40 million from $20 million.

Currently a manufacturer can only issue IDBs for a project if their capital expenditures, including the bonds proceeds, would not be more than $20 million during six years – three years before the bonds are issued and three years after that.

The bill has the support of the Council of Development Finance Agencies. “We’re thrilled that MAMBA has been reintroduced. It’s a vital piece of legislation that will help lower the barriers for small manufacturers to access affordable capital,” said CDFA president and CEO Toby Rittner.

“Representatives Hultgren, Neal, and Renacci have been great champions of manufacturing bonds and the development finance industry as a whole, and I’m thankful for their commitment to American manufacturing.”

The bill, which also has the support of the Illinois Manufacturers’ Association, is pending before the House Ways and Means Committee.

The Bond Buyer

By Lynn Hume

February 21, 2017

TIF Jurisdiction, Future Projects Among County Officials' Annexation Concerns.

Officials say existing Monroe County, Ind., tax increment financing districts will remain under the

jurisdiction of the Monroe County Redevelopment Commission even if the city annexes areas within them.

County attorney Jeff Cockerill said the areas proposed for annexation touch all of the county's tax increment financing more commonly known as TIF districts. If there is existing debt in a TIF district, it would be treated as if annexation did not occur. That is, the county would still accumulate TIF revenue that could be used to make existing bond payments within the district as well as accumulate funds to use toward projects such as building roads.

However, by state law, if a road is annexed into the city, then it becomes a city road, Cockerill said.

If annexation is approved, the city would also collect revenue due to increased assessed value.

In addition, the city could see increased revenue from other sources as well, such as an increase in road mileage, equating to more motor vehicle highway revenue.

The county has existing debts for its Westside and Bloomington Township/Ind. 46 TIF districts.

For the Westside TIF district, where the commission has concentrated a number of its recent infrastructure projects, its last bond expires in 2040. At this time, there are no projects scheduled for the Bloomington Township/Ind. 46 district.

The Fullerton Pike TIF district is the only area that does not have any current debt. Within it, the county is preparing to begin construction on phase I of the Fullerton Pike project, starting just west of where Gordon Pike and Rhorer Road intersect with South Walnut Street and heading east to just beyond where the road intersects with Walnut Street Pike. Cockerill said the county is still investigating what would happen if the commission decides to issue a new bond for that area.

Barry Lessow, a redevelopment commission member, said knowing this, questions that remain include whether the commission wants to continue making investments in areas that they know would later fall into the city's jurisdiction and whether to invest in areas within the TIF districts that are outside of the areas proposed for annexation.

Jim Shelton, a fellow redevelopment commission member, said such questions are why collaboration with the city is important.

"I don't see we do anything necessarily different except we extend an invitation to the city to participate," Shelton said. "As a community, we can't get hung up whether it is in the city or county or not."

Public Works Director Lisa Ridge said a number of the road projects the redevelopment commission is looking to do within the Westside TIF district were suggested to help all area residents, regardless of jurisdiction. She said such projects for instance, extending Profile Parkway are meant to address connectivity issues and relieve traffic congestion in an area changing due to nearby construction of Interstate 69.

But Lessow agrees conversation with the city is essential to ensure clarity about any actions that might influence the districts later.

Redevelopment commission member Richard Martin said the county board knows the area much better than city officials do, which was very evident from the questions city officials had about the areas proposed for annexation.

“They just don’t know enough at this point, and we need to educate them,” Martin said.

The Bond Buyer

By Ernest Rollins

February 16, 2017

BlackRock's Carney Says Tax Reform Won’t Hurt Munis.

Sean Carney, head of municipal strategy at BlackRock, and Bob Michele, chief investment officer at JPMorgan Asset Management, discuss how U.S. tax reform may impact the tax advantage of municipal bonds. They speak on “Bloomberg Daybreak: Americas.”

Watch video.

Bloomberg

February 23, 2017

Bank of America to Trump: Taxing Munis Won't Raise Very Much.

- Bank reckons the tax break costs less than official estimate
- Mayors previously said Trump backs keeping munis tax exempt

If President Donald Trump and Congressional Republicans are looking for revenue to offset planned tax cuts, Bank of America Merrill Lynch analysts say taxing investors’ interest on state and local debt wouldn’t provide as much as it seems.

The tax break for the $3.8 trillion municipal market — which holds down the expense of financing state and local projects — cost the federal government about $39 billion in 2016, according to the U.S. Treasury Department’s figures.

But Bank of America analysts led by Phil Fischer estimate that the revenue raised by repealing it would be much lower. Because taxing the interest would likely cause individual investors to move money elsewhere, many securities would wind up with buyers who don’t pay income tax, such as overseas firms or 401(K) plans. Once that’s factored in, taxing municipal bonds may only yield about $8.9 billion a year, the analysts reckon.

Moreover, the shift would foist about $7.6 billion of extra costs on state and local governments, assuming yields rise about 0.2 percentage points. That would push up the expense of financing the types of infrastructure projects Trump has vowed to promote.

The bonds have been targeted by previous proposals that stalled in Congress. Former President Barack Obama sought to cap the benefits the wealthiest earners can receive from municipal debt, while a deficit-cutting panel previously suggested eliminating the exemption outright. Lobbyists for state and local-government groups have fiercely opposed any change to the tax treatment of their bonds, given the cost it may impose.

“Hopefully, this helps clarify the point that the attack on the tax-exempt status of municipal bonds from time to time appears to be based more on political calculus than economic analysis,” the analysts wrote. “This is becoming more widely recognized and we do not expect that the tax exemption would be targeted in any tax-reform legislation.”

The president may agree: A delegation of mayors, after meeting with Trump in December, said he expressed support for keeping the tax break intact.

Bloomberg Markets

by Jordyn Holman

February 27, 2017, 11:30 AM PST February 27, 2017, 1:46 PM PST

The Countdown to August 18, 2017 – Something You Should Know.

The IRS has over the past three years issued significant guidance on the safe harbors from private business use for management contracts, and we’ve been dutifully reporting on this guidance (here, here, here, and here). This guidance has generally been well received, but some issues remain. In addition to questions raised by Bob Eidnier in his post a few weeks ago (link above), the recent spate of IRS guidance raises a concern that is the subject of this post. By correlating the permitted length of management contracts with the economic lives of the managed property, some management contracts that are materially modified after August 18, 2017 might not fit within the New Safe Harbors (defined below) even if the term of the modified contract is unchanged from the prior iteration!! (Tax lawyers use exclamation points to try and keep people awake).

Continue reading.

The Public Finance Tax Blog

By Joel Swearingen on February 25, 2017

Squire Patton Boggs

Senators Call for Tax Relief for Water Conservation Rebates.

Washington—Senators Dianne Feinstein (D-Calif.), Patty Murray (D-Wash.) and Michael Bennet (D-Colo.) today called on Treasury Secretary Jack Lew to confirm tax relief for individuals who receive water conservation and storm water management rebates that also result in energy conservation. These rebates have been treated as income but should qualify under an existing exemption in the tax code for energy conservation measures.

The senators wrote: **“There are many challenges impacting our nation’s water supplies, and it is imperative to maintain the effectiveness of incentives for residents to participate in water efficiency and storm water management programs. We would like to request that you clarify that in cases where a public utility can attest to energy savings from water conservation and storm water management measures, such rebates issued by a public utility can be excluded from gross income under Section 136. This is in line with the**

process many utilities already follow for energy conservation measures."

The full text of the letter follows:

December 20, 2016

The Honorable Secretary Jacob J. Lew
Department of Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Dear Secretary Lew:

We are writing to follow up on our May 26, 2016, correspondence to request that the Department of the Treasury consider additional information in determining whether water conservation rebates and storm water management rebates, including the installation of green infrastructure, could be excluded from residents' taxable income. Since our initial correspondence to you, we have received additional information showing significant, measurable energy savings that result from water conservation. Given the compelling data we have received, we now have reason to believe that water conservation rebates should be considered exempt from inclusion in gross income under 26 U.S.C. § 136 (Section 136), which provides such an exemption for energy conservation measures.

We have attached a letter from the Director of the Center for Water-Energy Efficiency at the University of California, Davis, which details the Center's findings that water conservation in California in Summer 2015 resulted in energy savings equivalent to those of energy efficiency programs. Notably, their research found that water conservation-related greenhouse gas savings over the Summer of 2015 were equivalent to taking about 50,000 cars off the road for a year. Additionally, The Los Angeles Department of Water and Power has estimated total energy savings of approximately 24,400 MWh for fiscal year 2015/16 from the residential and commercial indoor and outdoor water conservation rebates that it provides. These figures are even higher after including energy savings from hot water heating and other customer end uses. In Colorado, water utilities have also been working to implement conservation programs that have the benefit of saving water and electricity or natural gas, including residential shower head exchange programs. Similar conservation measures are underway at urban utilities throughout the country, including in Arizona, Nevada, and Washington.

Section 136 was added in 1992, when there was a clear line between energy and water conservation. Today, that distinction is largely gone and the nexus between saving water and saving energy has been established. Commissioner Lopez of the Bureau of Reclamation has stated, "[W]ater and energy efficiency are intrinsically linked. When we conserve water, we conserve the energy it takes to move it." Water conservation also results in other energy savings, including reductions in energy use for heating and for treatment. We believe the federal agencies involved in energy and water conservation and the Department of the Treasury currently have the authority to interpret Section 136 more broadly.

It appears that many, if not all, water conservation rebates result in per capita energy savings. The same is true of rebates designed to collect, treat, and use storm water or reduce storm water inflows into combined sewers. There are many challenges impacting our nation's water supplies, and it is imperative to maintain the effectiveness of incentives for residents to participate in water efficiency and storm water management programs. We would like to request that you clarify that in cases where a public utility can attest to energy savings from water conservation and storm water management measures, such rebates issued by a public utility can be excluded from gross income

under Section 136. This is in line with the process many utilities already follow for energy conservation measures.

We look forward to working with you to ensure the success of water conservation and water quality efforts in our states.

Sincerely,

Dianne Feinstein
U.S. Senator

Patty Murray
U.S. Senator

Michael Bennet
U.S. Senator

Municipal Bonds May Get Taxed If Border Tax Plan Fails.

Odds that interest on municipal bonds will continue to be exempt from federal taxes decrease if Congress doesn't approve a plan to alter the way imports and exports are taxed.

That's a concern for municipal-bond investors, as well as the state and local governments trying to get investors to buy their debt notes to pay for roads, bridges and other large public projects.

The Republican-controlled Congress is attempting to draft a revenue-neutral tax package to send to President Donald Trump this year, and a question remains as to whether border adjustments, which tax imports and exempt exports, will be included.

A revenue-neutral tax plan enables GOP lawmakers to pass a tax plan by a simple majority vote, without need of support from any Democratic members.

"If the border-adjustability piece, which raises close to a trillion dollars, is not completed, and we've heard mixed views on that, then everything is on the table," including the exemption for municipal-bond interest, Jim Febeo, senior vice president of government relations at Fidelity Investments, said at a Feb. 13 meeting of the National Association of State Treasurers (NAST) in Washington.

Retailers are lobbying against border adjustments, as is Koch Industries Inc., a financial supporter of conservative causes and candidates.

Some senators, including John Cornyn (R-Texas), Mike Lee (R-Utah) and Finance Committee Chairman Orrin G. Hatch (R-Utah), have said they have questions about the proposal, the details of which haven't been fleshed out.

Money for Change

House Speaker Paul D. Ryan (R-Wis.), who put forth the idea, has said the $1 trillion or so raised by border adjustments would allow for sweeping changes to federal taxes.

Without the money, "the municipal-bond exemption will be looked at," Susan Hirschmann, chief executive officer of Williams & Jensen, a Washington-based lobbying firm, said during the NAST

event.

“There is a lack of clarity right now as to whether the Senate supports border adjustments, and there is a lack of clarity on whether President Trump supports it,” Hirschmann said.

States Will Fight Back

State and local governments, which depend on bonds, will fight for the tax exemption, Charles S. Henck, a Ballard Spahr LLP partner who practices in public finance and tax law, told Bloomberg BNA.

“State and local governments will want to preserve the existing rule for tax exemption of municipal bond interest because to eliminate it would increase the cost of borrowing,” Henck said.

Arizona Treasurer Jeff DeWit, who spoke at the NAST meeting, said states shouldn’t worry because the exemption is too popular and the potential backlash against congressional members is too great.

“I don’t think the municipal exemption will be on the table,” he said. “Everyone is against doing that. If they really start to play with it, I don’t think that will truly be on the table. Maybe for leverage.”

‘Everything’ on Table

As House and Senate Republicans work on a package that appeals to Trump, elements of a 2014 tax plan offered by then-Rep. Dave Camp (R-Mich.) may give hints to “where we may be headed,” Febeo said. Camp’s plan proposed a 10 percent surtax on municipal-bond interest.

“I wish I had a crystal ball, but everything seems to be on the table right now,” he said.

According to a delegation from the U.S. Conference of Mayors, Trump expressed support for maintaining the tax exemption in the weeks before his inauguration. Others close to him, however, don’t support it.

Trump’s nominee for Commerce secretary, private equity investor Wilbur Ross, has said municipal bonds aren’t an efficient way to pay for public projects. One reason is that a percentage of the money goes to the bondholder. He has suggested private-public partnerships and tax credits to investors and construction companies to finance bridges, roads and other public projects.

Bloomberg BNA Tax Management

By Che Odom

February 17, 2016

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

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Tax Guidance to Slow Under Trump. Even More Emphasis on Letter Rulings in

Bond Transactions?

As the Trump Administration attempts to substantially reduce the amount of federal regulations, both the Deputy Tax Legislative Counsel of the Treasury Department and an Associate Chief Counsel at the Internal Revenue Service indicated this week that we are likely to see a virtual halt to formal tax law "guidance" for the foreseeable future. Such guidance includes regulations, revenue rulings, and revenue procedures, the principal means by which Treasury and IRS provide interpretations of tax statutes. However, both officials stated that the IRS will continue to provide taxpayer-specific private letter rulings (PLRs).

In addition to more PLRs being requested to resolve ambiguities in connection with particular transactions, the freezing of the formal guidance process could result in PLRs being given more weight than ever in the analysis of other transactions. Not only will bond attorneys have more incentive to read and rely upon the only available tea leaves as to the IRS's position, but IRS attorneys may write more substantive letter rulings with the expectation that they will guide practice beyond the particular transactions being ruled upon. While officially non-precedential, PLRs have long been of particular importance in the tax-exempt bond practice, where formal guidance is slow and case law is almost nonexistent.

The National Law Review

Wednesday, February 15, 2017

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Support for Munis Seen on Capitol Hill; Tax Reform May Be Next Year.

WASHINGTON – Two corporate executives and lobbyists told treasurers meeting here on Monday that they are hearing positive things about municipal bonds from legislative staffers, but a senior tax staffer from the Senate Finance Committee said tax reform may slip into 2018.

Larry Chadwick, vice president of federal government relations for TIAA, said he has found support for munis on Capitol Hill. "We think municipal bonds are a critical funding mechanism for infrastructure," he said during a tax reform panel at the National Association of State Treasurers 2017 Legislative Conference.

Chadwick and other panelists, including a senior staffer for the Senate Finance Committee, said the key issue for the Trump administration and the Republican-led Congress is economic growth and infrastructure is viewed as the path for job creation and economic growth.

"I don't think we'll see tax reform without a serious infrastructure piece," the tax staffer said.

Chadwick said he would like to see Congress eliminate or ease the proration provision of the federal tax code so life insurance companies could buy more municipal bonds used for infrastructure.

Pierce Scranton, executive director for global relations & public policy at JPMorgan Chase, said, "The municipal bond [interest] exclusion seems to be in pretty good shape."

But Scranton cautioned, as did the other panelists, that with tax reform, "We're in an environment where everything is on the table."

Though a number of House Republicans talk about having tax reform legislation in August, the senior tax staffer said there are a number of obstacles to that and it may be pushed into 2018.

Nothing will happen with tax reform until the Republicans in Congress and the administration follow through with plans to repeal and replace the Affordable Care Act, the senior tax staffer said at the National Association of State Treasurers 2017 Legislative Conference here.

The lawmakers have to resolve the ACA issue, even if they do something less than repeal and replace or decide they can't do anything and leave it alone, he said.

Legislatively things are already moving slowly, as lawmakers found they could not get support for repeal without some sort of replacement, the tax staffer said. Trump's cabinet officials are not in place, though Congress confirmed Steve Mnuchin as Treasury Secretary Monday night, with only one Democrat, Sen. Joe Manchin, D-W.Va., voting for him. Given the Democrats' opposition to Trump's nominees, including Mnuchin, there may be battles over assistant secretary positions, he said. Treasury's assistant for policy typically quarterbacks tax reform, he said.

Republican lawmakers hope to repeal and replace the ACA, as well as comprehensively reform the federal tax code, through the budget reconciliation process to expedite the legislation and get it through the Senate with only 51 instead of 60 votes. Normal legislation needs 60 votes to limit debate, avoid a filibuster and move forward. But reconciliation is only for legislation that changes spending, revenues and the federal debt limit. And provisions in a reconciliation bill cannot increase the deficit during a second 10-year window – two challenges to using that legislative vehicle.

The budget resolution for fiscal 2017 includes the ACA, but not tax reform. If Congress wants to do comprehensive tax reform through the reconciliation process, it will have to be for fiscal 2018. But it cannot start the process for fiscal 2018 until it finishes reconciliation for fiscal 2017.

Congress must also deal with other potentially controversial issues during the next few months. It will need to increase the federal debt limit on March 15. Also the latest continuing resolution keeping federal spending going in the absence of appropriations bills will expire on April 28, the tax staffer noted.

A "wild card" for any congressional action is April 30 expiration of legislation that temporarily shored up health care and pension benefits for retired miners. Manchin stopped work on the last CR until lawmakers provided the short-term fix. "Keep your eye on that," the tax staffer said.

Key financial issues will also affect how tax reform plays out, the staffer said. If the border adjustment tax envisioned in the Republican blueprint for tax reform doesn't pan out, then the $1 trillion in revenues it was to bring in will have to be found elsewhere. "If it fails, we'll need a whole lot of money from a lot of sources," the tax staffer said.

Medicaid is another issue to watch, he said, adding how it is dealt with in ACA action will also affect revenues for tax reform.

"But don't underestimate the president, the tax staffer said. If Trump decides to throw his weight behind tax reform, he can do a lot to push it forward, he said. The president has promised a phenomenal announcement on tax soon.

The Bond Buyer

By Lynn Hume

February 14, 2017

Membership Substitution Transactions – Why Are They So Misunderstood?

Membership substitution transactions are the most common form of business combination transaction in the nonprofit hospital industry. They are also widely misunderstood and the source of many mistakes. Many large 501(c)(3)s have become more acquisitive as a result of economic pressures of the ACA. Nonprofit health systems have been getting much better at participating in and winning competitive sale processes, resulting in an increased use of this business combination form.

In April 2013, St. Luke's Episcopal Health System announced its sale, via membership substitution, to Catholic Health Initiatives. In responding to a suit from physician owners (a minority faction) of a St. Luke's subsidiary, St. Luke's Sugar Land Hospital, St. Luke's attorney asserted: "the ownership of St. Luke's Sugar Land Hospital is totally unchanged by the Transaction." We have no opinion on this legal debate, but it points out something that repeatedly arises in these transactions – most participants don't really understand them to any depth.

Given the forecasted level of nonprofit hospital M&A activity in the coming years, as well as the increased use of the membership substitution specifically, it is important that these new and often inexperienced participants consider the implications of the structure. This article will explore the membership substitution structure – its history, use, pros, cons, and potential future applications. Issues such the impact on one's credit stature, bond covenants, and the legal handling of consolidating Master Trust Indentures are reviewed.

Description

Fundamentally, there are two means to acquire ownership and control of a company. One can either buy the assets of the business or its stock. Membership substitutions are analogous to a stock sale in corporate finance. A majority of public company mergers are completed via the acquisition of equity. Classic examples include Proctor and Gamble's acquisition of Gillette and Berkshire Hathaway's purchase of Heinz. In these arrangements, the legal entity of the target (Gillette and Heinz) remains intact with a new parent "stepping into Seller's shoes" as sole owner. This transaction structure has several advantages:

- It creates *successorship* for contractual agreements – employment, collective bargaining, management teams and similar operational matters are preserved.
- Business operations are uninterrupted – licensures, working capital, and leases are unchanged.
- The acquisition process is streamlined – timing and due diligence are simplified, regulatory scrutiny can be eased, and often there is no need for wind down corporation.
- Pensions, swaps, and other liabilities continue as a going concern – no need to terminate with the PBGC or unwind costly derivative instruments.
- Debt issues – avoid pre-payment penalties and defeasance costs associated with today's low interest rate environment.
- No need for tail insurance – beneficial if confronted with Stark or compliance issues that cause such coverage to be unattainable or unduly expensive.

It is easy to see that selling the stock of a business has certain advantages to sellers related to simplifying the transaction and costs. Conversely, buyers commonly prefer to acquire assets as it

limits real and theoretical future legal obligations.

Asset purchase transactions certainly have merit as well. In industries with significant intellectual property, e.g., technology, this more focused structure can isolate certain attractive assets and exclude other components of the business. For the same reason, divestitures of a subsidiary division within a conglomerate are generally acquired via a purchase of assets.

Governance

In a membership substitution model, typically the buyer will become the sole equity holder (or "membership interest" in nonprofit language) of the seller. As a result, the buyer will achieve full ownership and control of the seller. Think of this relationship much like that of a parent company and subsidiary, where the parent ultimately retains senior controls of the subsidiary. In connection with a member substitution transaction, the bylaws of each of the buyer and seller will be amended and restated in order to reflect the new governance structure and to provide for reserve powers that rest with the buyer. Oftentimes, the seller may negotiate with the Buyer to have a limited minority number of board seats on the buyer's board.

Forms of Consideration

In either a membership substitution or asset sale, there are generally three forms of economic consideration that the buyer provides to the seller of a hospital: (1) a purchase price, (2) assumption of liabilities, and (3) a commitment to spend capital in the future. Together, the sum of these must equate to "fair market value." The mixture of these forms varies based on the capital structure of the target and objectives of the parties. In a nonprofit to nonprofit membership substitution, a purchase price is rarely paid, instead the Seller is relieved of its financial liabilities and secures a commitment to invest capital in the future. In many cases, nonprofit Buyers are now the highest bidders in sale processes due to: (1) the high use of financial leverage, and (2) the strategic importance of growth. So while for-profit conversations were popular a decade ago to extract a purchase price and create a community foundation with the proceeds, today the total economic consideration of a membership substitution transaction is often equal or greater. Evidence of the achievement of "fair market value" is critical to defend the transaction to any critics, notably the state attorney general.

Financial Features

- All assets are conveyed to the buyer.
- All liabilities should be assumed or guaranteed by the buyer.
- Capital expenditures are committed by the buyer for routine and strategic needs in the future.
- Rarely are charitable foundations created, if so it is most always restricted to supporting the hospital.

Liabilities of the new subsidiary either remain in place by being assumed or guaranteed by the new parent company (as part of the obligated group), or are retired via refinancing. Issues associated with assuming the debt can include intercompany loans (potentially with interest), a support or guarantee arrangement, or inclusion or exclusion within the system's obligated group.

Similarly, the handling of balance sheet assets is also customized for each setting. Can the cash be swept to corporate treasury? Who controls the foundation, where is it housed, who gets to select grant donations? Will the capital commitment be infused into the local subsidiary or simply be funded through retained free cash flow?

As a result of the change in the organizational structure, it is important for each party to review its

Master Trust Indenture, as well as any and all material documents ancillary to or apart from the Master Trust Indenture between a bondholder and any member of the obligated group. With the assistance of investment bankers and legal counsel, the parties will want to determine whether each Master Trust Indenture may remain in place, and if so, whether this is the desired approach. Alternatively, the parties may determine that it is in the best interests of the combined organization and permitted pursuant to the terms of the Master Trust Indentures to consolidate the debt under one Master Trust Indenture. If consolidation is permitted and desired, then the parties will want to determine under which Master Trust Indenture they wish to proceed post-closing. For example, it may be advantageous to the parties to consolidate the debt under one of the Master Trust Indentures in order to take advantage of less restrictive and less burdensome covenants. In addition, there may be significant savings by capitalizing upon a more favorable cost-of-capital under one Master Trust Indenture over another.

The parties should also have an understanding of how the consolidation may affect the rating of the bonds as a result of the combination, which will require a review of the rating agencies on analysis of pro-forma ratios. As part of the review of the documents, the parties also will want to identify any consents that may be required of the bondholders and develop a timeline for reaching out to and obtaining such consents of the bondholders. Regardless of whether consent is required, there may be other covenants required by the Master Trust Indenture or ancillary documents, such as the delivery of legal opinions, officer's certificates and posting of additional collateral of which the parties should be aware. Finally, the parties will want to understand the terms of any other debt outside the Master Trust Indentures (including any swaps) that may be outstanding to determine if the combination will be in violation of any covenants, and consider whether it is best to obtain consent or alternatively, redeem or pay off such debt.

As a result of the modified structure via a membership substitution, the parties will need to review the contracts to determine whether the change of control will trigger any consent requirements of third parties, any terminations or defaults under any agreements or rights of first refusals. The parties will want to ensure that they abide by the terms of their agreements with third parties. In addition, in the event that the parties are members or partners in a joint venture, there may be transfer and consent requirements that are triggered as a result of the change of controls. Further, the parties will want to carefully review their contracts for non-competition restrictions, non-solicit restrictions and confidentiality provisions to fully understand the implications of the change of control.

Misnomers

Most of the confusion surrounding this structure in the nonprofit world centers on whether the parties acknowledge that a sale is occurring. Often there are incentives to obfuscate reality, namely easing the public relations messaging locally.

Part of the uniqueness of the membership substitution is the nonprofit nature of the partners entering the transaction. While for profit enterprises can access and variety of equity, debt, and synthetic markets to raise capital to finance strategic growth, nonprofit hospital companies are typically limited to the tax-exempt municipal bond market. Buyers of institutional debt are heavily reliant on credit rating (rather than growth prospects in the equity markets) in determination of the cost of capital or required yield. As a result, hospitals, and nonprofits generally tend to be more conservative with capital and have an affinity toward creative relationships to increase market share, revenue, and ultimately profits while not diluting one's rating and thus ability to raise capital.

Sellers are becoming more sophisticated, however, and are questioning what they're getting in return for selling their hospital. The give-away transactions of yesteryear are not likely to be

repeated in the era of more commercially oriented partners.

Conclusion

From our standpoint, it seems as though M&A techniques in the nonprofit hospital industry are given too much credit for their uniqueness. Much of this stems from a heartfelt belief that M&A transactions in the nonprofit world are completed on more friendly terms. As the stakes get higher in the increasingly capital intensive, regulated, and complicated hospital industry, however, this is changing. Transactions now seem more adherent to corporate norms – following SEC conventions and Delaware Law. Negotiations surrounding the accounting treatment of financial statements and technical topics such as representations and warranties, escrows, and breakup fees are becoming more common. Overall, it seems like the cottage hospital M&A business is maturing and taking on characteristics of public company transactions.

The Bond Buyer

By Ken Marlow and Rex Burgdorfer and Alex Voss

February 14, 2017

Ken Marlow is a partner and chair of the healthcare department at Waller Lansden Dortch & Davis in Nashville, Tenn. Rex Burgdorfer and Alex Voss are with Juniper Advisory in Chicago, a specialized investment banking firm focused exclusively on hospital M&A. Sources for this research include Waller Lansden and Juniper Advisory's M&A experience, as well as information compiled by The Harvard Business Review, The American Bar Associate, and Latham & Watkins studies.

New Proposed Legislation: PABs for Social Infrastructure and a Ban on Stadium Bonds.

The new Congressional session is heating up, and we'll cover two new pieces of proposed legislation below. For the first time in several years, we can avoid giving the usual disclaimer that any new piece of legislation is "likely going nowhere." Tax reform appears to be a real possibility for the first time in many years, and it will probably involve expansions of some areas of the tax-exempt bond world and contractions of others. The two bills discussed below are an example of each.

The first bill would allow tax-exempt private activity bond financing for public buildings that have too much private involvement. The second bill goes in the other direction, and would forbid governmental bond financing for stadiums, which, as we'll see, would have the effect of preventing tax-exempt financing of any kind for stadiums.

We are continuing to work with our industry-leading public policy group to study the many new legislative developments that are sure to arise, and we will use the blog to provide resources and reactions to them.

Continue reading.

The Public Finance Tax Blog

By Johnny Hutchinson on February 17, 2017

Squire Patton Boggs

BlackRock's Hayes Says Trump Unlikely to End Muni-Bond Tax Break.

- Trump's plans to cut taxes could curb demand for local debt
- Elimination of tax-exemption 'highly unlikely,' Hayes says

Peter Hayes, who oversees municipal-bond investments for BlackRock Inc., the world's largest money manager, doesn't think President Donald Trump and the Republican-led Congress will do away with the tax break given to buyers of state and local government debt.

"The tax exemption of municipal bond interest is a key draw for issuers. And while it may be deemed alterable, we don't see it as dispensable," Hayes said in a blog post on the company's website. "We see the elimination of muni tax exemption as highly unlikely."

Speculation that Washington will move to tax the interest investors receive in the $3.8 trillion municipal market has increased since Trump's election, given that the revenue could help cover the cost of cutting corporate and individual income taxes. Former President Barack Obama proposed capping the benefits the wealthiest earners can receive from municipal bonds, though the plan stalled in Congress, and a deficit-cutting panel once proposed eliminating the tax exemption outright.

Such change would lead investors to demand higher yields on municipal bonds than they do now, an outcome that may be at odds with Trump's other goal of increasing spending on infrastructure projects.

That doesn't mean the municipal market will be spared the effects of any tax changes: Cutting income-tax rates would also lessen the appeal of the securities. But such reductions may not come this year, as lawmakers focus first on overhauling corporate taxes, according to BlackRock's Hayes.

"The individual tax code is very complicated and politically difficult to amend, even under one-party control," he wrote. "Change may well come, but not likely in 2017 as Washington focuses on the comparatively easier task of corporate tax reform."

Bloomberg

by Jordyn Holman

February 14, 2017, 10:48 AM PST

TAX - IOWA

Acciona Windpower North America, LLC v. City of West Branch, Iowa

United States Court of Appeals, Eighth Circuit - February 7, 2017 - F.3d - 2017 WL 490412

Wind turbine manufacturer brought action against city, alleging breach of tax increment financing (TIF) development agreement for urban renewal project.

After entry of partial summary judgment in manufacturer's favor, bench trial was held. The United

States District Court entered judgment in manufacturer's favor, and city appealed.

The Court of Appeals held that:

- City was obligated by TIF development agreement to pay tax rebate to manufacturer once it paid its taxes for given fiscal year;
- Manufacturer did not make judicial admission that rebates were never appropriated;
- TIF agreement did not impermissibly limit city's ability to decline to pay rebates; and
- District court did not abuse its discretion in permitting manufacturer to change its damages calculation on eve of trial and declining to impose sanctions.

Under Iowa law, city was obligated by tax increment financing (TIF) development agreement to pay tax rebate to wind turbine manufacturer once it paid its taxes for given fiscal year, even though agreement provided that all rebate payments were "subject to annual appropriation of the City Council," where agreement specified that city was required to annually certify "amount obligated for appropriation for rebate," and that, if city decided to obligate rebate for appropriation, "rebate shall be paid to [manufacturer] within thirty days of receipt by the City of the incremental taxes paid."

In manufacturer's action against city for breach of tax increment financing (TIF) development agreement, manufacturer's statement in its summary judgment papers that it was undisputed that "City did not appropriate the $265,140 rebate" to be paid to it for fiscal year was best read as poorly worded effort to admit that it is undisputed that rebates were never paid, rather than as judicial admission that rebates were never appropriated, where manufacturer had always argued that rebate was appropriated, just not paid.

Under Iowa law, tax increment financing (TIF) development agreement that required city to pay tax rebate to wind turbine manufacturer once it paid its taxes for given fiscal year did not impermissibly limit city's ability to decline to pay rebates. TIF agreements were clearly authorized by state law and were to be liberally construed.

District court did not abuse its discretion in permitting manufacturer to change its damages calculation on eve of trial and declining to impose sanctions in its action against city for breach of tax increment financing (TIF) development agreement, despite city's contention that manufacturer revealed too late that it would seek damages for two fiscal years, where manufacturer sought compensatory damages for multiple fiscal years from beginning of its lawsuit, its pretrial clarification that it would seek compensatory damages for both fiscal years was entirely consistent with theory of damages it articulated at outset of case, and damages calculation used by manufacturer appeared to have been based on information in parties' agreement and documents originally in city's control.

Why Some Bargain Municipal Bonds Aren't Tax Free.

When individuals invest in municipal bonds they expect 100% tax-free income. Right? Well, many may unknowingly be setting themselves up for a tax bill from the IRS. How can this be? After all, we're talking munis.

It's been many years since the municipal bond De Minimis rule was relevant. Here's how it works in plain English: Say you purchase a low coupon municipal bond for a 2%, 2.25%, 2.50%, or even 3% coupon at a discount from the face value in the secondary market. If that discount breaches the IRS De Minimis threshold, then a portion of that discount can be taxed as ordinary income.

It all depends on how deeply the bond price is discounted. The simple formula to compute the De Minimis threshold is:

De Minimis threshold = Lower of par or original issue discount – (.25% X the years to maturity)

The formula basically stipulates that if you purchase a bond at a discount and the discount is equal to or greater than a quarter of a point per year until maturity, then your gain at redemption is taxed at your ordinary income tax rate rather than the more favorable capital gains rate, which are as low as 15%.

If this sounds like IRS gobbledygook, you are right. The law was created to prevent taxpayers from converting ordinary income into capital gains. Remember the only IRS rule you should commit to memory is: Whatever is best for the government and worst for the taxpayer is the correct rule interpretation .

Here's an example: Assume you purchased 50 XYZ Unified School District municipals, 2.00% coupon maturing September 1, 2028 originally issued at par, 100. If you purchased the bonds in the secondary market today at 90.288 for a 3.00% yield-to-maturity because rates rose since issuance, you will owe $2,107.50 in tax on $50,000 face value of the bonds.

The market discount cutoff price was $97.25. Okay—paying $2,107.50 in tax on 50 munis isn't the end of the world. Still, it could blindside you if your weren't aware of the De Minimis rule.
Your rule of thumb for purchasing municipal bonds should now be: If you want all your return to be tax free then invest in higher coupon bonds at par or a slight premium.

Stay away from market discounted munis. If you're doing business with a retail broker ask them to run the analytics on Bloomberg. That will quickly compute your tax liability if purchasing at a discounted price.

One caution: If interest rates rise significantly, high coupon premium bonds can decline and breach the De Minimis threshold too.

The De Minimis rule also has a significant impact on your bond price. Should you decide to sell a bond subject to the De Minimis rule your sale of the bond will be at an even deeper discount. The buyer will demand compensation for that portion of their [now] taxable return.

The reason we have not been plagued until recently with the De Minimis rule is that issuers weren't issuing many 2%, 2.25%, 2.50%, or 3% municipal bonds until 2016 when yields touched such low levels. Then post-election muni yields rose and prices declined.

If you buy munis online and your platform does not supply a De Minimis calculator better get out your pencil and paper for hand computations. There are numerous articles online written by Piper Jaffray, Pimco, Schwab, RBC and others explaining the formulas and with grids showing allowable market discounts before treatment as ordinary income kicks in.

Let this column be a red flag warning: The De Minimis rule can bite the incautious. Oh…and if you think no one will notice the discounted price you paid, the 1099s issued by the brokerage industry are extremely accurate in their reporting to the IRS.

FORBES

by MARILYN COHEN

FEB 7, 2017 @ 11:48 AM

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

Heller, Nelson, Kelly and Blumenauer Re-Introduce Bipartisan Public-Private Partnership Bill.

(Washington, DC) – Today, U.S. Senators Dean Heller (R-NV), Bill Nelson (D-FL), Congressman Mike Kelly (R-PA), and Earl Blumenauer (D-OR) released the following statements after re-introducing the *"Public Buildings Renewal Act."* The bill enables communities to establish public-private partnerships (P3s) for needed public infrastructure improvements, such as in schools or public universities, by creating $5 billion in new private activity bonds for public buildings.

"In the past, P3 investment has produced enormous benefits across the nation in the form of transportation and infrastructure improvements. I want to see the same results right here in the Silver State, especially for Nevada's schools. Now is the time to use the success of P3s in the infrastructure industry as a financing model for Nevada's public buildings to repair cornerstones in our communities like public schools and libraries. This commonsense idea helps our public schools and universities do even more. By empowering the private sector to address these issues, innovation ensures these projects are completed in a more cost efficient manner," said Senator Dean Heller.

"This bill will help local governments build schools, libraries, fire stations and other public buildings that serve as the foundation of our communities," said Senator Bill Nelson.

"Our country's public buildings are in a historic state of disrepair and in need of a bold solution. That's where the Public Buildings Renewal Act can come to the rescue. This legislation became more urgent than ever for me after I visited several of our district's schools last year and saw the unacceptable damage up close. When public places like schools, hospitals, and court houses are allowed to crumble, the people they serve suffer, especially students. Our bill will channel a new stream of P3 financing into local communities for the ultimate goal of restoring public infrastructure from coast to cast. It will take advantage of private sector efficiency to create jobs and save taxpayer money by streamlining the delivery, design, and construction of these projects. I thank my colleagues in both chambers for supporting this commonsense solution and look forward to helping them advance it swiftly," said Congressman Mike Kelly

"Congress has failed to display the political courage necessary to adequately invest in infrastructure—from roads and light rail to schools and courthouses. Our nation is literally falling apart and falling behind. We need an 'all of the above' approach to infrastructure funding, and simple fixes to lower investment barriers are steps in the right direction," said Congressman Earl Blumenauer (OR-03)

Background:

These newly created private activity bonds mentioned above would provide much-needed financing to cash-strapped states to construct government-owned buildings such as public schools, state colleges, post offices, libraries, prisons and courthouses. Currently, the use of P3s to deliver public buildings is extremely limited because unlike the transportation sector, public buildings are not eligible for private activity bonds. This inhibits public building P3s from combining tax exempt

financing with private financing, resulting in an increased cost of financing. Nearly every U.S. transportation P3 project that has moved forward has utilized federal financing, 75% of which have accessed Private Activity Bonds. Over $36 billion in transportation P3 projects have been undertaken since 2010 with a cost savings of nearly 20 percent for each project.

This bill will catalyze the use of P3s in public buildings just as PABs have for transportation. By empowering the private sector to tackle these projects, the bill would make these projects more cost effective, stretching every public dollar further. Additionally, the bill is a fiscally conservative solution to overhauling these public projects with an estimated cost from JCT of less than $50 million over ten years.

The House companion bill is HR 960.

Senator Heller was recently named Chairman of the Senate Committee on Finance's Subcommittee on Energy, Natural Resources, and Infrastructure. This role will give him the ability to promote infrastructure projects in Nevada like Interstate 11.

Bills Would Allow States, Localities to Issue up to $5B of PABs for Public Buildings.

WASHINGTON – House and Senate members have reintroduced companion bills that would allow state and local governments to issue up to $5 billion of private activity bonds to finance the repair or construction of schools and other public buildings under public-private partnership arrangements.

The "Public Buildings Renewal Act" was introduced in the House on Feb. 7 as H.R. 960 by Rep. Mike Kelly, R-Pa., and eight cosponsors, including six members of the House Ways and Means Committee such as Rep. Earl Blumenauer, D-Ore.

The measure in the Senate, which has not been assigned a number yet, is being introduced by Sens. Dean Heller, R-Nev., and Bill Nelson, D-Fla., both of whom sit on the Senate Finance Committee.

The bills they introduced last session were H.R. 5361 and S. 3177.

The legislation would create a new category of tax-exempt PABs that would allow states and localities to construct or renovate government-owned buildings such as public schools, state colleges, post offices, libraries, prisons and courthouses with private parties.

These kinds of projects cannot currently be financed with tax-exempt P3s because there is not a specific qualified PAB category for bonds for public buildings.

"Our country's public buildings are in a historic state of disrepair and in need of a bold solution," Kelly said. "That's where the Public Buildings Renewal Act can come to the rescue."

"Congress has failed to display the political courage to adequately invest in infrastructure – from roads to light rail to schools and courthouses," said Blumenauer. "Our nation is literally falling apart and falling behind. We need an 'all of the above' approach to infrastructure funding and simple fixes to lower investment barriers are steps in the right direction."

The Bond Buyer

By Lynn Hume

February 8, 2017

Senate Panel Told P3s Won't Work for Rural Areas, Tax-Exempts Are Key.

WASHINGTON – Municipal bonds are a “crucial component” of any infrastructure plan and their tax-exempt status must be preserved, a county official from Oklahoma representing the National Association of Counties told members of a Senate committee on Wednesday.

Transportation officials from rural states said during the hearing held by the Senate Environment and Public Works Committee that public-private partnerships won’t work for them. The hearing was on “Modernizing our Nation’s Infrastructure.”

The comments were not exactly an endorsement of President Trump’s $1 trillion infrastructure plan to bring in private investment to help finance the repair and development the nation’s roads, bridges, and other infrastructure projects.

Cindy Bobbitt, a commissioner of Grant County, Okla., who was representing NACo, told committee members that, “Between 2003 and 2012, counties, states and other localities invested $3.2 trillion in infrastructure through long-term, tax-exempt municipal bonds, 2.5 times more than the federal investment.”

Bobbitt, who noted that munis have low default rates and are often approved by both legislatures and the voters, said, “Simply stated, the tax exemption of municipal bond interest from the federal income tax represents one of the best examples of the federal-state-local partnership.”

She pointed out that two thirds of the nation’s 3,069 counties are considered rural with a combined population of 60 million and face challenges such as declining populations and a limited ability to raise revenue for capital projects.

Among her recommendations were that Congress should make federal highway dollars available for locally owned infrastructure. Local governments own 78% of the nation’s road miles, including 43% of federal-aid highways and 50% of the National Bridge Inventory, she said.

Committee chairman Sen. John Barrasso, R-Wyo., asked Bill Panos, the director and CEO of the Wyoming Department of Transportation who also testified, whether rural or smaller states could use Build America Bonds for infrastructure, though they would have to be reauthorized.

“Wyoming has never borrowed for transportation” because its “high cost per capita … discourages borrowing,” Panos said. But he later said the state has issued grant anticipation revenue vehicles, or Garvees.

Barrasso said data from the U.S. Treasury Department shows rural states issued a lot of BABs in 2009 and 2010 when they were authorized by the American Recovery and Reinvestment Act. BABs are taxable bonds for which Treasury makes subsidy payments to issuers equal to roughly 35% of their interest costs.

Panos, who was also speaking on behalf of the transportation departments in Idaho, Montana, North Dakota, and South Dakota, some of which issued BABs, told committee members that P3s and other

approaches to infrastructure investment that depend on positive revenue streams from projects "are not a surface transportation infrastructure solution for rural states."

P3s would be unlikely to attract investors even with tax credits, he said. Part of the problem is that roads in rural states tend to have relatively low traffic volumes, he said.

Panos said Congress must strengthen the Highway Trust Fund, which will no longer be able to support surface transportation programs after 2020, when funding from the Fixing America's Surface Transportation Act (FAST) ends.

He also said certainty is important for transportation planners. He applauded the FAST Act's providing several years of transportation funding, but said Congress' track record of passing continuing resolutions, restricting funds to the previous years' levels, instead of annual appropriations bills, creates uncertainty.

Sen. Deb Fischer, R-Neb., a committee member, said she's proposed legislation (S. 271) to shore up the Highway Trust Fund and to provide states with more flexibility in how federal funding is spent on infrastructure projects. "I think it's really important to look at a federal revenue source without raising taxes," she said during the hearing. Her bill would transfer revenues from U.S. Customs and Border Protection to the HTF.

"If we have certainty we can make better plans" and that will lead to lower costs, said Shailen Bhatt, executive director of the Colorado Department of Transportation, who also testified.

Most of the witnesses agreed with the current funding formulas that divide federal funds between highway and transit programs and urged that they be continued.

While the committee paid particular attention to the needs of rural areas, Bobbitt pointed out that farms and businesses in agricultural-based rural areas need roads and bridges to deliver products to urban areas. "It's not rural vs. urban," she said, adding, "We're all in this together."

The Bond Buyer

By Lynn Hume

February 8, 2017

The Timeline of Tax Reform and the Danger For Munis.

AUSTIN – Federal tax reform efforts will accelerate in just a few weeks, and municipal market participants need to be pushing hard to protect the muni interest exemption right now, lawyers told attendees at a conference here Thursday.

Speaking at The Bond Buyer's Texas Public Finance Conference luncheon, Bracewell attorneys Curtis Beaulieu and Charles Almond warned that the exemption could be in danger very soon despite President Donald Trump's apparent support for leaving that part of the tax code unchanged. Republicans have been pushing to lower corporate and individual income tax rates, a goal that puts the muni exemption in danger of being limited or eliminated.

The momentum will pick up about six weeks from now, Beaulieu said, when House Ways and Means

Committee chair Kevin Brady, R-Texas, releases the first draft of tax reform legislation. This draft, called the "chairman's mark," is crucial for the future of the muni exemption, said Almond. If the mark comes out and does not include a tax exemption for municipal bond interest, the lawyer warned, that means someone on the committee will then have to work to get it in.

"You really want things taken care of in the chairman's mark," Almond said, urging conference attendees to begin lobbying their representatives now if they hadn't already, warning them against waiting weeks to do so. Almond said that the "House blueprint" for tax reform that has already been publicly circulated could already be interpreted as limiting the tax exemption, and proposed eliminating "special-interest" deductions and credits.

A September estimate released by the Treasury pegs federal "tax expenditures" for tax-exempt bonds issued by state and local governments at about $565 billion over the 10-year period from 2017-2026. While that ranks only 15th on Treasury's list of tax expenditures, Almond said it still provides lawmakers with a potentially appealing way of helping to lower tax rates without adding to the deficit.

"To get those rates down, they're going to go searching for other places to raise revenues," said Almond.

Beaulieu said that even if the tax exemption is on the table, legislation would still be very unlikely to include a retroactive change to the status of outstanding tax-exempt bonds.

"Republicans typically do not support retroactive tax increases," Beaulieu said. "So there's probably no chance."

Almond downplayed the comfort that market participants can take in then President-Elect Trump's comments to the U.S. Conference of Mayors in December, during which Trump spoke about his proposed $1 trillion ten-year infrastructure plan and said that he plans to maintain the tax-exempt standing of municipal bonds.

"I don't think you can rely on anything until it's Tweeted," joked Almond.

Beaulieu said that Republicans can pass tax reform legislation on a partisan basis in the House, where they GOP maintains a sizeable majority. But when the discussion moves over to the Senate, he said, Republicans will likely need to abandon their partisan approach and get some Democrats on board. Republicans control 52 Senate seats, but the upper chamber's rules essentially require 60 votes to pass a bill because of the ability of Senators to filibuster and more easily amend bills they dislike.

"Everything slows down in the Senate," said Beaulieu.

The Bracewell lawyers' estimated timeline includes consideration of tax reform legislation by the full House by August. The full Senate could consider it by the end of 2017, and a conference report could produce a joint product by spring 2018.

The Bond Buyer

By Kyle Glazier

February 9, 2017

TAX - CONNECTICUT

Kettle Brook Realty, LLC v. Town of East Windsor

Supreme Court of Connecticut - January 24, 2017 - A.3d - 324 Conn. 544 - 2017 WL 194255

Property owner filed municipal tax appeal seeking reduction in property's assessed value.

The Superior Court granted town's motion to dismiss. Property owner appealed. The Appellate Court affirmed. Property filed petition for certification to appeal, which was granted.

The Supreme Court of Connecticut held that appeal was commenced when property owner served appeal documents on municipality, which was outside of two-month deadline, and not when appeal documents were filed with Superior Court, which was within two-month deadline, and thus appeal was untimely.

TAX - NEW HAMPSHIRE

Bishop of Protestant Episcopal Diocese in New Hampshire v. Town of Durham

Supreme Court of New Hampshire - December 9, 2016 - A.3d - 2016 WL 7177763

Church appealed town's assessment of property tax on 24 spaces in church parking lot that church leased to state university students. The Superior Court, Strafford County, Houran, J., entered summary judgment for town, and church appealed.

The Supreme Court of New Hampshire held that spaces in church's parking lot leased to state university students were not exempt from property tax.

Spaces in church's parking lot leased to state university students were not "used and occupied directly for religious purposes," within meaning of statutory exemption from property tax for "houses of public worship, buildings, and the lands appertaining to them owned, used and occupied directly for religious training or for other religious purposes by any regularly recognized and constituted denomination"; university students were using parking spaces for their own private and secular purposes, i.e., parking for about six hours each week, plus special event days and during snow plowing and repair operations, and church did not argue that leasing spaces to university students was reasonably necessary to carry out its mission.

Mayors Fight to Keep Municipal Bonds Tax Free.

Mayors present and past swear by the value of municipal bonds, while also swearing by the tax deduction for investing in them.

Hence their ongoing battle to preserve that tax benefit as Congress considers changes that could cut the deduction or trim it back in some way as part of an overall tax overhaul, despite some whispered assurance that the century-old exemption won't get touched.

Advocates don't want to take anything for granted.

Still, it doesn't hurt that they have easy allies on the House Ways and Means Committee, where

legislative changes to the U.S. tax code begin. Multiple GOP members are former mayors who are fighting opposition to the tax break.

“As we go through the tax reform debate, I will be a voice in that camp,” said Rep. Tom Reed (R-N.Y.), who ran City Hall in Corning, N.Y., in 2008 and 2009.

Municipal bonding is critical to building infrastructure such as roads, he told Bloomberg BNA, adding that no financing alternatives exist. That echoes a point raised by members of the U.S. Conference of Mayors in an effort to keep the tax benefit.

The group recently launched a formal campaign to ensure the status quo.

Local and state governments financed nearly $1.7 trillion in infrastructure projects through tax-exempt municipal bonds from 2003 to 2012, but would have paid nearly $500 billion more if investors couldn’t use the deduction over that decade, according to data from the mayors’ group.

That kind of impact would have caused higher taxes and job losses, a number of mayors argued at a recent gathering in Washington for their 85th winter meeting.

$195 Billion

The tax benefit for municipal bonds adds up to an estimated $195 billion in lost revenue from the 2016 federal fiscal year through 2020, according to an analysis released Jan. 30 by the Joint Committee on Taxation.

That federal subsidy for state and local outlays represents wasteful spending that accrues to top-income taxpayers, said Chris Edwards, director of tax policy studies at the libertarian Cato Institute. He has recommended repealing the provision because it favors government infrastructure over the private sector.

“It’s a distortion because it discourages state and local governments from making privatization reforms,” Edwards told Bloomberg BNA, repeating a message he has delivered directly to Ways and Means Chairman Kevin Brady (R-Texas) and committee staff.

Private ownership of airports, seaports and highways is much more common in countries like Canada and the U.K., Edwards said, adding that it is more efficient than government-run infrastructure.

But new water and sewer infrastructure would be imperiled without municipal bond financing in South Carolina’s state capital, Columbia, said its mayor, Steve Benjamin.

The project, which he said should service 300,000 people in the region when completed, hasn’t required higher taxes. In fact, the city hasn’t raised taxes in a decade and has ended five of the last six years with a budget surplus, Benjamin said.

“We don’t need rate increases simply based on the unavailability of additional capital,” he told Bloomberg BNA. “That’s the concern here. Certain cities will always be able to access the market. But if in fact we saw the tax exemption go away, or any other jolts to the muni market, there are several cities that wouldn’t be able to access markets.”

Trump Support

President Donald Trump agrees with keeping the tax benefit, according to Benjamin, who in

December met with Trump in New York along with New Orleans Mayor Mitch Landrieu and Oklahoma City Mayor Mick Cornett, president of the U.S. Conference of Mayors.

Behind the scenes, some Ways and Means Republicans don't expect change, according to two sources close to the talks who spoke on condition of anonymity so they could speak freely about the ongoing discussions, but the tax exemption's defenders don't feel safe.

"That alarms us because we know that that cuts directly into the amount of infrastructure that we're able to finance in our nation's cities," Cornett said at a news conference during the group's Washington meeting.

Several mayors had meetings with Ways and Means members and staff, Benjamin said, without providing specifics. He stayed in town through Trump's inauguration, but didn't have another meeting with the president.

"I can tell you it's one of the potential things to look at as far as replacing and simplifying the tax code," said Rep. James B. Renacci (R-Ohio), another former mayor among Ways and Means' GOP roster.

Committee members are being petitioned on a host of tax benefits that could be on the chopping block as part of tax reform, for which legislation is being developed based on the loose framework released in June by Brady and House Speaker Paul D. Ryan (R-Wis.).

"Being on the front line of that debate previously, I think mayors—and myself included—tend to understand the need for municipal bonding, and if you don't have it, how difficult it would be to meet the needs of local communities," Reed said.

Still Waiting

Renacci has pushed back against the opposition, and like Reed, would prefer to maintain the tax exemption. But the former mayor of Wadsworth, Ohio, admitted that such decisions remain out of his hands for now.

"We don't know what's in or what's out; we haven't seen the bill in writing," Renacci told Bloomberg BNA. "It's the same old answer—we just have to continue to wait and see what the committee staff puts in writing and we'll have a better answer."

Other former mayors on Ways and Means include Reps. Kenny Marchant (R-Texas), who said bonding was an essential ingredient to funding municipal projects during his tenure running Carrollton, Texas.

Ways and Means ranking member Richard E. Neal (D-Mass.), the former mayor of Springfield, Mass., said bonds' guarantees are essential for communities and investors, and that he couldn't imagine changing tax policy to alter their attractiveness.

"It's a public good," Neal told Bloomberg BNA. "I don't think that's a difficult one."

But the tax overhaul blueprint needs revenue to minimize more red ink on the federal ledger, something Brady has pledged to ensure when estimating economic upside that would come from the myriad tax cuts involved in the plan.

Both Reed and Renacci cautioned that changes to tax-exempt municipal bonds remain a possibility. But Reed said he won't hold back his opinions.

“To me, it’s a tool that’s worked for years and years and years,” he said. “And as we go through tax reform I’m about fixing the broken parts of the tax code, but for the provisions that work, we’re a voice to say let’s continue that.”

Bloomberg BNA

By Aaron E. Lorenzo

February 6, 2016

To contact the reporter on this story: Aaron E. Lorenzo in Washington at aaron@bna.com

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2017 – What lies ahead?

The year 2017 promises, and threatens, to be a potentially momentous one for public finance in the United States. The Trump Administration and the 115th Congress may put in place tax reforms and infrastructure programs that will have transformative consequences for the financing of public projects in all sectors and at all levels. These are only a few of the issues that state and local officials and public finance professionals will be following closely in the coming year:

- Will income tax rates be reduced and, if so, will lower rates reduce the relative attractiveness of tax-exempt municipal bonds?
- Will new restrictions be placed on the purposes for which tax-exempt bonds may be issued or on the manner in which they may be sold, or how their proceeds may be invested?
- Will the new Administration pursue the trillion-dollar, ten-year infrastructure program that President Trump proposed during the campaign? Will Congress approve it? If so, which categories of infrastructure improvements will be given priority?
- How will any major infrastructure program be paid for? As a candidate, President Trump indicated that he would propose new tax credits as a funding method. If enacted, would those tax credits enhance or undermine traditional municipal bond financing?
- Will the Alternative Minimum Tax be eliminated and, if so, will that increase the relative attractiveness of “AMT Bonds” (e.g., exempt facility bonds) commonly issued to finance certain types of large infrastructure projects?

Continue reading.

Squire Patton Boggs

The Public Finance Tax Blog

By Joel Swearingen, Johnny Hutchinson and Bob Eidnier on February 3, 2017

IRS Opens Probe Into Financing for Statler Redevelopment.

The Internal Revenue Service is investigating a deal that raised millions of dollars for the redevelopment of the Statler Hotel and Dallas Central Library, according to lawyers involved in the financing.

The *Dallas Morning News* recently signed a lease agreement to move into the old library building once it has been renovated. The library and 19-story hotel are on Commerce Street across from the Main Street Garden Park.

The IRS is examining a complex financing that raised $26.5 million for the $221 million project. Mehrdad Moayedi, a real estate developer known for building residential communities in North Texas, is spearheading the project though Commerce Statler Development LLC.

The financing to help pay for the redevelopment involved tax-exempt bonds, which are regulated by the IRS.

The bonds were sold by an agency in Wisconsin and were backed by future tax grants to the project from the city of Dallas. Local experts called that structure unusual when it was announced in August.

Lawyers involved in the tax-exempt bond sale published a notice Monday telling investors that the IRS is examining the deal because of concerns "that the debt issuance may fail one or more provisions" of the tax code. The notice said the concerns may have been raised by "external sources."

The agency did not respond to requests for comment Monday night.

The Public Finance Authority in Wisconsin "believes the bonds complied with all applicable provisions of the Internal Revenue Code," according to the law firm that posted the disclosure, Orrick, Herring & Sutcliffe. The firm declined to comment to *The News*.

The city of Dallas approved the bond sale based on the future payout of the tax incentives.

Moayedi's spokeswoman referred questions about the IRS inquiry to Kirk Wilson, a financial consultant for the project. Noting that the developer has not received any information directly from the agency, he said that the IRS is simply asking for more information in a routine audit.

The bonds are backed by so-called tax-increment financing, in which the city promises to give developers tax breaks over time for developing in designated areas. City representatives did not immediately respond to requests for comment.

The Dallas Morning News

by Terri Langford

Miles Moffeit contributed to this story

CDFA Agenda Includes Pushing for Bond Bills, Supporting Tax Exemption.

WASHINGTON – The Council of Development Finance Agencies this year will work to obtain separate bills that would ease certain tax restrictions for manufacturing bonds and remove water and sewer bonds from the private activity bond volume cap.

The goals are in the 2017 policy agenda the group is circulating to its members.

The CDFA also will work to preserve and strengthen tax-exempt bonds in general, obtain increased funding for the Water Infrastructure Finance and Innovation Act (WIFIA) and promote the launching of a federal urban tax increment finance program, among other things.

“The bond issues outlined in our agenda are our primary focus in 2017, said Toby Rittner, CDFA’s president and chief executive officer. “Working with our partners in Congress to get MAMBA passed would be a great victory for issuers, and for our industry as a whole. Our efforts to protect the tax-exempt status of municipal and private activity bonds are also important. With tax reform likely coming this year, it’s essential that we make sure members of Congress are fully aware of the importance of the tax exemption, and that they protect it at all costs.”

MAMBA is the acronym for “Modernizing American Manufacturing Bonds Act,” companion bills introduced by House and Senate members last year and the year before that would have loosened tax law restrictions for qualified small issue manufacturing bonds. These bonds are used to finance facilities for small and mid-sized manufacturers. They are also called industrial development bonds (IDBs). The bill (S. 3416) in the Senate was offered on Sept. 28 of last year by Sens. Sherrod Brown, D-Ohio, and David Perdue, R-Ga., The one (H.R. 2890) in the House was introduced on June 25, 2015 by Reps. Randy Hultgren, R-Ill., Richard Neal, D-Mass., and James Renacci, R-Ohio. Neal is now the top Democrat on the House Ways and Means Committee. The two congressmen had offered the bill the previous year as well.

The House and Senate bills would have made two tax law changes that had been put into effect in 2009 and 2010 under the American Recovery and Reinvestment Act. They would have expanded the definition of manufacturing facility to include intangible property, such as software, as well as tangible facility. The bills also would have allowed IDBs to be used to finance facilities that are functionally related and subordinate to the production of tangible or intangible property, such as warehouses that temporarily store materials and laboratories that test raw materials.

Additionally, the measures would have made two other tax law changes. They would have increased the maximum size of an IDB issue to $30 million from $10 million. The limit hasn’t increased since 1979 and hasn’t ever been indexed to inflation.

They also would have increased the capital expenditure limitation for IDBs. Currently, a manufacturer can only issue IDBs if their capital expenditures, including the bond proceeds, are not more than $20 million in the six-year period beginning three years before the date of the proposed new issue and ending three years after that date. Under the bills, that capital expenditure limitation would have increased to $40 million.

On tax-exempt financing in general, CDFA’s agenda said, “The administration must commit to preserving and protecting tax-exempt bonds under any and all circumstances. The restriction, capping, and/or eliminating of the tax-exempt status for municipal and private activity bonds should be dismissed outright.”

In addition, the group said, any tax reform measures considered by Congress should take into account the importance of private-sector led investment and “the critical role that tax-exempt bonds play in generating private investment.”

CDFA also wants to push for the reintroduction of legislation that would remove PAB volume caps for water and sewer bonds. A bill (S. 2606) was introduced in the Senate on Feb. 29 last year by Sens. Robert Menendez, D-N.J. and Mike Crapo, R-Idaho. The one (H.R. 499) in the House was

introduced by Reps. John Duncan, Jr., R-Tenn., and Bill Pascrell, DN.J., the year before in January.

In addition, the group wants increased funding for WIFIA, which provides credit assistance in the form of loans for large water infrastructure projects.

The group's agenda also calls for the launch of a Federal Urban Tax Increment Finance Program that would allow local governments to redirect specific estimated tax revenue to finance urban revitalization efforts. Currently state and local governments set up TIF districts and use the revenue to back tax exempt bonds.

CDFA called for the creation of a State Clean Energy Finance Initiative (SCEFI) pilot program with the Treasury Department that would be authorized for five years with a onetime $5 billion appropriation. The program would leverage an additional $50 billion of private investment nationally for clean energy projects.

The two-plus-page agenda calls for other initiatives as well.

The Bond Buyer

By Lynn Hume

February 2, 2017

Making the Case for the High Efficiency of the Tax Exemption - It's in the Numbers.

As tax reform takes shape, a key challenge for the municipal market in maintaining full access to the tax exemption stems from a factually flawed methodology utilized by the Joint Committee on Taxation.

Over a long period of time, we have been told, "don't try arguing with Joint Tax methodology, their methodology is accepted by Congress, the Administration and staff as being gospel." However, what if the problems with the Joint Tax analysis stem not primarily from methodology, but from factual inaccuracies in the data underpinning the analysis?

Under its analysis, the JCT comes to three conclusions:

1. That municipal yields as a percentage of taxable yields are high;
2. That this high ratio results in the marginal tax rate of the marginal investor in municipals being low; and,
3. That, as a consequence, everyone in a higher tax bracket received a "windfall"—a higher yield than would be needed to needed to attract them to buy municipals.

Under their methodology, long-term municipal yields as a percentage of corporate yields are indeed quite high – roughly 94% on long-term A1/A+-rated paper. However, the high ratio vanishes when two simple but essential adjustments are made to the calculation: The first adjustment is to compare municipals to corporate bonds that are actually similar, which the Joint Tax report demonstrably did not. We stress that this adjustment does not reflect a change in methodology relative to the JCT. It simply makes sure that the analysis involves an "apples vs. apples" comparison.

The second adjustment is to increase municipal yields to the levels that would be needed to clear the market if these municipals came as taxable bonds. That is a higher yield than that which would show on corporate indices, because as currently constructed, municipals have certain disadvantages that would force them to pay a higher yield than corporate bond indices suggest, if they came in the taxable market. These disadvantages include weaker call provisions, lower liquidity on smaller maturities, and a weaker disclosure regime than on corporate bonds. Having shown how these two adjustments would look, we then discuss two other factors, which provide important pieces of evidence that the conclusions of Joint Tax are incorrect—the functioning of the market for "Private Activity Bonds" subject to the Alternative Minimum Tax, and the pattern during the second half of 2009 and 2010, when taxable "Build America Bonds" were available as an alternative to tax-exempts.

The bottom line is that in our view, the 2012 report out of Joint Tax on their methodology for determining the efficiency of the tax-exemption was severely factually flawed:

- Triple-A corporates were compared to A1/A+ municipals using the Bond Buyer 20-Bond Index (BBI);
- The fact that the BBI severely overstates actual borrowing costs in the municipal bond market was ignored;
- The fact that municipals with shorter maturities compare much more favorably than longer bonds in comparison with taxable bonds was ignored; and,
- The more favorable structure of corporate bonds with respect to call provisions, liquidity and disclosure, which reduces their borrowing cost relative to the likely cost of fully taxable municipals was ignored.

All of the above factors create an illusion the JCT analysis that muni yields as a percentage of corporate bond yields are much higher than they are in the real world.

Finally, the underlying assumption that, if tax-exempts did not exist, investors would only buy fully-taxed corporates as an alternative, is simply incorrect, as Joseph Poterba at MIT has shown. At the maximum 40% tax rate on corporate bond interest, a vast number of investors would, if they could not buy tax exempts, seek out an alternative with a lower Federal tax rate, such as the 20% maximum rate on dividends and capital gains.

Working Through the Numbers

In our analysis, we start with the yield ratio we would expect JCT to derive using its flawed data. Using this starting point, we would have a tripleA corporate bond index of roughly 3.50%, and a yield on the Bond Buyer 20-bond Index of roughly 3.87%. This provides a starting point ratio of roughly 107%.

Adjusting for the factual inaccuracies in the data as shown by JCT in its own analysis works out as follows:

1. Currently, municipal yields are inflated to a degree by tax risk fears. In our estimation, long-term municipal yields would be at least 30 basis points lower under "normal" conditions. Since the election, investors have become reticent to put cash to work in the municipal market as a result of fears that tax reform would damage the value of municipals by sharply cutting tax rates or putting a cap on the value of the tax-exemption. Pressures on the municipal market are shown in municipal bond fund flows, which have been a whopping negative $15 billion since the election. Adjusting for tax risk fears, and the ratio declines to 3.57% vs. 3.50%, or 102%.
2. Different quality bonds are being compared. A Triple-A rated Corporate Bond index is compared

to the A1/A+ Bond Buyer Index. Use of comparably rated bonds would reduce the ratio on municipal yields to corporate yields considerably. (3.57% /3.60% would become 3.57%/4.10%). The yield ratio would thus move down from 102% to 87% – still very high, but wait…

3. The greatly inflated yield on the BBI. The Bond Buyer Index utilized by the JCT in their analysis ALWAYS yields considerably more than actual municipal bonds, as it did over the entire time period included in the JCT report. During their measurement period, the difference typically ran 80120 basis points. Now, with lower yields in all sectors, the difference still runs 50 basis points for similarly rated bonds due in 20 years. So, the 3.57% to 4.10% comparison above becomes 3.07% to 4.10% when real-world yield levels are used instead of the massively inflated BBI, and the ratio declines to 75%.
4. Differences in call provisions, liquidity and disclosure between A1/A+ corporates and A1/A+ municipals are ignored. To be sold in the taxable market without corporate-like attributes, we estimate that municipals would have to have roughly 40-basis-point higher yields than like-rated corporates, and 60 basis points more for smaller, less liquid issues. Differences include the lack of call risk on corporate bonds versus the ten-year call on nearly all municipals, stronger liquidity resulting from higher per-maturity issue size, and stronger disclosure requirements. So, the comparable ratios become 3.37% to 4.50%, and 3.37% to 4.70%, or the 74.9% to 73% range.
5. A focus on long maturities. As we discuss below, municipal yields as a percentage of taxable yields tend to be dramatically lower on bonds 11 years and shorter than they are on longer-maturity paper. By our estimate, the ratio in the 10year range would be at least 7 percentage points lower in 10years than it is in the 20-year bonds used in the JCT analysis, and on 5year paper would be another 7 percentage points lower. Using an average of a 10 percentage point drop for paper inside 10 years, and the ratio declines to from 64.9% to 63%.
6. Evidence for a very high clearing marginal tax rate on shorter maturities comes from BABs. During the period from mid-2009 through the end of 2010, nearly 40% of new issues came as Build America Bonds – fully taxable to the investor, but with a 35% subsidy provided to the issuer. Issuers thus had a choice: accept the reduced yield provided by access to the tax exemption, or accept a 35% subsidy. The two choices would essentially be break even when munis yielded exactly 65% as much as taxable BABs. In terms of measuring the efficiency of the tax exemption, here is the interesting result: during that period, a very large proportion of bonds with a maturity longer than roughly 11 years came as BABs, but nearly all bonds with a maturity inside 11 years came in the tax-exempt market. As far as the efficiency of the tax exemption is concerned, the implications are clear: inside roughly 11year maturities, municipal bonds were clearing with a ratio to taxable bonds lower than 65%. This compares with the implied tax rate for municipals during 2009 in the Joint Tax analysis of 13.2%. We estimate that the ratio actually stayed above 30% as far out as roughly 15 year maturities, a sizable component of the entire municipal market – roughly 60%-70%.
7. Thus, simply comparing apples to apples—similarly rated and structured municipals and corporates under current conditions takes the clearing marginal tax rate up from 8% to 34%-38.5%. However, even this purely factual analysis based upon current market conditions ignores an important invalid assumption in the Joint Tax Analysis: That investors who could no longer buy tax exempts would only buy taxable bonds taxed at their maximum income tax rate as an alternative. The problems with the assumption that taxable bonds are the only alternative in the absence of tax-exempts, is shown in the work of Joseph Poterba and teammates at MIT. (Example: *Portfolio Substitution and the Revenue Cost of the Federal Income Tax Exemption for State and Local Government Bonds*, Poterba, James M. and Verdugo, Arturo Ramírez, National Tax Journal, June 2011.)

It’s Not Just Municipals vs Taxable Bonds

Having adjusted the yield comparison to provide an apples-versus-apples comparison, we arrive at

an adjusted yield ratio of municipal yields to corporate yields, at various spots along the yield curve. While this adjustment suggests a marginal tax rate for the marginal buyer that is vastly higher than the JCT suggests, we then explain why the assumption that this ratio represents a complete comparison of the two markets is highly flawed. This assumption has been deconstructed by Poterba at MIT, among others.

In reality, in the absence of a tax-exemption, most investors would not buy taxable bonds taxed at their maximum marginal rate; they would hold more cash/nearcash (they currently hold 6X as much cash as the do municipals), or they would buy investments with a lower effective tax rate. Currently, dividends and capital gains are taxed at a maximum rate of 20%. With longterm corporate yields around 4.25%, investors in roughly the 40% tax bracket would earn roughly 2.50%, after-tax. As Drs. Poterba and Verdugo note, lacking access to tax-exempts, many of these investors would choose dividend paying stocks, or invest for a longterm capital gain, rather than buying fully taxable bonds. The idea that the difference between the ratio of municipal yields to corporate yields and investors' maximum tax brackets represents a "windfall" to the high bracket investor is simply incorrect, because investors have other choices.

Impact of a Cap on the Tax Exemption—Evidence From the Market for Bonds Subject to the AMT

Our message in the above is that, when comparisons between munis and corporates are measured properly, municipal yields as a percentage of taxable yields are vastly lower than that shown in the Joint Tax analysis. Quite simply, the low marginal efficiency of the tax-exempt market described by Joint Tax in its analysis results from inaccurate data. We do not attack the methodology, we simply show that the clearing marginal tax rate for municipals, properly measured, is quite high under most market conditions.

In addition, the question has come up as to what the impact would be of a 28% cap on the tax-exemption.

In our view there is already evidence of the impact from the functioning of the market for PABs subject to the AMT.

These bonds are subject to a "surtax" on the interest, but only for investors who pay the AMT. For other investors, the AMT has no effect. Even with this limited target for the surtax, bonds subject to the AMT cost issuers roughly 30 basis points more than nonAMT paper. To investors who do not pay the AMT, the extra yield is a "windfall" that provides no tax revenue to the Treasury. Now consider what would occur if all municipals were subject to a surtax in the form of a 28% cap: we would expect the cost of borrowing in the municipal market to rise substantially more than 30 basis points. In our estimate, the impact would range from 50 basis points to 75 basis points or more for the entire market. Please note that when municipals and corporates are compared properly, the clearing ratio of yields generally put the marginal tax rate above 28%. As a consequence, in our view, a 28% cap would be quite damaging the in the form of higher borrowing costs.

The Bottom Line

Decision makers often cite the Joint Tax methodology in explaining why they believe the tax exemption to be an inefficient subsidy. To a very significant degree, we believe that the JCT analysis is flawed, not because its methodology is incorrect, but because its data is wrong: its comparison is a clear "apples to oranges" comparison. When the data is adjusted to compare similar bonds in both sectors, we discover that muni yields as a percentage of corporate bonds actually provide a marginal tax rate that is impressively high. In addition, we site one comparison from the work of Joseph

Poterba et al at MIT: we believe, as he does, that if the tax-exemption were eliminated, many investors would substitute other investments with a tax rate roughly half of that on full taxable bond interest. Given all of this, the premise that the muni market clears through investors with a low marginal tax rate—thereby giving a windfall to high bracket investors – is simply incorrect.

The Bond Buyer

By George Friedlander

February 1, 2017

George Friedlander is a managing partner at Court Street Group Research.

Despite Budget Shortfalls, Some Governors Call for Tax Cuts.

About half of the states are facing budget shortfalls this fiscal year, but many governors are still pushing to cut taxes in their proposed 2018 budgets.

The proposals vary in scope but generally fall within two categories: comprehensive and targeted.

Nebraska Gov. Pete Ricketts' proposal is of the comprehensive variety and may be the most aggressive call for tax cuts so far. He is asking for property and personal income tax cuts to be phased in beginning in 2019 — even as the state faces a $900 million budget gap. Property taxes would be reduced via a new valuation formula and income tax breaks would kick in incrementally and only in years when state revenue grows by more than 3.5 percent.

On the whole, most of the comprehensive proposals are part of ongoing efforts.

"Many of these ideas are either follow-ons to things they've already done," said John Hicks, the National Association of Budget Officer's executive director. "Or they are things they hoped to do and haven't been able to yet."

For instance, Maine Gov. Paul LePage is again proposing to expand the state's sales tax on services as a way to pay for income tax cuts. In the latest version, LePage has extended his sales tax proposal to include streaming services like Netflix and rental platforms like Airbnb.

South Carolina Gov. Nikki Haley, who, if approved, will be vacating her office to take over as the United Nations ambassador for the Trump administration, is pushing for a pared-down version of a previous income and corporate tax cut proposal.

In Alaska, which faces a $3 billion budget shortfall, Gov. Bill Walker has toned down his previous efforts to overhaul the state's finances. He still wants to reduce citizens' annual bonus checks from the Alaska Permanent Fund and divert some of the fund's investment earnings into the state budget each year. But he has backed off previous proposals for a new state income tax, instead leaving a $900 million budget gap in his proposal for the legislature to fill.

Meanwhile, some governors are taking a more targeted approach.

Indiana Gov. Eric Holcomb wants to exempt veterans' pensions from the income tax; Arkansas Gov. Asa Hutchinson would cut taxes for low-income workers; and New York Gov. Andrew Cuomo wants to preserve planned tax cuts for the middle class.

Cuomo is renewing his proposal for a millionaire's tax hike, which would help pay for that state's $3.5 billion budget deficit. In Montana, which is also facing a shortfall, Gov. Steve Bullock has proposed a tax hike on his state's wealthiest residents. And Washington Gov. Jay Inslee is proposing a new tax on capital gains to help pay for the state's court-mandated education funding increases.

Outside of raising income taxes, some states are looking to excise or sin taxes to fill needs or budget deficits.

Governors in California, Indiana and Tennessee have floated raising the gas tax to fund transportation projects. In recent years, roughly 20 other states have approved gas tax hikes to raise sorely needed money for infrastructure and overdue maintenance. Governors in Colorado and Nevada have pitched raising marijuana taxes, while Kansas Gov. Sam Brownback is proposing an alcohol and cigarette tax hike.

In both Colorado and Kansas, the tax increases would help cover projected budget deficits. That can be a dangerous habit, said Meg Wiehe of the progressive-leaning Institute on Taxation and Economic Policy, because such tax increases tend to discourage consumption.

"Politically speaking they're low-hanging fruit," she said. "The problem in relying on this is it is a very unsustainable increase. When you increase taxes on cigarettes, smoking declines. If the motivation is for public health, then that's a different story. But if you're looking to address a short, medium or long-term budget hole … it's a bad proposition."

GOVERNING.COM

BY LIZ FARMER | JANUARY 25, 2017

TAX - ILLINOIS

Oswald v. Hamer

Appellate Court of Illinois, First District, Fourth Division - December 22, 2016 - N.E.3d - 2016 IL App (1st) 152691 - 2016 WL 7436113

Real property taxpayer brought action against Department of Revenue and the Director of Revenue, seeking declaration that statute governing property tax exemptions related to access to hospital and health care services was facially unconstitutional for granting a property tax exemption to a hospital applicant without regard to whether property was used exclusively for charitable purposes.

The Circuit Court granted summary judgment for defendants. Taxpayer appealed.

The Appellate Court held that statute was facially constitutional.

Statute governing property tax exemptions related to access to hospital and health care services was facially constitutional under state constitution's provision permitting exemption from taxation for properties used exclusively for charitable purposes. Statute's use of term "shall" was directory, rather than mandatory, and, thus, did not require an exemption without regard to whether property at issue was used exclusively for charitable purposes, General Assembly did not intend for satisfaction of statute to ipso facto warrant an exemption, but intended for requirements of the statute to considered on a case-by-case basis, and absence of exclusivity language in statute did not mean the statute was to be read separately from constitutional requirements.

TAX - NEW YORK

Congregation Ateres Yisroel v. Town of Ramapo

Supreme Court, Appellate Division, Second Department, New York - January 18, 2017 - N.Y.S.3d - 2017 WL 189197 - 2017 N.Y. Slip Op. 00287

Landowner, a religious not-for-profit corporation, brought action against town, town assessor, and Board of Assessment review, seeking declaration that owner's real property was exempt from real property taxes.

The Supreme Court, Rockland County, granted defendants' motion for summary judgment.

The Supreme Court, Appellate Division, held that landowner's use of real property violated town zoning law, and thus landowner was prohibited from receiving real property tax exemption.

Use of real property owned by landowner, a religious not-for-profit corporation, violated town zoning law, and thus landowner was prohibited from receiving a real property tax exemption. Landowner had illegally erected two trailers on property without obtaining proper permits, and had used primary structure on property as a dormitory and living quarters for over 20 students in contravention of its certificate of occupancy.

TAX - ILLINOIS

Hertz Corporation v. City of Chicago

Supreme Court of Illinois - January 20, 2017 - N.E.3d - 2017 IL 119945 - 2017 WL 243395

Car rental companies brought declaratory judgment actions against city, asserting that ruling by city's department of revenue as to tax on use of vehicles leased by city residents was unconstitutional.

The Circuit Court declared ruling facially unconstitutional and entered permanent injunction. City appealed. The Appellate Court reversed. Companies sought to appeal, which was allowed.

The Supreme Court of Illinois held that city department of revenue ruling regarding applicability of personal property tax to cars rented from agencies outside of city violated home rule article of state constitution.

Ruling had an extraterritorial effect, and therefore city department of revenue ruling determining that suburban car rental agencies located within three miles of city were responsible for paying tax on use of personal property within city borders unless lessee was exempt from paying tax based upon use of leased vehicle outside of city violated home rule article of state constitution. No part of the transactions took place within city's borders, and 100 percent of the cost of a car's rental was taxed even though ruling required that the car be driven in city for only 50 percent of the time to be subject to the tax.

Revenue Procedure 2017-13: Management Contracts – Still Trying To Get It

Right.

For the third time in less than three years, the IRS has issued major guidance – Revenue Procedure 2017-13 — on the safe harbor rules for management or service contracts to avoid private business use. The new revenue procedure follows closely behind the total rewrite of the safe harbor rules that the IRS issued as Rev. Proc. 2016-44 in August 2016, which was the subject of several of our posts (here, here, and here). A cynic might think the IRS was just looking for an excuse to renumber the management contract revenue procedure as 97-13 plus 20 years. But in fact there are some important modifications in the new revenue procedure.

Continue reading.

By Bob Eidnier on January 25, 2017

Squire Patton Boggs

IRS: Unspent Proceeds, Refunding Will Not Cause Loss of BABs' Subsidy.

WASHINGTON – Unspent proceeds at the time of a current refunding will not cause Build America Bonds to lose their qualified status for Treasury subsidy payments, the Internal Revenue Service recently found in a recent private letter ruling.

The private letter ruling (PLR) was written in response to a BAB issuer that sought a ruling on whether a proposed current refunding would cause the bonds to fail to meet a requirement that 100% of the proceeds, beyond those put into a reasonably required reserve, be used for capital expenditures.

In a current refunding, the issuer refunds previously issued bonds within 90 days from the issuance of the refunding bonds. The IRS concluded in the ruling that, based on the issuer's representations, "the existence of the unspent proceeds on the redemption date of the bonds will not retroactively cause the bonds to lose their status as 'qualified bonds.'"

Because of this, the IRS said, the issuer would not lose any credit under Section 6431 of the Internal Revenue Code for the bonds for the period prior to the date of redemption. IRS officials said the ruling is contingent on the issuer not spending any of the unspent proceeds for anything other than capital expenditures.

The four-page PLR, signed by IRS senior counsel Timothy Jones, states that the bonds in question were used to finance certain capital projects for an unidentified city. The bonds were to be treated as direct-pay BABs, and the issuer agreed to spend 100% of project proceeds of the bonds for capital expenditures. By an unspecified date, a percentage of the available project proceeds of the bonds remained unspent.

The names of all parties involved in the issuance were withheld in the PLR, which was released on Jan. 13. Both the issuer and city intended to refinance the BABs by issuing tax-exempt bonds.

The IRS also stated in the PLR that it was not expressing any opinion about whether the BABs could be considered reissued upon the deposit of the refunding bond proceeds into an escrow fund to pay principal and interest on the bonds at redemption.

Linda Schakel, a partner with Ballard Spahr in Washington, said she agrees with the ruling, especially considering that the BAB legislation was different than other tax credit subsidy bonds, which required proceeds be spent within three years of the issue date on permitted costs.

“I think this is definitely a very reasonable approach to the question of what happens when you have unspent proceeds at the time you do a refunding, particularly unspent proceeds more than three years after the bonds are issued,” she said.

However, Schakel said the ruling does not provide details regarding what might have delayed expenditure or what factors confirm the issuer still expects to expend proceeds.

“I take [this] to mean that the ruling is not conditioned as being extraordinary circumstances justifying the outcome,” Schakel said.

Tom Vander Molen, a partner at Dorsey and Whitney in Minneapolis, said he believes that the ruling is correct. He said that although he is not aware of this particular request for a PLR, this issue has come up in different contexts.

“Sometimes in audits, the IRS says maybe it’s a problem if you don’t spend proceeds before you refund,” Vander Molen said. “My position has always been it doesn’t matter as long as you use the proceeds you were going to in the time you were going to.”

“I think this is very consistent with that,” he said. “I think this ruling is exactly right.”

Created under the American Recovery and Reinvestment Act, roughly $181 million of BABs were issued to finance infrastructure during 2009 and 2010 before the program expired for new issuances.

The Bond Buyer

By Evan Fallor

January 19, 2017

IRS Modifies Safe Harbor Guidance and Deadlines for Section 45 and 48 Energy Credits: Grant Thornton

The IRS has issued new guidance (Notice 2017-04) updating and modifying deadlines and rules for the safe harbors for establishing that construction has begun and is continuous on projects qualifying for the renewable electricity production tax credit (PTC) under Section 45 and the energy investment tax credit (ITC) under Section 48.

The guidance extends the date by which a project can be placed in service and qualify for the continuity safe harbor, adds an effective date to a restriction on combining begin-construction safe harbor methods, and clarifies which expenses from a retrofitted facility are included in the 5% safe harbor calculation.

The Protecting Americans from Tax Hikes (PATH) Act of 2015 extended both the PTC and ITC credits. Under the bill, construction on qualified PTC projects must now have begun before the end of 2016 to be eligible for the full credit. The PTC will also be available at reduced rates for wind

facilities if construction begins in 2017 (80% of normal credit), 2018 (60%) or 2019 (40%). Taxpayers may also elect to take the ITC in lieu of the PTC, but any PTC rate reductions will apply to the ITC.

In addition, the 30% ITC for commercial solar projects was extended. The rate was set to fall to 10% if construction began after 2016, but the full 30% rate will now be available if construction begins by the end of 2019. A 26% credit is available if construction begins in 2020, and a 22% credit is available if construction begins in 2021 and the facility is placed in service by the end of 2023. The credit is otherwise 10%.

Under guidance issued previously (Notices 2013-29, 2013-60, 2014-46, and 2016-31) the IRS said that taxpayers can establish that construction has begun by either satisfying a test showing "physical work of a significant nature" has begun or by incurring 5% or more of the total cost of the facility under a safe harbor. Taxpayers can aggregate multiple facilities based on the relevant facts and circumstances, but then disaggregate them for applying the placed-in-service deadline for the continuity safe harbor.

However, Notice 2016-31, issued last year, does not allow taxpayers to use two different beginning construction tests in alternate years to establish construction has begun in different years for the purpose of the separate begin-construction and continuity deadlines. Newly issued Notice 2017-04 limits this restriction only to projects that began after June 6, 2016 (the day Notice 2016-31 was issued).

Notice 2016-31 also provided that a retrofitted energy project can qualify if the used property represents less than 20% of the value. Notice 2017-04 clarifies that only costs related to new construction in these projects are included in the calculation for the 5% safe harbor.

Once construction is considered to have begun, taxpayers must make continual progress toward completion. The IRS created a continuity safe harbor to satisfy this standard, last modifying it under Notice 2016-31. Taxpayers are generally considered to have made continual progress toward completion if a facility is placed in service within four calendar years of the calendar year in which construction began. Notice 2017-04 now provides that a taxpayer will also fall under this safe harbor if the project is completed before Dec. 31, 2018, even if this more than four years after construction began.

Taxpayers who don't use the continuity safe harbor must generally use a facts-and-circumstances analysis to determine if construction is continual. Notice 2017-04 does not update the nonexclusive list of allowable disruptions. The following disruptions remain excusable:

- Severe weather conditions
- Natural disasters
- Certain licensing and permitting delays
- Delays at the written request of government for safety, security or similar concerns
- Transmission interconnection issues
- Labor stoppages
- Supply shortages
- Delays in manufacturing custom components
- Inability to obtain specialized equipment
- Financing delays
- The presence of endangered species

Notice 2017-04 also does not update the list of preliminary activities under Notices 2013-29 and

2016-31 that don't qualify as physical work of a significant nature. The following preliminary activities do not qualify:

- Planning or designing
- Securing financing
- Exploring
- Researching
- Conducting geologic mapping and modeling
- Obtaining permits and licenses
- Conducting geophysical, gravity, magnetic, seismic and resistivity surveys
- Conducing environmental and engineering studies
- Performing activities to develop a geothermal deposit prior to discovery
- Clearing a site
- Test drilling of a geothermal deposit
- Test drilling to determine soil condition
- Excavation to change the contour of the land (as distinguished from excavation for footings and foundations)
- Removing existing turbines, towers, panels or other components

Last Updated: January 24 2017

Article by Dustin Stamper

Grant Thornton 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.

IRS Clarifies New Management Contract Safe Harbors.

In August, 2016, the IRS issued Revenue Procedure 2016-44, the first comprehensive revision of its management contract safe harbors since Revenue Procedure 97-13. Rev. Proc. 2016-44 built upon and amplified principles laid out in private letter rulings issued over many years and in Notice 2014-67. Now, less than six months later, the IRS has published Revenue Procedure 2017-13, which clarifies and supersedes Rev. Proc. 2016-44 but does not materially change the safe harbors described therein. The clarifications are in response to questions received with respect to certain types of compensation protected under earlier safe harbors, incentive compensation, timing of payments, treatment of land when determining useful life, and approval of rates.

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Tuesday, January 24, 2017

Should Tax Collectors Be Loan Collectors?

Investors love a federal green-energy program for property owners. But if there's a backlash, localities could be caught in the middle.

As proof that no good deed goes unpunished, a well-intentioned federal green-energy program has put local governments into a new alliance with finance companies, sparking a small frenzy on the bond market and turning county tax collectors into de facto home-loan servicers in 34 states and the District of Columbia.

Property Assessed Clean Energy (PACE) is an Obama-era Department of Energy program designed to help residential and commercial property owners finance renewable-energy systems and energy-efficiency improvements. PACE, according to The Wall Street Journal, has become the nation's fastest-growing loan category. Along the way, the property-tax assessment and payment system has morphed into a home equity loan repayment process, posing new perils for property owners and localities alike.

PACE works like this: Contractors offer special home-equity loans to homeowners to go green. Once the green upgrades are completed and the loan documents are signed, the loans are packaged with thousands of similar loans and sold to investors in the form of bonds. Any observer of the last great boom-and-bust cycle — along with any fan of the 2015 film "The Big Short" — will recognize the process.

But here's the rub: PACE loans aren't repaid like a car loan or a mortgage. Instead, localities serve as the middlemen by collecting payments once or twice a year as an assessment in the property owner's tax bill. Localities earn a fee and then forward the proceeds to finance companies.

The premise is a good one, at least in theory. It incentivizes property owners to make environmental upgrades, requiring no cash up front. The *Harvard Business Review* named the concept as one of 10 "Breakthrough Ideas for 2010," and *Scientific American* profiled the concept's creator.

Institutional investors are devouring the bonds because of their high credit ratings and green status. The first PACE program bond, structured by Deutsche Bank and issued in 2014, was awarded an AA credit rating by the Kroll Bond Rating Agency. The interest rate — the "coupon" in bond-speak — was 4.75 percent.

Recently the largest ever PACE bond was issued. It contained 13,432 assessments on homes in 31 California counties. The assessments had an average balance of about $24,400, an average interest rate of 7.96 percent and an average term of 14.95 years. This suggests an additional annual tax-bill payment averaging about $3,200 per property owner.

Critics in the banking industry argue that the PACE model gives these assessments priority lien status over mortgages. To placate lenders in California, which has been a laboratory for the concept and where PACE loans are known as HERO loans, a $10 million mortgage-loss reserve was established in 2014. Still, the banks don't like it.

Other critics contend that the program has been developed as fodder for the bond market and that environmental aims are secondary. PACE financing has been used to purchase everything from furnaces to pool covers to artificial turf. The National Consumer Law Center has reported abuses with the program, including some in which elderly homeowners were victimized.

From a public-policy standpoint, proponents see little difference between PACE and a locality paving a street and then assessing homeowners for the cost. PACENation, an industry group, argues that the increased investment has created stable work for local contractors — often family-owned businesses that have served their communities' needs for heating, air-conditioning, plumbing, roofing and landscaping for decades.

In the middle of all of this are participating localities, which sometimes deal with reports of abuse by contractors selling the loans with scant oversight, and homeowners, some of whom are shocked when their tax bills double or triple.

Even worse, localities fear that, if the home market goes bust again, they may be forced into wide-scale foreclosure proceedings, possibly leaving taxpayers on the hook to cover resulting loan-repayment shortfalls. And if and when a backlash comes from taxpayers or investors, it's likely to be local governments, the middlemen in all of this, that will have to deal with it.

GOVERNING.COM

BY JEREMY BAGOTT | JANUARY 25, 2017

Coming Soon to 6 States: Online Sales Taxes From Amazon.

Online retail giant Amazon will begin collecting sales tax in Missouri next month, as it does in dozens of other states.

The collection of state sales tax in Missouri will begin Feb. 1, Amazon spokeswoman Jill Kerr said in an email to the Post-Dispatch. The state sales tax rate in Missouri is 4.225 percent.

Items sold by Seattle-based Amazon.com and its subsidiaries already are subject to sales tax for merchandise shipped to more than 30 states. Amazon will also begin collecting sales tax on Feb. 1 in Mississippi, Rhode Island, South Dakota and Vermont, and in Wyoming in March.

Amazon does not yet have facilities in the state of Missouri, and online retailers aren't required to collect sales tax where they don't have a physical presence. Amazon charges sales tax in Illinois, where it has multiple distribution facilities, including in Edwardsville.

Amazon announced this month that it planned to hire 100,000 fulfillment employees nationwide over the next 18 months, leading to speculation that the company will open distribution facilities in Missouri. Amazon declined to comment on its distribution facility expansion plans.

"I gather they will be expanding in Missouri because there is a lot of warehouse space here," said David Overfelt, president of the Missouri Retailers Association, a Jefferson City-based trade group that supports requiring online retailers to charge sales tax.

"This is going to be good for Missouri and good for our communities because we provide a lot of services and finding resources is getting tougher and tougher," Overfelt said of Amazon's collection of sales tax. "This is a long time coming. We can't continue down the way we are without hurting Main Street businesses."

Several states and retail groups have pushed for years for Amazon to begin charging sales tax, arguing brick-and-mortar retailers that must charge sales tax are unfairly disadvantaged.

In 2013, a new tax law in Missouri required online retailers to collect sales tax if the company received business referrals from an affiliate in Missouri. After the law was passed, Amazon ended its Associates Program in Missouri that paid advertising fees to web entrepreneurs for customers referred to Amazon.com

Stephen Weiss, owner and president of Creve Coeur Camera, said he welcomed Amazon's announcement that it would begin charging sales tax. Shoppers often come to his eight stores to look at equipment but buy on Amazon because no sales tax is collected, making the purchase $50 or even more than $100 cheaper than buying at his stores, a practice retailers call "showrooming."

"It makes a huge difference," Weiss said about competing against Amazon's prices that don't include sales tax, which he said is an unfair disadvantage. "It kills us."

Creve Coeur Camera, a St. Louis County-based chain, is closing its Edwardsville store at the end of this month and is considering shuttering another store in part due to lost sales that Weiss blames on Amazon. Up until four months ago, Creve Coeur Camera sold some lenses through Amazon, but Amazon recently went directly to the manufacturer to supply the lenses, Weiss said.

Adding sales tax to goods sold in Missouri will help level the playing field for retailers, he said. "I think it'll help, no question."

A Missouri Department of Revenue spokeswoman did not immediately respond to requests for comment about the amount of new tax revenue that will be generated.

Carl Davis, research director for the Washington, D.C.-based think tank Institute on Taxation and Economic Policy, estimated the state of Missouri could collect between $30 million and $34 million annually from Amazon sales, based on an analysis of revenue generated in other states.

"We're supporters of sales tax being collected on online purchases in the same way they're collected at brick-and-mortar stores," Davis said.

Some Missouri Amazon customers criticized the decision on social media Wednesday, saying it could make merchandise more expensive.

Judith Stallmann, a professor at the University of Missouri who studies state and local public finance and rural and economic development, said the change may prompt cost-conscious shoppers to shift their buying habits.

"This means you're going to be paying sales tax on things you didn't before," Stallmann said. "There may be some people for whom paying sales taxes could weigh on their decision."

BY TRIBUNE NEWS SERVICE | JANUARY 27, 2017

By Lisa Brown

(c)2017 the St. Louis Post-Dispatch

How San Diego's Taxpayer Won by Letting the Chargers Bolt.

- Moody's: voters' rejection of new stadium credit positive
- Largest city-owned site could be redeveloped in better deal

The departure of a professional football team from San Diego means the city may not need to pay out $11.7 million annually from its general fund on the stadium for much longer.

The National Football League's Chargers are decamping for a new Los Angeles area stadium after

voters in November rejected a measure that would have pledged $1.1 billion in public backing for a new arena. Not only did residents dodge a debt burden, they now have a chance to see redevelopment of the city's largest piece of real estate available. One proposal would bring a soccer franchise without public subsidies.

The ballot proposal, pushed by the Chargers, would have increased hotel taxes to 16.5 percent from 10.5 percent to pay for a new stadium and a convention center expansion. But analysis by consultants highlighted the uncertainty of the $1.8 billion price tag. Since the city would have borne any cost overruns and infrastructure improvements, the rejection of the measure by 56 percent of the voters was a credit positive, Moody's Investors Service said.

"We've had a history of bad deals as a city," said City Councilman Chris Cate, who opposed the ballot measure. "I firmly believe that taxpayers paying for a stadium has no economic benefit whatsoever to the city or the region."

San Diego still owes $38 million in municipal bonds on the stadium, data provided by the city show. Debt service next year through 2027 will total about $4.7 million annually, which won't be covered by the team's $12.5 million payment to the city for breaking its lease. Still, it would be a "minimal" impact to the city's general fund, said Kristina Alagar Cordero, a Moody's analyst.

Investors in the city's debt don't appear to be put off by the loss of the football team. A San Diego 5.25 percent coupon 2040 revenue bond, callable in 2020, is trading at a 31 basis point spread to the BVAL AA Muni 5-Year Revenue Curve, compared to 28 basis points just before Election Day and 52 basis points on the day the Chargers made their departure official on Jan. 12.

Thanks to rebate agreements and legal settlements, San Diego actually ended up paying the Chargers to play for the past decade. "If anything, there will likely be a cost savings to the city by not having to provide public safety services" during games, said Craig Gustafson, a spokesman for Mayor Kevin Faulconer, in an e-mail.

The Chargers, who ended the season last in its division and with a home attendance that was second-worst in the league, will join the Rams in a new stadium in Inglewood, outside of Los Angeles, when it opens in 2019. Until then the team, renamed the Los Angeles Chargers, will play in a smaller complex in Carson.

Other leases, such as with San Diego State University, oblige the city to keep the stadium open through 2018. After then, it's up in the air. Since the facility is costing the general fund and also needs $90 million in upgrades, municipal officials are evaluating "the financial feasibility of continuing stadium operations beyond that point," Gustafson said.

The departure could yield a chance for long-term positive impact if the 166-acre site is redeveloped. "It does provide the city an opportunity," Cordero said.

Bloomberg Technology

by Romy Varghese

January 27, 2017, 2:00 AM PST

–With assistance from Eben Novy-Williams.

The Economy's Expanding. So Why Aren't Tax Revenues?

There are a couple of major reasons that the frustration is likely to continue for revenue estimators and policymakers.

It may still not feel like it to everyone, but we are at or near the top of the business cycle. By all definitions, we have been in expansion for nearly eight years, the third-longest period of expansion in modern American history. Gross Domestic Product growth is tracking at more than 2 percent, the unemployment rate is under 5 percent, and wage gains have finally begun to accelerate. But if you work for a state or a local government, you may not have noticed.

The same GDP reports that have shown such progress recently also show that states and local governments have subtracted from the pace of real economic growth in three of the past four quarters, and it doesn't take much detective work to find out why. That same year of strengthening growth coincides with five consecutive quarters of weak state tax-revenue growth, including an outright year-over-year decline in the second quarter of 2016. Combined, state tax revenues were unable to clear the pace of inflation in the past year, their worst performance since the Great Recession.

How can state taxes be in recession when the rest of the economy is in expansion? This has been the biggest puzzle for policymakers this year, and the leading cause of subnational budget weakness throughout the country. The growing disconnect is twofold and attributable to both structural and one-time factors.

The first source of frustration for revenue estimators and policymakers is temporary and has to do with prices. This is particularly relevant to sales taxes, which have been the largest underperformer for most states over the past year and a half. Price levels impact sales taxes because sales taxes are levied as a percentage of overall taxable value. Thus, even though consumers may have more money in their pockets and are buying a greater number of goods, the value of those goods may not be growing in line with expectations. In fact, the taxable value may be declining.

Typically, at this point in the business cycle, low unemployment and rising wages push prices — and therefore tax collections — higher. However, the extraordinary strength of the U.S. dollar and the energy bust are holding prices well below expansionary levels. Headline consumer prices are increasing in line with the business cycle at around 1.7 percent annually, but the components of the Consumer Price Index tell a more nuanced story. Looking solely at goods prices, which make up the lion's share of all taxable sales, we actually still see deflationary pressures weakening sales-tax collections.

Take homebuilding as an example. Housing construction is a major driver of sales taxes because of the large durable-goods purchases that go into building and furnishing a new home. Last year the number of housing starts increased significantly, which should have resulted in stronger sales-tax collections. However, the prices of most goods used in new-home construction declined significantly. Lumber prices, for example, were down by more than 10 percent at one point in 2016. So even though more housing units were being built, the sales-tax collections from each unit were much less than the year before.

With inflation expectations rising, this dynamic will only prove temporary. However, a second and more structural consideration will continue to give revenue estimators fits for some time to come.

Over time, state tax revenues have generally grown more disconnected from the underlying

economies upon which they're levied. A study we performed several years ago found that state tax revenues in the first decade of the 2000s had become three times more volatile than the underlying economy. This was orders of magnitude larger than anything states had experienced before, and it led to state tax revenues underperforming nominal GDP for the first time since records have been kept.

This dynamic has progressed in line with two growing influences on state taxation over the past few decades. First, states have become increasingly reliant on highly progressive personal income taxes. This isn't necessarily a bad thing — an efficient tax structure should have at least some progressivity — but a side effect is increased volatility. By making their tax structures more progressive, states are relying on a smaller set of higher-income taxpayers for a larger portion of their revenues. This set of taxpayers typically has some of the most volatile incomes. A taxpayer in the top 1 percent of the income distribution can make $10 million one year and very easily lose $10 million the next. It is no anomaly then that some of the states with the biggest income-tax surprises are also those with some of the most progressive tax codes.

Adding to this disconnect is the growing number of targeted tax incentives being put to use by state and local governments for economic development. This isn't necessarily a bad thing either, as these incentives can be effective at spurring local growth. But these rarely tracked incentives can also create a scenario in which the fastest-growing parts of an economy are growing tax-free. This distorts the relationship between broad-based economic statistics and tax revenues, making life very difficult on revenue estimators.

As a result, revenues become more unpredictable and policymakers have to become more cautious. Unfortunately, it looks like that dynamic is here to stay.

GOVERNING.COM

BY DAN WHITE | JANUARY 19, 2017

Neal: Tax Reform Should Preserve Tax Exemption, Reinstate BABs.

WASHINGTON – Tax reform legislation should preserve the tax exemption for municipal bonds and reinstate Build America Bonds for infrastructure financing, Rep. Richard Neal, the top Democrat on the House Ways and Means Committee, told reporters Thursday.

But tax reform may have to wait until Republicans complete their repeal and replacement of the Affordable Care Act as they have proposed, the Massachusetts Democrat said.

Speaking at a news conference at the National Press Club here, Neal said he is "skeptical" that Congress can simultaneously tackle two projects of the magnitude of tax reform and the ACA.

Republican leaders in Congress as well as President-elect Donald Trump and Vice President-elect Mike Pence have made repealing and replacing Obamacare the top priority at the start of the new administration.

Neal said he met with House Ways and Means Committee Chairman Rep. Kevin Brady, R-Texas, last week, who told him that the GOP blueprint for tax reform released last June would be rolled out as formal legislation this year. Neal said he could not provide a more specific timeframe, but added that Brady made it clear he wants to get through tax reform "vigorously."

He said he hopes the blueprint, which does not mention munis directly but proposes to generally repeal deductions, maintains the tax-exempt standing.

The former Springfield, Mass. mayor and longtime advocate of munis cited his municipal experience, calling himself a "pro-growth believer."

"My DNA is in the mayor's office and I know how we used tax-exempt bond financing," said Neal, who was named ranking minority member of the House Ways and Means Committee in December. "It worked quite well."

Although roads, bridges and other public use projects "beg" for a large infrastructure program, Neal said, infrastructure spending is not as easy to pass as it once was. That could mean reintroducing BABs, which were a "stunning success" when they were created and used in 2009 and 2010.

Neal introduced the Build America Bonds Act of 2015 two years ago, which would have permanently reinstated and expanded the BAB program.

About $181 billion of BABs were issued before the bonds expired at the end of 2010.

"I think investing in those sorts of initiatives can return us to a connection with … the middle class," he said.

Neal also opposes the Republicans' plan to concentrate tax cuts at the top, a move that could raise taxes on the middle class. Although tax policy is complicated and consequential, he said, he suggested bipartisan efforts should be made, similar to those of former Michigan Republican Rep. Dave Camp several years ago when he included Democratic suggestions in his tax reform proposal.

"There could be an appetite here for some common ground on tax reform," Neal said, adding that the current system is underproductive and inefficient. "It's stuck in the eighties. It's a rotary phone in a smartphone world."

However, he is critical of what he believes are GOP tax cuts that could increase the federal budget deficit.

"All of this is being done without deficits in mind," Neal said. "I want our Republican friends to hold their party and president-elect to the same standard they held Barack Obama. Do deficits only count when there is a Democrat in office?"

Meanwhile, Brady and Neal have announced the tax policy subcommittee members for the 115th Congress. The Republicans include: Reps. Peter Roskam from Illinois; Dave Reichert from Washington State; Pat Tiber from Ohio; Tom Reed from New York; Mike Kelly from Pennsylvania; Jim Renacci from Ohio; Kristi Noem from South Dakota; George Holding from North Carolina; and Kenny Marchant from Texas.

Democrats on the subcommittee include ranking member Lloyd Doggett from Texas, as well as: Reps. John Larson from Connecticut; Linda Sanchez from California; Mike Thompson from California; Suzan DelBene from Washington State; and Earl Blumenauer from Oregon.

The Bond Buyer

By Evan Fallor

January 12, 2017

A Tax Credit Turns 30.

The low-income housing tax credit (LIHTC) has helped house millions, and it remains a vital driver of development. The 30-year track record of the LIHTC offers compelling evidence that affordable housing is good business, a stable asset class, and a strong driver of economic activity and neighborhood improvement.

Among the myriad ways the U.S. Internal Revenue Code affects commercial real estate is through a federal tax incentive that has become the most important tool to develop and rehabilitate affordable housing: the LIHTC. Since 1986, it has attracted enough private equity to produce nearly 3 million apartments for working-class families, seniors, and formerly homeless individuals. When one looks back over a generation of housing tax credit activity, several themes of importance to the entire real estate industry emerge:

Affordable housing can be a smart real estate investment. A 2015 survey of the housing credit throughout its history by New York City–based professional services firm CohnReznick found that equity investors have realized 98 percent of their anticipated federal tax credits (dollar-for-dollar reductions in federal income taxes owed) through calendar year 2014. The report also noted that yields on housing credit fund investments have maintained a healthy premium over yields on ten-year Treasuries, "with an approximate 400-basis-point buffer since 2011."

Affordable housing can be a viable development opportunity. Contrary to popular perception, most LIHTC-supported and other affordable developments are delivered by for-profit firms. According to a 2016 paper from Harvard University's Joint Center for Housing Studies, for-profit companies among the largest 50 developers were responsible for 79 percent of all affordable housing starts between 2009 and 2014. Nonprofit developers also are important players in LIHTC-supported development. Various studies have shown that both for-profit and nonprofit sponsors execute LIHTC-supported developments of similarly high quality and financial performance.

Affordable housing is a significant driver of overall multifamily construction activity. The housing tax credit drives the creation of roughly 50,000 new units per year—a significant share of overall multifamily development activity even during the current boom in new apartment construction. The LIHTC also supports the rehabilitation of another 50,000 existing units. The Washington, D.C.–based National Association of Home Builders estimates that the LIHTC annually generates 95,700 jobs; $3.5 billion in federal, state, and local tax revenue; and $9.1 billion in wage and business income.

Affordable housing development can strengthen struggling areas. Housing credit properties are found in many types of neighborhoods and usually—if not always—provide higher-quality housing than their residents could otherwise afford or access. A working paper from the National Bureau of Economic Research found that LIHTC-supported development delivers significant impact at the community level as well: each LIHTC-supported development in a low-income area generates aggregate benefit in the neighborhood of $116 million, increasing surrounding home prices by 6.5 percent (which boosts the local tax base) and lowering crime rates.

Housing credit development and management face challenges, however. Industry participants agree that total development costs for LIHTC-supported properties in some markets are high in relation to existing affordable units, and even some market-rate homes, for reasons that include higher construction quality and excessive state and local regulatory requirements.

The CohnReznick report found that 17 percent of LIHTC-supported properties operated below breakeven (a debt-coverage ratio less than one), but noted that this percentage is way down from ten years prior and that "the great majority of properties that did not achieve breakeven operations in 2014 failed to do so by relatively modest amounts." Analysis by certified public accountants Novogradac & Company, based in Bethesda, Maryland, has shown that net operating income as a percentage of total rental income had declined annually from 2010 through 2013 for LIHTC-supported units, with a small upward rebound in 2014, which slightly reversed a negative trend.

The biggest challenge facing the housing tax credit, though, is the overwhelming demand for the housing it enables developers to produce, which vastly exceeds the amount of tax credit authority available to states every year. In a broader housing market where supply is probably 3 million units short of demand, according to industry estimates, low-income renters—including millions filling critical jobs in the workforce such as teachers, nurses, firefighters, and police officers—are paying half or more of their income for housing, living in substandard units, and sacrificing on other basic needs to pay their rent.

An expanded LIHTC would help ease that crunch. Senators Maria Cantwell (D-Washington) and Orrin Hatch (R-Utah) have introduced a bill to increase credit authority by 50 percent. The proposed legislation would help create or preserve approximately 1.3 million affordable homes over a ten-year period—an increase of 400,000 more units than is possible with current authority. Efforts expected by Congress next year to reform the tax code could create an opportunity to enact the proposal. Tax reform could also endanger the credit or weaken its effectiveness, according to industry experts.

The 30-year track record of the LIHTC offers compelling evidence that affordable housing is good business, a stable asset class, and a strong driver of economic activity and neighborhood improvement. Regrettably, it is also a basic foundation for family success that a growing number of Americans cannot access.

Urban Land Institute

By Stockton Williams

December 13, 2016

Stockton Williams *is the executive director of the ULI Terwilliger Center for Housing.*

IRS Releases Interesting Private Letter Ruling on Build America Bonds.

On January 13, 2017, the Internal Revenue Service released Private Letter Ruling 201702009. The IRS held in this private letter ruling that the existence of unspent "available project proceeds" would not cause an issue of Build America Bonds ("BABs") to lose their status retroactively when they are redeemed with the proceeds of tax-exempt bonds.[1] The IRS further held that the issuer of the BABs would not lose any subsidy paid to it in respect of the BABs for the period that ends on the BABs' redemption date. This private letter ruling is most interesting for an opinion that the IRS expressly said that it was not giving but that is unavoidably implicit in the holding of the private letter ruling.

Continue Reading

By Michael Cullers on January 18, 2017

Squire Patton Boggs

Breaking News: Rev. Proc. 2017-13 Released

The IRS has released Rev. Proc. 2017-13, which provides updated safe harbors from private business use for management contracts. Click here for a copy; we will have more on this soon.

By Alexios Hadji on January 17, 2017

Squire Patton Boggs

US Mayors Raise Concerns Over Threats to Municipal Bonds.

US mayors have reiterated the importance of federal infrastructure investment and their concerns over the threat of municipal bonds losing their tax-exempt status, as Donald Trump takes office.

Three hundred mayors gathered in Washington DC at the US Conference of Mayors Winter Meeting with some using the platform to express their fears that the new administration will remove the exemption on one of the most important tools for funding infrastructure.

“We are fighting to protect [the tax exemption] so that we can build schools, roads, hospitals and protect jobs without costing middle-class taxpayers billions of dollars that they cannot afford,” said Steve Benjamin, Mayor of Columbia, and Second Vice President of the US Conference of Mayors.

Other concerns discussed over the three days of the conference included immigration reform, policing, and the repeal of the Affordable Healthcare Act, otherwise known as Obamacare.

Mitch Landrieu, Mayor of New Orleans and Vice President of the US Conference of Mayors, spoke out against any new plans for immigration reform that would force cities to become a “deportation force for federal government”.

“Everyone is welcome in our cities–they are not the dark foreboding places that people have talked about,” said Landrieu. “The President-elect paints with too broad a brush.”

Playing on Trump’s campaign slogan, Landrieu added: “Investment needs to take place in policing for safety and infrastructure for jobs. We need to make America safe again.”

But while the mayors are keen to air their views on what works best for US cities, they are looking to establish consensus with the new administration. Last month, Mick Cornett, Mayor of Oklahoma City and President of the US Conference of Mayors, took comfort in the fact that President-elect Trump expressed his support for continuing the tax-exempt status of municipal bonds when they met in Trump Tower.

Mike Pence, the Vice President-elect of the US joined a lunch meeting this week, the first time a Vice President-elect has attended a US Conference of Mayors meeting before being sworn in.

Although short on detail, Pence emphasised the importance of infrastructure, public safety and education.

“This administration is going to be a friend to America’s mayors,” he added saying that he and “Donald Trump are going to work in partnership with city halls all across America”.

Earlier Cornett had added that relations with the incoming Trump administration were “so far so good” and paid tribute to treatment received from the outgoing Obama administration over the past eight years.

“Although many of us mayors may differ on some of the policies of the administration we had good access to the executive branch and we were treated well and respected.”

CitiesToday

by Jonathan Andrews

17th January 2017

Pirates in the Desert: Oakland Raiders Charging Toward Biggest Taxpayer Subsidy in NFL History.

If the relocation is approved, a Las Vegas hotel tax hike would fund nearly 40 percent of the Raiders’ new stadium

The Oakland Raiders moved one step closer this week to leaving the San Francisco Bay Area for Las Vegas. If the relocation deal is approved, a hotel-room tax increase at the nation’s gambling hub would help pay for a shiny new $1.9 billion stadium.

The team filed its paperwork to win approval for the move from the National Football League, the NFL announced Thursday.

“The application will be reviewed in the coming weeks by league staff and the stadium and financing committees,” the league said in a statement. The deal also requires the support from at least 24 of the 32 NFL team owners in a vote that would take place during a meeting in Phoenix on March 26-29.

If the relocation is approved (and Bay Area investors fail to entice the team to stay), then the new home of the Las Vegas Raiders would become the largest taxpayer-subsidized stadium deal in NFL history, blowing past the $600 million in public money used to build the Atlanta Falcons’ $1.5 billion Mercedes-Benz Stadium and the nearly $500 million the public is picking up for the U.S. Bank Stadium in Minneapolis, the future $1.06 billion home of the Minnesota Vikings.

State officials have said the team would bring more tourists to Las Vegas, but critics question whether the benefits outweigh the costs.

“The big carrot being held out to Vegas residents is that it will bring in new tourism that will help pay for the hotel-tax increase,” Neil deMause, co-author of the book “Field of Schemes,” told Salon in an email. “The notion that there are currently tourists who aren’t going to Vegas but will start to do so once there are Raiders games to be seen is, let’s say, unproven at best — it’s far more likely that existing visitors will just reschedule their planned trips around what NFL games they want to see, but the NFL boosters don’t want to hear that.”

With the help of Goldman Sachs, the NFL and Raiders owner Mark Davis would arrange $500 million in financing to fund the new Vegas stadium. Another $650 million would come from billionaire casino magnate and major Republican Party donor Sheldon Adelson, one of the richest men in America. The rest, $750 million, would come from a lodging tax paid primarily by tourists that was approved by state lawmakers in October. The subsidy deal explicitly excludes the public from sharing in the future profits from the stadium and would lock in the hotel tax even if the project comes in under budget, according to the San Francisco Chronicle.

Local officials and team backers often argue that deals like this ultimately benefit the public by creating jobs and generating peripheral economic activity and tax revenue. Yet the immense wealth of team owners and stakeholders has critics questioning why public funds are needed when the primary individual beneficiaries are private citizens with enough financial clout to fund and build these projects on their own. Adelson's net worth is estimated to be about $31 billion, according to Forbes, and Davis, who inherited the Raiders from his father, is worth an estimated $500 million.

The biggest issue for critics like DeMause is the sheer amount of public money going to stadium projects. Pitching in a few tens of millions of dollars on a big project that would benefit private investors might be justifiable if there's a proven net increase in jobs and tax revenue to help fund truly public projects like road maintenance and schools.

But evidence is scant about the long-term benefits (not just temporary spikes in construction jobs and other project-related economic activity) and the so-called multiplier effect, the claim that publicly-subsidized megaprojects increase incomes and therefore create more spending and economic activity. A study by economists Roger Noll and Andrew Zimbalist in the late '90s concluded that backers of these types of deals often radically overstate the long-term benefits.

"A new sports facility has an extremely small (perhaps even negative) effect on overall economic activity and employment," the authors wrote. "No recent facility appears to have earned anything approaching a reasonable return on investment."

Bay Area proponents of keeping the Raiders in Oakland are offering a new $1.25 billion stadium, but so far that proposal would be privately funded, and smaller. If business executives like Adelson believe in the magic of capitalism, perhaps they should play ball on a level playing field by declining handouts to subsidize their investments.

SALON.COM

ANGELO YOUNG

SUNDAY, JAN 22, 2017 06:00 AM PST

TAX - OREGON

Village at Main Street Phase II, LLC v. Department of Revenue

Supreme Court of Oregon, En Banc. - December 30, 2016 - P.3d - 360 Or. 738 - 2016 WL 7488855

Taxpayers challenged county assessor's real market value of improvements on their real property.

Assessor sought preliminary ruling that it had statutory right to pursue counterclaims alleged in its proposed amended answers challenging value of taxpayers' land.

The Tax Court granted preliminary ruling in favor of taxpayers. Department of Revenue and assessor appealed. The Supreme Court reversed and remanded. After taxpayers served notices of voluntary dismissal before assessor could file amended answers, the Tax Court entered judgment of dismissal, over assessor's objection, and denied subsequent motions for relief from judgment filed by Department and assessor. Department and assessor appealed.

The Supreme Court of Oregon held that as matter of apparent first impression, Supreme Court's remand following its determination that assessor had statutory right to pursue counterclaims required Tax Court to allow pending amended answers to be entered before turning to taxpayers' subsequently filed notices of dismissal.

Supreme Court's remand, which followed its determination that county assessor had statutory right to pursue counterclaims alleged in its proposed amended answers challenging value of taxpayers' land, required Tax Court to allow pending amended answers to be entered before turning to taxpayers' subsequently filed notices of dismissal of property tax appeals challenging assessor's value of improvements on their land. Although remand made no statement about Tax Court's dismissal rule, Tax Court's dismissal failed to implement Supreme Court's decision, which reversed Tax Court's only basis for denying entry of amended answers, and action was remanded for "further proceedings," which included implied directive to enter assessor's answers

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TAX SALES - UTAH

Jordan v. Jensen

Supreme Court of Utah - January 10, 2017 - P.3d - 2017 WL 104642 - 2017 UT 1

Purported owners of severed mineral interest brought quiet title action against successors to purchaser of real property at tax sale, and successors counterclaimed to quiet title and brought third-party complaint against lessor.

The Eighth District Court granted summary judgment to owners and lessor. Successors appealed.

The Supreme Court of Utah held that four-year statute of limitations could not be applied after tax sale was conducted in violation of owners' due process rights, overruling *Hansen v. Morris*, 3 Utah 2d 310, 283 P.2d 884.

Four-year statute of limitations applicable to challenges to tax titles could not be applied to bar quiet title action brought by mineral interest owners after tax sale was conducted in violation of owners' due process rights, despite contention that constructive notice of tax sale was sufficient to trigger statute of limitations without violating due process. Statute was not self-executing time bar, but was limitations period that was triggered by county's adversarial action and sale of property at tax sale, and names and addresses of owners were reasonably ascertainable, rendering constructive notice insufficient; overruling *Hansen v. Morris*, 3 Utah 2d 310, 283 P.2d 884.

GOP Expected to Take Aim at Local Tax Deductions.

State and local governments are fighting to avoid becoming big losers in tax reform — and they hope President-elect Donald Trump will be an ally.

Trump and congressional Republicans are aiming to pass tax-reform legislation this year that lowers rates and curbs and eliminates tax breaks.

In the process, two key preferences important to state and local governments, the deduction for state and local taxes and the tax exemption for municipal bonds, may be on the chopping block.

The two preferences are among the most expensive provisions in the tax code. They are also viewed as disproportionately benefiting upper-income people.

Of the two, the state and local tax deduction, which tends to benefit areas that lean Democratic, looks to be more endangered.

A 2015 paper from the Tax Foundation found that the 10 counties that benefit the most from the deduction are located in New York, New Jersey, California and Connecticut.

House Republicans are currently drafting a bill based on a tax-reform blueprint they released in June. That plan would eliminate the state and local tax deduction, since it does away with all itemized deductions except those for mortgage interest and charitable giving.

House Ways and Means Committee Chairman Kevin Brady (R-Texas) said at a Heritage Foundation event in December that he thinks there's "merit" to eliminating the deduction while also lowering rates.

"The added benefit here is that the federal tax code will no longer subsidize higher taxes at the local level," he said. Brady acknowledged that eliminating the deduction would be a big change and asked the public to look at his plan and provide feedback.

The tax plan Trump released in September did not specifically mention the deduction but would cap itemized deductions at $100,000 for individuals and $200,000 for married couples.

Groups representing state and local governments are concerned about the elimination of the deduction because it could reduce the government's flexibility to make tax changes.

"We're big proponents of federalism and we feel this strikes at the heart of it," said Brett Bolton, principal associate for federal advocacy at National League of Cities.

Emily Brock, director of the Government Finance Officers Association's federal liaison center, said her group is asking Congress "to honor the commitment they've made which is the partnership between the federal government and state and local governments."

Max Behlke, director of budget and tax policy at the National Conference of State Legislatures, said states with high income taxes are "very wary" about the deduction being eliminated. If the deduction is eliminated, the states could face pressure to lower their taxes.

It's "definitely possible" that Trump could be sympathetic to keeping the deduction because he's from a state with a high income tax. However, Trump may defer to Congress on taxes, Behlke said.

The municipal bond tax exemption is more likely to be preserved than the state and local tax deduction, and its preservation is the top tax reform priority for state and local governments.

The exemption allows state and local governments to have lower borrowing costs when they issue debt to finance infrastructure projects.

The House Republicans' tax-reform blueprint and Trump's tax plan are both silent on the municipal bond tax exemption, though the blueprint discusses eliminating tax breaks that benefit special interests.

But during a meeting at Trump Tower last month, Trump told a group of mayors that he supports the tax exemption.

While state and local governments are encouraged by Trump's comments, they are still concerned that changes to the tax exemption will be made. Many of the details about what will be included in tax-reform legislation is unknown, and many of the policy positions of the incoming administration are not firm.

"It's positive, but again, tax reform still has to go through Congress," said David Parkhurst, general counsel of the National Governors Association.

Groups held a briefing for Capitol Hill staff on the municipal bond exemption in late November, and they are meeting with lawmakers on the Hill to educate them about the importance of the exemption.

On Tuesday, groups in a public-finance network sent lawmakers a letter in support of tax-exempt bonds.

"They are the best way to implement the infrastructure needs of each community effectively, as the decision to issue bonds for various projects is determined and approved by either the citizens themselves through bond referenda or their elected legislative bodies," the groups said.

The exemption does have support on Capitol Hill, including from some Republicans. Last year, Reps. Randy Hultgren (R-Ill.) and Dutch Ruppersberger (D-Md.) launched a municipal finance caucus.

"Tax reform is complex and wrought with many pressures," Hultgren said in a statement. "I hope to see this key financial tool, which has worked for more than a century, maintained in a much-needed comprehensive tax reform package."

THE HILL

BY NAOMI JAGODA – 01/10/17

The Case Against Tax Money for Stadiums, Movies.

The Tampa Bay Rowdies owner has pledged to privately finance an $80 million renovation of Al Lang Stadium, envisioned above. If the Rowdies and other teams like the Orlando soccer team can pay for stadium renovations, why can't NFL teams?

Florida's state legislators from both political parties have resisted corporate welfare schemes in recent years, and taxpayers should celebrate.

Corporate welfare gives a select few industries special handouts at the expense of everyone else. Supporters of corporate welfare claim that such programs create jobs, but the facts demonstrate that's rarely the case. Even when jobs are created, each job comes at a tremendous cost to Floridians.

Take Enterprise Florida, for example, a public-private partnership that promised to create 200,000 jobs by 2005. After $1.7 billion in incentives, it had reached only slightly more than half of its goal as of 2013. And while the program was intended to be funded equally between public and private funds, an estimated 90 percent of its funding came from the taxpayers.

Some claim that while Enterprise Florida was a failure, other programs are still worth the taxpayer's dime. In fact, the Tampa Bay Times editorial board cited sports and tax film credits as worthy programs to keep intact, albeit with appropriate reforms.

But the facts tell another story.

When it comes to sports stadiums financed through Florida's Professional Sports Facilities Incentive Program, according to the state's own economists, for every dollar invested in sports renovation projects, the state sees only 30 cents returned in economic activity — a far cry from a sound investment.

What's more, plenty of sports owners can afford to renovate without a special taxpayer-funded deal.

Case in point: The Orlando City Soccer Club is building its own stadium. And while the Orlando team originally asked for $30 million from the state, it announced it would self-fund the stadium after citizens and lawmakers opposed state funding.

In St. Petersburg, Tampa Bay Rowdies owner Bill Edwards has pledged to privately finance an $80 million renovation of Al Lang Stadium in order to bring a Major League Soccer team to the region.

If these sports teams can renovate on their own, why do other teams such as the NFL's Tampa Bay Buccaneers, Miami Dolphins or Jacksonville Jaguars deserve taxpayer money?

As for film production handouts, they too have a storied past. The state's economists find that the film subsidy program only produces up to 43 cents for every dollar invested.

The program hurts taxpayers, while often going to projects that don't produce any long-term jobs in the Sunshine State. Of course, the film industry lobbying for the special favor alleges the program produces more revenue, but the estimates don't pass muster in comparison to the state estimates.

What's more, state after state that has gone down the road of film tax credits has paid the price of doing so. The University of Southern California conducted a national study on state programs, finding that since 1999 tax credits have created close to zero jobs, even in states like California and New York. Taxpayers, on the other hand, are still on the hook for over $10 billion to Hollywood producers and movie stars.

Floridians have enough legitimate demands on their tax dollars, such as education and transportation expenses. It's not our responsibility to ensure that Ben Affleck's new movie is profitable or that sports executives have enough extra cushion to ensure fans will flock to their fields.

For the past several years, lawmakers have rightly rejected some of these efforts to boost special interests — now is not the time to reserve course. Instead, lawmakers should keep fighting against all forms of corporate welfare so that everyone has a chance to succeed.

Tampa Bay Times

By Chris Hudson

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Chris Hudson is the Florida state director of Americans for Prosperity, a conservative political advocacy group.

Munis Are Critical for Infrastructure, Groups Tell Lawmakers.

WASHINGTON – State and local groups told members of Congress that tax-exempt bonds are the cornerstone of infrastructure financing, as the lawmakers consider how to increase spending on roads and bridges as well as tax reforms that could entail restrictions on tax exemption.

Tax-exempt bonds are used by more than 50,000 state and local governments, and nearly 75% of infrastructure funding comes from munis, the 29 groups said in a joint letter to House and Senate members.

"We welcome the chance to work with you to develop new tools as a complement to tax-exempt municipal bonds," the groups wrote. "We would note that even new ideas – including variations of public-private partnership models – will likely rely on municipal bonds."

The two-page letter was signed by representatives of the Government Finance Officers Association, the National Governors Association, the U.S. Conference of Mayors (USCM), the National Association of State Treasurers, and the National Association of Counties (NACo) and other groups.

The organizations comprise the Public Finance Network, a coalition of state, local and utility issuers and stakeholders. While the GOP blueprint for tax reform released last year does not mention the muni exemption directly, its intention of repealing unnamed deductions have made state and local groups uneasy of a cap or repeal.

House Ways and Means Committee Republicans said Tuesday that they are "moving forward aggressively" to turn the blueprint into formal legislation that would eliminate special interest provisions they said keep rates high and "increase confusion."

Michael Belarmino, NACo's associate legislative director and associate general counsel, said the letter is meant to be a "refresher" for lawmakers as the 115th Congress kicks off.

"I'm hoping that this message continues to resonate with them," Belarmino said. "It seems pretty clear that there are many things on their agenda at this point and where tax reform is going to fall is anybody's guess."

The coalition stressed that issuers save on average roughly two percentage points on borrowing costs to finance infrastructure investments through munis, which they said equates to "substantial" savings for taxpayers.

Munis have financed more than $2 trillion in new infrastructure over the past decade, and are on track to finance another $2 trillion over the next ten years, the coalition wrote.

"As the new administration and Congress seek ways to increase infrastructure investments, we would note an incredibly powerful tool already in hand – tax-exempt municipal bonds," it wrote.

The groups argued that munis are the most effective method to finance community infrastructure, as

bond issuances are determined and approved through citizen referenda or by elected legislative bodies.

Several state and local groups have told The Bond Buyer that they set their sights on Congress after President-elect Donald Trump told the USCM in December that he supports maintaining the muni exemption.

The Public Finance Network also cited as good resources on munis Reps. Randy Hultgren, RIll., and Dutch Ruppersberger, DMd., two major allies of the muni exemption who chair the bipartisan Municipal Finance Caucus in Congress.

The Bond Buyer

By Evan Fallor

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