Hospital Property Tax Exemption Under Attack In Illinois.

On Jan. 5, 2016, the Illinois Fourth District Appellate Court ruled in the Carle Foundation Hospital case that an Illinois state law providing for property tax exemptions for certain not-for-profit hospitals is unconstitutional. Since that time, there have been several developments including the following:

- The Carle Foundation announced that it plans to appeal the ruling to the Illinois Supreme Court.
- The Champaign County Board of Review voted to place Carle Foundation and Presence Covenant Medical Center in Urbana back on its tax rolls.
- The Illinois Department of Revenue said it will await the Supreme Court's decision before issuing any new property tax exemptions.
- The Fourth District Appellate Court denied requests to delay enforcement of the decision pending further review by the Illinois Supreme Court.

If the ruling stands, not-for-profit hospitals in Illinois could be in danger of losing their property tax exemptions.

Case details

The case involved an action brought by Carle Foundation against the City of Urbana and other taxing authorities in which the hospital sought to recover real estate taxes which it paid under legal protest during the period from 2004 to 2011.

The case centered on a statute which uses a monetary test to determine which hospitals are eligible for a property tax exemption. 35 ILCS 200/15-86. Under this law, hospitals are eligible for a property tax exemption if the hospital's total dollar amount of charity care and other services equals or exceeds the hospital's estimated property tax liability for the year.

The legislative authority for the statute is from article IX, section 6 of the Illinois Constitution of 1970 which provides: "The General Assembly by law may exempt from taxation…property used exclusively for…charitable purposes."

The court held that the statute exceeds the terms and conditions of article IX, section 6 because it does not require the subject property to be "used exclusively … for charitable purposes" and instead "grants an exemption on the basis of an unconstitutional criterion, i.e., providing services or subsidies equal in value to the estimated property tax liability." Read the opinion.

Trends in nonprofit hospital tax exemptions

This ruling appears to be consistent with a growing trend in states' questioning property tax exemptions for nonprofit hospitals. As cities and counties continue to lose tax revenue because of property tax exemptions, nonprofit hospitals are becoming potential targets to increase revenue. For example, in November of 2015, Morristown Medical Center in New Jersey agreed to pay $26 million to the town of Morristown to settle a dispute involving the hospital's property tax exemption. Also, state leaders in Connecticut and Maine and the mayor of Pittsburg have recently raised the issue.

Last Updated: March 14 2016

Article by Nicole K. Jobe

Thompson Coburn 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.

State, Local Taxes On Tribal Leases Vulnerable After California Court Order.

HIGHLIGHTS:

- A California district court recently issued an order that signals it is likely to invalidate Riverside County's imposition of a possessory interest tax on lessees of trust lands within the reservation of the Agua Caliente Band of Cahuilla Indians.
- The court analyzed several previous cases, the Bureau of Indian Affairs (BIA) leasing regulations and the Bracker balancing test, which is designed to determine whether the exercise of state authority violates federal law.
- As a result of the changing landscape, tribes are now in a position to argue that many lease-related state and local taxes are preempted by federal law even if those taxes have been upheld by courts in the past.Continue reading.

Last Updated: March 13 2016

Article by Steven D. Gordon and Kenneth Parsons

Holland & Knight

Bond Lawyers Blast Proposed Political Subdivision Rules.

WASHINGTON – Bond lawyers on Thursday criticized the political subdivision rules recently proposed by the Treasury Department and Internal Revenue Service, claiming they would trample states' rights, alter the landscape for public financing, and jeopardize the tax-exempt status of millions of dollars of municipal bonds.

The lawyers pummeled Treasury and IRS officials with questions and concerns about the rules at the National Association of Bond Lawyers' 14th Tax and Securities Law Institute here.

The federal officials thought they might have minimized controversy by releasing a prospective effective date for the rules the night before the meeting. The initial rules faced a firestorm of criticism for proposing a technically complicated effective date that would have been prospective under certain tax-exempt bond provisions of the tax code, but not others.

But NABL members were still upset by the substance of the proposed rules. Richard Chirls, a lawyer with Orrick, Herrington & Sutcliffe who sat in the audience during a panel discussion, accused Treasury and the IRS of “stepping on the toes of state and local governments” and said, “I think it’s quite offensive.”

Chirls noted that states, for many years, have set up political subdivisions within their jurisdictions under state laws that specify that an entity is a political subdivision if it has been delegated a substantial amount of at least one of three sovereign powers: eminent domain, taxation and policing.

These proposed rules, however, would add two new requirements — that political subdivisions serve a governmental purpose and be governmentally controlled.

Under the proposed rules, the determination of whether an entity serves a governmental purpose would be based, in part, on whether the entity carries out the public purposes set forth in its enabling legislation and whether it operates in a manner that provides a significant public benefit “with no more than an incidental private benefit.”

To be governmentally controlled, a political subdivision would have to be controlled by a state or local governmental unit or an electorate. The proposed rules set forth what Chirls later called “arbitrary new standards for voting” to ensure the political subdivision is not controlled by private parties.

Mike Larsen, a lawyer from Parker Poe Adams & Bernstein, said he did not see any demonstrated need for new rules and asked a Treasury official on the panel why they were proposed.

John Cross, Treasury’s associate tax legislative counsel, told NABL members that IRS audits had exposed a vulnerability of political subdivisions to be controlled by private entities and that this had “raised concerns at the highest levels of government.”

“We tried to be targeted with the way we addressed that” with the proposed rules Cross said, adding, “We don’t think there’s a big problem here.”

But Chirls insisted that the proposed rules’ attempt to expand on what states are allowed and not allowed to do “is offensive.”

Cross reminded the lawyers that that the tax exemption of munis “is a federal subsidy” and said the federal government plays a role in determining how that subsidy is used.

Many of the lawyers in the room were concerned that the rules would jeopardize political subdivisions that were initially temporarily controlled by developers who sold bonds to build infrastructure for retirement communities or water or irrigation districts before residents moved in or farmers could get water and play a part in governing the districts.

Cross said federal officials are aware that many political subdivisions are initially controlled by developers and that there’s plenty of opportunity to provide public comments to the Treasury and IRS on how they should deal with this issue.

Richard Moore, a lawyer with Orrick who was on the panel, worried that the proposed requirement for a political subdivision to operate in a manner that provides a significant public benefit “with no more than an incidental private benefit” would set up another “private use test” and would allow IRS auditors to audit anything they don’t like about a political subdivision. Many of the lawyers also complained the proposed requirement was too broad.

Spence Hanemann, an attorney in the IRS’ Office of Chief Counsel, said bond lawyers must tell the

IRS how it can limit the “no more than an incidental private benefit” requirement to make it more reasonable. The best way to make the requirement more reasonable would be to get rid of it, said Mitch Rapaport, a lawyer at Nixon Peabody.

Hobby Presley, a lawyer with Balch & Bingham, said the rule will have unintended consequences for many public universities that are set up under state constitutions and have procedures for electing trustees. Those procedures might not comply with the proposed rules’ voting standards to demonstrate governmental control, he said.

Another lawyer in the audience said Pennsylvania has created a number of political subdivisions that have board members who are not elected on an ongoing basis and worried about how they would fare under the proposed rules.

Perry Israel, a lawyer in Sacramento who represents the Village Center Community Development District in Florida that is the subject of an IRS audit that led to the proposed rules, said he is grateful that rules were proposed that are subject to public comment and will be prospectively effective.

NABL members joked that Israel should win an award for sucking up to the Treasury and IRS and that his audit should be closed.

Treasury and IRS lawyers decided to write rules on political subdivisions after the IRS’ Chief Counsel’s Office issued a very controversial technical advice memorandum in 2013 concluding that the Village Center CDD was not a political subdivision, and therefore could not have issued millions of dollars of tax-exempt bonds as it did from 1993 to 2004, because its board was and will always be controlled by the developer rather than publicly elected officials. The audit had been ongoing for years and has still not been resolved, although the bonds have been redeemed.

Lawyers argued that the TAM’s assertion that control by elected officials is necessary for an entity to be a political subdivision was a new requirement and that such changes should be made through regulatory proposals that can be commented upon rather than through a TAM in an enforcement proceeding.

Meanwhile, the English comedian and television host of “Last Week Tonight,” John Oliver, recently aired a segment on “special districts” that compared them to “cults” and said they can take your money without your even being aware you are in them. He said they are being replicated all over the country with little or no standards or regulatory oversight.

The Bond Buyer

By Lynn Hume and Evan Fallor

March 10, 2016

To TIF or Not to TIF: Podcast

Billionaire Under Armour CEO Kevin Plank is asking Baltimore City for $535 million to help fund redevelopment in Port Covington. The city would borrow against future property tax revenue to pay for streets, utilities, and other infrastructure related to the project. If approved, it would be the largest tax increment financing, or TIF, deal in city history. TIF is a common development tool across the country; the city of Baltimore has OK'd eleven deals since 2003. But tax increment financing is controversial. Supporters say it attracts private investment to blighted areas. Critics say it enriches developers at public expense.

Listen.

Our guests: Greg LeRoy, Executive Director of Good Jobs First, and Toby Rittner, President and CEO of the Council of Development Finance Agencies.

WYPR.ORG

By SHEILAH KAST & ANDREA APPLETON • MAR 15, 2016

TAX - VERMONT

Burgess v. Lamoille Housing Partnership

Supreme Court of Vermont - March 11, 2016 - A.3d - 2016 WL 932908 - 2016 VT 31

Taxpayers' son who had redeemed property brought action against town, town clerk, town's attorney, and landowner to obtain declaratory and injunctive relief in form of tax collector's deed or to recover damages for negligent misrepresentation by attorney. The Superior Court denied request for injunctive or declaratory relief and dismissed landowner. The Superior Court then entered summary judgment in favor of town, clerk, and attorney. Son appealed.

The Supreme Court of Vermont held that:

- The redemption did not unjustly enrich landowner;
- Town and town clerk lacked authority to transfer property to son;
- Son did not justifiably rely on attorney's alleged that son had right to tax collector's deed.

Nonprofit corporation that owned land and leased it to homeowners was not unjustly enriched when homeowners' son redeemed the property after tax sale and restored its interest, even though son paid redemption price in response to alleged statement by town attorney promising tax collector's deed.

Town and town clerk lacked authority to transfer property to taxpayers' son who had redeemed it, and, thus, son was not entitled to tax collector's deed, even if town attorney promised to deliver a deed. Redemption merely extinguished tax sale purchaser's contingent interest and returned the property to original owners free and clear of purchaser's claim.

U.S. Not-For-Profit Acute Health Care Ends 2015 With Positive Ratings Trends Due To Revised Stand-Alone Hospital Criteria And Credit Quality.

Upgrades dramatically exceeded downgrades in 2015 for the acute care sector including stand-alone hospitals and health systems. This is the first time upgrades have exceeded downgrades since 2012 and largely reflects rating actions associated with the revised stand-alone criteria implemented in late 2014 (see chart 1). Rating changes for stand-alone hospitals due solely to credit quality were roughly equally distributed between upgrades and downgrades which alone represents improvement over prior years. Despite the high number of rating changes in 2015, the ratings distribution remains largely unchanged because a majority of the changes were just one notch and within the same rating category. Also contributing to the above-average number of rating changes were credit shifts into and out of the stand-alone classification due to publication of our revised system definition. Health systems in general continue to have higher ratings due to geographic and financial dispersion, as well as size and scale benefits associated with system membership.

Although we expect fewer rating changes in 2016 as the criteria implementation period is now over, the 2015 rating actions that were driven by credit quality and not the criteria revision, support our view of a more stable sector (see “U.S. Not-For-Profit Health Care Sector Outlook Revised To Stable From Negative, Though Uncertainties Persist” published Sept. 9, 2015, and “U.S. Not-for-Profit Health Care Outlook Remains Stable In 2016 On Sector Recovery” published Feb. 25, 2016). Benefits from Medicaid expansion, mergers and acquisitions, and our criteria on group rating methodology also continue to improve the sector’s credit profile, although we believe positive rating actions associated with these factors have started to wane. Weak year-to-date investment markets and the potential for rising interest rates could also be tempering factors in 2016. The presidential race could also slow progress toward greater adoption of Medicaid expansion in 2016, which has proven to have a positive credit impact over the past 18 months. Although there was increased rating action in 2015 due to the stand-alone criteria revision, a vast majority of our ratings were still affirmed, which is consistent with historical trends (see chart 2).

Continue reading.

17-Mar-2016

TAX - CALIFORNIA

City of Bellflower v. Cohen

Court of Appeal, Third District, California - March 3, 2016 - Cal.Rptr.3d - 2016 WL 858801

Cities brought two actions against State Director of Finance, State Board of Equalization, the State Controller, and various local government entities to challenge the validity of statutes authorizing withholding of tax revenues from cities that failed to turn over dissolved redevelopment agencies’ funds to county auditor-controllers.

The Superior Court found no violation of the state constitution in the withholding of property, sales, or use tax revenues. Cities appealed. The Superior Court found that the withholding of sales and use tax revenues from sponsoring agencies violated the state constitution. Director of Finance, Board of Equalization, Controller, and local government entities appealed.

The Court of Appeal held that the statute authorizing withholding of tax revenues for a successor agency’s failure to turn over a dissolved redevelopment agency’s funds violates the constitutional provision prohibiting reallocation of local government tax revenues.

IRS Makes Political Subdivision Rules Prospectively Effective.

WASHINGTON – The Internal Revenue Service issued a “correction” on Wednesday that makes its proposed definition of political subdivision truly prospectively effective.

The six-page “correction,” which will be published in the Federal Register on March 14, is expected to lessen the ire of bond lawyers meeting here on Thursday who were prepared to blast Treasury Department and IRS officials for the initial proposed effective date, which had not been prospectively effective despite assurances it would be.

“This is a clean, clear prospective effective date for bonds that are either existing or issued within 90 days after the final issue political subdivision rules are published in the Federal Register with regard to all tax-exempt bond provisions of the federal tax code,” said John Cross, the Treasury Department’s associate tax legislative counsel.

The same effective date applies to refundings of those bonds, as long as the refundings don’t extend the maturities of the underlying bonds, he said.

Treasury and IRS officials had faced a firestorm of criticism from bond lawyers over the technically complicated first proposed effective date that would have been prospectively effective under certain tax-exempt bond provisions of the tax code, but not others. As a result, the prospective effective date would not have been prospective at all.

The correction means that the old political subdivision definition will apply to all existing bonds or those bonds issued within 90 after the final political subdivision rules are published, as well as to refundings of those bonds that don’t extend maturities of the underlying bonds. Under the old definition, an entity is a political subdivision that can issue tax-exempt bonds if it has a delegated right to exercise a substantial amount of at least one of three recognized sovereign powers of a state or local governmental unit: eminent domain, taxation or police.

For existing political subdivisions that want to issue new tax-exempt after 90 days after the final rules are published, the old definition applies temporarily, but issuers have three years to reorganize to comply with the proposed new definition of political subdivision. New issuers that want to issue tax-exempt bonds must also meet the proposed new definition of a political subdivision.

Under the new definition, an entity is a political subdivision that can issue tax-exempt bonds if it meets a three-prong test. It must: be delegated the right to exercise a substantial amount of at least one of the three sovereign powers; serve a governmental purpose; and be governmentally controlled.

The IRS says the determination of whether an entity serves a governmental purpose is based, in part, on whether the entity carries out the public purposes set forth in its enabling legislation and whether it operates in a manner that provides a significant public benefit “with no more than an incidental private benefit.”

The IRS proposes at least three benchmarks of rights or powers that constitute control. These would be the right or power: to both approve and remove a majority of an entity’s governing body; to elect a majority of the governing body of the entity in periodic elections of reasonable frequency; and to approve or direct the significant uses of funds or assets of the entity in advance of those uses.

Apart from these three arrangements, the determination of whether a collection of rights and powers constitutes control would depend on facts and circumstances. Control of an entity by a small faction of private individuals, businesses or corporations, trusts, partnerships or other persons “is fundamentally not governmental control,” the IRS said.

Therefore the proposed rules would generally require that control be vested in either a general purpose state of local governmental unit or in an electorate established under an applicable state or local law of general application. If, however, a small faction of private persons controls an electorate, the electorate's control of an entity does not constitute governmental control of the entity. Under the proposed rules, an entity controlled by an electorate is not governmentally controlled with the outcome of the exercise of control is determined solely by the votes of an unreasonably small number of private persons.

The IRS provides two facts and circumstances tests that serve as brackets to determine if there is governmental control. On one hand, the number of private persons controlling an electorate "is always unreasonably small" if the combined votes of the three voters with the largest share of votes determine the outcome of an election, regardless of how the other voters vote, the agency said.

On the other hand, the number of private persons controlling an electorate "is never unreasonably small" if determining the outcome of an election requires the combined votes of more voters than the 10 with the largest share of votes. "For example, control can always be vested in any electorate comprised of 20 or more voters that each have the right to cast one vote in an election without giving rise to a "private faction," the IRS said.

The Bond Buyer

By Lynn Hume

March 9, 2016

IRS Releases Proposed Regulations Defining a "Political Subdivision" For Purposes of Determining Eligibility to Issue Tax-Exempt Bonds: Butler Snow

On February 22, 2016, the Internal Revenue Service (the "IRS") released proposed treasury regulations (the "Proposed Regulations") to provide guidance as to how the IRS intends to prospectively define a "political subdivision" for purposes of allowing political subdivisions to issue tax-exempt bonds under Section 103 of the Internal Revenue Code (the "Code"). The Proposed Regulations have not yet been enacted as "final" regulations, and accordingly, until the Proposed Regulations are finalized, the existing IRS guidance continues to control. The Proposed Regulations will mainly impact special districts formed by developers to provide infrastructure for new development.

The IRS has solicited comments to the Proposed Regulations and a public hearing is scheduled for June 6, 2016. As these Proposed Regulations, when finalized, will have a significant impact on many of Butler Snow's clients, be assured that Butler Snow lawyers will be directly and actively involved with the preparation of comments on these Proposed Regulations directly with Treasury Department's Chief Counsel's Office, as well as through the National Association of Bond Lawyers and the American Bar Association.

Section 103 of the Code provides that interest on certain bonds issued by States and political subdivisions will be exempt from federal income tax. Traditionally, provided that a governmental entity possessed one or more substantial sovereign powers, including the power to tax, the power of eminent domain or the police power, the governmental entity was generally deemed to be a political subdivision, eligible to issue tax-exempt bonds under Section 103 of the Code. In 2013, however, the IRS issued Technical Advice Memorandum 201334038 (the "TAM") which challenged traditional belief that a governmental entity possessing one or more substantial sovereign powers alone was enough to ensure the entity was in fact a political subdivision eligible to issue tax-exempt bonds. As a result of the TAM, there has been a great deal of uncertainty as to whether many of our special district clients qualify as political subdivisions, and ultimately, remain eligible to issue tax-exempt bonds under Section 103 of the Code.

The Proposed Regulations provide a new three-part test for determining whether an entity qualifies as a political subdivision, taking into account all of the relevant facts and circumstances, which includes:

1. The entity must possess the right to exercise a substantial amount of at least one sovereign power (the “Sovereign Power Test”);
2. The entity must serve a governmental purpose (the “Governmental Purpose Test”); and
3. A State or local government must exercise control over the entity (the “Control Test”).

Unlike the Sovereign Power Test and the Governmental Purpose Test, the Control Test is a substantial deviation from the current regulatory regime.

The Proposed Regulations define control, for purposes of the Control Test, as an ongoing right or power to direct significant actions of the entity and suggest the following significant rights or powers, on a discretionary and non-ministerial basis, will constitute control:

1. Right or power to elect a majority of the governing body of the entity.
2. Right or power to elect a majority of the governing body of the entity in periodic elections of reasonable frequency.
3. Right or power to approve or direct the significant uses of funds or assets of the entity in advance of that use.

The Proposed Regulations further provide that control, for purposes of the Control Test, may be vested in one or both of the following:

1. State or local governmental unit possessing a substantial amount of each of the sovereign powers and acting through its governing body or through its duly authorized elected or appointed officials in their official capacities; or
2. An electorate established under applicable state or local law of general application, provided the electorate is not a “private faction.”

For this purpose, an electorate is a “private faction” if the outcome of the exercise of control is determined by the votes of an unreasonably small number of private persons. The Proposed Regulations provide that whether the number of private persons is unreasonably small will be determined based on all of the facts and circumstances, but also conclusively affirm that a private faction will always exist if the combined votes of three voters with the largest shares of votes can determine the outcome. The Proposed Regulations provide a safe harbor whereby a private faction will not exist provided a combined vote of more than 10 voters with the largest shares of votes in the electorate can determine the outcome. So, for example, an electorate with 20 voters, each with 5% equal voting power, would satisfy the safe harbor as 11 voters would be required to determine the outcome. In contrast, an electorate with 20 voters with unequal voting power in which 10 or few members could determine the outcome, would not satisfy the safe harbor.

The Proposed Regulations, if enacted as drafted, could have a significant impact on many Butler Snow clients. These Proposed Regulations are scheduled to be effective 90 days after publication in final form, with certain transition rules. It is likely that these Proposed Regulations will be modified to some degree following the comment process and public hearing, and therefore, it is unlikely they will be finalized as currently drafted. Please note, for all entities in existence prior to March 25, 2016, the Proposed Regulations would not be effective until three years and 90 days after publication in final form, presumably to give existing entities an appropriate amount of time to restructure and become compliant.

Of note to the development community is that the Treasury Department and IRS are seeking public comment on whether it is necessary or appropriate to permit special districts formed for new developments to be political subdivisions during an initial development period in which one or two private developers elect the district's governing body and no other governmental control exists. The development community should consider commenting on the Proposed Regulations to make clear how important this tool is to new development.

As mentioned above, Butler Snow lawyers will continue working with IRS, the National Association of Bond Lawyers and the American Bar Association to ensure that the concerns of our Butler Snow clients are represented.

Butler Snow LLP

by Rene Adema Moore & Dee P. Wisor

March 1, 2016

Treasury Corrects Proposed Regulations on What is a Political Subdivision: Squire Patton Boggs

Recently, Treasury proposed a new test for an entity to qualify as a "political subdivision" that is entitled to issue tax-exempt bonds on its own behalf. (These are merely proposed regulations, and are not yet governing law.)

The proposed regulations included some transition rules that Treasury put in place to make sure that the proposed regulations would only apply prospectively. (Prop. Reg. 1.103-1(d)(2) – (4).)

One of the transition rules said that solely for purposes of determining whether outstanding bonds of an entity were issued by a political subdivision, the new, more restrictive definition of political subdivision would not apply to that entity with respect to its outstanding bonds that are issued no more than 30 days after Treasury finalized the proposed regulations. We immediately noted a nasty trap lurking in these new rules. If Treasury finalized the rules in their current form, this transition rule would mean that existing bonds would be treated as issued by a political subdivision (under the current definition of political subdivision), but the issuer itself would be treated as a private user (because the transition rule only applies for purposes of determining whether the bonds were issued by a political subdivision, and no further). The same trap would ensnare refunding bonds that were intended to qualify from the additional transition rule that would grandfather in refunding bonds that did not extend the weighted average maturity of prior bonds issued under the old definition of political subdivision.

Our immediate thought was that this trap could not have been what Treasury intended, and Treasury has agreed. Treasury corrected the proposed regulations yesterday. The corrections make it clear that the transition rules apply for all tax-exempt bond purposes, avoiding this potential trap. The revised provisions look like this:

Click here to view the image

The proposed regulations have many other substantive flaws that the tax-exempt bond community will continue to discuss, which are based on policy disagreements between Treasury and the tax-exempt bond community. Treasury should be commended for fixing this obviously unintended result in the meantime.

Squire Patton Boggs – John W. Hutchinson

March 10, 2016

TAX - OHIO

Oak View Properties, L.L.C. v. Franklin Cty. Bd. of Revision

Supreme Court of Ohio - March 3, 2016 - N.E.3d - 2016 WL 827799 - 2016 -Ohio- 786

City board of education appealed decision of Board of Tax Appeals (BTA) that affirmed reduced valuations of property ordered by county board of revision.

The Supreme Court of Ohio held that board of education failed to preserve for appeal to BTA its claim that BTA should not retain valuations set by board of revision.

Supreme Court of Ohio holds that city board of education failed to preserve for appeal to Board of Tax Appeals (BTA) its claim that BTA should not retain valuations set by county board of revision, where board of education presented no arguments for reversing and reinstating auditor's valuation, which had been rejected by board of revision.

TAX - OHIO

Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision

Supreme Court of Ohio - March 2, 2016 - N.E.3d - 2016 WL 827784 - 2016 -Ohio- 757

City board of education appealed decision of the Board of Tax Appeals (BTA) affirming valuation of hotel property by county board of revision for tax purposes.

The Supreme Court of Ohio held that evidence supported decision of county board of revision and BTA not to rely on sale price of property.

Evidence supported decision of county board of revision and Board of Tax Appeals (BTA) not to rely on sale price of hotel property in valuing property for tax purposes. Record documented a decline in property values after sale not only for subject property but also for its competitive set of comparable hotels, and appraiser testified that sale lacked arm's-length character.

TAX - NEW JERSEY

New Jersey Turnpike Authority v. Township of Monroe

Tax Court of New Jersey - February 22, 2016 - N.J.Tax - 2016 WL 741487

Turnpike Authority brought action against township challenging local property tax assessments. Authority and township filed cross-motions for summary judgment.

The Tax Court held that:

- Tax exemption granted for real property acquired by an authority created by the State may be denied on grounds that the property was not used for a Turnpike purpose for a later tax year;
- Turnpike's acquisition of property to satisfy its mitigation obligations to Department of Environmental Protection for loss of environmentally protected lands was used for a "transportation project," and thus property was exempt from tax assessments under Turnpike's enabling statute; and
- Turnpike's claim for an exemption on property for an earlier tax year was time-barred, and thus Tax Court lacked subject-matter jurisdiction to consider claim.

Tax exemption granted for any real property acquired by an authority created by the State after written notice was provided to the assessor may be denied on the grounds that the property was not used for a Turnpike purpose for a later tax year.

Turnpike's acquisition of property to satisfy its mitigation obligations to Department of Environmental Protection for loss of environmentally protected lands was used for a "transportation project," and thus property was exempt from tax assessments under Turnpike's enabling statute, even if Turnpike obtained some acreage in excess of what was required by Department. Turnpike acquired property solely in furtherance of a project to widen and reconfigure portion of a highway to improve traffic, increase safety, and reduce motor vehicle congestion, Turnpike was required by law to obtain permits from Department allowing it to disturb environmentally sensitive areas, and but for project, such areas would not have been impacted, and property was not being held for an indeterminate purpose or time, nor with an intention to sell it as surplus property.

Turnpike's claim for an exemption from tax assessments on property that it acquired and used for a transportation project was time-barred, and thus Tax Court lacked subject-matter jurisdiction to consider claim, even though Turnpike was granted an exemption in the prior tax year and there was no change in property's ownership or use. Turnpike did not challenge assessment in any forum, timely or otherwise, and raised right to exemption only in a summary judgment motion before the Tax Court.

TAX - OHIO

[Lowe's Home Ctrs., Inc. v. Washington Cty. Bd. of Revision]

Supreme Court of Ohio - February 4, 2016 - N.E.3d - 2016 WL 427832 - 2016 -Ohio- 372

On appeal of County Board of Revision's ("BOR") valuation before the Board of Tax Appeals ("BTA"), Lowe's and the county presented competing property appraisals. The BTA adopted the county's appraisal, and Lowe's appealed.

Lowe's argued that the BTA adopted the county's appraisal without addressing whether the evidence justified applying the special-purpose doctrine that was the basis for the Ohio Supreme Court's holding in *Meijer Stores*.

The Supreme Court of Ohio held that the BTA's adoption of the county's appraisal without addressing whether the evidence justified applying the special-purpose doctrine required vacation of the BTA's decision and remand for further proceedings.

Leased comparables will typically need to be adjusted in determining the value of a subject property that is itself unencumbered by such a lease; however, adjustments may not be necessary when the special-purpose doctrine applies.

STANDING / TAX APPEAL - CONNECTICUT

Fairfield Merrittview Ltd. Partnership v. City of Norwalk

Supreme Court of Connecticut - March 1, 2016 - A.3d - 320 Conn. 535 - 2016 WL 730546

Limited partnership appealed board of assessment appeals' decision upholding municipal property tax assessment on commercial office complex. The Superior Court granted partnership's motion for permission to amend appeal to add limited liability company (LLC) as plaintiff, and, subsequently, the Judge Trial Referee, valued complex at $35,059,753. City appealed. The Appellate Court reversed and remanded. Partnership and LLC appealed.

The Supreme Court of Connecticut held that:

- LLC had standing to appeal decision upholding tax assessment, and
- Mistake should be construed in its ordinary sense, rather than as connoting absence of negligence, abrogating *DiLieto v. County Obstetrics & Gynecology Group, P.C.*, 297 Conn. 105, 998 A.2d 730.

Limited liability company (LLC), which was added as plaintiff by limited partnership, had standing to appeal board of assessment appeals' decision upholding municipal property tax assessment on commercial office complex, despite claim that LLC had not appeared before board. LLC was aggrieved by board's refusal to reduce claimed overassessment of complex, LLC was owner of property on date of board's assessment and was legally responsible for payment of any taxes levied on basis of assessment, city did not object to amendment of appeal, which named LLC as plaintiff, and naming of partnership, instead of LLC, was due to error, misunderstanding, or misconception.

Mistake should be construed in its ordinary sense, rather than as connoting an absence of negligence, as used in statute allowing a court, when necessary for determination of real matter in dispute, to substitute or add a plaintiff when any action has been commenced in name of the wrong person as plaintiff through mistake, abrogating *DiLieto v. County Obstetrics & Gynecology Group, P.C.*, 297 Conn. 105, 998 A.2d 730.

EXEMPT FACILITIES - NEW YORK

Community Humanitarian Ass'n, Inc. v. Town of Ramapo

Supreme Court, Appellate Division, Second Department, New York - March 2, 2016 - N.Y.S.3d - 2016 WL 802981 - 2016 N.Y. Slip Op. 01458

Non-profit corporation that provided residential housing for low-income families filed action seeking declaratory judgment that real property owned by the corporation was fully exempt from property taxes. The Supreme Court, Rockland County, granted summary judgment in favor of town. Owner appealed.

The Supreme Court, Appellate Division, held that:

- Alleged violation by non-profit corporation of zoning ordinance could not support denial of property tax exemption for use of property for charitable purposes, and
- Fact issue barred summary judgment.

Alleged violation by non-profit corporation of village zoning ordinance, by exceeding certificate of occupancy for building corporation owned which allowed only two residential apartments, could not, without more, support denial of property tax exemption for use of property for charitable purposes.

Genuine issue of material fact as to whether or not non-profit corporation that provided residential housing for low-income families used its real property in a manner consistent with a charitable purpose precluded summary judgment, in corporation's action seeking declaration that its property was fully exempt from property taxes as property used for charitable purposes.

TAX INCREMENT FINANCING - CALIFORNIA

Macy v. City of Fontana

Court of Appeal, Fourth District, Division 1, California - February 23, 2016 - Cal.Rptr.3d - 2016 WL 702297

Resident and community organizations petitioned for writ of mandate challenging redevelopment agency's, housing authority's, and city's alleged failure to use 20 percent of city tax increment revenues in support of low- and moderate-income housing under the Community Redevelopment Law (CRL). The Superior Court sustained demurrer without leave to amend. Resident and organizations appealed.

The Court of Appeal held that:

- CRL did not subject city to its redevelopment agency's statutory duty to use tax increment revenues for affordable housing;
- Redevelopment agency dissolution law did not subject city to its redevelopment agency's statutory duty to use tax increment revenues for affordable housing; and
- City's agreement to receive tax increment revenues from redevelopment agency did not require city to use the revenues for affordable housing.

Nothing in the Community Redevelopment Law (CRL) itself makes a municipality responsible for the obligations of a redevelopment agency.

.The redevelopment agency dissolution law did not subject city to city redevelopment agency's statutory duty to use 20 percent of redevelopment agency's tax increment revenues in support of low- and moderate-income housing, even though city was the successor agency to the redevelopment agency.

The redevelopment agency dissolution follow-up audit legislation does not expressly or by implication expand the liability of municipalities to include redevelopment agency's statutory duty to use 20 percent of redevelopment agency's tax increment revenues in support of low- and moderate-income housing, even though it included an expanded definition of "cities" and "counties" for purposes of the audits

City's role as a party to an Owner Participation Agreement (OPA) requiring city redevelopment agency to pay part of its tax increment revenues to developer and part to the city did not subject city to redevelopment agency's statutory duty to use 20 percent of redevelopment agency's tax increment revenues in support of low- and moderate-income housing, even though the OPA expressly required that the city and the agency do nothing that would adversely impact developer's right to receive the pledged tax increment revenue, and even though the Community Redevelopment Law (CRL) was amended to more strictly limit the ways in which a redevelopment agency could meet its low- and moderate-income housing obligations after the agency and the city brought their successful validation action approving the city's participation in the OPA.

IRS Disputes Tax-Exempt Status of Solid Waste Bonds in S.C.

WASHINGTON – The Internal Revenue Service is preliminarily challenging the tax-exempt status of bonds issued in December 2010 by the Three Rivers Solid Waste Authority in South Carolina to provide permanent financing for a system to treat and deliver methane gas from a landfill site to Kimberly-Clark Corp.

The authority, which sells the gas to Kimberly-Clark for its manufacturing facility in Beech Island, S.C. under an agreement according to the official statement for the bonds, described the dispute with the IRS in its audited financial statement for the year ending on June 30, 2015. The audit was opened in the authority's fiscal 2015, according to that document.

"The IRS has preliminarily asserted in an 'Information Document Request' that the 2010 bonds do not satisfy the federal tax requirements on 'solid waste disposal facilities' because the [gas] conveyance system, which comprised the majority of the project, was not part of a solid waste disposal function," the authority said in its financials. "If the IRS is correct, the conveyance system would not be permitted to be financed with tax-exempt bonds."

Based on that description, the IRS appears to be questioning how tax-exempt bonds could be issued to finance a treatment and pipeline system designed to deliver landfill gases the authority is selling to a private company. The authority said that it and its legal counsel "disagree … with the conclusions reached by the IRS" and that "management is preparing a response to the IRS rebutting its claims."

Tim Fox, general manager for the authority said on Monday that, "We're optimistic that we've moved through that situation." But he referred questions about the dispute to the authority's tax controversy counsel, Mike Larsen, a partner at Parker Poe in Charleston. Larsen could not be reached for comment.

The $11.21 million of December 2010 solid waste disposal facilities refunding revenue bonds were used in part to refund $11.25 million of lease revenue bond anticipation notes that also were sold in 2010. The BANs, in turn, were used to refund solid waste disposal facilities tax-exempt certificates of participation that were issued in 2007 to finance the development of the treatment and conveyance system from the landfill to Kimberly-Clark's manufacturing facility.

The landfill consists of 1,378 acres on the U. S. Department of Energy's Savannah River Site in Aiken County, S. C. There is a memorandum of understanding, a permit agreement, and a business agreement between the authority and DOE. But the involvement of the federal government does not appear to be an issue in the audit, based on the authority's description of it.

The dispute has its roots in a series of actions that took place in the 1990s, according to the official statement for the bonds. In May 1991, the governor of South Carolina signed into law the Solid Waste Policy and Management Act, which, in an effort to stop disposing of waste in unlined trenches throughout the state, toughened regulations and resulted in the closing of many landfills. The act encouraged the development of regionalized efforts to deal with waste and charged the state's counties with the responsibility for the waste generated within their jurisdictions.

The counties formed a solid waste authority and tasked it with coming up with a comprehensive solid waste plan for them. At that time, DOE was investigating several locations to site a landfill and wanted to explore partnerships with private or public entities. That led to the agreements between DOE and the Three Rivers Solid Waste Authority.

Under the 50-year permit agreement, DOE will not incur any costs in the construction, operation, maintenance, closure or monitoring on the premises or of any authority facilities or structures without DOE's written consent. DOE agrees to provide water, sewer, leachate treatment and other services. Under
the business agreement, the authority must ensure landfill activities comply with all applicable federal and state laws and regulations. The authority agreed to contribute $1.00 per ton of municipal solid waste received at the landfill to an escrow account for the Solid Waste Technology Center for as long as the
landfill is in operation.

The authority began solid waste disposal operations in July 1998 after completion of the first of 11 cells of the landfill. It has agreements to take solid waste from nine counties.

Initially, the authority had proposed to deal with the methane generated from the landfill by flaring it into the atmosphere. But the authority decided that the most economically-feasible method of disposing of the landfill gas would be to sell it to Kimberly-Clark for its manufacturing facility. Bond counsel and disclosure counsel for the 2010 refunding revenue bonds was Howell Linkous & Nettles in Charleston.

Underwriters counsel was Drinker Biddle & Reath in Philadelphia. The Mosteller Law Firm in Barnwell, S.C. was counsel to the authority.

Municipal Advisors Group of Boston, Inc., in North Scituate, Mass. was financial advisor to the authority. The bonds were underwritten by Oppenheimer & Co. and Morgan Keegan.

The Bond Buyer

by Lynn Hume

Feb 29, 2016 12:30pm ET

Hundreds of Local Officials Defend Municipal-Bond Tax Exemption.

WASHINGTON — The prospects for a tax overhaul this year are nil, yet hundreds of state treasurers, mayors and other officials are mobilizing to protect a cornerstone of the $3.9 trillion market for municipal debt: the tax breaks the bonds offer investors.

Some 600 state and local officials are calling on Congress to stay away from taxing the interest paid to municipal-bond investors, warning the municipal market is a vital mechanism for financing schools, roads, transit systems and other infrastructure projects that create jobs. They fear Congress may try to do just that in 2017.

“Proposals to change this commitment to tax-free municipal bonds would not only be costly for state and local taxpayers, but also result in fewer projects, fewer jobs and further deterioration of our infrastructure,” the officials wrote in a letter they plan to send Wednesday to top lawmakers on the tax-writing committees of the House and Senate.

The letter, organized by the National Association of State Treasurers, reflects a heightened state of anxiety among officials in states and localities that Washington policy makers will move to limit or kill the exemption, after years of trying—and failing—to do so.

While no broad tax-code overhaul is expected this year, state and local officials are taking pre-emptive steps to protect their bonds’ tax exemption from any deal that might materialize down the road.

President Barack Obama has repeatedly advanced the idea of capping the tax exemption on the grounds that too much of the roughly $30 billion a year in forgone federal tax payments from a century-old interest exemption goes to higher-income households. Top lawmakers in both parties have said they, too, are willing to consider curbing the bonds’ tax-exempt status.

Investors are willing to accept lower yields for municipal bonds than corporate debt because their interest income is exempt from federal income taxes as well as taxes in the state in which the bonds were issued. In some high-tax areas, such as California, the bonds are also exempt from local income taxes.

By exempting municipal bond interest from federal taxes, the government creates an incentive for investors to buy them, which helps hold down the borrowing costs of the states, cities and other entities that issue them. Curbing the exemption would likely reduce demand for the bonds, pushing those borrowing costs higher, critics say.

Mr. Obama’s proposal, floated several times since 2011 including in a budget he released last month, would place a 28% cap on the tax exemption for interest earned on municipal bonds. That means a wealthy household—in a top tax bracket of 35%—with $100,000 in previously tax-free municipal-bond interest income would have to pay 7% in taxes, reducing their income from the bonds to $93,000.

Capping or eliminating the tax-exemption would hurt taxpayers in every state, the officials wrote, because “municipalities will have to either curtail infrastructure projects or raise taxes on sales, property or income” to attract investors.

State officials said the harm is more than theoretical: In December 2012, the municipal market experienced a spike in rates as investors recognized a cap on exemption was under consideration, they said.

THE WALL STREET JOURNAL

By ANDREW ACKERMAN

March 1, 2016 6:00 a.m. ET

Write to Andrew Ackerman at andrew.ackerman@wsj.com

Big Win for Marketplace Fairness Act in the Tenth Circuit Court of Appeals.

On February 22, 2016, the Tenth Circuit United States Court of Appeals upheld a Colorado law requiring remote sellers to provide Colorado purchasers with an annual summary of their purchases, and to send the same information to the Colorado Department of Revenue. Broadly, this important step taken by the Tenth Circuit upholds the constitutionality of use tax reporting requirements in any state. Reporting requirements are a step in the right direction until Congress acts on legislation that would allow states to enforce the collection of sales taxes on remote online vendors.

Since 2010, the State of Colorado has required remote sellers to provide Colorado purchasers with an annual summary of their purchases and to send the same information to the Colorado Department of Revenue. The Direct Marketing Association (DMA) sued Colorado in federal court, claiming the law was unconstitutional. In *Direct Marketing Association v. Brohl*, the Tenth Circuit disagreed. The court concluded the Colorado law doesn't discriminate against interstate commerce because DMA was unable to show that the notice and reporting requirements imposed on out-o--state retailers are more burdensome than the sales tax collection and administration requirements imposed on in-state retailers.

GFOA, along with "Big Seven" members of the State and Local Legal Center (SLLC), have filed amicus briefs in every stage of *DMA v. Brohl*, citing the devastating impact that the 1992 *Quill Corp. v. North Dakota Supreme Court* ruling has had on state and local governments in light of the rise of Internet purchases, Congress's failure to pass the Marketplace Fairness Act, and states' need to improve use tax collection through statutes like Colorado's. Justice Anthony Kennedy wrote a concurring opinion, upon considering DMA, which appeared to rely on the SLLC's brief; it stated that the "legal system should find an appropriate case for this court to reexamine Quill," the Tenth Circuit's opinion actually cited the SLLC's amicus brief, which provided an estimate of the very low rate of use tax compliance and also quoted Justice Kennedy's recent criticism of *Quill.*

GFOA continues to work with the SLLC to help communicate the necessity of states' ability to enforce the collection of use taxes already due to the Courts. We will continue to keep members up to date on any developments of this case, as well as the keeping the success of the Marketplace Fairness Act a priority in our legislative activities.

Government Finance Officers of America

Tuesday, March 1, 2016

TAX - OHIO

Rural Health Collaborative of S. Ohio, Inc. v. Testa

Supreme Court of Ohio - February 16, 2016 - N.E.3d - 2016 WL 671433 - 2016 -Ohio- 508

Tax commissioner appealed decision of Board of Tax Appeals which granted a charitable-use property tax exemption to leased facility that provided dialysis services.

The Supreme Court of Ohio held that:

- Board's finding that healthcare provider lessor was a charitable organization was reasonable and lawful, but
- Board's failure to fully consider whether dialysis clinic, as lessee, could qualify as a charitable organization, required remand.

Board of Tax Appeals' finding that health care provider, which constructed and leased a dialysis clinic, was a charitable organization under charitable-purpose property tax exemption, was reasonable and lawful. The Board viewed the construction and leasing of the dialysis clinic within context of provider's larger body of activities, obtaining grants for tobacco-cessation funding, pregnancy care and education, diabetes prevention and education, and managed-care planning, along with community-care initiatives such as blood drives.

Board of Tax Appeals' failure to fully consider whether dialysis clinic, as lessee, could qualify as a charitable organization, in granting lessor's application for charitable-purpose property tax exemption, required remand. Under provision of charitable-purpose tax exemption statute, both parties to a lease were required to qualify as a charitable institution in providing service to those in need, without regard to race, creed, color, or ability to pay.

Don't Like It? Sue Me.

Tired of waiting for Congress to approve a tax on Internet sales, more than a dozen states — including Alabama, South Dakota and Utah — are moving to pass bills or change regulations in ways that deliberately invite lawsuits from Internet retailers. The goal? Landing the issue before the U.S. Supreme Court.

Alabama, for its part, will start enforcing an old law it says allows it to tax out-of-state sellers. The state will audit companies that don't file returns.

"We're confident that some remote sellers will not comply and therefore it will lead to litigation," Alabama Deputy Revenue Commissioner Joe Garrett told The Wall Street Journal. "We have been very open about what we're doing."

The move won instant praise from brick-and-mortar businesses, who say they can't compete with online retailers who don't collect a sales tax. A bill allowing states to collect sales taxes from online purchases has stalled in Congress for a half-decade. By some estimates, states are collectively missing out on more than $23 billion annually in potential online sales tax revenue.

"Despite the ways this disparity distorts the market, and despite pleas from Main Street retailers in every state, Congress continues to dodge the issue," said Stacy Mitchell, co-director of the Institute for Local Self-Reliance.

But online retailers and others argue that a universal Internet sales tax wouldn't level the playing field, as some hope. Large companies that have a presence in multiple states generally have the infrastructure in place to collect a sales tax. "But it's more challenging for smaller retailers that don't have the computer systems and accounting staff to ensure compliance with 10,000 nationwide tax jurisdictions and 46 state tax auditors," argue NetChoice, a trade association promoting e-commerce.

If the issue does make it to the nation's top court, it would challenge a 1992 Supreme Court decision, Quill Corp. v. North Dakota. Under the ruling, states can apply sales taxes only to companies with a physical presence in the state.

GOVERNING.COM

BY LIZ FARMER | FEBRUARY 26, 2016

IRS Proposed Political Subdivision Rules Would Be Big Change for Munis.

WASHINGTON – The Internal Revenue Service is proposing new rules for political subdivisions issuing tax-exempt bonds that lawyers say will completely change the regulatory landscape and the way infrastructure has been financed in a number of states.

Under the proposed rules, which are slated to be published in the Federal Register on Tuesday, an entity is a political subdivision that can issue tax-exempt bonds if it meets a three-prong test. It must exercise sovereign powers, serve a governmental purpose, and be governmentally controlled. The requirement to be governmentally-controlled is new.

Historically, community development districts in Florida, metropolitan districts in Colorado, and rural utility districts in California and other states have been set up to issue tax-exempt bonds to finance public infrastructure such as roads, sewer and water systems for a variety of development projects. Initially the districts are controlled by developers, but as homes, business parks or shopping areas are built and irrigation systems are set up, that control is passed onto to users such as homeowners, businesses or farmers.

Now the IRS wants political subdivisions to be controlled by state or local governments or a group of elected officials that do not constitute a "private faction."

"This changing the landscape, it's such a change from how the rules were done before," said Vicky Tsilas, a partner at Ballard Spahr here and former associate tax legislative counsel at the Treasury Department. "But the good news is that they are only proposed and there's the ability to comment on them."

Tsilas noted that the proposed rules would restrict the financing of infrastructure at a time with the federal government is trying to promote it.

"This is a big shift in the law in many people's views," said Carol Lew a shareholder at Stradling Yocca Carlson & Rauth in Newport Beach, Calif. "Some of the tests – the three-prong test – are going to be difficult to apply, particularly for small districts such as small irrigation districts" where there may only be three famers that own the land.

"I think it will surprise the IRS as to how many districts are potentially affected by these," said Perry Israel, a lawyer with his own practice in Sacramento, Calif. who represents the Village Center Community Development District in Florida in a current dispute with the IRS that served as the impetus for these proposed rules.

The proposed rules would take effect beginning 90 days after they are finalized. However, they would not apply to existing tax-exempt bonds or to refundings that do not extend the maturities of the underlying bonds. Also, there would be a three-year transition period, under which entities in existence "prior to 30 days after the proposed rules are published" could continue to issue tax-exempt bonds while restructuring to comply with the new rules.

Comments on the new rules and requests to speak at a June 6 public hearing are due by May 23.

Dee Wisor, an attorney at Butler Snow in Denver, said the transition rule might cause a "rush to market" to issue tax-exempt bonds or refunding bonds for existing political subdivisions. He said the infrastructure in these developments has been financed in part with five- to seven-year bank loans with the intent of replacing the short-term loans with longer term tax-exempt bonds. But this wouldn’t comply with the restrictions on refundings.

“If they’re saying a developer can’t form a district and issue tax-exempt bonds, that’s going to be a big deal,” Wisor said.

In a section of the proposed rules called “Possible Relief for Development Districts,” the IRS asked for public comments on whether development districts should be political subdivisions during an initial development period in which one or two private developers could elect the district’s governing body and no other government control exists.

“The Treasury Department and IRS recognize that the governmental control requirement may present challenges for [some] development districts,” the agencies said, adding that they are “concerned about the potential for excessive private control by individual developers, the attendant impact of excessive issuance of tax-exempt bonds, and inappropriate private benefits form this subsidy.”

Lawyers and other market participants have been seeking guidance on the definition of a political subdivision ever since the IRS issued a very controversial technical advice memorandum in 2013. The TAM concluded the Village Center CDD was not a political subdivision, and therefore could not have issued millions of dollars of tax-exempt bonds as it did from 1993 to 2004, because its board was and will always be controlled by the developer rather than publicly elected officials.

Lawyers argued that the notion that control by elected officials is necessary for an entity to be a political subdivision is a new requirement and that such changes should be made through regulatory proposals that can be commented upon rather than through a TAM. Historically, the determination of whether an entity was a political subdivision was based on whether it had the right to exercise substantial sovereign powers, such as the power to tax for services, they said. The IRS has since said the TAM would not be retroactively applied.

In its proposed rules on political subdivisions, the IRS would provide at least three benchmarks of rights or powers that constitute control. These would be the right or power: to both approve and remove a majority of an entity’s governing body; to elect a majority of the governing body of the entity in periodic elections of reasonable frequency; and to approve or direct the significant uses of funds or assets of the entity in advance of those uses.

Aside from these three arrangements, the determination of whether a collection of rights and powers constitutes control would depend on facts and circumstances. Control of an entity by a small faction of private individuals, businesses or corporations, trusts, partnerships or other persons “is fundamentally not governmental control,” the IRS said.

Therefore the proposed rules would generally require that control be vested in either a general purpose state of local governmental unit or in an electorate established under an applicable state or local law of general application.

The IRS provides two facts and circumstances tests that serve as brackets to determine if there is governmental control. On one hand, the number of private persons controlling an electorate “is always unreasonably small” if the combined votes of the three voters with the largest share of votes determine the outcome of an election, regardless of how the other voters vote, the agency said.

On the other hand, the number of private persons controlling an electorate “is never unreasonably small” if determining the outcome of an election requires the combined votes of more voters than the 10 with the largest share of votes. “For example, control can always be vested in any electorate comprised of 20 or more voters that each have the right to cast one vote in an election without giving rise to a "private faction," the IRS said.

The proposed rules would place more emphasis on the fact that an entity must serve a governmental purpose to be a political subdivision. "Arguably, this was there before," Israel said. "This puts more emphasis on it."

Finally, the rules would maintain the existing longstanding requirement that a political subdivision be empowered to exercise a substantial amount of at least one of three generally recognized sovereign powers: eminent domain, or the power to take private property for public use, as well as the powers to police and tax.

THE BOND BUYER

BY LYNN HUME

FEB 22, 2016 12:58pm ET

TAX - CONNECTICUT

[Wheelabrator Bridgeport, L.P. v. City of Bridgeport]

Supreme Court of Connecticut - February 2, 2016 - A.3d - 2016 WL 347925

Taxpayers, which were a waste-to-energy (WTE) facility and its owner trustees, appealed assessor's valuation as to their real and personal property on the Grand Lists. Appeals were consolidated. The Superior Court dismissed in part, and entered judgment. Taxpayers appealed, and city cross-appealed.

The Supreme Court of Connecticut held that:

- Trial court's improper rejection as a matter of law of the cash flow approach required a new trial;
- Trial court was required to determine whether the appraisals by experts included the value of personal property;
  Evidence that the city engaged in wrongdoing was admissible;
- Any failure by taxpayer to provide a copy of an appraisal would not deprive the trial court of jurisdiction;
- An otherwise qualified expert is not disqualified merely because of a lack of a Connecticut real estate appraiser's license; and
- Trial court did not abuse its discretion when it deducted developer's profit of 15% from its reproduction cost approach calculations.

Trial court's improper rejection as a matter of law of the cash flow approach to valuation of property of taxpayers, which were a waste-to-energy (WTE) facility and its owner trustees, required a new trial at which the court could exercise its discretion to determine the credibility of expert testimony regarding the appropriate valuation method and expert's calculations, where court strongly suggested that it believed there were problems with the approach itself, implied that approach was inherently improper for tax assessment of a property that had no rental market, noted with approval another court's disparagement of the approach, and never explained why it found not credible the expert testimony from both sides that the approach was best.

Evidence that the city engaged in wrongdoing was admissible in appeal from valuation as to real and personal property of taxpayers, which were a waste-to-energy (WTE) facility and its owner trustees, for the purpose of determining whether taxpayers were entitled to interest on overpayments to the city.

Any failure by taxpayer, through refusing to provide a copy of an appraisal, would go, at most, to the merits of the trial court's decision sustaining taxpayers's appeal, and would not deprive the trial court of jurisdiction to hear the appeal.

A person who otherwise would be qualified as an expert witness to testify regarding the value of real property is not disqualified merely because the person is not a licensed real estate appraiser in Connecticut. In contrast to the evidentiary and procedural rules governing expert testimony, the purpose of the statutory scheme governing the licensure of real estate appraisers is to protect members of the general public.

Trial court did not abuse its discretion when it deducted developer's profit of 15% from its reproduction cost approach calculations when reviewing city's assessment of property of taxpayers, which were a waste-to-energy (WTE) facility and its owner trustees, where city cited no evidence that would support a finding that the property's historical cost basis did not include developer's profit, and trial court reasonably could have concluded from the record that expert had assumed that it did not.

Police Misconduct Costs Prompt U.S. Cities to Increase Taxes.

The costs of police confrontations with citizens are mounting in U.S. cities, forcing many to spend millions more on training and some to seek tax increases to pay for federally mandated reforms in departments that used excessive force.

New Orleans voters in April will consider raising property taxes to pay the costs of a 2010 consent decree, one of 16 enforced by the Justice Department in the past six years. Cleveland Mayor Frank Jackson on Feb. 1 proposed a half-percentage point increase in the local income tax to improve policing, after a 2015 decree that will cost $10.6 million this year and a projected $7.1 million in each of the next four years, city documents show.

Spending on police training in 23 of the 25 most populous U.S. cities has increased by 17 percent since 2013 to $317.9 million last year, with at least $332.5 million budgeted in 2016, according to data provided in response to public-records requests and compiled by Bloomberg. The numbers don't capture all the training costs because some cities don't track it separately.

"Cities just don't have this kind of money," said Kevin Kelley, president of the Cleveland City Council. "Nobody advocates unconstitutional policing, but the point is this is going to be very expensive."

Budget Whack

In Ferguson, Missouri, where the 2014 shooting of an unarmed black 18-year-old caused civil unrest, the St. Louis suburb says the costs associated with a consent decree could consume more than one-quarter of its $14.5 million annual operating budget.

Ferguson's city council balked at signing a proposed agreement Feb. 9. The city, which projects a $2.8 million deficit and last September had its credit reduced to junk status by Moody's Investors

Service, estimates the costs could be as high as $10 million over a three-year period. The day after the council's decision, the federal government sued the suburb of 21,000 people, alleging in a civil-rights lawsuit the city violates residents' rights and misuses law enforcement to generate revenue.

Unlike the 1990s, when the federal government provided large grants to police departments for crime fighting, the costs of misbehavior are now borne by municipalities.

"There's never been a concerted national effort to really spend a lot of money to address police misconduct," said Stephen Rushin, a professor at the University of Alabama School of Law who studies consent decrees. "We're finally coming to the recognition that correcting police misconduct is an expensive proposition."

Video Evidence

Even where the federal government isn't intervening, municipalities are facing higher costs from lawsuit judgments after videotaped incidents in which black victims died at the hands of officers.

In July 2014, a white New York police officer was recorded using an apparent chokehold to subdue Eric Garner, who was selling cigarettes illegally. Garner, who was black, died and his death was ruled a homicide, but the officer was cleared by a grand jury.

Subsequent incidents in Ferguson, Baltimore and Chicago drew attention as well as civil-rights investigations. Videotape evidence gave weight to allegations of excessive force.

The risk of litigation involving police "has become very substantial," said Marshall Davies, executive director of the Public Risk Management Association, which is in the business of evaluating and minimizing financial exposure for governments.

"The risk has been there forever, as long as there have been police forces," Davies said. "Suddenly, the risk has greatly increased in size."

Los Angeles has seen its payouts for cases involving excessive or unlawful use of force and civil-rights violations reach $23.6 million for the fiscal year ended June 30 from $4.6 million in the year ended June 30 2012, according to records provided by the city attorney's office.

City Councilman Mitchell Englander, the chairman of the public safety committee, said the city often settles cases even when they lack merit to eliminate the risk of going to court.

"I haven't seen a spike in misconduct at the LAPD," Englander said. "What I have seen is a spike in awareness and concern both nationally and locally. We may get punished for the sins of our siblings, so to speak."

Chicago paid the family of Laquan McDonald $5 million last year before the release of a video showing a white police officer shooting him 16 times, even as he lay crumpled on the ground. The Justice Department began a civil-rights investigation of the city's police department in December. The nation's third-largest city is financially vulnerable, facing a $20 billion unfunded pension liability. Moody's has also cut Chicago's credit to junk status.

New York City reached a $5.9 million settlement last year with Garner's family. Cleveland agreed to pay $3 million to settle a lawsuit brought by the family of Tamir Rice, a 12-year-old black boy fatally shot by police in 2014 while holding a toy gun.

These incidents have forced the bill for police training to jump. At a cost of $35 million, the New

York Police Department is teaching all 22,000 patrol officers new techniques for street encounters with civilians, particularly in minority neighborhoods, an initiative that grew out of the Garner incident.

Seattle's annual budget for police training has increased about $5 million to $13.6 million after a 2012 consent decree forced changes, said Sergeant Sean Whitcomb, a spokesman for the department.

Training is a major component of managing risk, and cities that are able to afford more robust training "are the ones that are less likely to suffer," said Chuck Thompson, executive director of the International Municipal Lawyers Association in Washington.

In a Feb. 18 report, Moody's said legal bills related to Ferguson's fight with the Justice Department "will exacerbate the city's financial challenge that already include large deficits and rapidly dwindling reserves."

Federal officials have begun their investigations of the Baltimore and Chicago police departments. Cleveland's Kelley said both places should be ready to open their wallets.

"Cities need to know that when the Justice Department comes in, there will be a financial burden," Kelley said.

Bloomberg Business

by Tim Jones, Mark Niquette & James Nash

February 23, 2016 — 2:00 AM PST

TAX - SOUTH CAROLINA

Duke Energy Corp. v. South Carolina Dept. of Revenue

Supreme Court of South Carolina - February 17, 2016 - S.E.2d - 2016 WL 626180

Taxpayer sought review of South Carolina Department of Revenue's denial of corporate income tax refund. The Administrative Law Court granted Department summary judgment. Taxpayer appealed. The Court of Appeals affirmed. Taxpayer appealed.

The Supreme Court of South Carolina held that as a matter of first impression, taxpayer could not include principal recovered from sale of short-term investments in denominator of formula used to apportion income between states in calculating income tax obligation.

The return of investment principal to taxpayer from short-term investments was not a "sale" as that term was defined by statute, and was therefore not includable in denominator of formula used to apportion its income between states in calculating its South Carolina corporate income tax obligation. Inclusion of principal recovered from sale of short-term securities would produce absurd results, which could not have been intended by the General Assembly.

TAX - TEXAS

[HDSA Westfield Lake, LLC v. Harris County Appraisal District]

Court of Appeals of Texas, Houston (14th Dist.) - February 11, 2016 - S.W.3d - 2016 WL 552156

Community housing development organizations (CHDOs) appealed county appraisal review board's decision upholding appraisal district's denials of ad valorem tax exemptions for apartments owned by CHDOs. The District Court granted summary judgment to appraisal district. CHDOs appealed.

The Court of Appeals held that CHDOs were "owners" of apartments and were thus entitled to continuation of exemptions.

Community housing development organizations (CHDOs) were "owners" of apartments that had previously received tax-exempt status and were thus entitled to a continuation of ad valorem tax exemptions, even though entity that acquired apartments and then transferred legal title to the CHDOs was not itself a qualifying CHDO, where CHDOs undisputedly held legal title at time they filed timely applications for continuation of exemptions establishing that they were qualifying CHDOs.

TAX - OHIO

[State ex rel. Cornerstone Developers, Ltd. v. Greene Cty. Bd. of Elections]

Supreme Court of Ohio - January 29, 2016 - N.E.3d - 2016 WL 427839 - 2016 -Ohio- 313

Business sought writs of mandamus and prohibition against county board of elections, township, Secretary of State, and city, to prevent a tax levy from appearing on the township ballot.

The Supreme Court held that:

- Two-resolution process is required to place tax levy on ballot;
- The Supreme Court would not issue writ of prohibition to board of elections;
- Laches did not bar business's action; and
- Business was not entitled to writ of mandamus against Secretary of State.

To levy taxes, a taxing authority is required to first adopt a resolution of necessity and, once the auditor responds, the taxing authority must then adopt a resolution to proceed.

Supreme Court would not issue writ of prohibition to board of elections in business's dispute over township's placement of tax levy on ballot, where there was no statutory obligation upon board to conduct hearing.

Laches did not bar business's action for writs of mandamus and prohibition in dispute over township's placement of tax levy on ballot without passing required two resolutions, despite contentions that business should have brought action when township approved first resolution, when township certified levy to board of elections, or when board approved matter for ballot. Action brought after approval of first resolution would have been premature, as ballot measure was not pending before board, business was not on notice of when township certified levy to board, and business brought action four business days after board approved levy for ballot.

Business was not entitled to writ of mandamus against Secretary of State in dispute over township's placement of tax levy on ballot, where Secretary had not acted at all.

IRS Proposed Political Subdivision Rules Would Be Big Change for Munis.

WASHINGTON – The Internal Revenue Service is proposing new rules for political subdivisions issuing tax-exempt bonds that lawyers say will completely change the regulatory landscape and the way infrastructure has been financed in a number of states.

Under the proposed rules, which are slated to be published in the Federal Register on Tuesday, an entity is a political subdivision that can issue tax-exempt bonds if it meets a three-prong test. It must exercise sovereign powers, serve a governmental purpose, and be governmentally controlled. The requirement to be governmentally-controlled is new.

Historically, community development districts in Florida, metropolitan districts in Colorado, and rural utility districts in California and other states have been set up to issue tax-exempt bonds to finance public infrastructure such as roads, sewer and water systems for a variety of development projects. Initially the districts are controlled by developers, but as homes, business parks or shopping areas are built and irrigation systems are set up, that control is passed onto to users such as homeowners, businesses or farmers.

Now the IRS wants political subdivisions to be controlled by state or local governments or a group of elected officials that do not constitute a "private faction."

"This changing the landscape, it's such a change from how the rules were done before," said Vicky Tsilas, a partner at Ballard Spahr here and former associate tax legislative counsel at the Treasury Department. "But the good news is that they are only proposed and there's the ability to comment on them."

Tsilas noted that the proposed rules would restrict the financing of infrastructure at a time with the federal government is trying to promote it.

"This is a big shift in the law in many people's views," said Carol Lew a shareholder at Stradling Yocca Carlson & Rauth in Newport Beach, Calif. "Some of the tests – the three-prong test – are going to be difficult to apply, particularly for small districts such as small irrigation districts" where there may only be three famers that own the land.

"I think it will surprise the IRS as to how many districts are potentially affected by these," said Perry Israel, a lawyer with his own practice in Sacramento, Calif. who represents the Village Center Community Development District in Florida in a current dispute with the IRS that served as the impetus for these proposed rules.

The proposed rules would take effect beginning 90 days after they are finalized. However, they would not apply to existing tax-exempt bonds or to refundings that do not extend the maturities of the underlying bonds. Also, there would be a three-year transition period, under which entities in existence "prior to 30 days after the proposed rules are published" could continue to issue tax-exempt bonds while restructuring to comply with the new rules.

Comments on the new rules and requests to speak at a June 6 public hearing are due by May 23.

Dee Wisor, an attorney at Butler Snow in Denver, said the transition rule might cause a "rush to market" to issue tax-exempt bonds or refunding bonds for existing political subdivisions. He said the infrastructure in these developments has been financed in part with five- to seven-year bank loans with the intent of replacing the short-term loans with longer term tax-exempt bonds. But this wouldn’t comply with the restrictions on refundings.

“If they’re saying a developer can’t form a district and issue tax-exempt bonds, that’s going to be a big deal,” Wisor said.

In a section of the proposed rules called “Possible Relief for Development Districts,” the IRS asked for public comments on whether development districts should be political subdivisions during an initial development period in which one or two private developers could elect the district’s governing body and no other government control exists.

“The Treasury Department and IRS recognize that the governmental control requirement may present challenges for [some] development districts,” the agencies said, adding that they are “concerned about the potential for excessive private control by individual developers, the attendant impact of excessive issuance of tax-exempt bonds, and inappropriate private benefits form this subsidy.”

Lawyers and other market participants have been seeking guidance on the definition of a political subdivision ever since the IRS issued a very controversial technical advice memorandum in 2013. The TAM concluded the Village Center CDD was not a political subdivision, and therefore could not have issued millions of dollars of tax-exempt bonds as it did from 1993 to 2004, because its board was and will always be controlled by the developer rather than publicly elected officials.

Lawyers argued that the notion that control by elected officials is necessary for an entity to be a political subdivision is a new requirement and that such changes should be made through regulatory proposals that can be commented upon rather than through a TAM. Historically, the determination of whether an entity was a political subdivision was based on whether it had the right to exercise substantial sovereign powers, such as the power to tax for services, they said. The IRS has since said the TAM would not be retroactively applied.

In its proposed rules on political subdivisions, the IRS would provide at least three benchmarks of rights or powers that constitute control. These would be the right or power: to both approve and remove a majority of an entity’s governing body; to elect a majority of the governing body of the entity in periodic elections of reasonable frequency; and to approve or direct the significant uses of funds or assets of the entity in advance of those uses.

Aside from these three arrangements, the determination of whether a collection of rights and powers constitutes control would depend on facts and circumstances. Control of an entity by a small faction of private individuals, businesses or corporations, trusts, partnerships or other persons “is fundamentally not governmental control,” the IRS said.

Therefore the proposed rules would generally require that control be vested in either a general purpose state of local governmental unit or in an electorate established under an applicable state or local law of general application.

The IRS provides two facts and circumstances tests that serve as brackets to determine if there is governmental control. On one hand, the number of private persons controlling an electorate “is always unreasonably small” if the combined votes of the three voters with the largest share of votes determine the outcome of an election, regardless of how the other voters vote, the agency said.

On the other hand, the number of private persons controlling an electorate “is never unreasonably small” if determining the outcome of an election requires the combined votes of more voters than the 10 with the largest share of votes. “For example, control can always be vested in any electorate comprised of 20 or more voters that each have the right to cast one vote in an election without giving rise to a "private faction," the IRS said.

The proposed rules would place more emphasis on the fact that an entity must serve a governmental purpose to be a political subdivision. "Arguably, this was there before," Israel said. "This puts more emphasis on it."

Finally, the rules would maintain the existing longstanding requirement that a political subdivision be empowered to exercise a substantial amount of at least one of three generally recognized sovereign powers: eminent domain, or the power to take private property for public use, as well as the powers to police and tax.

THE BOND BUYER

BY LYNN HUME

FEB 22, 2016 12:58pm ET

[NABL: IRS Issues Proposed Political Subdivision Regulations.]

The Internal Revenue Service issued proposed regulations (REG-129067-15) revising the definition of political subdivision for the purpose of tax-exempt bonds. The proposed regulations include transition rules under which the definition of political subdivision will not apply (1) for determining whether outstanding bonds are obligations of a political subdivision, and (2) to existing entities for a transition period.

A public hearing is scheduled for June 6, 2016 at 10:00 AM. Comments and requests to speak must be submitted by May 23, 2016.

[Click here to view the proposed regulations.]

For more information about political subdivision, attend the [Tax Hot Topics panel at NABL's Tax and Securities Law Institute.] The panel will include John J. Cross III, Associate Tax Legislative Counsel at the Department of Treasury, and a discussion on these proposed regulations.

[Big Box Tax Appeal Could Cost Indiana Municipalities Big Dollars.]

A state tax court ruling that changes the way big box stores are assessed could take a significant financial toll on some local communities, according to financial consultants, who are warning government officials to be prepared in case they have to cover possible shortfalls.

"You can plan for a disaster if you know it's happening," Jim Bennett, Merrillville's financial consultant, told the Town Council recently.

A December 2014 ruling by the Indiana Board of Tax Review found a Meijer store in Marion County should have been assessed according to the value of similar stores nearby that were vacant and sold, not on the sales taking place inside its building.

As a result, the court decided the Marion County store should be assessed at $30 per square foot instead of the $83 per square foot it was being assessed.

The case is still pending before the Indiana Tax Court, and a court conference call is scheduled for Tuesday on the matter, according to online court records.But communities are now bracing for appeals from Meijer and other big box stores — such as Wal-Mart, Target, Lowe’s and Costco — which could see the stores’ tax bills cut substantially as a result.

What’s more, the appeals could cover the past 10 years or more, which means some communities would have to give refunds to stores.

Experts in municipal finance say they don’t know how many appeals there will be but added they could hit some communities harder than others.

“It could hit their bottom lines at the end of the year. It would not be good. We’re talking multimillion dollar refunds, depending on the scope of the appeal,” said Michael Wieser, director of finance in the Lake County Auditor’s office.

Wieser said while he doesn’t know what the scope of any appeals filed would be, he did some preliminary scenarios two years ago when first hearing of the court’s decision. He found that St. John Township, particularly Schererville, would be hard hit in Lake County, due largely to the fact that its big box stores are along U.S. Route 41, which is in a tax increment financing district.

Wieser said he calculated that Schererville could have to give refunds of about $700,000 a year for six years, plus interest.

“Interest in 2009 was 9 percent,” he said.

He said St. John could have to pay a couple hundred thousand dollars a year, but Dyer looks like it will pay next to nothing.

He explained that in a TIF district, the community’s Redevelopment Commission issues bonds that pay for infrastructure improvements in that area to bring in businesses. The increment in the assessed valuation of the businesses in the district is used to repay the bonds.

“There are so many variables, but it could be devastating to Redevelopment Commissions. The bonds are for 25 to 30 years, and the commission has to pay X amount every year. It doesn’t go down as you pay it,” Wieser said.

Karl Cender, the financial consultant for Portage and Valparaiso in Porter County, said he doesn’t know if anyone has done an analysis in Porter County on how communities would be affected.

“It could be substantial,” he said.

Cender said communities should begin looking at ways to protect themselves in the event appeals are made by some of the big box stores and refunds are awarded.

“In general, they need to look at other ways to cut expenses or other measures to increase revenues,” Cender said.

He said Valparaiso should have enough money in its reserves to weather the storm. Portage has some reserves, but should start preparing, he said.

Hobart Clerk-Treasurer Deborah Longer said that city shouldn't be affected too badly as its commercial retail area isn't in a TIF district.

Hobart Councilman Dave Vinzant, D-4th, called this another example of the pro-business state helping businesses and putting the extra burden onto its residents.

Merrillville's Bennett suggested some of the communities work together as a team to fight the assessment change.

Merrillville Town Councilman Shawn Pettit, D-6th, said the town should contact Indiana Association of Cities and Towns about the issue.

"It's important for us to look at this collectively as a group to see what could happen." Merrillville Council President Richard Hardaway, D-2nd, said.

"All we can do is sit back and wait to see what happens," said Merrillville Councilwoman Chrissy Barron, D-5th.

Chicago Tribune

Karen Caffarini

Karen Caffarini is a freelance reporter for the Post-Tribune.

Changes to Federal Tax Code Could Impact Revenues of Most States.

WASHINGTON – Comprehensive or targeted reform of the federal tax code could significantly impact the revenue of most states, The Pew Charitable Trusts found in a report released Wednesday.

That's because, of the 41 states and the District of Columbia with broad-based personal income taxes, 40 states and D.C. have incorporated a range of federal tax expenditures, including the exclusion for tax-exempt bond interest, into their state tax codes.

"Understanding the extent to which state income taxes are linked to the federal system is important for policymakers at both levels of government when evaluating federal revisions or reforms," the report said. "In considering reforms, federal policymakers should realize that changes can affect state revenue, requiring states to decide whether to revise their tax policies …. State leaders need to weigh the trade-offs of linking to federal tax expenditures, given the possible impacts of revisions."

Pew looked at how the state and D.C. tax systems conformed to the federal tax code in 2013 and then simulated the repeal of 42 major nonbusiness individual tax expenditures, which account for roughly 80% of the total forgone federal revenue associated with all personal tax expenditures from 2015 to 2024.

In the simulation, federal taxes also were reduced by about 40% to offset the expected revenue increase resulting from the repeal of the tax expenditures. Additionally, the alternative minimum tax was repealed to reduce interaction effects. The analysis assumed that the states linked to federal provisions in 2013 would maintain their conformity also follow the federal government by also repealing the tax expenditures.

One of tax expenditures repealed was the exclusion of tax-exempt muni bond interest. The report said that, even for states that don't conform to the federal tax code, the repeal or restriction of the federal exclusion of tax-exempt interest from muni bonds would increase borrowing costs for state and local governments. However, it did not estimate the impact on borrowing costs.

But for the states and the District that conform to the federal tax code, the report found that overall, state individual income tax revenue would increase by about 34% or $100 billion. The revenue increases ranged widely, from about 5% to 50%, depending on the degree of state conformity to the federal tax code.

State revenues increased the most for: Iowa, up 61.4%, Louisiana, up 57.4%, and Nebraska, up 57.2%. Each of these states conforms to the federal tax code for exclusions and adjustments, federal itemized deductions and federal earned income tax credit.

The lowest percentage increase was New Jersey, up only 2.1%. That state only conforms to the federal tax code for federal earned income tax credit. The next lowest increase was Mississippi, up 12.6%. That state only conforms for federal itemized deductions.

The report also found that repeal of the tax expenditures related to health insurance and retirement had the largest impact on state revenue because many states conform to them, they include a large amount of untaxed income, and they benefit a significant portion of the population.

Repeal of the employer-provided health insurance exclusion and deductions for self-employed health plans would account for 36% of the revenue increases for all of the states. The repeal of pension and savings tax preferences would account for 25% of the state revenue gains.

The simulation also showed federal income taxes paid rose in 29 states and fell in 21 states and D.C. Most of the revenue changes were not significant, with all of them totaling 10% or less. Nevertheless, the variations could contribute to the diverse economic impacts by changing the disposable income in different ways across the states, according to the report.

Pew found some federal tax code changes that can have implications for states that are unrelated to conformity, one of which was the exclusion of tax-exempt bond interest. This category also included the federal deduction for state and local taxes paid. Federal tax filers who claim itemized deductions are able to deduct state and local property taxes and income or sales taxes, reducing the overall cost of those taxes for these filers. Repealing or restricting these deductions would make state and local taxes more expensive for those taxpayers.

Other federal tax code changes could affect state revenue by altering taxpayer behavior, according to the report. For example, it said, if federal capital gains rates were to rise, taxpayers might sell investments beforehand to avoid paying higher taxes.

The Bond Buyer

by Lynn Hume

FEB 17, 2016 11:00am ET

GFOA: State and Local Governments Lose Battle against Federal Preemption.

Despite strong sustained opposition from GFOA and other groups representing local government, Senate leaders announced a legislative deal that would compromise local governments' ability to deliver essential services to their communities. Senators dropped their objections to the inclusion of the Permanent Internet Tax Freedom Act (ITFA) in the Trade Facilitation and Trade Enforcement Act conference report (HR 644) and approved the legislation in exchange for a commitment from Senate majority leadership to provide floor time for a discussion on the Marketplace Fairness Act (MFA) later this year. The move permanently removes local tax policy control on telecommunications services in exchange for mere consideration of MFA, with no guarantee as to the outcome.

The deal was made on February 10, but the ITFA has long legislative history. For nearly 15 years, GFOA has pressed Congress to lift the temporary moratorium prohibiting states and their local governments from raising revenue to supplement the costs they bear, including expanding the infrastructure used to facilitate the expansion of broadband fiber. The ITFA moratorium, originally passed in 1997 to protect the then-nascent internet industry, is now not only permanent, but also lifts the clause protecting seven states' grandfathered ability to collect these revenues (over a four-year period). The legislation, to be enacted in 2016, will essentially exempt an entire (and enormously fast-growing and prosperous) sector of the economy – the telecommunications and cable industries – from state and local taxation.

Turning our sights to the other side of the bargain, it is now more important than ever for state and local governments to help members of Congress understand the considerable importance of passing MFA. Although there is no indication of when MFA will be called up for discussion on the floor of the Senate, GFOA's Federal Liaison Center will continue to urge Congress to support any efforts to advance legislation that would finally bring federal law into the digital age by enabling state and local governments to collect sales taxes on online purchases that are already owed. To help you with this outreach, please feel free to visit and use materials on the Marketplace Fairness Act Resource Center.

Government Finance Officers of America

Tuesday, February 16, 2016

NABL: IRS Provides State QZAB Limits.

On February 12, 2016, the IRS issued Notice 2016-20, which allocates to each state its portion of the national limitation on the Qualified Zone Academy Bonds (QZABs) for calendar years 2015 and 2016. The national limitation for QZABs issued for each of calendar years 2015 and 2016 is $400 million.

Click here to view Notice 2016-20.

Brownstein Hyatt Farber Schreck's Colorado TIF Update.

Read the Update.

Brownstein Hyatt Farber Schreck | Feb. 12

IRS: Form 990-N Submission Website Will Change Feb. 29, 2016.

Beginning February 29, 2016, Form 990-N electronic submissions will be accepted through IRS.gov instead of Urban Institute's website.

Form 990-N, *Electronic Notice (e-Postcard) for Tax-Exempt Organizations Not Required to File Form 990 or Form 990EZ,* is used by small, tax-exempt organizations for annual reporting and can only be submitted electronically.

Registration required

Aside from the submission site change, 990-N filers will be required to complete a short, one-time registration before submitting their electronic form to IRS.gov.

Previously-registered organizations may continue using the Urban Institute website through February 28, 2016.

For more information, visit the Form 990-N webpage.

From Camps to Campaign Funds: The History, Anatomy, and Activities of 501(c)(4) Organizations.

Abstract

501(c)(4) "social welfare" organizations are the second-most common type of nonprofit organization registered with the Internal Revenue Service. They are also the legal home of some of the most powerful political interest groups in the country. In 2013, the US Treasury Department proposed regulations that attempted to clarify the rules governing 501(c)(4) political activity. In light of such attention and the still-looming potential for a regulatory overhaul, the need for objective information about 501(c)(4) organizations is greater than ever. This report is an overview rather than an exhaustive examination of the 501(c)(4)s that reveals knowledge gaps.

Read the full report.

The Urban Institute

by Jeremy Koulish

January 28, 2016

S&P Medians Report: U.S. Not-For-Profit Cultural Institutions.

U.S. not-for-profit cultural institutions rated by Standard & Poor's Ratings Services remained on stable financial footing in 2015 despite more modest investment returns than the two previous years (which were buoyed by record stock market growth).

Continue reading.

Feb. 4, 2016

Grand Jury Report Slams Miami-Dade's Anti-Blight Tax Districts.

A Miami-Dade grand jury report released Thursday slammed county taxing districts created to fight slum and blight, saying some appear to fund pet projects of elected officials and flirt with "slush fund" status while shunning desperate needs for affordable housing.

The report takes aim at districts called Community Redevelopment Agencies, which siphon property taxes from general services like police and transit in order to focus spending within their boundaries. While billed as anti-poverty initiatives, CRAs have been used to subsidize museums, concert halls and a production studio in downtown Miami, tapped to cover county cultural expenses as it pursued funding for Marlins Park, and enlisted for a string of neighborhood amenities.

"It is unfathomable to us that in this day and age, citizens in our community live in housing units where sewage backs up within their apartments or overflowing sewage being released on the grounds of their apartment buildings are a regular occurrence," the grand jury wrote in the report. "This, while millions of dollars are being spent annually to fund ball stadiums, performing arts centers and dog parks is an outrage."

Supporters see CRAs, which are authorized by state law, as important tools in helping revive neighborhoods where seed money from government can spur private investment. But critics see them as ways to circumvent public scrutiny of tax expenditures, and reserve millions of dollars for projects that otherwise would lose out in the normal budget process.

They're set to cost Miami-Dade about $37 million in the current budget year — twice what it spends on Animal Services — and new CRAs have been floated as ways to subsidize the planned Miami Wilds amusement park in south Miami-Dade and expanding transit to accommodate a David Beckham soccer stadium. The dollars in play can be significant: a recent report predicted that downtown Miami's Omni and Overtown CRAs would cost the city and county $1 billion in lost property-tax revenues through 2030.

The grand jury report urges reforms of how CRAs are run, noting elected leaders rarely appoint civilians to boards so that, instead, elected leaders themselves can be in charge of the money. (Read the full report by clicking here.)

"We discovered several examples of CRA boards spending large amounts of taxpayer dollars on what appeared to be pet projects of the elected officials," the report said. "Additionally, there is, at a minimum, a perception and appearance that certain CRA boards are controlled by the commissioner or councilman within whose district boundaries the CRA operates."

"Under these circumstances," it continued, "we believe there is a significant danger of CRA funds being used in slush funds for the elected officials."

The report also noted that the Miami-Dade County Commission, which has authority over spending, routinely provides required approval of CRA budgets well after the fiscal year begins. As a result, it is retroactively approving expenditures of property-tax dollars nominally under its control.

Use of CRAs has long been controversial, and release of this report comes during a recent contretemps over a potential extension of a downtown district's 2030 retirement date. The Omni CRA, in Miami's northern downtown, is being eyed as potential source for an operating subsidy at the Frost Museum of Science, a non-profit named after billionaire philanthropists that is now seeking county hotel taxes to boost its $275 million construction effort.

Miami-Dade Mayor Carlos Gimenez wants to borrow $45 million for the Frost against a stream of county hotel taxes that had been earmarked for a $4 million yearly Frost operating subsidy. Gimenez said that planned budget support would be scrapped to instead fund the construction dollars.

Separately, he also recommended that, if Miami and Miami-Dade agree to extend the Omni CRA's life another 15 years, that money be found to subsidize operations at Frost as well as its sister property in Museum Park, the Perez Art Museum Miami, and the nearby Adrienne Arsht Center for Performing Arts.

To the south, controversy ensued when Miami's Overtown CRA agreed in late 2014 to provide up to $108 million in tax refunds to help finance the massive Miami Worldcenter project in Park West. A larger deal is currently being negotiated with a developer planning an 1,800-room hotel and expo center on the old Miami Arena site. Both agreements hinged on local workforce hiring commitments and enhanced wages.

In exchange for the subsidies, developers have agreed to hire from within Overtown and other poor Miami communities and pay elevated wages. Redevelopment executives argue that tax incentives spur investment that in turn finances improvements in residential neighborhoods, lures in important retail and commercial businesses and brings jobs to the community. In Overtown, new development allowed the CRA to borrow $60 million to help finance the construction of several affordable and mixed-income rental projects, as well as rehab residences in the low-income Town Park communities.

Miami Commissioner Keon Hardemon, who is chairman of the Overtown CRA, said during a community meeting Wednesday at Trinity CME Church in Overtown that bringing new development to Overtown has also allowed the agency to fund rehabs of existing co-op and townhome communities, and rehab low-income apartment buildings.

"It takes money to get things to happen," he said.

Kevin Crowder, a CRA consultant working with North Miami and North Miami Beach, said the grand jury seemed to misunderstand the emphasis state laws place on the creation of affordable housing by redevelopment agencies. He said parts of the report were inaccurate, and glossed over the way economic activity can rebuild entire communities.

"It's not just housing. It's about investment, it's about jobs, creating wealth for everybody in the area," said Crowder, director of economic development for the RMA consultancy.

The grand jury report does not name names and largely avoids singling out specific CRAs or parties that may be responsible for questionable actions. It notes "we also found several CRAs which effectively and efficiently used their funds to accomplish the intended goals."

But its most pointed passages paint a picture of taxing districts spending millions largely out of the normal public oversight. It noted that CRAs regularly borrow money on the board's authority alone, using the same property-tax dollars that otherwise would require a public referendum before being used to backstop government debt.

And for districts charged with helping Florida's most blighted neighborhoods, the grand jury found a string of expenditures that seemed aimed at less pressing needs. One unnamed CRA spends most of its money running the CRA itself. Because of failed projects, the report said, tax revenue coming into the district amounted to $400,000 a year while the CRA's administrative budget amounted to $300,000.

"The CRA board was spending $300,000 in salary and benefits to 3 employees who were managing the remaining $100,000," according to the report.

New CRAs are assigned a portion of all property-tax revenue generated either by higher property values or new construction, allowing the existing property-tax base to continue flowing into the regular government coffers.

The idea is that removing slum and blight would improve property values, and generate a stream of revenue for the CRA. But the grand jury said affordable-housing projects lose out in the calculation, since their creation doesn't tend to boost tax values.

"CRAs are not formed to see how profitable they can become," the report stated. "They are formed to address the needs of the community. In many of these communities, one of the major needs is that of safe and sanitary affordable housing."

MIAMA HERALD

BY DOUGLAS HANKS AND DAVID SMILEY

FEB 4, 2016

TAX - TEXAS

Jack County Appraisal District v. Jack County Hospital District

Court of Appeals of Texas, Fort Worth - January 14, 2016 - S.W.3d - 2016 WL 299703

County hospital district appealed county appraisal review board's appraisal of leased computerized tomography (CT) scanner. The District Court granted summary judgment in favor of hospital district. Appraisal district appealed.

The Court of Appeals held that hospital district was the owner of the scanner, and, therefore, scanner was exempt from taxation.

Hospital district, a political subdivision of state, was "owner" of leased computerized tomography (CT) scanner, for purposes of statute exempting from taxation tangible personal property owned by political subdivision and providing that political subdivision was owner of such property if property was subject to lease-purchase agreement providing that political subdivision was entitled to compel delivery of legal title at lease's end, even though purchase price was undetermined and lease payments were not credited. Hospital district had right to compel delivery of legal title at end of lease by buying scanner at fair market value or at average of values determined by two appraisers if hospital district and lessor could not agree on fair market value.

TAX - ILLINOIS

[WKS Crystal Lake, LLC v. LeFew]

Appellate Court of Illinois, Second District - December 23, 2015 - N.E.3d - 2015 IL App (2d) 150544 - 2015 WL 9460075

Taxpayers brought action challenging propriety of tax levy ordinance enacted by city. The Circuit Court granted summary judgment in favor of taxpayers. City appealed.

The Appellate Court reversed, holding that:

- Tax levy ordinance was not ordinance directed at expenditure of money requiring stricter voting requirements;
- City's adoption of Robert's Rules of Order was not inconsistent with Municipal Code; and
- Ordinance's reference to Municipal Code did not render Code's voting requirements applicable to passage of ordinance.

City's tax levy ordinance was not directed to the expenditure of money, and therefore provision of Municipal Code governing adoption of ordinances did not require the affirmative vote of all elected members city council in order to pass ordinance, rather ordinance was directed at raising of money through a tax levy.

Home rule city's adoption of Robert's Rules of Order was not inconsistent with Municipal Code, and therefore Municipal Code provision governing city council meeting voting requirements did not apply to city council's adoption of tax levy ordinance. City's adoption of Robert's Rules of Order to provide the voting procedures generally applicable in city council meetings operated as a statute "governing the passage of ordinances" within the city, and Municipal Code explicitly yielded to such home rule ordinances.

Tax levy ordinance's reference to "Illinois Municipal Code" did not render Code's city council voting requirements, which required more affirmative votes than did city code's requirements, applicable to passage of ordinance, where applicable section of Municipal Code expressly permitted adoption of other voting procedures.

TAX - VERMONT

[Adams v. Town of Sudbury]

Supreme Court of Vermont - January 22, 2016 - A.3d - 2016 WL 275303 - 2016 VT 11

Taxpayer, who owned three units in a condominium community located in two towns, sought judicial review of town's property tax assessment of portion of common lands within its boundaries. Following a bench trial, the Superior Court upheld the assessment. Taxpayer appealed.

The Supreme Court of Vermont held that:

- Statute providing how to tax common lands whose condominium units lie entirely in another town was constitutionally valid;
- Appraisal method used by town to value portion of taxpayer's land located within its boundary was accurate; and
- Town's apportionment of property tax burden among condominium unit owners in relation to their percentage interest in condominium community was reasonable.

Statute that expressly created two different property tax classifications, one for common elements of condominium community located entirely in one town and another for common elements located in two towns, created a tax regime that was not only reasonable but also resulted in fair and uniform tax treatment if implemented properly, and did not violate equal protection clause of federal constitution, nor proportional contribution clause of state constitution. Pursuant to the statute, towns were prevented from taxing lands located outside their boundaries, but were free to raise funds in accordance with the amount and value of land located within their boundaries.

Appraisal method used by town to value portion of taxpayer's land located within its boundary conformed to proportional contribution clause's fair market value requirement. Method began with general land schedule provided by state based on actual sales in the town over previous three years, it then made adjustments based on factors including terrain, accessibility, septic systems, and quality of structures, and its assessed values were very comparable to actual sales.

Town's apportionment of property tax burden among condominium unit owners in relation to their percentage interest in condominium community comported with statute prohibiting taxing common areas as a separate parcel only if those common areas lie in the same town as the community's units. None of the condominium community's units were within the town, so town could tax portion of common lands lying within its boundaries.

[Growth Expected for Tax Allocation Districts, But Redevelopment Concerns Remain, Study Says.]()

ATLANTA–Revenues from Atlanta's 10 tax allocation districts (TADs), districts where incremental growth in property tax revenues is used to finance economic development projects, are expected to be up significantly in the current tax year, according to a new Georgia State University report.

The report finds Atlanta's TADs are expected to post strong growth in 2016 with a projected revenue increase of nearly 30 percent, or $21.5 million overall, based on preliminary assessment data for tax year 2015. The highest projected increase of nearly 43 percent is in the Atlanta BeltLine district. Popular destination Atlantic Station is expecting an increase of about 27 percent. The new projections are the first glimmer of progress following years of lackluster growth blamed on the Great Recession.

"Despite the Great Recession's effects on redevelopment activity in Atlanta's TADs, the city's use of tax increment financing has created nearly $2.5 billion in new taxable value, a better than 10 percent increase," said Dick Layton, an expert in Georgia municipal finance and author of the report, released by the Center for State and Local Finance.

The study shows that several of Atlanta's 10 self-financing districts have been quite successful despite recent troubling times. Assessed values have more than doubled in six of the districts, including an increase from $7 million to $538 million at Atlantic Station. Still, the Great Recession created hurdles that may have a lasting impact on Atlanta's future use of these districts, Layton said.

Tax collections peaked in fiscal years (FY) 2010 and 2011, but then declined nearly across the board. Atlantic Station saw a 21 percent decline from FY 2011 to FY 2012; Atlanta BeltLine, a 30 percent drop; and Eastside, a 36 percent drop. In one example of economic fallout, developers at Atlantic Station converted newly constructed condos into lower-valued apartments when available space went unused.

The study also discusses concerns raised about management over the years of Atlanta's redevelopment program, including the accumulation of unused funds in certain TADs, high administrative costs for some TADs, the overcommitment of Atlanta BeltLine funds to Atlanta Public Schools, as well as issues associated with the ongoing evaluation of TAD progress in meeting economic development goals.

"It should be noted that many, if not all, of these concerns originated as and when the TADs were being created, leaving subsequent city administrations to deal with them," Layton said.

The report notes that Atlanta has been one of the most active users in the country of this form of financing. Outside of California cities, Atlanta is second only to Denver. With the economy picking up, self-financing districts will likely regain some of their popularity. As Atlanta considers new uses for tax increment financing, the report suggests the city should pursue more aggressive oversight and evaluation of each TAD's progress toward meeting goals and objectives.

Download a copy of the report.

January 27, 2016

Andrew Young School of Policy Studies, Center for State and Local Finance

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TAX - INDIANA

In re 2014 Johnson County Tax Sale

Court of Appeals of Indiana - December 22, 2015 - N.E.3d - 2015 WL 9306974

Following tax sale, town brought petition seeking issuance of tax deed. The Superior Court denied issuance of tax deed, ruling that the property owner had redeemed the property. Town appealed, arguing that property owner was not entitled to equitable relief because he did not file an objection to the Town's petition for a tax deed.

The Court of Appeals held that:

- Trial court's findings were not clearly erroneous, and
- Trial court was not prevented from exercising its equitable power in favor of property owner by denying town's petition.

Trial court, in granting equitable relief to property owner by denying town's petition for issuance of tax deed, did not clearly err in finding that he went to auditor's office to determine amount due to redeem property and paid amount he was provided, that he did not have unclean hands, and that he relied upon information provided by auditor.

Trial court was not prevented from exercising its equitable power in favor of property owner by denying town's petition for issuance of tax deed, by property owner's failure to file objection and request hearing pursuant to statute governing petitions for issuance of tax deed, where court did hold hearing and town did not object to hearing.

TAX - OHIO

Cuyahoga Cty. v. Testa

Supreme Court of Ohio - January 19, 2016 - N.E.3d - 2016 WL 259380 - 2016 -Ohio- 134

County appealed decision of the Board of Tax Appeals (BTA) affirming tax commissioner's denial of exemption of marina/restaurant portion of real property acquired by county.

The Supreme Court of Ohio held that:

- County failed to preserve for appeal its claim that tax-exempt status of portion of property containing marina and restaurant should not have been considered separately from tax-exempt status of portion containing park, and
- Evidence supported BTA's decision that marina and restaurant were not used exclusively for a public purpose.

On appeal to Board of Tax Appeals (BTA) from tax commissioner's denial of tax exemption to county-owned marina/restaurant portion of real property that also included park, county failed to preserve its claim that tax-exempt status of marina/restaurant portion should not have been considered separately from tax-exempt status of park portion, where county's notice of appeal to BTA failed to specify the separate treatment of the two uses as error.

Evidence supported decision of Board of Tax Appeals (BTA) that county-owned marina and restaurant were not used exclusively for a public purpose by county, but were instead operated with a view to profit, and thus county was not entitled to tax exemption for portion of property containing marina and restaurant. Marina was operated by a for-profit entity, marina served as a revenue source for developing county-owned park on another portion of the property, and marina used long-term leases that limited general public's access.

IRS Examining Arborwood CDD Board, Land Purchase.

WASHINGTON – The Internal Revenue Service is stepping up its audit of $80 million of Arborwood Community Development District's 2006 bonds and appears to be focusing in part on the Florida CDD's board and land
possibly purchased at too high a price.

IRS tax-exempt bond revenue agent Debbie Arceneaux asked for nine items from the CDD last month, including whether any members of the board of supervisors have been elected by CDD residents as well as a list of landowners along with the number of acres they owned and voting units they held when the bonds were issued.

She also asked for the status of the bonds, including how many are outstanding and if any defaulted or were refunded. Arceneaux wanted the sources and amounts of revenues being used to pay debt service and copies of sales or acquisition agreements between the CDD and developers for any transfer of assets using the bond proceeds.

She made the requests in a Dec. 8, 2015 letter that was included in documents recently posted on the Municipal Securities Rulemaking Board's EMMA website. The letter asked for the information to be provided by Dec. 31.

The Arborwood CDD, located near Fort Myers, has been under audit since 2012. This is the IRS' fourth request for information, according to Michael McElligott, who works in finance at Special

District Services, Inc., which manages the CDD. The audit is one of a number IRS investigations of CDDs in Florida, one in particular of which is being closely watched by the bond law community. The IRS has claimed the Village Center Community Development District, in Lady Lake, Fla., is not a political subdivision and therefore can't issue tax-exempt bonds because its board is tied to the developer and isn't made up of any elected CDD residents.

Bond lawyers have complained the agency is trying to set new standards for political subdivisions through enforcement cases rather than rulemaking. They typically have defined a political subdivision as one that has been delegated the right to exercise sovereign powers, such as eminent domain or taxation. As a result of the controversy, the Treasury Department and IRS are working on new rules for defining a political subdivision that they say will be subject to public comment and will be prospectively effective.

Wes Habor, a shareholder at Hopping Green & Sams, counsel to the Arborwood CDD, said it differs from the Village Center CDD in that it has more than 250 residents and its board is elected by residents.

But the website of the Arborwood Homeowners Association, Inc. showed 151 units at the end of 2015, with each charged $115.50 per month for a total of $17,440.50 per month and $209,286 per year. Association officials could not be reached for comment.

Kathleen Dailey, who joined SDS last year and manages the CDD, said the board has been made up entirely of residents since 2014. She didn't have information on the number of residents but said it could be obtained from the homeowners association.

Dailey said the CDD only oversees the lakes and stormwater system, the acquisition of which was financed with the bonds. The CDD oversees the assessments on property owners used to pay the bonds and obtains permits for the preserved lands and wetlands. Those include a panther reserve and a bat habitat, she said.

There is very little descriptive information about the Arborwood CDD on its website, though its key officials and financial documents are posted. A 2004 engineer's report provided to the CDD and posted on its website said Arborwood was a proposed 2,467 acre master planned community in Fort Myers, Fla. that was to be approved for 4,050 single family homes, 2,450 multi-family units, 36 holes of golf, commercial space, wetland preserves infrastructure, landscaped roadways and gated entries. Dailey doesn't know if that's changed.

McElligott said at least three major developers are currently building homes in the CDD, including PulteGroup, which acquired Centex in 2009. The documents posted on EMMA show the IRS is particularly interested in roughly 561 acres of preserves and wetlands, which the CDD acquired from the developer (under contract at that time to Centex Homes) with proceeds from $67.34 million of bond anticipation notes issued in 2005. The land was used as collateral for $80 million of capital improvement revenue bonds issued in 2006 to refund the 2005 notes.

The documents posted on EMMA include an assessment of the value of the land by senior IRS appraiser Howard Kanter that was sent to IRS officials in September. Kantor said the 561 acres were part of 1,826 acre parcel that was purchased at $67,167 per acre for a total purchase price of $122.65 million in 2003. Kanter said the 561 acres can't be commercially developed. He estimated their value at $2,500 per acre or $1.4 million.

Vanessa Albert Lowry, a shareholder at Greenberg Traurig in Philadelphia who appears to be representing the CDD in the IRS audit, could not be reached for comment.

The Bond Buyer

by Lynn Hume

JAN 20, 2016 3:32pm ET

TAX SALE - NORTH DAKOTA

[Estate of Glasoe v. Williams County, N.D.]

Supreme Court of North Dakota - January 19, 2016 - N.W.2d - 2016 WL 225224 - 2016 ND 18

Heirs of property owner brought action to recover and quiet title to property that was sold at public auction following tax lien foreclosure. Following a trial, the District Court dismissed action. Heirs appealed.

The Supreme Court of North Dakota held that:

- Service of notice of foreclosure by certified mail on deceased property owner and by personal service on resident complied with statutory requirements;
- Service of notice of foreclosure on non-resident constituted valid personal service;
- Auditor was not statutorily required to provide final notice of expiration of redemption period; and
- Purchaser's successful bid and county's acceptance of down payment precluded redemption.

TAX - RHODE ISLAND

[DePasqual v. Cwiek]

Supreme Court of Rhode Island - January 14, 2016 - A.3d - 2016 WL 166477

Taxpayers who allowed installation of wind turbine on their property filed suit challenging decision of Tax Board of Review that denied taxpayers' appeal from local property tax bill based on assessment of wind turbine. The Superior Court entered summary judgment for taxpayers, and assessor appealed.

The Supreme Court of Rhode Island affirmed the decision of the Superior Court, holding that:

- Taxpayers were manufacturers, within meaning of exemption from property tax for manufacturer who used premises primarily for purpose of transforming raw materials into finished product for trade;
- Wind turbine did not come within statutory exception to definition of "manufacturer"; and
- Statute granting municipality authority to enact ordinance exempting from property tax any renewable energy system located in municipality did not impose any qualification on taxpayers' entitlement to exemption from property tax as "manufacturer" of electricity.

Taxpayers who owned property where wind turbine was built were "manufacturers," within meaning of statute granting exemption from tax for manufacturer who used any premises primarily for purpose of transforming raw materials into finished product for trade, where turbine was used exclusively for purpose of transforming raw materials—namely, wind—into finished product—namely, electricity.

Wind turbine that converted wind to electricity, which product was not sold to public but instead was sold directly to National Grid pursuant to standard power purchase agreement, did not come within statutory exception to definition of "manufacturer" exempt from property tax for non-regulated power producer that commenced commercial operation by selling electricity at retail or taking title to generating facilities as of designated date.

Statute granting municipality authority to enact ordinance exempting from property tax any renewable energy system located in municipality did not impose any qualification on existing statutory right of wind turbine owner to exemption from property tax as "manufacturer" of electricity from raw materials, namely, wind, based on use of "any premises, room, or place in it primarily for the purpose of transforming raw materials into a finished product for trade."

TAX - NEVADA

City of Fernley v. State, Dep't of Tax

Supreme Court of Nevada - January 14, 2016 - P.3d - 2016 WL 166087 - 132 Nev. Adv. Op. 4

City filed complaint against state, challenging constitutionality of Local Government Tax Distribution Account and seeking declaratory and injunctive relief and damages for violations of state constitutional prohibition on special or local legislation.

The First Judicial District Court granted state summary judgment and awarded state costs. City appealed.

The Supreme Court of Nevada affirmed, holding that:

- City knew or had reason to know of its claim for retrospective relief against state on date of it's incorporation;
- Failure to file claim within default statute of limitations did not bar claim for injunctive and declaratory relief;
- Local Government Tax Distribution Account was a general law; and
- Distribution classifications applied uniformly and legislature had legitimate purpose for enacting different classifications.

Trial court did not abuse its discretion in awarding costs to state in city's suit against state challenging constitutionality of Local Government Tax Distribution Account and seeking declaratory and injunctive relief and damages for violations of state constitutional prohibition on special or local legislation. Even though city's lawsuit involved a good-faith challenge to tax distribution legislation, state was prevailing party in action for recovery of money damages where city sought to recover more than $2,500.

City knew or had reason to know of its claim for retrospective relief against state that Local Government Tax Distribution Account was unconstitutional under constitutional provision prohibiting legislature from passing local or special laws for assessment and collection of taxes, triggering default statute of limitations of four years, on date of its incorporation as city, since city was aware that its base distributions under Local Government Tax Distribution Account would be calculated as of that date.

City's failure to file claim within default four-year statute of limitations that Local Government Tax Distribution Account was unconstitutional under state constitutional provision prohibiting legislature from passing local or special laws for assessment and collection of taxes did not bar city's claims for injunctive and declaratory relief from allegedly unconstitutional statute. City retained right to prevent future violations of constitutional rights.

Local Government Tax Distribution Account was general law, as required to defeat city's claim that tax distribution legislation was unconstitutional under state constitutional provision prohibiting legislature from passing local or special laws for assessment and collection of taxes. City was not singled out in legislation, but rather was classified with similarly situated local governments.

Distribution classifications under Local Government Tax Distribution Account applied uniformly to all entities that were similarly situated and legislature had legitimate government purpose for enacting different classifications, as required to defeat city's claim that tax distribution legislation was unconstitutional under state constitutional provision prohibiting legislature from passing local or special laws for assessment and collection of taxes. Tax distribution legislation did not specify recipients, but rather had different formulas it used for any entity that fell within that classification, and classifications that legislature used when enacting legislation were rationally related to achieve its legitimate government interests of promoting general-purpose governments.

TAX - SOUTH DAKOTA

Flandreau Santee Sioux Tribe v. Gerlach

United States District Court, D. South Dakota, Southern Division - December 18, 2015 - F.Supp.3d - 2015 WL 9273931

Following decision by South Dakota Office of Hearing Examiners that nonmember purchases at casino owned and operated by Indian tribe on tribal lands were subject to state's use tax, brought action in federal court against state and governor, alleging that state lacked authority to impose its use tax scheme on reservation land against nonmember casino patrons. Defendants moved to dismiss.

The District Court held that:

- Under South Dakota law federal claims were not precluded by any res judicata effect of Hearing Examiner's final order;
- Younger abstention and "Our Federalism" doctrine did not preclude federal jurisdiction;
- Tribe adequately pleaded that state taxation of nonmember purchases of goods and services at casino was preempted by IGRA;
- Tribe's complaint that imposition of taxes was unlawfully discriminatory met threshold requirement of plausibility;
- Claim was ripe for judicial determination; and
- Tribe adequately pled that tax remittance was unrelated to alcohol regulation, and thus invalid.

Decision by South Dakota Office of Hearing Examiners, in compelled review of state's alcohol license denial, that nonmember purchases at casino owned and operated by tribe on tribal lands were not subject to state's use tax, did not consider tribe's Ex parte Young federal questions of state taxation on reservation land, federal preemption law, operation of IGRA, and jurisdiction over Indian tribes, and which did not involve § 1983 claim, and thus under South Dakota law federal claims were not precluded by any res judicata effect of Hearing Examiner's final order, which tribe had not appealed to state court, although Hearing Examiner discussed that application of use tax on tribe violated neither IGRA nor Tribal-State Compact.

Younger abstention and "Our Federalism" doctrine did not preclude federal jurisdiction over Indian tribe's federal claims not yet litigated in state court against state and governor, alleging state's taxation on reservation land contravened IGRA, although tribe had initiated state administrative proceeding seeking to compel reissuance of its alcohol license. State proceeding was licensure hearing, not enforcement proceeding, brought by tribe and not state, and thus was not judicial in nature.

Indian tribe, which owned and operated IGRA-sanctioned casino on tribal lands, adequately pleaded that state taxation of nonmember purchases of goods and services at casino was preempted by IGRA. Taxes were result of casino activity, compact existed between tribe and state but did not direct state's authority to tax alcohol sales at tribe's casino, state could have negotiated for taxes on alcohol sales on casino floor depending on use to which those funds were to be put, questions remained regarding whether state waived its right to such tax imposition, and whether sales of alcohol and other services was directly related to gaming, and tax interfered with IGRA's purpose of amplifying tribal development as it related to gaming.

South Dakota's tax imposition on nonmember patrons of casino on reservation land of not only goods presumably purchased by tribe off reservation for resale to casino patrons, but also services provided to patrons on reservation, required weighing of interests of tribe, state, and federal government to determine if taxes were permissible, and thus tribe's complaint that imposition of taxes was unlawfully discriminatory as applied to tribe met threshold requirement of plausibility, as required to adequately plead claim, even though tribe erroneously relied on case involving off-reservation tax.

Indian tribe's claim that South Dakota's use tax and remittance requirements as applied to on reservation patrons and that was necessary to retain alcohol license at tribe's casino were preempted by Indian Commerce Clause of Federal Constitution, federal common law, and infringed on inherent tribal sovereignty was neither hypothetical nor speculative given that state declined to renew tribe's license after tribe failed to collect and remit tax, and thus claim was ripe for judicial determination.

Indian tribe adequately pled that alcohol licenses conditioned on tax remittance was unrelated to alcohol regulation and as such was violative of statute granting state's authority to regulate and control use of alcohol on tribal lands, and thus was invalid as improper exercise of state regulatory authority.

TAX - OHIO

Warrensville Hts. City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision

Supreme Court of Ohio - January 13, 2016 - N.E.3d - 2016 WL 147273 - 2016 -Ohio- 78

City board of education appealed decision of the Board of Tax Appeals, which found that the value of a racetrack was approximately $30 million less than the purchase price at a bankruptcy sale six months after tax-lien date.

The Supreme Court of Ohio held that:

- Purchase price did not establish true value, and
- Evidence was sufficient to support valuation.

Purchase price of racetrack at bankruptcy sale six months after tax-lien date did not establish property's true value, and therefore Board of Tax Appeals properly considered appraisal evidence in valuing property, where racetrack was sold at auction, which was forced sale other than in ordinary course of business and not between typically motivated parties, and sale occurred at least in part to liquidate assets for benefit of creditors.

Evidence was sufficient to support Board of Tax Appeals' decision to value racetrack at $13.8 million, as opposed to $43 million, which was purchase price at bankruptcy sale, as advocated by board of education. Board of education presented nothing apart from price at forced auction to establish value of property, purchaser's appraisal indicated that $27,950,000 of purchase price was attributed to obtaining racing license and that furniture, fixtures, and equipment were worth approximately $1,200,000, and other evidence, including recitals in purchase agreement, corroborated appraisal's valuation.

TAX - VERMONT

Rasmussen v. Town of Fair Haven

Supreme Court of Vermont - January 8, 2016 - A.3d - 2016 WL 99839 - 2016 VT 1

Taxpayer appealed Board of Civil Authority (BCA) decision finding taxpayer withdrew his property assessment appeal. The Property Valuation and Review Division's Property Tax Hearing Officer concluded that the BCA had correctly dismissed taxpayer's appeal. Taxpayer appealed.

The Supreme Court of Vermont held that:

- Taxpayer's refusal to allow a complete inspection of the properties comprising his single parcel, including an inspection of the interior of any dwelling, constituted a withdrawal of his assessment appeal, and an affirmance of the lister's assessment of the property, and
- Town did not need to file an objection to taxpayer's appeal in order to enable the hearing officer to consider if he had the authority to consider the appraised value of the property de novo.

Because taxpayer's lands were one parcel for tax purposes, he was obligated to make any lands comprising the parcel available for inspection, and thus, his refusal to allow a complete inspection of the properties comprising his single parcel, including an inspection of the interior of any dwelling, constituted a withdrawal of his assessment appeal, and an affirmance of the lister's assessment of the property.

Inspection of a taxpayer's property for property tax assessment by town listers, the Board of Civil Authority (BCA), or a Property Valuation and Review Divsion's Property Tax Hearing Officer, would not constitute an unreasonable search under the Fourth Amendment. While a taxpayer could refuse to allow an inspection, the consequence would be that the taxpayer would not be allowed to challenge the assessment of his or her property.

The scope of taxpayer's appeal of a Board of Civil Authority (BCA) decision finding that taxpayer withdrew his property assessment appeal when he refused to allow an inspection of a portion of his property was not limited to the issues identified by taxpayer in his notice of appeal, and town did not need to file an objection to the appeal in order to enable the hearing officer to consider if he had authority to consider the appraised value of the property de novo. Due to taxpayer's refusal to allow an inspection, the BCA could not and did not make any findings or rulings on the merits.

[New England Tax Wars.]

With Massachusetts' unofficial nickname being "Taxachusetts," some may be wondering why General Electric (GE) announced this week that it's moving its corporate headquarters from Connecticut to Boston. The move follows a contentious fight in Connecticut over the state's corporate tax structure that would have eventually increased GE's tax burden.

The bulk of the fight was over Connecticut's move toward "combined reporting," which basically makes a corporation declare any tax havens it may have in other states that presumably have lower (or no) taxes on corporate and individual income. About half the states have implemented combined reporting as a way of discouraging companies from using havens to evade taxes. If GE stayed in Connecticut, its income earned elsewhere would have been subject to the state's 9 percent corporate tax rate, which is one of the highest in the country. Connecticut has also increased taxes several times in recent years, and a committee is currently studying broader tax reform.

When GE threatened to leave Connecticut over these changes last year, Gov. Dannel Malloy quickly backtracked and delayed the tax hikes until this year. But it turns out he was just buying time for GE to scout out its next move.

Oddly enough, Massachusetts already has combined reporting requirements and a similarly high corporate income tax rate. But it has a much lower individual income tax rate (a flat rate of 5.1 percent, versus Connecticut's highest tax bracket of 6.99 percent). Massachusetts and Boston also sweetened GE's deal by providing tax credits totaling $145 million.

After spending the past 40 years in Connecticut, GE's relocation sends a sobering message to states as they continue to see their revenue from corporate income taxes shrink. "[General Electric] becomes just another company that has chosen to relocate due to a state's decision to alter its tax code," said Nicole Kaeding of the Tax Foundation.

GOVERNING.COM

BY LIZ FARMER | JANUARY 15, 2016

[GFOA: Lend Your Support to Preserve the Tax Exemption on Municipal Bond Interest.]

As Congress and the White House return to discussions on comprehensive federal tax reform in 2016, GFOA is urging our members to help engage federal lawmakers regarding the need to preserve the tax exemption on municipal bond interest. In addition to the resources already available for your use on our [federal government relations page], GFOA is urging members to sign their jurisdictions onto [this letter] to the leaders of the House and Senate tax writing committees, expressing support for the tax exemption. Beyond GFOA's membership, the letter is also being distributed by our colleagues at the National League of Cities, U.S. Conference of Mayors, National Association of Counties, and the National Association of State Treasurers. Our aim is to secure the support of hundreds of jurisdictions on this letter to demonstrate to Congress the immense support for this provision of the tax code. Jurisdictions that are interested in signing on should contact Emma Heydlauff by February 15.

Download:

Letter Expressing Support for Tax Exemption

Thursday, January 14, 2016

SCHOOL FINANCE - ALASKA

State v. Ketchikan Gateway Borough

Supreme Court of Alaska - January 8, 2016 - P.3d - 2016 WL 106156

After making its contribution to fund local school district, borough brought suit against state asking the superior court to declare the required local contribution unconstitutional, to enjoin the state from requiring the borough to comply with the statute, and, to direct the state to refund its protested $4.2 million payment. Both parties moved for summary judgment. The Superior Court partially granted borough's motion. State appealed and borough cross-appealed.

The Supreme Court of Alaska held that:

- As a matter of first impression, local school funding formula was not a state tax or license within meaning of state constitutional prohibition against dedicated taxes, and
- Required local contribution did not violate the appropriations clause or the governor's veto clause of the Alaska Constitution.

State's local school funding formula, requiring that a local government make a contribution to fund its local school district, was not a "state tax" or "license" within meaning of state constitutional prohibition against dedicated taxes. Minutes of the constitutional convention and the historical context of those proceedings suggested that the delegates intended that local communities and the State would share responsibility for their local schools.

State's local school funding formula, requiring that a local government make a contribution to fund its local school district, did not violate the appropriations clause or the governor's veto clause of the Alaska Constitution; plain language of both the appropriations and governor's veto clauses indicated that the clauses restrict the State's power after money enters the state treasury, not before.

Gambling Tax Upheld by Illinois Supreme Court.

A recent decision by the Illinois Supreme Court will allow Cook County to collect about $3 million in unpaid taxes from Des Plaines' Rivers Casino.

The decision also will allow the county to continue to collect another $1 million in yearly tax revenue from Midwest Gaming, the casino's owner and operator. A separate recent state appellate court decision also upheld the county's legal right to tax gambling machines.

The Supreme Court decision effectively ends a three-year legal battle over a gambling tax approved by the Cook County Board of Commissioners in late 2012. The high court denied Midwest Gaming's petition to appeal an earlier ruling by an appellate court.

The county lost in circuit court and won in appellate court. The appellate court's decision was upheld when the state's high court declined to hear the case.

As a result of the decision, the county's Department of Revenue anticipates receiving an about $3 million one-time payment for outstanding taxes from 2013, 2014 and 2015.

"We are pleased with the Supreme Court's decision confirming our long-held belief that the county's tax on video gaming machines is legitimate and lawful," said Cook County Board President Toni Preckwinkle in a news release. "The revenue generated from the gambling tax will help provide important funding for critical public safety services to county residents."

Rivers Casino spokesman Dennis Culloton offered a different opinion.

"We respectfully disagree with the court's ruling, and we are considering our options," he said in an emailed statement.

When asked about the issue, Des Plaines City Manager Michael Bartholomew said the city was aware of the lawsuit but that it had little bearing on the municipality. He said the tax revenue the city receives from Rivers Casino is remitted by the state, not the county.

State Rep. Marty Moylan, D-Des Plaines, said in an emailed statement that he opposed the 1 percent sales tax increase passed by the Cook County board last year and would "continue to oppose any tax increase that hurts our local economy and middle-class families," but did not specifically mention the county's gambling machine tax.

After approval of the tax, Midwest Gaming filed suit against Cook County in circuit court. An agreement reached during the hearing process stipulated that the county would not enforce the tax or issue non-compliance citations while the case was still being fought. Midwest Gaming also agreed to pay any unsettled taxes after a final decision by the court.

Tax decals for gambling machines found in casinos in Cook County cost $1,000, while those for video poker machines in bars and restaurants cost $200 per the county ordinance. Based on the number of gambling machines at Rivers Casino, the county expects to receive $1 million in annual tax revenue.

BY TRIBUNE NEWS SERVICE | JANUARY 5, 2016

By Lee V. Gaines

How States' Dependence on Corporate Taxes Has Declined.

For most states, corporate income taxes represent a slow growing source of revenue. A story in the January issue of Governing explores how Michigan and other states have experienced sharp drops in these tax collections.

The Census Bureau collects tax data from states as part of its Annual Survey of State Government Finances. To see how these sources of revenue have changed over time, we've compiled financial data for each state dating back to 1950.

Corporate income taxes account for a small slice of a state's total budget, ranging from just over 5 percent of total revenues in Illinois and New Hampshire to nothing in states that don't collect any.

On average, states' reliance on such taxes has gradually dwindled over the past few decades:

Continue reading.

GOVERNING.COM

BY MIKE MACIAG | JANUARY 6, 2016

NABL: ABA Section of Taxation Submits Issue Price Comments.

On January 4, 2016, the American Bar Association (ABA) Section of Taxation submitted its comments on the proposed issue price regulations.

In the comments, the committee requested four primary points of clarification or revision to the proposed regulations, including:

> **1)** revision of the definition of underwriter to limit the risk of misapplication of the definition in enforcement proceedings and provide greater certainty to market participants;
> **2)** clarification of diligence and documentation issues, such as the issuer diligence requirement under the alternative method;
> **3)** revisions to achieve workable solutions to potential yield restriction issues that may arise under the alternative method in connection with advance refunding transactions; and
> **4)** an adjustment to the proposed rules to allow for more definite price determinations at more certain dates and times.

To read the ABA comments, please click here.

TAX - CALIFORNIA

Gillette Co. v. Franchise Tax Bd.

Supreme Court of California - December 31, 2015 - P.3d - 2015 WL 9589602 - 14 Cal. Daily Op. Serv. 21

This case evaluated California's calculation of income taxes on multistate businesses.

In 1974, California joined the Multistate Tax Compact, which contained an apportionment formula and permitted a taxpayer election between the Compact's formula and any other formula provided by state law. The Legislature later amended the Revenue and Taxation Code to specify a different apportionment formula that "shall" apply "[n]otwithstanding" the Compact's provisions. (Rev. & Tax.Code,1 § 25128, subd. (a) (section 25128(a)).)

Taxpayers here contended that they remained entitled to elect between the new statutory formula and that contained in the Compact.

The Supreme Court of California concluded that the Legislature may properly preclude a taxpayer from relying on the Compact's election provision, holding that:

- Multistate Tax Compact is not binding under constitutional contract clauses;
- Amendment of Uniform Division of Income for Tax Purposes Act (UDITPA) apportionment formula

did not violate constitutional reenactment rule; and
- Amendment of UDITPA amended the Multistate Tax Compact.

The Multistate Tax Compact is not a binding contract among its member states to preserve the Uniform Division of Income for Tax Purposes Act (UDITPA) apportionment formula, and thus the UDITPA formula does not take precedence over other state law under the contract clauses of the federal and state Constitutions, since states may unilaterally join and withdraw from the Compact, and the Multistate Tax Commission has no binding regulatory authority upon member states.

Amendment of Uniform Division of Income for Tax Purposes Act (UDITPA) apportionment formula providing that "all business income shall be apportioned to this state" under a new formula did not violate the constitutional reenactment rule, even though there was no reenactment of the Multistate Tax Compact to eliminate its provision authorizing election of a different apportionment formula, where the UDITPA amendment referenced the Compact provision.

Amendment of Uniform Division of Income for Tax Purposes Act (UDITPA) apportionment formula providing that "all business income shall be apportioned to this state" under a new formula amended the Multistate Tax Compact to require the use of the new formula.

PENSIONS - FEDERAL

Kaplan v. Saint Peter's Healthcare System

United States Court of Appeals, Third Circuit - December 29, 2015 - F.3d - 2015 WL 9487719

Participant in Employee Retirement Income Security Act (ERISA) plan brought putative class claim against employer, a religiously affiliated hospital, alleging that, as a mere qualifying agency of a church, hospital was precluded from establishing a church plan entitled to certain exemptions under ERISA.

The District Court denied employer's motion to dismiss. Employer appealed.

The Court of Appeals held that:

- Relevant ERISA provision was unambiguous in requiring a church to establish a church exempt plan;
- Legislative history indicated that agencies were precluded from establishing church exempt plans; and
- Provision did not violate Free Exercise Clause.

ERISA provision granting exemptions for churches and qualifying church agencies was unambiguous in requiring that a church, rather than a qualifying church agency, establish such a church exempt plan. Statute was clear in defining a church exempt plan as one "established and maintained" by a church for its employees, ignoring "established" language would render it superfluous by removing a careful limitation, language permitting a qualifying agency to establish a plan was expressly omitted, and court would construe exemption narrowly in favor of plan participants.

Even assuming ERISA provision permitting churches to create benefit plans exempt from certain requirements was ambiguous as to whether qualifying church agencies could also establish such plans, legislative history demonstrated that qualifying agencies were not permitted to create such exempt plans. History did not demonstrate that Congress was concerned about the ability of agencies to establish exempt plans, rather it demonstrated that Congress did not intend to open up the exemption broadly.

Informal determination of Internal Revenue Service (IRS) in general counsel memorandum that qualifying church agencies could establish and maintain church exempt plans under ERISA was contrary to plain language of ERISA provision that only permitted churches to establish such plans, and thus was not entitled to deference.

Congress did not ratify Internal Revenue Service (IRS) interpretation of ERISA provision permitting qualifying church agencies to establish church exempt plans. IRS interpretation was contrary to plain language of statute, and there was no indication that Congress had detailed knowledge of provision and its interpretation.

ERISA provision permitting only churches to establish church exempt plans did not violate Free Exercise Clause of First Amendment. Requirement that such plans be established by churches rather than their qualifying agencies did not prohibit church agencies from having their employees covered by a church exempt plan.

Not-for-Profit Hospital Borrowing Rebounds in 2015.

Hospitals borrowed 50% more from long-term investors this year than in 2014, as potential savings from refinancing drew not-for-profit hospitals into the market, new data show.

Hospitals sold investors $18 billion in fixed-rate municipal bonds this year, according to healthcare financial advisers HFA Partners. That’s compared with 2014, when hospitals borrowed $12 billion.

Rates were also low in 2014, but hospitals had additional incentives to capitalize on cheap debt this year—including the much-anticipated action by the Federal Reserve to raise interest rates. The nation’s central bank announced earlier this month it would finally raise rates from zero after years of halting economic recovery from the Great Recession. In fact, more rate hikes are expected.

Interest rates were also further depressed this year by the small number of hospitals looking to borrow in 2014. Hospital debt entering the market dropped to a 10-year low in 2014. Investors had fewer hospital bonds to buy, which held down the interest rates that hospitals had to pay.

Rates were so low entering 2015 that some hospitals sought to refinance bonds, despite terms that prohibit them from doing so for a few more years.

Hospitals often agree not to refinance, or call, bonds for a few years after borrowing money. Borrowers can get around that agreement with “advance refunding,” but that can be costly.

Still, some hospitals found they could save money regardless of advance refunding costs this year. “If rates are low enough, it works,” said Pierre Bogacz, managing director at HFA Partners.

Not all hospitals benefit equally from low rates. Borrowers with higher interest rates on existing debt stand to gain the most, Bogacz said. Advanced refunding is often most attractive to hospitals that are close to the date—one or two years—when their bonds can be refinanced.

Reid Health in Richmond, Ind., will save $1 million a year on interest after refinancing $92 million in February, said Christopher Knight, vice president and chief financial officer for the central Indiana hospital.

In 2005, Reid Health went to municipal bond markets to finance construction of a replacement hospital, which opened three years later. The financial crisis that erupted that year forced Reid Health and other not-for-profits into costly refinancing deals. Reid ended up with an average coupon rate of 6.5% and agreed not to refinance the bonds again until 2019.

Now, newly issued 30-year bonds will save the hospital money even after the $25 million cost of an advanced refunding. “I think everybody was surprised,” by the amount, Knight said. Reid rushed to enter the market in February to refinance before the Federal Reserve boosted borrowing costs. “That’s why we got in as early as possible,” Knight said.

Hospital leaders have also sought to capitalize on the large supply of investors and the small number of borrowers in the industry. Hospitals have borrowed less in recent years, despite low rates, as they scale back on construction and invest in more information technology. Demand for Reid Health’s bonds was so high that not all investors could buy bonds.

Refinancing surged in the first months of the year when Reid Health entered the market, accounting for three-quarters of the $5.8 billion in first-quarter bonds issued by hospitals, an HFA Partners analysis shows. That’s compared with 20% of the $1.4 billion hospitals borrowed in 2014.

Interest rates are more favorable now than in 2009, when “the market was anything but normal,” Bogacz said. Hospitals also save from an advance refunding with debt that must be paid back more quickly, or when hospitals’ credit rating has improved, both of which typically lower interest rates, he said.

Modern Healthcare

By Melanie Evans | December 28, 2015

Melanie Evans writes about healthcare finance, hospital management and governance issues. She has been part of the Modern Healthcare staff since 2004. Earlier in her career she covered healthcare and not-for-profits as a reporter at the Duluth (Minn.) News Tribune. She received a bachelor’s degree in international relations from Boston University and a bachelor’s in journalism from the University of Minnesota.

Outlook: What's Ahead for Tax Regulation, Enforcement in 2016.

WASHINGTON – The biggest tax regulatory issue for municipal market participants in 2016 are the issue price rules and what changes the Treasury Department and Internal Revenue Service will make as they finalize them, dealer and issuer group representatives said in interviews about the coming year.

“Our biggest issue is the issue price rules,” Michael Decker, a managing director and co-head of municipal securities for the Securities Industry and Financial Markets Association, said when asked about the tax arena.

“Issue price continues to be a big issue for underwriters and issuers,” said John Vahey, director of federal policy for Bond Dealers of America.

“As far as what we can envision going on on the regulatory front in 2016, [issue price] springs to mind,” said Dustin McDonald, director of the Government Finance Officer Association’s federal liaison center here. “I know it’s a big priority of John Cross to get it done.”

Cross, the Treasury Department’s associate tax legislative counsel, agreed with that assessment.

“Issue price is an important priority and broadly applicable topic,” he said in an interview. He said he hopes the agencies can get those final rules out sometime in the spring of next year.

Cross told GFOA’s debt committee members at their winter meeting earlier this month that tax regulatory officials “are going to take another good look at whether we can do something more on competitive sales.”

“I thought John’s remarks were very encouraging and hopefully we’ll end up with an issue price rule that’s workable,” said Decker.

In addition, muni market groups have asked for some clarifications in the proposed rules, which were published in July after the Treasury and IRS withdrew earlier ones proposed in September 2013 because of complaints they were unworkable.

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, as well as whether federal subsidy payments for direct-pay bonds such as Build America Bonds are appropriate.

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

But tax regulators became concerned that some dealers were “flipping” bonds — selling then 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.

Treasury and the IRS tried to tighten the rules in 2013 by proposing new ones that replaced the “reasonable expectations” standard with actual sales and increased the definition of “substantial amount” to 25% instead of 10%. But those rules drew many complaints so Treasury and IRS scrapped them and proposed new rules in June, under which the issue price of a maturity would generally be the price at which the first 10% of the bonds are actually sold to the public.

If 10% of a maturity hasn’t been sold by the sale date, the issue price will be the initial offering price of the bonds sold to the public, as long as the lead or sole underwriter certifies to the issuer that no underwriter filled an order from the public after the sale date and before the issue date at a higher price than the initial offering price. An exception can be made if the market moved after the sale date, but the underwriter must document any market movements justifying a higher price.

Dealers and issuers want a safe harbor or special rules for bonds sold in competitive deals, where there is less opportunity for pricing abuses.

Cross’ statements on possibly considering special rules for competitive deals are “very helpful,” said Stefano Taverna, a partner at McCall, Parkhurst & Horton in Dallas who heads the tax-exempt financing committee of the American Bar Association’s taxation section.

“The fact that he’s open to it is a good thing,” said Vahey.

Muni market groups also want clarification on actions that underwriters or issuers must take if less than a 10% of a maturity is sold to the public. “I don’t see him backing away from the actual sales approach,” said Vahey. Other market participants said the same thing.

Political Subdivision

But the Treasury and IRS may move even earlier in the year to propose rules that will be open for public comment and prospectively effective on the definition of a political subdivision, according to Cross.

Market participants and lawmakers have been seeking guidance on the definition of a political subdivision ever since the IRS issued a technical advice memorandum in 2013 that concluded the Village Center Community Development District in Florida was not a political subdivision, and therefore could not have issued tax-exempt bonds from 1993 to 2004, because its board was and will always be controlled by the developer rather than publicly elected officials. In June, the IRS said it will not apply the TAM retroactively.

Lawyers have said that the notion that control by elected officials is necessary for an entity to be a political subdivision is a new requirement and that such changes should be made through regulatory proposals that can be commented upon rather than in a TAM. Historically, the determination of whether an entity was a political subdivision was based on whether it had the right to exercise substantial sovereign powers, such as the power to tax for services.

Cross told bond lawyers meeting in Chicago in September that the Treasury and the IRS were considering having the rules include “a possible objective governmental control standard” and other principles beyond the sovereign powers analysis.

Management Contracts

The Treasury and IRS also are working to update and liberalize safe harbors in longer term management contracts so that the contracts do not create a significant amount of private use and payments that would make tax-exempt bonds taxable.

Bond and tax lawyers have complained that the tax agencies’ previous guidance on management contracts is not flexible enough to allow tax-exempt bonds to be used in transportation or infrastructure projects financed by public-private partnerships.

The IRS issued guidance in 2013, Rev. Proc. 97-13, that set up safe harbors for longer term management contracts. For a contract up to 10 years, at least 80% of the manager’s annual compensation had to be based on a fixed fee. For one of 15 years, at least 95% of the annual compensation had to be based on a fixed fee.

Then in October 2014, the IRS issued Notice 2014-67 covering management contracts that included most types of fixed or variable rate compensation for contracts of five years or less. But it did not permit compensation based on a share of net profits.

Both the NABL and the ABA’s tax-exempt financing committee have made recommendations on how this guidance could be modernized.

“I hope they will be able to turn to the management contract rules. I think that the White House still has a push for public-private partnerships” and these rules would help with that, said Linda Schakel, a partner at Ballard Spahr here.

Cross said there is a lot of interest at Treasury on this topic because of the work being done by a task force chaired by Treasury Secretary Jack Lew and Transportation Secretary Anthony Foxx. "This is a fairly early priority in the coming year," he said.

The Treasury and IRS also want to consider new guidance or rules that show what remedial actions could be taken with regard to leases under change of use rules so that bonds could remain tax-exempt if a bond-financed facility was leased to a private party.

"Those would be two very good pieces of guidance that we need," Taverna said, referring to management contracts and leases. "They would be particularly helpful in certain contexts, particularly with regard to transportation, water facilities and other types of long term assets."

The ABA taxation section's tax-exempt financing committee has "focused a lot over the past couple of years on transportation projects, particularly P3s and allocation and accounting and management contract" rules, he said.

The tax regulators also are considering issuing guidance or rules that would provide issuers of direct-pay bonds with an easier "cure" than a defeasance of the bonds in change of use situations, when too much private use and payments threatens the federal subsidy payments. They are exploring whether it would be possible, instead, to halt or lower subsidy payments instead of forcing the bonds to be defeased.

The Treasury and IRS are working on a big project to consolidate and finalize arbitrage rules that were proposed in 2007 and 2013. The issue price rules had been part of the 2013 arbitrage proposals, but were broken out as a separate regulatory project.

Other ongoing projects involve finalizing the so-called TEFRA rules, which implement provisions of the Tax Equity and Fiscal Responsibility Act of 1982 requiring public approval for private-activity bonds. The Treasury and IRS issued temporary rules in 1983 and then modified them in rules proposed in 2008. Muni groups seemed to like the 2008 proposed rules, but they were never finalized.

NABL submitted recommendations on the final rules to the Treasury and IRS in June.

Another ongoing project is to tweak reissuance notices published in 2008 and put them into reissuance rules for tax-exempt bonds. One incentive to get this project finished fairly soon is that a lot of debt was restructured into bank debt with shorter, five to seven year maturities in 2008 and issuers are going to want to convert that into long-term debt as it matures, Cross said.

"We're starting to see some reissuance questions," said Cross.

TEB

Meanwhile, IRS officials said the tax-exempt bond office is finding some ongoing problem areas in audits. These include: impermissible private use of bond-financed jails and prisons; total return swaps that result arbitrage rule violations; users of small issue industrial development bonds exceeding capital expenditure limits, direct-pay qualified zone academy bonds issued under volume cap that should not have been carried forward; arbitrage rebate payments that were not determined and paid on time; and sales of bond-financed property that created compliance issues.

The IRS tax-exempt bond office closed 568 audits and entered into 19 closing agreements during fiscal 2015, which ended on Sept. 30. An IRS spokesman said TEB will be adding market segments to audit in the coming year to those already under audit like governmental bonds, 501()(3) bonds, private-activity bonds and tax credit bonds. He was not specific about what might be added. He said TEB also is still looking at arbitrage issues and whether Form 8038-Ts on arbitrage rebate have been accurately filed.

“We’re seeing a lot of audit notices come out and it takes time for issuers to respond to them,” said Schakel, adding, “Some of the questions surprise us.” TEB entered into 105 settlements under the voluntary closing agreement program, about twice as many as in fiscal 2014.

VCAP settlements involved 501(c)(3) ownership problems, arbitrage problems, tax-credit bond issues and exempt facility bond issues. IRS officials declined to provide the dollar amounts of audit and VCAP settlements and said it would be difficult to project how many settlements might be reached in fiscal 2016.

TEB plans two substantial webcasts in 2016, but declined to specify the topics. The office plans to update publications on its website on governmental, private-activity and 501(c)(3) bonds. It is also working on an arbitrage publication.

Some lawyers noted that the costs of applying to the IRS for private-letter rulings has skyrocketed in recent years. The fee has more than doubled during the last five years, rising to $28,300 in 2015 from $14,000 in 2011. “It’s jumped dramatically over the past couple of years and I think it’s due to budget cuts, said Schakel. Issuers are supposed to seek PLRs when they fail to spend all of their proceeds for qualified school construction bonds, she said, adding, some of them don’t want to spend $28,000 over a few thousand dollars of unspent proceeds.

Finally, an IRS spokesperson said TEB is no longer sending newsletters to state and local officials because “we found that we were usually posting the same material on our website.”

The Bond Buyer

by Lynn Hume

DEC 29, 2015 11:10am ET

TAX - NEW JERSEY

[Seaboard Landing, LLC v. Borough of Penns Grove]

Tax Court of New Jersey - December 3, 2015 - N.J.Tax - 2015 WL 8006052

Taxpayer sought reduction of assessments on real property, pursuant to the Freeze Act.

The Tax Court held that:

- Square corners doctrine did not preclude municipality from opposing taxpayer’s application for Freeze Act relief; and
- Application of Freeze Act to preclude relief for tax year in which districtwide reevaluation was implemented as well as for following year did not render Act in violation of uniformity clause, even if assessments for the two tax years at issue exceeded property’s true market value; but
- Freeze Act does not preclude availability of relief in a year in which a taxpayer’s complaint is dismissed for failure to pay taxes.

Square corners doctrine did not preclude municipality from opposing taxpayer’s application for

Freeze Act relief, in proceeding in which taxpayer sought reduction in assessments of real property, even though, during discovery, municipality commissioned expert report that opined that property's true market value was more than 50% lower than equalized assessed value for certain tax years, where taxpayer did not file complaints in tax court challenging assessments for those particular tax years, and municipality, aware that the opinion of its expert, if adopted by the court, would require a reduction in the challenged assessments, proceeded to call its expert witness to offer testimony damaging to the municipality's own position.

Application of Freeze Act to preclude relief for tax year in which districtwide reevaluation was implemented as well as for following year did not render Act in violation of uniformity clause, even if assessments for the two tax years at issue exceeded property's true market value. There was no mandate in uniformity clause that all assessments which evidence suggested exceeded true market value must be revised.

Freeze Act does not preclude availability of relief in a year in which a taxpayer's complaint is dismissed for failure to pay taxes.

TAX - NEW YORK

Maimonides Medical Center v. U.S.

United States Court of Appeals, Second Circuit - December 18, 2015 - F.3d - 2015 WL 9261236

Not-for-profit corporation – Maimonides Medical Center (MMC) – brought action against the United States to recover overpayments of employment taxes.

The parties agreed that MMC was entitled to a refund for an overpayment of taxes, but disagreed as to the interest rate to be applied under I.R.C. § 6621(a)(1). MMC argued that the lower interest rates applicable to "corporation[s]" applied only to for-profit corporations, and that because it is a nonprofit corporation, it was entitled to the higher standard rate.

The United States District Court for the Eastern District of New York applied the lower interest rate. Taxpayer appealed.

The Court of Appeals held that the lower corporate interest rates provided by § 6621(a)(1) are also applicable to nonprofit corporations.

McGuire Woods: President Signs Extender Package for PTC and ITC - Renewable Energy Tax Credits.

Nearly two weeks ago, Congress passed the omnibus Consolidated Appropriations Act, 2016 (the "Omnibus Bill"), and the Protecting Americans from Tax Hikes Act of 2015 (the "Act"), both parts of a package that President Obama signed into law on Friday, December 19, 2015. Both the Omnibus Bill and the Act make substantial changes to numerous expiring or already expired tax provisions, many of which will directly impact renewable energy development.

The more important provisions of the Omnibus Bill and the Act affecting renewable energy projects include:

- **Production Tax Credits (PTC)** – The PTC under Section 45 of the Code had expired at the end of 2014 and the Act extends the PTC through the end of 2019 for wind; however, the credit is phased out beginning in 2017 (i.e., 100 percent PTC in 2015 and 2016, 80 percent for 2017, 60 percent for 2018 and 40 percent for 2019). Other technologies − such as geothermal, municipal waste, landfill gas, and open- and closed-loop biomass − received only a two-year extension of the PTC, through the end of 2017. The ability to elect from the PTC into the ITC was extended on the same basis, and with the phase-out for wind beginning in 2017. The PTC still contains the requirement that construction must have "begun" before the applicable tax year.
- **Investment Tax Credits (ITC)** – The ITC under Section 48 of the Code also received a favorable extension through 2019 for qualifying solar projects. The ITC was set to phase down from its current 30 percent credit to 10 percent for qualifying solar equipment at the end of 2016. The Omnibus Bill maintains the 30 percent ITC for qualifying solar projects through the end of 2019.
- **Residential Solar Tax Credit** – The residential solar tax credit under Section 25D of the Code was set to expire at the end of 2016 and now has been extended through the end of 2019. The residential solar tax credit allows the homeowner to take a 30 percent tax credit related to the construction costs of a qualifying solar installation, most commonly residential rooftop solar panels.
- **Bonus Depreciation** – The 50 percent bonus depreciation was extended through 2019 but begins phasing out in 2018 (i.e., 50 percent in 2015, 2016 and 2017; 40 percent in 2018; and 30 percent in 2019).
- Among other renewable tax provisions included were extensions for credits applicable to alternative fuel, renewable diesel and biodiesel.

Additionally, there was a two-year extension through 2016 for the deduction applicable to energy-efficient commercial buildings under Section 179D of the Code. Lastly, there was a five-year extension of the New Markets Tax Credit Program under Section 45D of the Code. The extension applies for the five years beginning 2015 and ending 2019, with $3.5 billion in allocation for each year. The carryover availability for unused limitation has been extended through 2024.

December 28, 2015

OUTLOOK: Tax Reform Bill Unlikely But Muni Market Must Remain Vigilant.

WASHINGTON – Congress will not act on comprehensive tax reform next year, but House Republicans could try to move forward with international or corporate tax reform, according to tax experts.

In any case, muni market groups must remain vigilant in educating lawmakers about the importance of municipal bonds, the experts and market participants said in interviews about 2016.

"There will be no important tax legislation next year, nothing's going to get to the finish line," said Howard Gleckman, senior fellow at the Tax Policy Center.

Senate Majority Leader Mitch McConnell, R-Ky. "has made it clear that it's a nonstarter and Obama's just not interested," he said.

Just after he replaced John Boehner as House Speaker, Rep. Paul Ryan, R-Wis., said he wanted the

House to pass a tax reform bill by July 18-21, when the Republican presidential convention is to be held in Cleveland. More recently Ryan said it would impossible to do comprehensive tax reform while president Obama is still in office, but he did not close the door on international or corporate tax reform.

“I understand Ryan’s enthusiasm,” said Gleckman of the former House Ways and Means Committee chairman who was, and is expected to continue to be, very focused on tax reform. “I just don’t see it.”

Several congressional observers said that by enacting the $1.1 trillion omnibus spending bill and the tax bill this month, lawmakers do not have much left to do next year.

“Everyone would agree that what Congress ended getting done at the end of the session was a larger package than expected,” said Micah Green, a partner and co-head of government affairs and public policy group at Steptoe & Johnson. The tax bill extends expired tax provisions through the end of 2016, he said.

“Congress has basically completed its to-do list,” said John Godfrey, senior director of government relations at the American Public Power Association. “The pressure to act has been lifted.”

However, Godfrey cautioned that tax policy is driven by headlines as well as deadlines, and said that if there is more controversy over U.S. companies moving their headquarters overseas to avoid U.S. taxes, that could spur efforts at international tax reform.

New House Ways and Means Committee Chair Kevin Brady, R-Texas, recently told reporters he wants to focus on international tax reform in 2016 and set the stage for a broader tax overhaul after the presidential election. In November, just after replacing Ryan, Brady said he planned to solicit the views of House members on tax reform over the next few months.

“I suppose you could see a scenario where there is agreement on international tax reform,” said Green. “But as you build up to the elections, making hard choices is harder and harder to do.”

“I don’t think we’re going to see anything in the form of comprehensive tax reform until after the elections,” said Jessica Giroux, general counsel and managing director of federal regulatory policy for Bond Dealers of America. “I think there will continue to be discussions.”

“There are two areas of risk,” said Michael Decker, managing director and co-head of municipal securities at the Securities Industry and Financial Markets Association.

First, in broader discussions on comprehensive tax reform, tax-exempt interest “will most certainly be on the table,” he said.

Second, if some form of tax reform legislation that is not comprehensive is considered and there is a need for revenue raisers to pay for provisions, “there’s always the risk that some tweaking of the tax-exempt bond statutes will find itself in that discussion,” Decker said.

“Even if you don’t have comprehensive tax reform there’s still substantial risk that municipal bonds will be on the table for corporate tax reform as a pay for,” Godfrey agreed.

Bill Daly, director of governmental affairs for the National Association of Bond Lawyers pointed out that corporate tax reform could very well involve munis, as there are tax provisions that limit the amount of tax-exempt bonds that some companies like banks or insurers can hold.

But he added that, “It’s hard to see [Congress] doing much with the truncated session” for next year’s presidential election. Members will be out part of July, all of August, all of October and most of November.

Still, he said, “The muni market needs to be vigilant no matter what.”

Green agreed. “I’ve always said that the time to make the case for the value, the efficiency of municipal bonds is before there’s movement on tax reform,” he said.

Muni market participants in past years have had confront Obama’s repeated budget proposals for capping the value of tax exemption at 28% for higher income earners. Former House Ways and Means Committee chair Dave Camp in 2014 released a draft comprehensive tax reform proposal that would have imposed a 10% surtax on muni bond interest for higher earners and eliminated the tax exemption for new private-activity bonds.

“Once you’re on the menu, you’re always on the menu,” said Godfrey.

Giroux said BDA is going to continue to try to educate congressional staff and members about the importance of municipal bonds. She said she assumes the group will do another educational seminar for staff next year.

Obama and other lawmakers have proposed reinstating direct-pay bonds like Build America Bonds, but with lower subsidy rates.

“We think you can make a strong argument to revive BABs,” said Decker. “But there seem to be key members of Congress that just don’t like that product and if that continues to be the case, it’s hard to imagine there’d be much movement in Congress.”

Both he and Giroux said BABs have lost some support among issuers because of sequestration, which has reduced their federal subsidy payments. “Sequestration needs to be addressed,” said Decker.

Asked about some lawmakers’ attempts to push for more tax credit bonds, Decker said, “It’s just a structure that doesn’t work well, that’s never been proven even on a small scale basis.”

When Congress in 2010 offered certain bonds in both direct-pay and tax credit modes, and allowed issuers to choose between them, none chose tax credit bonds.

Gleckman said rising interest rates may take more of the spotlight than tax reform in 2016.

“Probably the most important thing in the municipal market is the Federal Reserve Board and what’s going to happen to interest rates.”

If the Fed continues to raise rates, he said, “It’s going to make it more expensive to borrow money” and it’s going to “close the window” on advance refundings.

THE BOND BUYER

BY LYNN HUME

DEC 30, 2015 10:52am ET

NABL: Certain Tax-Exempt Bonds Extended in PATH Act.

On December 17, 2015 the House passed The Protecting Americans from Tax Hikes (PATH) Act of 2015, a $680 billion tax extender bill. Section 164 of the PATH Act authorizes the issuance of $400 million of qualified zone academy bonds in 2015 and 2016. Section 171 of the PATH Act extends through December 31, 2016 tax benefits, including tax-exempt bonds, in empowerment zones. Section 171 also modifies Section 1394 of the Internal Revenue Code, concerning tax-exempt enterprise zone facility bonds. The modifications are effective for bonds issued after December 31, 2015.

The Senate is expected to approve and the President to sign the PATH Act.

Click here to view the PATH Act (See page 69 for Section 164 and page 77 for Section 171).

Mind The GAAP: Financial Reporting Impact Of New Accounting Standards For Not-For-Profits.

In April of this year, the Financial Accounting Standards Board ("FASB") circulated a series of proposed changes to generally accepted accounting principles ("GAAP") applicable to certain not-for-profits. These changes, which are intended to provide clearer information to donors, creditors, and other users of financial statements, may have a significant impact on not-for-profit financial reporting (which has remained largely unchanged for nearly twenty years) and will, among other things, (i) impact the reporting of operating performance in an entity's statement of activities and related metrics in the statement of cash flows, (ii) require the use of the direct method for preparing the statement of cash flows, and (iii) modify the reporting disclosure of net assets and "underwater" endowments.

The new standards will apply to most not-for-profit organizations, including public charities and private foundations, but not to entities that provide dividends, lower costs, or economic benefits to owners, members or participants such as mutual insurance entities, credit unions, farm and rural electric cooperatives, or employee benefit plans.

FASB has not offered a timeline for when these GAAP changes will take effect and they remain subject to revision.

Some highlights of the proposed changes are:

Defining Operating Activities

Not-for-profit entities (other than healthcare entities) are currently required to report their "change in net assets," a metric which is similar to the comprehensive income of a for-profit business. While entities now have flexibility regarding how that metric is calculated, the proposed standards will require the classification of all revenues, expenses, gains, losses or other changes in net assets as either operating or nonoperating activities, with operating activities consisting of all resources derived from or directed at carrying out an entity's mission and available for use in the current reporting period.

Cash Flows

The proposed operating activity reporting changes will be reflected on the statement of cash flows. Specifically, certain expenditures, gifts of cash to acquire property and equipment, and cash invested for programmatic purposes will be classified as operating cash flows. Returns from non-programmatic investments will be considered investing inflows, while interest on financing will be classified with financing activities. In addition, entities will be required to report operating activity cash flows using direct method reporting (which generally involves breaking out cash flows on a line item basis, rather than showing net income as modified by certain adjustments).

Net Asset Reporting

Currently, not-for-profit entities classify net assets as unrestricted, temporarily restricted and permanently restricted. Under the proposed standards, a new category, "net assets with donor-imposed restrictions," will replace the temporarily restricted and permanently restricted categories, with the differences among funds being described in the footnotes to the financial statements. In addition, the unrestricted category will be renamed "net assets without donor restrictions."

Underwater Endowments

Finally, the proposed standards will change the way entities report so-called "underwater" endowment funds. An endowment fund is considered to be "underwater" if the fair value of the assets and accumulated returns of the fund are less than the historical amount of the gift. Currently, GAAP requires entities to report a deduction in net assets without donor restrictions to the extent of the deficit. Under the proposed standards, entities will present the entire endowment fund, including whatever is underwater, in "net assets with donor restrictions" and disclose (i) the aggregate fair value of the underwater endowment funds, (ii) the original gift amount or the amount the entity must maintain according to donor requirements or the law, and (iii) the amount by which funds are underwater.

Apart from the administrative and reporting impact on not-for-profits, these changes may influence how donors view a not-for-profit's health and prospects. Not-for-profits can expect more questions about their financials, both because of these changes, in the near term, and because the proposed standards will lessen the similarities between for-profit and not-for-profit reporting.

Staff and board members of not-for-profit entities should familiarize themselves with the proposed changes, and should plan to meet with their auditors and counsel to evaluate how the new standards may affect their financial reporting and to determine whether any bookkeeping changes should be implemented in advance to prepare.

Patterson Belknap Webb & Tyler LLP

Article by Dahlia B. Doumar and Justin Zaremby

Last Updated: December 14 2015

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 - PENNSYLVANIA

Fish v. Township of Lower Merion

Supreme Court of Pennsylvania - December 21, 2015 - A.3d - 2015 WL 9282331

Taxpayers sought declaratory judgment, challenging township's imposition of its business privilege tax on taxpayers' lease revenue and application of registration requirements for any "business, trade, occupation or profession."

The Court of Common Pleas found in favor of township. Taxpayers appealed. The Commonwealth Court affirmed in part and reversed in part. Review was allowed.

The Supreme Court of Pennsylvania held that Township's application of business privilege tax to businesses whose sole income consisted of rent payments on leased real property was not barred by provision of Local Tax Enabling Act precluding "any tax" on leases or lease transactions. Prohibition on lease taxes did not encompass a similar proscription as to privileges related to leases; disapproving *Cheltenham Twp. v. Cheltenham Cinema, Inc.*, 548 Pa. 385, 697 A.2d 258, and *F.J. Busse Co. v. City of Pittsburgh*, 443 Pa. 349, 279 A.2d 14.

TAX - UTAH

DIRECTV v. Utah State Tax Com'n

Supreme Court of Utah - December 14, 2015 - P.3d - 2015 WL 9016406 - 2015 UT 93

Satellite television providers brought a constitutional challenge to Utah's pay-TV sales tax scheme. The scheme provides a sales tax credit for "an amount equal to 50%" of the franchise fees paid by pay-TV providers to local municipalities for use of their public rights-of-way. Not all pay-TV providers pay franchise fees, however. Cable providers employ a business model that triggers franchise fees (and, by extension, the tax credit); satellite providers use a different model that triggers no such fees (or credit).

The satellite providers filed suit, asserting that Utah's tax scheme unconstitutionally favors local economic interests at the expense of interstate commerce. In this challenge, the satellite providers assert claims under the dormant Commerce Clause of the U.S. Constitution and the Uniform Operation of Laws Clause of the Utah Constitution.

The Fourth District Court dismissed claims. Satellite providers appealed.

The Supreme Court of Utah held that:

- Tax credit did not violate dormant Commerce Clause, and
- Credit did not violate Uniform Operation of Laws Clause of State Constitution.

State did not violate dormant Commerce Clause by providing sales tax credit in amount equal to 50% of franchise fees paid by pay-television providers to local municipalities for use of their public rights-of-way, even though cable providers benefited from credit and satellite providers did not. Credit provided no benefits to business entities based in state at expense of those who were not, and credit was triggered only by a company's self-chosen business model.

State did not violate Uniform Operation of Laws Clause of State Constitution by providing sales tax credit in amount equal to 50% of franchise fees paid by pay-television providers to local municipalities for use of their public rights-of-way, even though cable providers benefited from credit and satellite providers did not. State had a rational basis for limiting tax credit to cable providers because only cable companies incurred franchise fees.

TAX - ALABAMA

City of Pike Road v. City of Montgomery

Supreme Court of Alabama - December 11, 2015 - So.3d - 2015 WL 8569354

Property owner filed interpleader action to resolve dispute between the City of Montgomery and the City of Pike Road concerning police jurisdiction over manufacturing plant located in unincorporated section of County and the corresponding right to sales and use taxes.

The Circuit Court entered judgment in favor of Montgomery and Pike Road appealed.

The Supreme Court of Alabama held that:

- Police jurisdiction could expand to include area within three miles of city limits only after either a federal decennial census or a municipal census established that population exceeded 6,000 inhabitants, and
- City's population was not proper subject of judicial notice.

Municipality's police jurisdiction could expand to include area within three miles of its city limits only after either a federal decennial census or a municipal census established that population exceeded 6,000 inhabitants, and, the jurisdiction could not expand based on United States Census Bureau's estimate showing population in excess of 6,000. (Per Justice Stuart with three Justices concurring and a Special Justice concurring in result).

City population between federal decennial censuses was not proper subject of judicial notice in cities' dispute over whether population of smaller city grew to exceed 6,000 residents and smaller city's police jurisdiction grew to three miles beyond its city limits. City's population was the subject of dispute. (Per Justice Stuart with three Justices concurring and a Special Justice concurring in result).

Tax-Exempt Hospitals Face Payments to Host Towns in New Jersey.

New Jersey's nonprofit hospitals, which have long enjoyed a tax exemption, would have to make payments to their host communities to cover the cost of municipal services under a bipartisan measure making its way through the state legislature.

Lawmakers are responding to a June court ruling which found that the 40-acre Morristown Medical Center owed local property taxes because of "blurred lines" between its nonprofit and for-profit businesses. The 687-bed hospital's owner agreed in November to pay the town $15.5 million over the next decade.

The decision opened the door for other municipalities that host nonprofit businesses, including hospitals and universities, to challenge their tax-exempt status. Hospitals in Illinois, Pennsylvania and Iowa also have faced challenges as towns struggle to balance budgets.

"It's not a stretch to say that every nonprofit that owns property should be looking at this," Linda Czipo, executive director of the Center for Non-Profits, an organization based in Mercerville, New Jersey that advocates for the groups in Trenton and Washington. "We're concerned about how the whole property-tax issue might play out for the broader nonprofit community."

The judge who issued the Morristown ruling is also presiding over a lawsuit against Princeton University, New Jersey’s only Ivy League school. Residents are challenging its exemption because it collects drug-patent royalties that it shares with faculty.

Tax Code

The Morristown hospital’s tax-exemption challenge, like those in other states, arose in part from President Barack Obama’s signature 2010 legislation designed to shrink the number of Americans without health insurance, and in large measure due to a wave of consolidations in the hospital industry. While the existence of a new generation of joint operations and profit-based services cropped up in order to trim costs, hospitals were still operating under a tax code put in place around the turn of the last century.

“The law as it was written in 1913 really didn’t apply today,” said Senator Joseph Vitale, a Democrat from Woodbridge. “It’s a new day of doing business for hospitals.”

Vitale is co-sponsoring a bill that would establish a payment formula for nonprofit hospitals that have for-profit businesses, such as doctor groups. The new payments would be less confusing for the governments who would have to decide how to assess the bills for the hospitals, and are designed to be lower than the full levies they might otherwise face, said Senator Robert Singer, a Republican from Lakewood who is also a co-sponsor.

“This is an opportunity for hospitals to keep their heads above water,” Singer said. “As municipalities get cash-strapped, they are looking at every resource, and the Morristown case was a ’my ship has come in’ moment.”

The legislation would obligate the hospitals to make “community service contributions” of $2.50 per bed a day to host municipalities to defray costs such as police, fire and ambulance crews. Many poor, inner-city hospitals or those deemed money-losing by the state would be exempt under the bill, which passed a Senate committee this month.

Statewide Solution

Hospitals account for 140,000 jobs in the state and see more than 18 million patients a year, according to the New Jersey Hospital Association, the state-level trade group representing almost 400 health-care organizations. The association supports the measure.

“Clearly, the Morristown tax court decision has created a great deal of uncertainty, for hospitals and municipalities alike,” Betsy Ryan, NJHA’s president, said in a statement. “Our goal was to support a statewide solution that would strike a fair balance.”

In New Jersey, property taxes make up almost all of the local revenue used to fund town, county and school budgets. While hospitals can serve as a community’s economic anchor, the towns — and their residents — are footing the bill for the cost of services such as police and fire.

Nonprofits employ 314,000 people in New Jersey, nearly 10 percent of the state’s private workforce.

Nicole Sizemore, a spokeswoman for Governor Chris Christie, declined to comment on pending legislation.

“What folks forget is that for most non-profits the margin is razor thin,” said Andrew Dick, an Indianapolis attorney who represents hospitals in tax-exemption cases for Hall, Render, Killian, Heath & Lyman P.C. “If they had to pay the property taxes, that could be enough to push them into the red.”

Bloomberg News

by Terrence Dopp

December 28, 2015 — 4:57 AM PST

NABL: Tribal Economic Development Bonds, New CREBs.

On December 4, 2015, the IRS published Notice 2015-83 on Tribal Economic Development (TED) Bonds issued under a draw-down loan structure. Notice 2015-83 adds a new Section 10 to Notice 2012-48. Notice 2012-48 provided that any allocated bond volume unused after 180 days from the date of the allocation letter would be forfeit. Under Notice 2015-83, if a tribal government received a TED bond allocation and issues at least 10 percent of the allocation within 180 days, then the tribal government will have two years, or in some cases three years, to issue the remaining amount. The application for the allocation of volume cap must include a commitment letter from a financial institution stating that the institution reasonably expects to advance the total principal amount of the draw-down bonds no later than three years after the date of the allocation letter.

Notice 2015-83 also requests comments on whether similar rules should be provided for New CREBs.

The rule is effective for applications for TED bond volume cap submitted on or after December 4, 2015.

Allocations that did not expire before December 4, 2015 may also be able to rely on Notice 2015-83.

To read Notice 2015-83, please click here.

Notice 2012-48 is available here.

TAX - KANSAS

In re Equalization Appeal of Kansas Star Casino, L.L.C.

Court of Appeals of Kansas - November 20, 2015 - P.3d - 2015 WL 7375845

Kansas Star Casino, L.L.C. appealed from the ruling by the Kansas Court of Tax Appeals (COTA) that the appraised value of its property, a 195.5 acre tract of land located in the northeast corner of Sumner County and used for casino operations, was $80,510,000 for the tax year 2012. In reaching its conclusion, COTA determined that the value for Kansas Star’s land was $16,931,250. This amount was based on the actual price Kansas Star’s parent company paid for the land.

On appeal, Kansas Star argued that COTA erroneously inflated the value of its land and that the land should have been valued based on sales of agricultural property in the surrounding area. The County cross-appealed, arguing COTA erred in declining to include various additional costs as part of its valuation.

The Court of Appeals affirmed, holding that:

- Highest and best use of land was for casino operations, and, thus, appraisal complied with the law;
- Value added to land due to taxpayer's selection as gaming facility manager was not exempt from taxation;
- Option acquisition payment was properly included in property value;
- Taxpayer did not purchase land under undue compulsion; and
- County did not meet its burden to prove that taxpayer's marquee sign was personal property.

In appraising property for purposes of ad valorem taxation, highest and best use of tract of land was for operation of casino, where taxpayer was hired by state pursuant to Expanded Lottery Act as gaming facility manager via management contract to construct and own casino improvements and infrastructure and manage gaming operations, and no other entity was permitted to build a casino in south central gaming zone.

Value that was added to taxpayer's tract of land by Kansas Expanded Lottery Act (KELA) and management contract that allowed taxpayer to construct and own casino improvements and infrastructure and manage gaming operations on tract did not represent value that was separate from tract's property value so as to be exempt from ad valorem taxation.

In assessing ad valorem taxes, option acquisition payment was required to be included as part of value of real property, on which taxpayer was entitled under management contract with state to construct and own casino improvements and infrastructure and manage gaming operations on property. Without buying option, there would have been encumbrance on the tract, and taxpayer would not have possessed a fee simple interest.

Taxpayer's purchase of real property, on which taxpayer would operate casino pursuant to management contract with state, was not result of undue compulsion, and thus use of purchase price to determine fair market value property for purposes of ad valorem taxation was warranted, where taxpayer entered into options for property voluntarily in open and competitive market, and taxpayer was neither forced to pay a certain price nor to exercise its options after it was awarded contract.

County did not meet its burden to prove that taxpayer's marquee sign was personal property for purposes of valuing property for ad valorem taxation, where county pointed only to testimony that was largely conclusory.

Costs associated with trailer rentals for Racing and Gaming Commission (RGC) was not a "soft cost" subject to ad valorem taxation regarding real property used for casino operations by taxpayer, which was hired by the State pursuant to the Expanded Lottery Act as gaming facility manager via a management contract to construct and own the casino improvements and infrastructure and manage the gaming operations, although presence of RGC employees was necessary for licensing and approval of vendors. Requirement that RGC employees be present related to the management contract, not the construction of the casino itself.

Costs in organizational, administrative, and legal expenses were not "soft costs" subject to ad valorem taxation of property used for casino operations by taxpayer, which was hired by the State pursuant to the Expanded Lottery Act as gaming facility manager via a management contract to construct and own the casino improvements and infrastructure and manage the gaming operations, where the costs were for business start-up and preopening expenses, such as regulatory fees, preopening payroll, preopening marketing, preopening training and uniforms.

County did not meet its burden to prove that financing costs were soft costs subject to ad valorem taxation of property used for casino operations by taxpayer, which was hired by the State pursuant to the Expanded Lottery Act as gaming facility manager via a management contract to construct and own the casino improvements and infrastructure and manage the gaming operations, where appraiser's projected financing costs were called into question because they were based on 12 months, rather than the actual nine-month production cycle.

[IRS Amends TED Bond Volume Cap Rules To Accommodate Draw-Down Loans: Holland & Knight]

HIGHLIGHTS:

- The Internal Revenue Service (IRS) has issued Notice 2015-83, which will make it easier for Indian tribal governments to use tribal economic development (TED) volume cap for "draw-down" loan structures in which the lender advances funds for the loan on different dates.
- Draw-down loans are often a preferred means for tribal governments to borrow money for new construction projects because construction funds are borrowed in stages as needed, thereby reducing the "negative carry" associated with notes or bonds in which the full construction costs are borrowed and interest begins to accrue upon the sale of the securities.
- In addition, since draw-down loans are not considered securities subject to registration with the U.S. Securities and Exchange Commission (SEC), tribes can utilize them to borrow funds without incurring such increased costs.

The Internal Revenue Service (IRS) issued Notice 2015-83 on Dec. 4, 2015, a change that will make it easier for Indian tribal governments to use tribal economic development (TED) volume cap for "draw-down" loan structures in which the lender advances funds for the loan on different dates. Under a legislative provision enacted in 2009 as part of the American Recovery and Reinvestment Act, tribal governments may apply for TED volume cap in order to finance on-reservation, non-gaming economic development projects with tax-exempt debt. However, relatively few tribal governments have taken advantage of TED bonds or loans since they first became available in 2010.

Draw-down loans are often a preferred means for tribal governments to borrow money for new construction projects because construction funds are borrowed in stages as needed, thereby reducing the "negative carry" associated with notes or bonds in which the full construction costs are borrowed and interest begins to accrue upon the sale of the securities. Further, securities – such as bonds or notes – issued by a tribal governments are not exempt from registration requirements of the U.S. Securities and Exchange Commission (SEC) under the federal securities laws, often resulting in higher rates of interest and closing costs. Since draw-down loans are not considered securities subject to registration with the SEC, tribes can utilize them to borrow funds without incurring such increased costs.

In 2012, the IRS issued Notice 2012-48, under which a tribal government would have to issue debt obligations utilizing its allocated TED volume cap within 180 days of receiving the allocation. It was not clear how the IRS' 180-day rule, which was put in place administratively to encourage tribal governments use allocation awards promptly, would apply to draw-down loans. Arguably, draw-down loans were at odds with the IRS timing requirements because typically the loan proceeds would be drawn down over a longer period of time, sometimes two or three years.

Overview of Notice 2015-83 Requirements

Under Notice 2015-83, the IRS established new rules that accommodate the use of TED volume cap in the draw-down loan context. If a tribal government receives a TED allocation for a tax-exempt draw-down loan and spends at least 10 percent of the borrowed money within 180 days, it will have up to three years from the date of the allocation to spend the remaining volume cap amount. To have a full three years from the original allocation date, the tribal government must not only meet the 10 percent requirement above, it must also spend at least 50 percent of the proceeds of the draw-down loan within the first two years.

Notice 2015-83 also requires tribal governments to meet certain information reporting requirements to demonstrate readiness and compliance. First, a tribal government applying for a TED allocation must submit a commitment letter from a financial institution stating that the institution reasonably expects to advance the total principal amount of the draw-down loan no later than three years after the date of the allocation letter. Second, a tribal government awarded a TED allocation must submit notices of issuance to the IRS not later than 15 days after:

- the 180-day period
- the 2-year period
- the 3-year period

Each of the notices must indicate the amounts drawn and the remaining unused allocation (if any) for each period.

Notice 2015-83 states that the new rules are effective for applications for TED bond volume cap submitted on or after December 4, 2015. It also applies to applicants that have received TED volume cap that has not expired before December 4, 2015.

Considerations for Tribal Governments

In summary, Notice 2015-83 offers useful guidance for tribal governments that would like to participate in the advantages associated with tax-exempt financing without having to issue bonds that may have disadvantages when compared with draw-down loans.

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.

Last Updated: December 8 2015

Article by Kathleen M. Nilles and Randolf A. DelFranco

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IRS Helps Tribes Use TED Bond Volume Cap for Draw-Down Loans.

WASHINGTON – The Internal Revenue Service issued a notice Friday that will make it easier for Indian tribal governments to use tribal economic development bond volume cap for draw-down loans.

Notice 2015-83 “is very important” for financing new construction projects, said Townsend Hyatt, a partner at Orrick, Herrington & Sutcliffe in Portland, Ore.

“It’s really designed to deal with the borrowing reality, which is that in most cases tribes borrow through loans rather than through bonds,” he said.

Because tribal economic development bonds are not exempt from registration requirements under the federal securities laws, most tribal governments borrow from banks, according to Hyatt.

For new construction projects, tribal governments would typically draw down the loan money over time as needed to cover costs.

But draw-down loans were at odds with IRS requirements set forth in a previous notice published in 2012 (Notice 2012-48), under which a tribal government would have to use all of its allocated TED bond volume cap within 180 days of receiving it.

This requirement made it very difficult to obtain TED bond volume cap allocation for the total cost and the total amount of a tax-exempt draw-down loan needed for a project because typically the money would be drawn down over a period of time, sometimes two or three years.

Under the notice issued Friday, if a tribal government receives a TED bond allocation for a tax-exempt loan and spends at least 10% of the borrowed money within 180 days, it will have the rest of two-year period from the date of the allocation to spend the remaining amount.

If the tribal government spends at least 50% of the proceeds of the loan within two years, it will have the remaining amount of time in the three-year period since the allocation to spend the rest of the money.

The IRS, however, requires tribal governments to file several notices with it. The tribal government applying for an allocation of TED bond cap for a draw-down loan must file one or more notices with the IRS that includes: its name and taxpayer identification number; the issue price of any bonds issued, the issue date of the bonds, a description of the project being financed; and any amount of the allocation that is being forfeited.

The applicant also must submit a notice of issuance not later than 15 days after the final draw for the draw-down loan. Other notices are required as well.

“There are numerous notice requirements but the basic substance of the rule is good,” Hyatt said.

The notice said the rule is effective for applications for TED bond volume cap submitted on or after Dec. 4, 2015. It also applies to applicants that have received TED bond cap that did not expired before Dec. 4, the IRS said.

The published volume cap for the period that began Dec. 1 is almost $1.365 billion and the maximum amount of cap that any single borrower can apply for is $272.90 million, according to the IRS.

The IRS and Treasury Department, in the notice, also asked for public comments on whether they should provide special volume cap allocation rules for New Clean Renewable Energy Bonds issued as draw-down bonds or loans.

THE BOND BUYER

By Lynn Hume

DEC 4, 2015 4:00pm ET

[Fitch: WIFIA Tax Exempt Ruling Is Positive for US Water Credits.]

Fitch Ratings-New York-10 December 2015: Recent legislation lifting a ban on the use of tax-exempt bonds in conjunction with federal loans provided by the Water Infrastructure Finance and Innovation Act (WIFIA) pilot program will result in lower borrowing costs for US water utilities, Fitch Ratings says.

Utilities are facing significant costs to replace, rehabilitate, and improve their aging infrastructure. The American Water Works Association estimated the cost of maintenance of existing systems and expansion at $1 trillion over the next 25 years. Utilities will benefit from an overall lower cost of financing to the extent they are able to use low-cost loans from the five-year WIFIA pilot program in combination with tax-exempt bond proceeds. The legislation could also temper the need of some issuers to obtain rate increases related to capital.

WIFIA allows utilities to borrow up to 49% of the project cost at Treasury rates with 35-year amortization periods. However, the original legislation prohibited issuers from using tax-exempt financing for the remaining 51% of the cost. This recent legislation lifts that ban.

WIFIA was modeled after the more established Transportation Infrastructure Finance and Innovation Act program and was enacted in 2014 to provide $350 million in loans over five years for water, wastewater, storm water and water reuse projects, allowing for leverage of at least $3.5 billion. The WIFIA loans, authorized by the Water Resources Reform and Development Act, are the first new federal water finance tool established since the 1996 Drinking Water State Revolving Fund.

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[Allowing Tax-Exempt Use with WIFIA Loans Will Lower Borrowing Costs.]

WASHINGTON — A provision in the new transportation funding law that lifts the ban on using tax-exempt bonds in conjunction with federal loans will result in lower borrowing costs for water utilities, Fitch Ratings said on Thursday.

The provision in the Fixing America's Surface Transportation (FAST) Act that President Obama signed on Dec. 4 removes the ban that had been included in the Water Infrastructure Finance and Innovation Act (WIFIA). WIFIA was part of the Water Resources and Reform Development Act enacted last year.

The five-year, $350 million WIFIA pilot program, modeled on the Transportation Infrastructure Finance and Innovation program, allows utilities to borrow up to 49% of the costs for large drinking water, wastewater, stormwater and water reuse projects. The loans can be used to leverage at least $3.5 billion.

However, as written, the program could not be used in conjunction with tax-exempt bonds. FAST lifts that ban.

"Over the long run, this will help some utilities with capital costs and rate increases related to capital," Shannon Groff, director of U.S. public finance for Fitch who authored the release issued by the rating agency, said in a brief interview.

"Utilities are facing significant costs to replace, rehabilitate and improve their aging infrastructure," Groff said in the release.

Water groups also cited the importance of the FAST provision.

"By removing the ban on using tax-exempt bonds with WIFIA loans, Congress has freed WIFIA to do its important work in addressing America's enormous water infrastructure challenge," said David LaFrance, chief executive officer of the American Water Works Association.

The AWWA estimates the cost of maintaining and expanding existing water systems will reach $1 trillion over the next 25 years.

Rep. Bob Gibbs, R-Ohio, chairman of the House Transportation and Infrastructure Committee's water resources and environment subcommittee who was a key proponent for WIFIA and lifting the ban, said recently, "I am pleased to see a provision included [in FAST] that supplements the funding of public water infrastructure. Municipalities across the country are dealing with expensive and necessary improvements to public water systems. The ability to combine WIFIA funding with tax-exempt bonds gives cities and counties the ability to affordably address their public health needs."

Another champion of the WIFIA fix was Sen. Barbara Boxer, D-Calif.

LaFrance said water groups, including the AWWA, the National Association of Clean Water Agencies, the Association of Metropolitan Water Agencies, and the Water Environment Federation fought for the ban to be lifted and are now urging Congress to provide WIFIA loans and state revolving fund programs in fiscal year 2016, which began Oct. 1.

"The sooner WIFIA is making loans for large water projects, the better," LaFrance said.

THE BOND BUYER

BY LYNN HUME

DEC 10, 2015 1:38pm ET

Fitch Replay: USPF Nonprofit Healthcare 2016 Outlook.

Fitch Ratings hosted a teleconference on Friday, December 4th to discuss the outlooks for the US Healthcare sector. Presenter Jim LeBuhn shared insights on key issues for 2016.

Key insights will include:

-Improving liquidity and leverage position cushion greater operating variability
-Impact of changing reimbursement deferred but not diminished
-Need for size and scale increasingly important

Listen to the teleconference replay.

NABL: Transportation Bill Allows Tax-Exempt Bonds for WIFIA.

The House and Senate passed and sent to the President this week the Conference Report on H.R. 22, the Fixing America's Surface Transportation Act or FAST Act. Section 1445 of the Act repeals Section 5028(a)(5) of the Water Resources Reform and Development Act of 2014 (33 U.S.C. 3907(a)(5)), which prohibits the use of tax-exempt and tax credit bonds in conjunction with the Water Infrastructure Finance and Innovation Act (WIFIA), a new program administered by EPA similar to the better-known transportation program TIFIA. The President has said he will sign the bill.

More information on WIFIA is available here.

The text of the H.R. 22 is available here.

Tribal Economic Development Bonds: Use of Volume Cap for Draw-down Loans.

Notice 2015-83 provides special rules regarding the process for allocation of the available amount of national volume cap for tax-exempt tribal economic development bonds under § 7871(f) of the Internal Revenue Code (TEDBs) for bonds issued under a "draw-down" loan structure in which the lender advances funds for the loan on different dates. The notice allows additional time to use allocated volume cap for issuance of TEDBs as draw-down loans if an issuer meets certain requirements.

Notice 2015-83 will be in IRB 2015-51, dated December 21, 2015.

Read the Notice.

TAX - OHIO

Megaland GP, L.L.C. v. Franklin Cty. Bd. of Revision

Supreme Court of Ohio - December 3, 2015 - N.E.3d - 2015 WL 7766712 - 2015 -Ohio- 4918

City's board of education appealed interim order of the Board of Tax Appeals (BTA) denying board's motion to reassign case regarding valuation of landowner's property to BTA's regular docket from its small-claims docket.

The Supreme Court of Ohio held that:

- The Supreme Court had jurisdiction to consider challenge to interim order, and
- Board was not "a party that is a taxpayer" under statute requiring reassignment of certain cases upon taxpayer's request.

Supreme Court had jurisdiction to consider city board of education's claim that interim order from Board of Tax Appeals (BTA) erroneously denied board's motion to reassign case regarding valuation of landowner's property to BTA's regular docket from its small-claims docket. Board had substantial right to participate in landowner's BTA appeal by virtue of its status as countercomplainant below, and BTA's retention of case on small-claims docket effectively foreclosed any appeal from ultimate BTA decision, preventing possibility of board's position being vindicated on later appeal. (Per curiam, with three justices concurring and one justice concurring in judgment only.)

City board of education was not "a party that is a taxpayer" under statute requiring Board of Tax Appeals (BTA) to reassign certain appeals assigned to small claims docket upon request by party that is taxpayer, even though board owned taxable property in county during time period at issue in case, where board was party only by virtue of its countercomplaint, its standing to have filed countercomplaint depended on its being a board of education, and its status as property owner was completely irrelevant. (Per curiam, with three justices concurring and one justice concurring in judgment only.)

TAX - CALIFORNIA

Golden Gate Hill Development Company, Inc. v. County of Alameda

Court of Appeal, First District, Division 5, California - November 25, 2015 - Cal.Rptr.3d - 2015 WL 7690054

Taxpayer brought action against county and school district for refund of special parcel taxes imposed under two voter-approved measures, alleging that tax rates were improper because different rates were imposed on residential and nonresidential properties, as well as nonresidential properties of different sizes.

The Superior Court sustained county's and school district's demurrer without leave to amend, and taxpayer appealed.

The Court of Appeal held that taxpayer's action seeking refund of special parcel taxes imposed under voter-approved measures, although not a reverse validation action, was based on the alleged illegality of the tax scheme enacted by the measures, which imposed different rates on residential and nonresidential properties, and thus, as measures had been deemed valid by operation of validation statutes, taxpayer failed to state a claim for a refund. Refund claim did not involve a matter beyond the validity of the measures themselves, claim that measures imposed an illegal tax could have been adjudicated in validation action, and, while measures specified procedure for refund, they did not specify a validation procedure different from that proscribed by validation statutes.

MILL LEVY - COLORADO

Prospect 34, LLC v. Gunnison County Board of County Commissioners

Colorado Court of Appeals, Div. III - November 5, 2015 - P.3d - 2015 WL 6746441 - 2015 COA 160

Reserve Metropolitan District No. 2 (RMD2) is a special district located entirely within the town of Mt. Crested Butte (Town) in Gunnison County. RMD2's service plan — a document statutorily required to organize a special district — states that RMD2's mill levy "shall not exceed 50 mills, subject to Gallagher Adjustments," and that any levy beyond 50 mills requires Town approval.

By 2013, the mill levy totaled 52.676 mills, including the Gallagher Adjustment of 2.676 mills. Then the RMD2 board approved certifying to the BOCC 55.676 mills, 3.000 mills in excess of the cap in the 2000 service plan. Although the maximum mill levy provision in the service plan had never been increased, the BOCC levied 55.676 mills on December 21, 2012.

The Town council protested the mill levy increase, noting that it "does not consent to any increase above 50 mills 'gallagherized' in the mill levy…." The Town sued in Gunnison County Court to enjoin the excess mill levy and for a declaratory judgment that the excess mill levy was void. The court denied the council's motion for summary judgment on this issue. That action remains pending.

When RMD2 taxed Prospect Development Company, Inc., and Prospect 34, LLC (together, Prospect) at a higher rate, Prospect petitioned the Gunnison County Board of County Commissioners (BOCC) to abate the excess taxes. After the BOCC denied the petition, Prospect appealed to the Board of Assessment Appeals (BAA). The BAA did not independently examine the legality of the excess mill levy. Instead, it relied sonly on the County Court's denial of summary judgment to conclude that the 3.000 mills were levied legally. Prospect appealed.

Section 39–10–114(1)(a)(I)(A) provides, as relevant here:

[I]f taxes have been levied erroneously or illegally, whether due to erroneous valuation for assessment, irregularity in levying, clerical error, or overvaluation, the treasurer shall report the amount thereof to the board of county commissioners, which shall proceed to abate such taxes in the manner provided by law.

Thus, the court was was obligated to examine if an excess mill levy

The Court of Appeals concluded that section 39–10–114(1)(a)(I)(A) provided a statutory basis for Prospect to challenge the excess mill levy before the BAA, the BAA had authority to decide whether the excess mill levy was illegal, the BAA abused its discretion by instead relying on an order denying summary judgment as making a final determination, and the excess mill levy was illegal.

The Court reversed the BAA's decision and remanded for the BAA to order the BOCC to grant the petition and abate the excess taxes.

Mintz Levin: Helpful News from IRS on Student Loan Bonds.

On November 13, the IRS issued Notice 2015-78, providing favorable guidance on topics of interest to providers of "supplemental" or "alternative" student loans financed with tax-exempt bonds and to underwriters of such student loan bonds. Such guidance confirms that loans financeable under such programs include (i) parent loans as well as student loans and (ii) loans that refinance or consolidate prior loans that were or could have been financed on a tax-exempt basis.

Tax-exempt bonds used to finance student loans, so-called "qualified student loan bonds," come in two flavors under the Internal Revenue Code, those issued to finance federally-guaranteed loans made under the Federal Family Education Loan Program ("FFELP") and those issued to finance certain loans issued under programs created by the states, generally known as "supplemental" or "alternative" loan programs. While the FFELP program, historically much larger, terminated in 2010, tax-exempt financing for new loans under state supplemental programs has continued in approximately fifteen states.

Notice 2015-78 appears to have been prompted by recent efforts by governmental issuers to provide refinancing of student loan debt through non-federally guaranteed "consolidation loans", which presented questions on which the IRS had not previously provided guidance. The IRS also used the notice as an opportunity to address selected other issues applicable to all tax-exempt financed supplemental loans, not just refinancing loans. The Notice clarifies the following:

> **Eligible Borrowers.** Notwithstanding the widespread practice of making higher education loans to parents, a practice provided for by statute under FFELP through the Parent Loan to Undergraduate Students (PLUS) program, the IRS had expressed concerns in the context of ruling request discussions about whether loans to parents were bond-financeable student loans. Notice 2015-78 clarifies that the student, the parent, or both can be an eligible borrower of a bond-financed "student loan." The Notice attempts to provide a similar rule for refinancing loans, stating, "An eligible borrower of a refinancing loan … is the student or parent borrower of the original loan." In the refinancing loan context the Notice's particular wording leaves unclear whether if the sole borrower on the original loan was the parent, the sole borrower on the refinancing loan can be the proud young graduate who wishes to take on the debt through a consolidation loan. Such a fact pattern clearly satisfies the policy underlying this otherwise expansively drafted notice.
>
> **Nexus to State.** The Internal Revenue Code requires the student to be a resident of the state which provides the "volume cap" allocation for the bonds or enrolled at an educational institution in that state. In the case of a refinancing or consolidation loan, there has been some question whether such "nexus" is required to be established at the time the original loan was made or at the time the refinancing loan is made. The Notice provides the broadest rule, stating that a "refinancing loan," including a loan which allows the borrower to consolidate prior debt, complies with the statutory nexus requirement either if that requirement was satisfied at the time of the original loan or if it is satisfied at the time of the refinancing loan. If reliance is placed on nexus at the time the original loan is made, in the case of a consolidation loan care may need to be exercised to establish nexus for all underlying loans.
>
> **Loan Size.** The Code limits supplemental loans to "the difference between the total cost of attendance and other forms of student assistance … for which the student borrower may be eligible." The "may be eligible" language has resulted in troublesome challenges in IRS audits, where IRS agents have suggested that issuers might be responsible for documenting that students actually had applied for all other potentially available student assistance, or obligated to downsize loans by the amount of other student assistance that was hypothetically available

> but not received by the student. The Notice confirms that tax-exempt bond issuers may rely on certifications from the student's school as to total cost of attendance and as to other student assistance. Further, the school may rely on definitions provided under the Higher Education Act, including a definition of "estimated financed assistance" which looks only to assistance the student "will receive."
>
> **Type of Loans Eligible for Refinancing.** The Notice states that supplemental student loan bonds can be used to refinance not only original loans which were themselves supplemental loans but also other loans, "for example, a FFELP loan or a student loan made by a private lender, provided that the refinancing loan meets all of the requirements for a State Supplemental Loan." Although not addressed by the Notice, it should be noted that tax-exempt bonds issued to refinance prior loans, including consolidation of prior loans, generally will require an allocation of state volume cap, which in some states is a scarce commodity. The need for volume cap may be avoided to the extent the refinancing loans made with proceeds of a bond issue refinance loans financed with other tax-exempt bonds issued by the same issuer or a related issuer and the payoffs on the refinanced loans are applied to redeem such other tax-exempt bonds in a manner that qualifies for the volume cap exception for current refunding bonds.

As a general proposition, the national student loan market is growing and dynamic. Notice 2015-78 will assist governmental issuers in fulfilling their intended role.

Article by Maxwell D. Solet

Last Updated: November 20 2015

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

NABL Recommends Revisions to Management Contract Safe Harbors.

NABL has sent to the IRS and Treasury Department suggested revisions to expand the safe harbors against private business use in Rev. Proc. 97-13. NABL made three basic recommendations.

First, safe harbors for contracts having a term greater than five years relying on the "fixed fee" framework should be made more flexible in a manner comparable to the flexibility provided in Notice 2014-67 for five-year contracts, and certain principles developed in private letter rulings should be reflected in published guidance.

Second, there should be additional safe harbors that are not based on "fixed fee" limitations.

And third, the limitation set forth in the existing regulations prohibiting management and other service contracts "based, in whole or in part, on a share of net profits" should be reconsidered, and a more flexible rule focusing on control relationships should be adopted.

Read NABL's Comment Letter.

TAX - INDIANA

[Union Tp., St. Joseph County v. State, Dept. of Local Government Finance]

Tax Court of Indiana - November 12, 2015 - N.E.3d - 2015 WL 7010912

In July of 2012, Union Township, together with the Union–Lakeville Fire Protection Territory, requested the Department of Local Government Finance's (DLGF) permission to impose an excess property tax levy. Their appeal documentation asserted that due to a $40 million "error" in calculating Union Township's 2010 net assessed valuation, they each suffered a property tax revenue shortfall in 2011. More specifically, they explained that the error was the result of the DLGF certifying Union Township's 2011 budget based on a net assessed valuation of $159,424,430, but St. Joseph County subsequently issuing the tax bills using a lower net assessed valuation of $119,968,732. Union Township and the Union–Lakeville Fire Protection Territory therefore requested the DLGF to increase the current net assessed valuation by at least $40,000,000 and allow a levy for 2012 payable 2013 sufficient to make up for the cumulative effect of that error.

On October 16, 2012, Union Township submitted a second request for the DLGF's permission to impose an excess levy. This second appeal again identified the $40 million error as the cause of a property tax revenue shortfall in 2011; it specifically sought a levy increase in the amount of $51,929.

On December 7, 2012, the DLGF issued two final determinations that denied both excess levy appeals. On January 8, 2013, Union Township initiated an original tax appeal.

The Tax Court reversed the final determinations of the DLGF, remanding to the DLGF so that it may determine whether an error caused the $40 million discrepancy between the net assessed valuation used to certify Union Township's 2011 budget and the net assessed valuation the St. Joseph County Auditor used in issuing the property tax bills related to that budget.

"DLGF has not answered 'the $40 million question:' whether or not an "error" existed. Indeed, even assuming that 1) the St. Joseph County Auditor failed to timely certify Union Township's 2010 pay 2011 net assessed valuation and 2) the DLGF was therefore authorized to certify Union Township's 2011 budget using its 2009 pay 2010 net assessed valuation does not explain why the St. Joseph County Auditor subsequently issued the 2010 pay 2011 tax bills using a number that was $40 million lower."

If an error did in fact occur, the DLGF shall order a correction to be applied to Union Township's levy limitations, rate, and levy for the ensuing calendar year to offset the cumulative effect that the error caused.

[3 Things the New Tax Incentive Disclosures Rule Won't Reveal.]

Kraft Heinz announced this month that it's closing six plants across North America and eliminating 2,600 jobs. That's bad news for several states, except, perhaps, Iowa, which was able to negotiate a deal with the company to keep about a third or 1,400 jobs at its Davenport plant in exchange for more than $20 million in state and local subsidies.

It's hard in deals like these to definitively say who the winner is, particularly when Iowa's tax incentive package includes money for job retention even though the state is losing nearly 1,000 jobs.

But a new rule could change that. Starting next year, Iowa and other governments have to start tracking, tallying up and reporting the tax incentives awarded on their annual financial statements as lost tax revenue. The new rule, mandated by the Governmental Accounting Standards Board (GASB), is a big step toward disclosing what has been a relatively difficult area of public finance to measure.

But there are at least three key areas the rule doesn't cover, starting with who gets the money. When it files its 2017 financial report, Iowa won't have to identify Kraft Heinz by name because the new rules only require voluntary disclosure of subsidy recipients. GASB thinks the reporting would be burdensome for reporting entities, especially if they've given out numerous awards.

But critics disagree, arguing that governments should at least be required to disclose the names of the largest recipients. One reason for this is that many believe subsidies don't generally help small, homegrown businesses flourish. That belief and the increasing occurrence of so-called mega deals between states and companies, led the advocacy group Good Jobs First to conduct a survey on how some states spend certain types of tax incentives. The survey showed that an average of 70 percent of deals states reached were with large businesses (those with more than 100 employees). Those deals represented 90 cents of every $1 in incentives a state doled out.

Greg LeRoy, Good Jobs First's executive director, says the survey gives ammunition to businesses owners who are tired of seeing their states spend money to keep or woo big business. "We're not saying don't spend money on economic development," LeRoy said. "But we've heard overwhelmingly that small business owners don't want them to allocate money in same way."

Another area the rules ignore involves how rebates are spent. Take film tax credits. While they're on the way out in many states, they remain a robust business in Massachusetts. The Bay State reasons that film tax credits attract productions that employ local workers — a boon for small businesses. But a recent examination by the Boston Herald revealed a stunning black market of sorts for Massachusetts' film tax credits. At least $335 million of the state's film tax credits were actually sold off to corporations and individuals who had little to do with the movie that won the tax credit in the first place.

So how does that work? The film tax credit is a 25 percent refund filmmakers earn if they spent at least $50,000 in Massachusetts. Many projects ultimately don't end up owing enough in state taxes to use the entire credit, so instead they transfer it to someone else who needs it. In other words, a filmmaker who earns, say, a $1 million credit can sell it to a broker for $900,000. The broker then sells it to a corporation for $920,000. The broker earns a $20,000 profit and the corporation gets a $1 million credit it can claim on its taxes. At least a dozen other states, according to the Herald, have transferable film tax credits.

Finally, a point of ire for some governments is that they have to report their subsidies as lost income. While GASB reasons that doing so gives a better picture of a government's overall financial health, the requirement will likely negatively affect a government's bottom line. While governments also report the criteria that businesses must meet for their abatement, it doesn't reflect potential income on a balance sheet. "I think a lot of governments are afraid it's only going to tell half the story," said Ted Williamson, a partner in RubinBrown's Public Sector Services Group.

The rule applies to fiscal years that begin after Dec. 15. Most governments start their new fiscal years on July 1 so the first disclosures would go out in financial reports issued in 2017.

GOVERNING.COM

BY LIZ FARMER | NOVEMBER 24, 2015

IRS: Mailing Address for Notices of Defeasance and Certain Elections Required by Treasury Regulations.

The Treasury Regulations at 1.141-12(d)(3), 1.142(f)(4)-1(b)(1), and 1.142-2(c)(2) require that written notice be given to either the Commissioner [Internal Revenue Service] or the Internal Revenue Service within 90 days of the establishment of the defeasance escrows under Regs. 1.141-12 and 1.142-2, or the election under 1.141(d)(4)-1.

Treasury Regulations 1.150-5 provides that the notices required by these regulations be filed with the. Internal Revenue Service, 1111 Constitution Avenue, NW, Attention: T:GE:TEB:O, Washington, DC 20224.

First Time Issuers of Tax-Advantaged Bonds – Part I Introductory Module - IRS Webinar.

An Introduction to Tax-exempt Bonds for First Time Issuers

Learn about the basics of tax-advantaged bonds, including certain requirements and post-issuance compliance.

Launch the Webcast.

Wednesday, September 16, 2015

First Time Issuers of Tax-Advantaged Bonds – Part II Private Business Use Module - IRS Webinar.

Information for First Time Issuers of Tax Exempt Bonds – Introduction to Private Business Use

Learn about fundamentals of private business use and its impact on tax-advantaged bonds.

Launch the Webcast.

Wednesday, September 16, 2015

First Time Issuers of Tax-Advantaged Bonds – Part III Arbitrage Module - IRS Webinar.

Information for First Time Issuers of Tax Exempt Bonds – Introduction to Arbitrage

[Launch the Webcast.]

Wednesday, September 16, 2015

[Ballard Spahr: New Rules Encourage Use of P3s.]

The recently released Internal Revenue Service (IRS) rules in the final allocation and accounting regulations encourage the use of public-private partnerships (P3s). Under these rules, a private party can form a partnership with a public party and use both tax-exempt bonds and equity to finance a facility. Previously the tax rules did not permit these types of partnership structures.

What do the final regulations do?

In general, allocation and accounting rules play a role in determining whether tax-exempt bonds, including tax-exempt bonds issued to pay a portion of the capital costs of a P3, are categorized as governmental bonds or private activity bonds (PABs) under the Internal Revenue Code. Governmental bonds are bonds where the proceeds are primarily used to finance governmental functions or which are repaid with governmental funds. PABs are bonds in which the state or local government serves as a conduit, providing financing to private businesses or individuals. Regulations already exist for measuring the extent of use by a party other than a state of local government (private business use) in a bond financed facility. The existing regulations provide that if a facility is financed exclusively with tax-exempt bonds, up to 10 percent private business use generally is permitted.

Mixed-use facilities. The accounting rules are relevant when a facility being financed with tax-exempt bonds is used by both governmental users and private users (referred to as a mixed-use facility). The final regulations provide guidance on when more than 10 percent private business use of a facility can be permitted in circumstances where there is less than 100 percent tax-exempt bond financing. The final regulations provide a method to identify the portion of a mixed-use project that is governmentally used. Mixed-use financing is permitted where the financing reflects the proportionate benefit derived by the users.

P3s and the partnership piece of the final rules

In a major step forward, the final regulations permit partnerships between private and governmental partners without jeopardizing the tax-exempt status of bond-financed facilities and provide rules for measuring the use of bond-financed property by a private partner. In doing so, the IRS and U.S. Treasury Department specifically indicated that the change was made to accommodate pP3s and remove barriers to tax-exempt financing of the government's (or 501(c)(3) organization's) portion of the benefit of property used in joint ventures.

Measuring private business use. The final regulations set forth a method for measuring the private business use of a tax-exempt bond-financed property resulting from the use of the property by a partnership that includes a partner that is a nongovernmental person. The amount of the use by the private partner will be based on that partner's greatest share of the partnership items (income, gain, loss, deduction or credit) in any one-year period.

The final partnership rule is a great step forward for private parties seeking to enter into arrangements with public entities because it permits flexibility in structuring arrangements that will not jeopardize the tax-exempt status of the bonds. The need for this type of rule is evidenced both by the increased interest and the discussions regarding flexibility in structuring P3s for infrastructure projects. Moreover, the implementation of the Affordable Care Act has highlighted the need for recognition of the proportionate benefit to a governmental person or 501(c)(3) organization participating in a joint venture with private partners.

When can these regulations be applied?

The final regulations generally apply to bonds sold, and deliberate actions that occur, on or after January 25, 2016. Issuers also may elect to apply the partnership provisions and the allocation and accounting rules in whole but not in part to any bonds to which the current regulations apply.

by Vicky Tsilas, J. Brian Walsh, and Charles S. Henck

November 20, 2015

Attorneys in Ballard Spahr's Public Finance Group have participated in every kind of tax-exempt bond financing and have extensive experience with the rules and regulations set by the IRS and U.S. Treasury. Working closely with attorneys in Ballard Spahr's P3/Infrastructure Group, they routinely monitor and report on new developments that impact federal and state infrastructure programs related to transportation and other types of projects.

Hawkins Advisory: Final Allocation & Accounting Regulations under Section 141 of the Internal Revenue Code.

The attached Advisory describes in brief final Treasury Regulations promulgated under section 141 of the Internal Revenue Code of 1986, as amended, for purposes of allocating the proceeds of tax-advantaged bonds to assets or portions of assets and accounting for the use of such assets or portions thereof.

Read the Advisory.

Hawkins Delafield & Wood LLP

November 18, 2015

TAX - CALIFORNIA

Carloss v. County of Alameda

Court of Appeal, First District, Division 3, California - November 12, 2015 - Cal.Rptr.3d - 2015 WL 7008872

Son of deceased former resident of tax-defaulted property brought action against county for declaratory relief challenging county's denial of son's claim for excess proceeds of the tax sale. The Superior Court sustained demurrer without leave to amend. Son appealed.

The Court of Appeal held that:

- Statute of limitations began to run when decision was mailed, and
- Recorded grant deed is not the exclusive means of proving a person's "title of record."

The 90-day statute of limitations for an action to review the decision of a board of supervisors on a claim for excess proceeds from a default tax sale begins to run from the date the decision is mailed.

A petition for writ of administrative mandamus was the proper method for the son of a deceased former resident of tax-defaulted property to challenge county's denial of son's claim for excess proceeds of the tax sale, even though son argued that the refund statute was facially unconstitutional, where son's complaint and appeal rested primarily on the contention that the statute, even if constitutional on its face, was interpreted too narrowly by the county when ruling on his claim.

While a recorded grant deed may be the best evidence of "title of record" establishing a claimant's right to excess proceeds from a default tax sale, a recorded grant deed is not the exclusive means of proving a person's title of record, and such proof may consist of recorded instruments of various types, the assessor's records, and testimony that, as a whole, establishes that the claimant or the claimant's predecessor in interest held title of record immediately prior to the tax-default sale.

TAX - GEORGIA

Glynn County v. Coleman

Court of Appeals of Georgia - November 16, 2015 - S.E.2d - 2015 WL 7162162

Taxpayers filed three class action lawsuits against county seeking a refund of ad valorem taxes, declaratory judgment, and equitable, injunctive, and mandamus relief. The trial court granted class action certification. County appealed.

The Court of Appeals held that statute governing tax refund actions against counties and municipalities permitted class action certification of taxpayers.

Motion to dismiss asking trial court to dismiss taxpayers' class action claims because complaint generally was subject to dismissal based upon sovereign immunity, limitation periods in tax refund statute, and alleged flaws with taxpayers' claims for non-monetary relief, was not proper procedure to avoid certification of a class action, in taxpayers' action against county for refund of ad valorem taxes; rather, issue to be resolved was whether requirements of class action statute had been met.

Statute governing tax refund actions against counties and municipalities permitted class action certification of taxpayers in action against county seeking refund of ad valorem taxes. While general assembly had modified a different tax refund statute to disallow class action certification, it left statute in question intact.

The Hidden Cost to 'Pay for Success'.

Nonprofits have discovered a hidden cost in preventative social programs that's keeping many from even trying to start one.

Lili Elkins spends a lot of time planning and negotiating. It's her job as chief strategy officer of the Boston-area youth nonprofit Roca. But nothing could have prepared Elkins for the project that came across her desk in 2012: It was to help design what is so far the country's largest social impact bond.

The "bond" funds a program to help reduce recidivism and increase employment among young ex-offenders. Over seven years, Roca will provide counseling and job training to 929 young men in the probation system or exiting the state juvenile justice system.

In Elkins' prior experience at Roca negotiating grants, project design was generally ironed out in a few meetings over the course of a month. The social impact bond project for Massachusetts, however, took two years of negotiating. "I teach financial management to graduate students and I'm a lawyer," said Elkins," and I still needed help understanding the financing."

Social impact bonds, which many are now calling pay for success programs, work like this: Private funders pay a government to establish a preventative social program aimed at achieving a certain measurable result. The only way investors get their money back is if the program meets those results.

The Massachusetts project, which launched in late 2014, rounded up more than $20 million from investors. But the time and cost it took to design the project exposes a major, potential deterrent to other nonprofits interested in developing a pay for success project for a government.

Part of the problem is that each pay for success project — and there are only eight up and running across the country — is unique. That means that project designs aren't easily transferrable from one government to another. So each project requires a nonprofit to surrender their best talent for great lengths of time. To help with the burden, Roca was able to utilize $250,000-worth of free legal aid to help with the negotiating. Still, Roca ended up devoting more of its top staff time than it bargained for when it started.

It's because of this that Living Cities, one of the funders of the Massachusetts recidivism program, is creating a new funding option for nonprofits interested in getting involved in pay for success projects. The foundation has secured investors for a revolving loan fund that would help nonprofits pay for designing a project, which includes things like data gathering, analysis of that data, economic modeling, evaluation design and program training.

Called a "construction loan," it would be paid back by the nonprofit only if a pay for success project moves forward. The cost of the construction loan could be built into the overall financing of the project by private funders. If the project launches, part of the money the nonprofits receive in funding could be used to pay back the loan. Living Cities has so far advanced a total of $350,000 to support projects in Illinois, New York and Salt Lake County, Utah.

Eileen Neely, Living Cities' director of capital innovation, hopes it will help governments recognize the full cost of paying for social preventative programs. "Currently they just assume the service provider will find grant money for the other costs and that's part of the reason we don't have as many projects," she said. "This is another way to make sure we are being honest about the entire cost of pay for success."

GOVERNING.COM

BY LIZ FARMER | NOVEMBER 12, 2015

S&P Webcast Replay: U.S. Not-For-Profit Health Care Median Ratios.

Standard & Poor's Ratings Services held an interactive, live Webcast and Q&A on Thursday, September 10, 2015, at 2:00 p.m. Eastern Time where the discussion included the U.S. not-for-profit health care median ratios reports.

Listen to the webcast.

Download the slides.

Sep. 10, 2015

TAX - NEW JERSEY
Fields v. Trustees of Princeton University
Tax Court of New Jersey - November 5, 2015 - N.J.Tax - 2015 WL 6859580

Taxpayers filed a complaint challenging property tax exemptions that had been granted by municipal tax assessor for twenty-one individual parcels owned by university. University moved for a determination as to which party had burden of proof.

The Tax Court held that:

- Appealing taxpayer has burden of proving that assessment is erroneous;
- Presumption of validity afforded property tax assessor's original tax assessments does not extend to tax exemptions; and
- Taxpayers had right to appeal property tax exemption.

When challenger of a property tax exemption is the municipality proper, burden of proving tax-exempt status is always upon the claimant, even when taxing district initiates the action to overturn a county board judgment.

Burden of persuading Tax Court that a tax exemption is merited is on claimant even when county board has granted exemption and appeal is by municipality.

TAX - MICHIGAN

[Hartland Glen Development, L.L.C. v. Township of Hartland]

Court of Appeals of Michigan - October 20, 2015 - Not Reported in N.W.2d - 2015 WL 6161517

In 2005, the Township of Hartland levied a $792,000 Special Assessment for 144 Residential Equivalent Units ("REUs") for residential unit sewer taps on property owned by Hartland Glen Development.

The special assessment district originally allocated the REUs to the various ownership groups in the district, which were then divided equally across the various tax parcels each group owned. However, in 2011 the REUs were reallocated across the various tax parcels based on acreage, along with creating an additional supplemental assessment district to assess additional costs incurred by the district. This reallocation resulted in the transfer of 459.14 REUs to Hartland, for a total of 603.14 REUs, a levy of $2,364,596.85 for those REUs, and a Supplemental Special Assessment of $199,488.76.

The Michigan Tax Tribunal affirmed the special sewer assessments, including the Township's changes in 2011 to the initial assessments that were made in 2005. Hartland appealed.

The Court of Appeal held that:

- Hartland was not entitled to relief on the basis of either collateral or judicial estoppel;
- The Township possessed the statutory authority to reallocate the REUs; and
- The special assessment was valid because the benefits of the special assessments to the subject property outweighed the costs.

[IRS Changes to the EO Determinations' Additional Information Request Process Beginning September 2015.]

We're making changes to how we ask for additional information in the Exempt Organizations (EO) determination letter program. The revised procedures will generally apply to determination letter requests and will improve the program's efficiency and consistency. General application processing procedures are described in Revenue Procedure 2015-9.

These revised procedures will be effective for letters requesting additional information mailed on or after the effective date of an Interim Guidance memorandum to be issued in early September 2015.

EO Determinations reviews every request

EO Determinations reviews every determination letter request to determine if it meets applicable requirements.

> **1. If the request contains sufficient information,** we consider the request and issue a determination letter.
>
> **2. If additional information is needed to make a determination,** we'll ask for it by letter and give you a period of time (generally 28 days) to submit the information. We'll also attempt to contact you or your designated representative by telephone to alert you to the coming letter.

3. If you don't respond within the provided time frame, we'll close your request without making a determination. We won't return any submitted documents or any portion of your user fee. However, we'll attempt to contact you or your designated representative by telephone before closing the request. We'll no longer place requests that have no response in a suspense status for a period of time before closing the request.

What if my request is closed?

If your application is closed because you didn't respond within the allowable time frame, you'll need to submit a new determination letter request and user fee.

IRS Changes to the EO Determinations Process: Rejecting Incomplete Applications Beginning November 2015.

We continue to make changes to our Exempt Organizations (EO) determination letter program to improve the program's efficiency and consistency.

EO Determinations will no longer process substantially incomplete applications

Effective November 18, 2015, if you submit a substantially incomplete determination letter request (Form 1023, Form 1024, Form 1028, Form 8940 or other letter request), we'll return the application package and user fee to you with a letter of explanation.

Revenue Procedure 2015-9, Section 3.08 (updated annually), lists the requirements of a substantially complete application as:

- The current version of the application form found at www.irs.gov
- The correct user fee
- A signature by an authorized individual
- An employer identification number
- A statement of receipts and expenses
- A copy of your organizing document that meets the requirements of a conformed copy
- A detailed narrative of your proposed activities
- A copy of your bylaws or similar governing rules, if adopted

Note: If your particular letter request doesn't require a listed element, we won't consider that element when determining whether your application is substantially complete.

If we return your application package, our records won't show a pending application for a determination letter. If you still want a determination letter, you must resubmit your entire application package, including the missing information, and the correct user fee.

If your request is substantially complete, we'll review it to determine if it meets the requirements for the type of request and ask for any additional information needed. You can find information on case processing in Revenue Procedure 2015-9 as well as on the website at IRS processing of exemption applications.

Non-acceptance of Form 1023-EZ

We continue to not accept/reject an incomplete Form 1023-EZ. Generally, if you attempt to electronically submit an incomplete Form 1023-EZ, www.pay.gov won't accept the submission. Also, once submitted, if we determine your Form 1023-EZ is incomplete or otherwise not accepted for processing based on Revenue Procedure 2015-5, Section 4 (updated annually), we'll send you a letter of explanation, and we'll refund your user fee (certain exceptions apply).

NABL: IRS Issues Guidance on Student Loan Bonds.

The IRS today issued Notice 2015-78 providing guidance on qualified student loan bonds under Section 144(b) of the Code. The Notice addresses (1) the eligibility of parents to borrow for their child's education; (2) how the student nexus requirement applies in the context of refinancing loans; (3) the loan size limitation; and (4) the types of student loans that may be refinanced with a State Supplemental Loan. The Notice applies to loans originated on or after February 11, 2016, but issuers may apply this notice to loans originated before February 11, 2016.

The Notice will be published in the Internal Revenue Bulletin on November 30, 2015 (IRB 2015-48). The text of the Notice is available here.

Nonprofit-Government Contracts and Grants: The State Agency Perspective.

Public agencies, at all levels, increasingly rely on nonprofit organizations to address social issues and deliver publicly funded human and cultural programs and services. Therefore, strengthening relationships between nonprofits and government is essential to enhancing the quality of service delivery. This report provides information and insights on the nonprofit-government contracting and grants relationships from the state government perspective. The findings convey challenges administering government contracts and grants and strengthen the need for state government policymakers to strategize with their nonprofit and government partners about how to better align their efforts to address specific problems and improve nonprofit-government relations.

Read the full report.

The Urban Institute

by Saunji D. Fyffe

October 29, 2015

Foley: New IRS Regulations For Mixed Use Projects Financed With Tax-Exempt Bonds Have Practical Importance.

On October 27, 2015 the U.S. Treasury Department and Internal Revenue Service published final regulations concerning the treatment of "mixed-use" projects financed with tax-exempt bonds. These new regulations have significant and immediate importance for tax planning and tax compliance of tax-exempt bond issuers and borrowers.

A copy of the new final regulations can be obtained here. See 80 FR 65637.

The new regulations, which are published as “general allocation and accounting regulations” most importantly provide rules for the measurement of private use of a project that is financed in part with proceeds of tax-exempt bonds and in part with other funds of an issuer or borrower. The new regulations also facilitate the use of tax-exempt bonds in certain “public-private partnerships.” In addition, the new regulations clarify the rules for taking “remedial actions” to correct noncompliance.

The new regulations apply to both bonds issued for the benefit of State and local government projects (“governmental bonds”) and bonds issued for the benefit of borrowers that are section 501(c)(3) exempt organizations (“qualified 501(c)(3) bonds”).

For convenience, references in this alert to “issuers” of tax-exempt bonds refer to both State or local government issuers of governmental bonds and borrowers that are section 501(c)(3) organizations. Reference to “private persons” in this alert refer to nongovernmental persons, in the case of governmental bonds, and to nongovernmental persons and persons that are not governmental persons or section 501(c)(3) organizations, in the case of qualified 501(c)(3) bonds.

Background

The Internal Revenue Code generally restricts the amount of “private business use” of projects to small amounts (generally, 10% for governmental bonds and 5% for qualified 501(c)(3) bonds, although other limitations apply in some circumstances). Although tax-exempt bond issues technically fail to comply only if the bond issue also fails to comply with a second “private security or payment” test, in most cases issuers rely on the private business use test to comply. Over the years, application of these “private business tests” has become increasingly burdensome and complex. In particular, in 1997 the Treasury Department published final regulations that require private use compliance to take into account “deliberate actions” after the date of issuance, which rule requires tax compliance monitoring throughout the term of a bond issue.

One of the most helpful strategies that issuers use to manage compliance with these complex rules is to finance the costs of a project that will be used for private uses with funds other than proceeds of tax-exempt bonds. Under that approach, the proceeds of the tax-exempt bonds are not treated as used for private uses, because the portion of the project paid with the “equity carve out” is instead treated as privately used. The new regulations set forth detailed new rules for how and when this commonly-used “equity carve out” approach works.

The Treasury Department published proposed regulations on this topic on September 26, 2006. Since the publication of the proposed regulations in 2006, issuers and practitioners have looked to the proposed regulations for general themes about how mixed-used projects should be treated, but have not been bound to follow all the specific details of the proposed regulations.

The 2006 proposed regulations also suggested that the Treasury Department would consider permitting projects financed with tax-exempt bonds to be used by a partnership including private persons. The Service has historically taken the position that use of projects financed with tax-exempt bonds by a partnership including private persons results in private business use.

Summary of the Final Regulations

Rules for equity contributions that are generally more flexible, but not in all cases more favorable. The new regulations provide that private business use of a project is allocated first to the portion of the project financed with “qualified equity.”

The rules for "qualified equity" contain important limitations. Qualified equity generally means proceeds of taxable bonds (other than taxable bonds that are tax-advantaged, such as tax credit bonds) and funds that are not derived from proceeds of a borrowing. For example, qualified equity includes an issuer's cash derived from revenues and cash donations. Qualified equity does not include equity interests in real property or personal property. This approach is consistent with prevailing practice and the proposed regulations.

The rules for "qualified equity" also contain new limitations that may be problematic in some cases. Qualified equity must be contributed to a project as part of the "same plan of financing" as the tax-exempt bonds and must pay for capital expenditures of the project on a date that is not earlier than the date on which the expenditures would be applicable to reimbursement by proceeds of the applicable tax-exempt bonds. Among other things, this appears to mean that the tax-exempt bonds generally can qualify for the "qualified equity" benefits only to the extent bonds are issued no later than 18 months after the date of the expenditure (or 18 months after the placed in service date of the project, if later, but no more than three years after the date of the expenditure), although a definitive interpretation of certain aspects of this timing limitation may require clarification from the Service. This timing rule is new, and may raise a number of problems, including particular problems for projects that have a long construction period. Similarly, the new regulations may present difficulties in some cases where a single project is financed with a series of bond issues.

The new regulations also state that qualified equity contributions must be made before the placed in service date of the financed project, except for reasonable retainage.

"Floating use" is expressly permitted. The new regulations expressly and helpfully permit "floating" use of the portion of a project treated as financed with qualified equity. For example, suppose the costs of a 10-story building are funded 70% with tax-exempt bonds and 30% with an issuer's cash. The new regulations generally provide that private use of three floors will not be treated as private use of the tax-exempt bonds, even if the particular three floors change from year to year. The new regulations remove certain limitations on "floating" use that were set forth in the proposed regulations.

A "project" that may be treated as funded in part with qualified equity is defined very broadly. One of the most favorable rules in the new regulations is a very flexible definition of a "project." These rules are particularly important in light of the rules that permit private use to "float" within a mixed-use project. The new regulations permit an issuer to treat as a single "project" one or more facilities or capital projects, including land, buildings, equipment, or other property financed in whole or in part with the proceeds of a bond issue. The proposed regulations generally permitted only certain functionally related facilities, such as adjacent buildings, to be treated as part of the same project. The more flexible rule in the new regulations may present significant tax planning opportunities and tax compliance relief, although it may in some cases be complex to apply.

Annual measurement is required, except for output facilities. The final regulations expressly provide that the "qualified equity" rule must be applied on an annual basis, except for "output facilities." In an example in the new regulations, a building is funded 70% with tax-exempt bonds and 30% with the issuer's cash. In one year, 44% of the building is used for a private business use. The example states that the amount of private business use for that year is 20% (that is, 14% divided by 70%), regardless of whether there is any private business use in any other year.

The rules for "output facilities" are significantly more flexible. Output facilities generally consist of electric and gas generation, transmission, distribution and related facilities and water collection, storage and distribution facilities. In the case of output facilities, the benefits of "qualified equity" may generally be applied on an average basis over the term of a bond issue. This more flexible approach is consistent with the special treatment in the regulations for output facilities, including more flexible rules for how private business use is measured.

No special elections or recordkeeping requirements. The new regulations helpfully do not require any special elections or record retention requirements to make use of the "qualified equity" rules. The proposed regulations contained a number of such requirements that could have been traps for the unwary. Thorough and rigorous identification of qualified equity contributions to projects and retention of records relating to such contributions and identifications, however, will continue to be important in practice. In addition, the time limits for making allocations of bond proceeds in the existing final regulations may have relevance for taking actions under the new regulations. The existing regulations generally require that an issuer must allocate proceeds to expenditures no later than 18 months after a project is placed in service.

Favorable treatment of partnerships. The new regulations facilitate "public-private partnerships" by permitting tax-exempt bonds to be used to finance an issuer's contribution to a partnership which includes private persons. Under this new rule, the amount of private business use by a private person resulting from the use of property by a partnership is the nongovernmental partner's greatest percentage of any partnership item of income, gain, loss, deduction, or credit attributable to the period the partnership uses the property during the period private use needs to be taken into account. The rule generally requires that a State or local government (or, in the case of qualified 501(c)(3) bonds, a 501(c)(3) organization) be one of the partners.

This favorable rule for partnerships expressly applies to qualified 501(c)(3) bonds issued to benefit 501(c)(3) organizations. For that purpose, ownership by a partnership does not violate the requirement that all bond-financed property needs to be owned by a 501(c)(3) organization or a State or local government.

This rule can be expected to make tax-exempt financing eligible to some extent for public-private partnerships not previously eligible for tax-exempt bond financing to any extent.

Clarification of "remedial action" rules. Since 1997, the regulations have permitted certain remedial actions to correct noncompliance with the private use rules. One remedial action is the redemption or defeasance of "nonqualified bonds." The new regulations make important revisions and corrections to these remedial action rules.

The most important "remedial action" rule in the new regulations concerns "anticipatory" remedial actions. The prior regulations expressly permitted remedial actions only in response to a deliberate action that resulted in noncompliance. Prevailing practice has been to permit redemption or defeasance in anticipation of such a deliberate action, but practice standards have varied. The new regulations permit redemption or defeasance of bonds in an anticipatory remedial action, but only if the issuer first declares an official intent on or before the date on which it defeases or redeems such bonds which identifies the financed property or loan with respect to which the anticipatory remedial action is being taken and describes the deliberate action that potentially may result in the private business tests being met. This rule states that it applies in a manner "similar" to the rules for declarations of intent for tax-exempt bond reimbursements. The required degree of specificity for declarations of intent for these anticipatory remedial actions will require consideration on a case-b--case basis.

Subsequent to 1997, the Treasury Department has published proposed regulations to make certain technical corrections to make the remedial action rules more readily administrable. The final regulations adopt in final form these favorable technical provisions. First, the final regulations confirm that an issuer may pick and choose the maturities of the nonqualified bonds that are required to be redeemed or defeased, provided that the weighted average maturity of the nonqualified bonds is not less than the weighted average maturity of the other bonds of the bond issue. Second, the new regulations confirm that the amount of nonqualified bonds does not need to correct all private use, but only an amount so that the remaining bond issue is compliant.

Clarification of "multipurpose allocation" rules. The new regulations include additional examples explaining how the rules for "multipurpose allocations" apply. The "multipurpose allocation" rules permit an issuer to break a bond issue into different portions, and to apply the private activity bond rules separately to each portion. The most helpful new example clarifies that an issuer may make a multipurpose allocation to treat governmental bonds and qualified private activity bonds for airport facilities as separate issues, even when sold on the same date pursuant to the same plan of finance.

The multipurpose allocation rules can be applied at any time and can be an important and useful tax planning and tax compliance tool, but may be complex to apply in many contexts.

Effective dates. Issuers are generally required to apply the new regulations to bonds that are sold on or after January 25, 2016, although certain special effective date rules apply.

Issuers are generally required to apply the rules for remedial actions to any "deliberate actions" that occur on or after January 25, 2016, even if the bonds were sold before that date. In this regard, it is important to note that, although the remedial action rules in the new regulations are generally favorable, the new regulations contain certain new requirements. In particular, the new rule for "anticipatory" remedial actions will generally apply to any deliberate action occurring on or after January 25, 2016. The new regulations also contain a special transition rule for remedial actions that is intended to accommodate existing bond indentures that require optional redemptions of a portion of a term bond to be applied first to reduce the earliest mandatory sinking fund payments on that bond; that special transition rule only applies to bonds issued before January 25, 2016.

Issuers may apply the new regulations to bonds sold before that date, but the effective date rules impose certain limitations on such retroactive application. An important limitation is that the effective date provisions provide that retroactive application is generally permitted only if all of the provisions of the new regulations are applied in whole. The clarification in the new regulations for "multipurpose allocations," however, may be applied separately.

Except as described above, the application of the new regulations to bonds sold before the effective date is expressly permissive. There is no implication that bonds sold before the effective date need to comply with the new regulations, although as a practical matter issuers and practitioners may look to principles in the new regulations in taking positions with respect to pre-effective date bonds.

Implications for tax-exempt bond compliance procedures. Many issuers may wish to consider whether to revise their tax-exempt bond compliance procedures to reflect certain provisions of the new regulations. For example, an issuer may be able to make best use of the favorable provisions in the new regulations by adopting a formal process to review how those provisions can be applied to particular bond issues.

Expected future developments. In 2014, the Treasury Department published Notice 2014-67, which provided for more flexible safe harbors for management contracts for use of property financed with tax-exempt bonds that have a term not exceeding five years. Accordingly, the new regulations are the second significant recent action by the Treasury Department to facilitate more flexible public/private arrangements involving projects financed with tax-exempt bonds. In that light, there is reason to anticipate that the Treasury Department may follow the new regulations with guidance that provides additional safe harbors for longer-term management contracts involving projects financed with tax-exempt bonds.

Last Updated: October 29 2015

Article by Michael G. Bailey, David Y. Bannard, Chauncey W. Lever and Mark T. Schieble

Foley & Lardner

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 - OHIO

Sears, Roebuck & Co. v. Franklin Cty. Bd. of Revision

Supreme Court of Ohio - November 3, 2015 - N.E.3d - 2015 WL 6742213 - 2015 -Ohio- 4522

School board sought review of valuation of property by the Board of Tax Appeals.

The Supreme Court of Ohio held that:

- Board had no obligation to make particularized findings of fact and conclusions of law in upholding appraiser's valuation, and
- Evidence supported appraiser's methodology.

Board of Tax Appeals had no obligation to make particularized findings of fact and conclusions of law in upholding appraiser's valuation of property. Board determined a value based on record that contained owner's appraisal as the only substantive evidence of value, and Board predicated its determination on that value and said so.

Evidence supported appraiser's methodology, which lumped together automobile service center and mall department store in order to create one building that was then valued as a mall department store. Appraiser advanced several grounds in support of her method, school board that opposed method did not remotely negate appraiser's reasons, and appraiser had valued analogous properties using same method.

McCarter & English: At Long Last – Allocation and Accounting Rules.

Good things come to those who wait. The tax-exempt bond industry has waited 18 years for a missing reserved section of the private activity bond regulations, the allocation and accounting regulations, Treas. Reg. Section 1.141-6. The regulations released by the IRS in final form October 27, 2015, (the "Regulations") provide welcome guidance on allocation of bond proceeds and equity to expenditures and to particular uses within a financed project. The Regulations also take steps to accommodate public-private partnerships by providing for aggregate as opposed to entity treatment of a partnership that includes governmental entities or 501(c)(3) organizations and private persons. In addition, the Regulations amend Treas. Reg. Section 1.141-12 to provide a rule for anticipatory remedial action that permits bonds to be redeemed or defeased prior to an expected action that would cause the private activity limits to be exceeded.

The promulgation of the Regulations gives issuers and conduit 501(c)(3) borrowers the opportunity to rethink relationships with private entities as potential users of bond-financed property and consider the use of different, non-tax-exempt bond funding sources as part of a financing package to accommodate these relationships. The Regulations also provide planning opportunities relating to disposition of bond-financed property and remedial action. At the heart of all of these changes continues to be the IRS' focus on effective post-issuance compliance procedures. The efforts by the IRS to provide simpler and more straightforward rules should make post-issuance compliance more manageable.

Undivided Portion Allocation

The Regulations provide a special, undivided portion allocation method as the exclusive method of allocation of sources of funding to expenditures and uses for eligible mixed-use projects. Under this method, qualified equity is allocated first to private business use of the eligible mixed-use project and then to governmental use, and tax-exempt bond proceeds are allocated first to governmental use and then to private business use. This allocation method inherently permits "floating private use"—private use that may move within a building from time to time.

An eligible mixed-use project is a project wholly owned by one or more governmental persons (or 501(c)(3) organizations) or by a partnership with at least one governmental partner that is financed with governmental bonds (or qualified 501(c)(3) bonds) and with qualified equity pursuant to the same plan of financing. Qualified equity includes proceeds of taxable bonds other than tax-credit bonds, and funds not derived from a borrowing. The qualified equity is treated as financing the project under the same plan of financing if it pays for capital expenditures of the project on a date no earlier than the date on which such expenditures would be eligible for reimbursement under the reimbursement regulations and no later than the date the measurement period begins, generally the placed-in-service date.

Read in conjunction with the allocation timing rule of Treas. Reg. Section 148-6(d)(1), which requires allocation of proceeds to expenditures not later than the later of 18 months after the expenditure is paid or the date the project is placed in service, and in no event later than 60 days after the fifth anniversary of the issue date, the issuer will at that time be able to identify qualified equity that was part of the plan of finance and allocate private business use to that equity.

Partnerships

In response to recent pressure for the development of tax-exempt bond rules that accommodate the participation of private entities in partnership with governmental entities in financing major projects, the Regulations permit the governmental share of a project used in joint ventures to be financed with governmental bonds by treating the partnership of governmental entities and private entities as an aggregate of the partners rather than as a separate taxable entity. The private business use by a private entity partner will be determined based on that partner's greatest percentage share of any of the specified partnership items, income, gain, loss, deduction or credit attributable to the partnership during the measurement period. Taken together with the undivided portion allocation method, this treatment will permit qualified equity to be allocated to the private entity partner's private business use.

Anticipatory Remedial Action

The Regulations provide a rule that would permit an issuer to redeem or defease bonds in advance of an action that would cause the private activity limits to be violated, a remedial action not addressed by current regulations. To meet this new remedial action rule, an issuer must declare its official intent to redeem or defease all the bonds that would become nonqualified bonds as a result of a subsequent deliberate action and redeem or defease such bonds prior to the action occurring. The declaration of intent must precede the redemption or defeasance, identify the financed property with respect to which the remedial action is being undertaken and describe the deliberate action that is expected to occur. The redemption or defeasance of the nonqualified bonds must not result in an extension of the weighted average maturity of the bonds, subject to a limited transition rule.

Effective Dates

The Regulations generally apply to bonds sold on or after January 25, 2016, and the new remedial action rule applies to deliberate actions that occur on or after January 25, 2016. The partnership rules and the allocation and accounting rules may be permissively applied in whole, but not in part, to any bonds to which the private activity bond regulations apply.

McCarter & English LLP

by Jeannette M. Bond

November 3, 2015

Discerning the True Policy Debate over Donor-Advised Funds.

This brief summarizes discussion at a June 2015 Tax Policy and Charities Project session where the nation's leading Donor Advised Fund (DAF) providers, nonprofit leaders, and policy experts sought to clarify and distinguish the policy issues and debates surrounding DAFs, as well as to lay out a research agenda for the DAF field. This brief also contains a useful summary comparison, prepared by Victoria Bjorklund, retired partner of Simpson Thacher, of major differences in the laws and regulations applicable to public charities providing DAFs, other public charities and private foundations.

Download the brief.

Tax Policy Center

by C. Eugene Steuerle, Ellen Steele

Published: October 21, 2015

TAX - ILLINOIS

Village of Bedford Park v. Expedia, Inc. (WA)

United States District Court, N.D. Illinois, Eastern Division - September 28, 2015 - F.R.D. - 2015 WL 5693596

Fourteen Illinois municipalities – on behalf of a putative class of 154 municipalities – filed putative class action in state court against online travel companies seeking unpaid taxes owed under their municipal hotel tax ordinances. Following removal, pursuant to Class Action Fairness Act (CAFA), municipalities moved to certify class.

The District Court held that:

- Common questions did not predominate;
- Class action was not superior to other methods of resolving claims; and
- Class was ascertainable.

Questions affecting only individual members predominated over questions of law or fact common to class members, precluding certification of Illinois municipalities' class action claims against online travel companies for unpaid taxes owed under multiple municipal hotel tax ordinances. Although claims had been organized into subgroups that included like-worded ordinances, any statutory analysis to determine whether the ordinances set materially identical legal standards would require an individual inquiry into whether any relevant amendments had been enacted over time, as well as the nature and effect of these amendments, and individual analysis would be required to determine whether the same terms in different ordinances had the same legal meaning.

Class action was not superior to other available methods for fairly and efficiently adjudicating claims of 154 Illinois municipalities against online travel companies for unpaid taxes owed under multiple municipal hotel tax ordinances, precluding certification of the claims. Although, absent certification, a multitude of individual lawsuits would be filed against the online travel companies, the 154 ordinances at issue could not be easily arranged into a modest number of subclasses, given possibility that materially different legal standards applied between the individual ordinances.

Proposed definition of class was clear, and it defined membership by objective criteria, so as to ensure ascertainability of members, as required for certification of class action against online travel companies for unpaid taxes owed under multiple municipal hotel tax ordinances, where definition described putative class members as Illinois municipalities that had enacted and collected tax on a percentage of a retail rate that consumer occupants paid owners or operators of hotels for lodging within their cities. Although travel companies asserted that definition promoted only a proscribed fail-safe class, in that membership was defined in terms of success on the merits, definition did not include only those who were entitled to relief, given possibility of varying definitions of "owner" or "operator" in the ordinances, which might or might not include travel companies.

IRS Official Tells Issuers to Monitor Compliance.

PROVIDENCE, R.I. – Municipal issuers should monitor bond activity for compliance violations no matter how inadvertent, an Internal Revenue Service tax law specialist for tax-exempt bonds said Tuesday.

"It's up to municipal issuers and conduit borrowers to identify and report these violations to assure continued tax-exempt borrowing. Otherwise, problems arise," James Held said at The Bond Buyer's Healthcare and Higher Education Finance Conference.

Institutional finance professionals and other muni market participants are discussing the challenges of these two sectors at the Omni Providence Hotel.

Many compliance failures related to 501(c)(3) nonprofit issuance are inadvertent in nature, according to Held, often because of misunderstanding legal complexities and lack of attention.

"We also know that bond counsel and other advisors are not around every day," he added.

Self-correction steps are available, according to Held.

“The clock starts ticking on the day of the violation, not the day of discovery,” he said. Such steps could include redemption or defeasance of the non-qualified bonds or using the funds for alternative qualified use.

The federal tax code requires the use of 95% of the proceeds of the tax-exempt bonds toward the exempt activities of the 501(c)(3) organization. “We call it the 95% test,” said Held.

Ownership violations, according to Held, can involve a sale of a facility, a change in facility or a change in use.

“If the bonds are still outstanding, there could be a problem,” he said.

Held works with the IRS’ voluntary compliance, educational guidance and compliance analysis and review programs related to tax-exempt bonds, tax credit bonds and Build America Bonds. He works on self-reporting cases, and compliance initiatives within the muni bond market.

Earlier Tuesday, Rhode Island General Treasurer Seth Magaziner said his state is transitioning from low-cost jobs and manufacturing to an economy based on technology innovation.

“The good news is that we are well-positioned and you already see signs of that transformation,” he said in his morning keynote.

Magaziner, elected last fall after predecessor and fellow Democrat Gina Raimondo won the governor’s race, cited Ivy League Brown University’s $3 billion capital campaign with its emphasis on life sciences and biotech and the strong presence of Rhode Island School of Design.

“Industrial design is one of the most important disciplines,” he said.

THE BOND BUYER

BY PAUL BURTON

OCT 27, 2015 11:57am ET

Disclosure of Determination Letters Issued by the Exempt Organizations Rulings & Agreements.

The IRS shares information with the public whenever possible. This includes exemption letters issued by the National Office in Washington, DC.

In the past, the IRS shared exemption letters processed in Washington with some members of the press. Due to changes in the approval process starting in 2014, applications for exemption are no longer processed in the National Office. The National Office is currently working on a few remaining applications and when a final disposition is made, EO will provide determination letters or denial letters, as applicable, for those organizations in the Electronic Reading Room as well as to the members of the media.

The IRS continues to release redacted copies of denial letters it issues to organizations. Denial letters also are released through the electronic reading room.

The IRS provides a list of all 501(c)(3) organizations that have received a favorable determination letter on our [EO Select Check](#) tool. We also provide additional information on all organizations exempt from tax on our Exempt Organizations Business Master File Extract page.

A copy of an application and/or a determination letter of an exempt organization may be requested from the Internal Revenue Service by submitting [Form 4506-A](#) to:

> Internal Revenue Service
> Attn: Correspondence Unit
> P.O. Box 2508, Room 4024
> Cincinnati, OH 45201

NABL Past President Testifies for NABL at IRS Hearing.

Linda Schakel, former NABL President and partner at Ballard Spahr, testified on behalf of NABL at the October 28 Internal Revenue Service (IRS) hearing on the proposed issue price regulations published in June. Ms. Schakel reiterated the points made in NABL's comments, which were submitted on September 22, particularly regarding the due diligence to be required of issuers.

NABL's written comments are available here.

Fitch: ACA Exchange Drop May Pressure Hospitals Long Term.

Fitch Ratings-New York/Chicago-21 October 2015: The long-term impact on not-for-profit hospitals of a continued decline in buyers of health insurance through federal and state insurance marketplaces will depend on their state's Medicaid program and the portion of their patients that have benefits, Fitch Ratings says. The impact of the decline in the short term is expected to be slight even as enrolees through these exchanges fell from 11.7 million to 9.9 million from February to June of this year.

The cost of health insurance in the 19 states that have not expanded Medicaid benefits under the Affordable Care Act (ACA) is likely the biggest factor in the declines. Although many enrolees received federal subsidies for the majority of the cost, wage stagnation and other personal budget factors may make the uncovered cost of the benefits untenable for some. The New York Times reported that Mississippi, where 95% of enrolees received subsidies, saw an 8% decline in enrolment from March 31 to June 30.

The long-run impact on hospitals would depend, in part, on their state's Medicaid program. In New York, which already had a robust Medicaid program in place, the subsidized healthcare exchanges have proven more beneficial to hospitals, as the underinsured have fuller coverage, helping increase utilization in a state where medical costs to patients can be high.

However, we would expect critical access hospitals (CAHs), which are inherently vulnerable to shifts in reimbursement due to their limited revenue base, to be at greater risk. The decline in the rural population that CAHs were created to serve is also pressuring the sector. This population shift is more common in the South and Midwest regions. Those regions are home to the most states that have not expanded Medicaid eligibility under ACA.

We believe the decline in enrolees could continue if stagnant wage growth for earners in the lowest quartile persists. According to the Bureau of Labor and Statistics, since 2000 the average hourly wage for non-management private-sector workers in the lowest quarter (when adjusted for inflation) has declined by 3%.

EXEMPT PROPERTY - WISCONSIN

SSM Health Care of Wisconsin, Inc. v. City of Fitchburg

Court of Appeals of Wisconsin - September 24, 2015 - Slip Copy - 2015 WL 5598829

SSM Health Care of Wisconsin, Inc., which owns and operates St. Mary's Hospital, sought a refund for property taxes levied by the City of Fitchburg against all of SSM's personal property that was located in a renal center and a sleep center owned and operated by SSM in Fitchburg during the 2009, 2010, and 2011 tax years.

On summary judgment, the circuit court held that some of SSM's personal property in the two centers was exempt from tax under WIS. STAT. § 70.11(4m)(a) (2013–14), the non-profit hospital tax exemption, and that SSM was entitled to a refund for that tax-exempt personal property.

The City appealed, arguing that the circuit court erred in granting summary judgment in favor of SSM for two reasons: (1) the non-profit hospital tax exemption under WIS. STAT. § 70.11(4m) does not apply here because the renal center and the sleep center are each used as a "doctor's office" and, therefore, all of the personal property located in each center is taxable; and (2) SSM initially sought tax exemption for "all" personal property in each center and, according to the City, SSM cannot subsequently "convert a request for a total tax exemption into a partial exemption in the midst of litigation."

The Court of Appeals affirmed, holding that:

- Neither the renal center, nor the sleep center are "doctor's offices" and
- Although SSM did not provide an itemized list of non-exempt property when it initially filed the tax-exemption requests, it does not follow that this bars SSM from entitlement to a refund for taxes levied against property that is tax-exempt.

TAX - NEW YORK

Allegany Mountain Resort, LLC v. Town of East Otto

Supreme Court, Appellate Division, Fourth Department, New York - October 9, 2015 - N.Y.S.3d - 2015 WL 5894848 - 2015 N.Y. Slip Op. 07361

Taxpayer brought proceeding to challenge town's tax assessments for property on which it operated a campground resort facility. The Supreme Court, Cattaraugus County, granted taxpayer's motion for summary judgment, and town appealed.

The Supreme Court, Appellate Division, held that measurements based upon the size of the chassis of each trailer at taxpayer's campground resort facility could not be used to establish that the trailers were 400 square feet or less in size, as required to qualify for exemption from property taxation.

Measurements based upon the size of the chassis of each trailer at taxpayer's campground resort facility could not be used to establish that the trailers were 400 square feet or less in size, as required to qualify for exemption from property taxation for recreational vehicles that are 400 square feet or less, self propelled or towable by an automobile or light duty truck and used as temporary living quarters for recreational, camping, travel or seasonal use. Trailers were vehicles, and their dimensions were thus required to be measured inclusive of load and bumpers.

While Arizona Cardinals Soar, Legal Battle Puts Stadium Investors in Red Zone.

Dispute over rental-car taxes that help cover stadium's payments highlights risks for bond investors

The Arizona Cardinals are one of the National Football League's hottest teams, leading their division with a 4-2 record.

Their stadium, however, is on a losing streak with investors. Its operator, along with state tax collectors, have lost two court rulings since last year over the legality of rental-car taxes used to fund the $455 million University of Phoenix Stadium in Glendale. The battle threatens the authority's capacity to collect revenue that accounts for nearly a third of the stadium's bond payments.

A lawyer for the operator, the Arizona Sports and Tourism Authority, said he expects the state agency to prevail on appeal.

The legal fight highlights the risk borne by investors who buy stadium bonds.

U.S. state and local governments from Florida to Arizona have financed stadium construction and improvements by linking bonds to tourism taxes, such as on hotels and rental cars. But the practice can backfire when collections decline, leaving taxpayers on the hook and investors facing downgrades and falling bond prices.

"These fluctuate and people cut back on things like tourism expenses when the economy's down," versus, say, a bond backed by water or utility fees, said Howard Cure, director of municipal research at Evercore Wealth Management.

Now, litigation is proving another risk. Rental-car agencies contend that the fees Arizona levies are a vehicle tax, which the state's constitution limits to supporting roads. A state court last year agreed, and in August, the state was ordered to refund what could amount to tens of millions of dollars while it appeals the case.

Those taxes make up about one-third of the payments on the authority's almost $270 million of municipal bonds. Without them, the Arizona stadium debt may be downgraded, ratings firms have warned. The bonds enjoy an investment-grade rating now. But Fitch Ratings said in an August report that the absence of legislative action to replace the money "could result in ratings dropping to below investment-grade levels."

Some Arizona Sports and Tourism Authority bonds maturing in 2036 traded recently at yields around 4%, about half a percentage point above comparably rated debt, according to Thomson Reuters Municipal Market Data. Yields rise as prices fall.

Tourism taxes are one of the most-common sources of public money for stadiums nationwide. U.S.

cities and states owe around $3.5 billion in bonds backed in some part by hotel and rental-car payments, according to a Wall Street Journal analysis of Bloomberg and Electronic Municipal Market Access data. The money has helped build stadiums for teams including the Houston Texans, San Antonio Spurs and the under-construction ballpark for the Atlanta Braves.

Fitch downgraded bonds that paid for Orlando’s basketball arena to junk in 2010, citing fluctuations in revenue from tourism taxes and warning officials would need to tap reserves to pay investors. The rating firm upgraded the bonds this year.

The use of tourism taxes is the result of public officials’ attempting to make stadium borrowing more palatable to voters by passing on the cost to outsiders, several analysts said.

“For local officials, it makes it more appealing to say this particular tax is going to fall on nonresidents,” said David Swindell, director of the Center for Urban Innovation at Arizona State University. “We saw that in authorities across the country during the recession—they took a big hit because they were so dependent on tourism dollars.” That can leave taxpayers facing higher bills to make up the difference.

Now, lawyers for rental-car companies suing the stadium authority are asking a judge to escrow the taxes while the state appeals, a process that could mean years of uncertainty for bondholders. Shawn Aiken, who represents the plaintiffs, said that in Arizona, those taxes are reserved for highways and he is confident the state can find other sources of money to pay investors.

“The building of a football stadium is clearly a non-highway purpose,” he said.

Timothy Berg, a lawyer who represents the stadium authority, said it will oppose the motion to withhold the taxes while it appeals.

While bonds sold for stadiums tend to be lower-rated and more volatile than other municipal debt, even the worst-off facilities typically avoid long-term distress, said John Miller, co-head of fixed income at Nuveen Asset Management LLC. His firm holds some of the Arizona bonds, as well as those that paid for Chicago’s Soldier Field, ballparks for the New York Yankees and Mets, and Houston’s venues.

“They tend to be lower rated, because of the reliance on these entertainment and travel sources of revenue,” Mr. Miller said. “They’re more economically sensitive, but they’ve come back stronger since 2009,” as tourism rebounded after the recession.

The problems with the rental-car taxes are just the latest wrinkle in the region’s misadventures hosting big league sports, Mr. Swindell said.

The city of Glendale suffered downgrades after it built a hockey arena for the Arizona Coyotes and spent tens of millions covering the team’s losses, amid broader financial difficulties for the city.

The state stadium authority has already struggled to make ends meet. A legislative audit last month found tourism revenue was insufficient to fulfill its financial obligations, which include promoting tourism and funding youth sports. Tourism money has also fluctuated widely, exacerbating shortfalls, while debt payments are scheduled to increase in coming years.

THE WALL STREET JOURNAL

By AARON KURILOFF

Oct. 24, 2015 5:33 a.m. ET

TAX APPEAL - OHIO

Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision

Supreme Court of Ohio - October 20, 2015 - N.E.3d - 2015 WL 6288275 - 2015 -Ohio- 4304

Court-appointed receiver for former owner of property brought real property valuation complaint seeking reduction of valuation of real property. Following remand from the Court of Common Pleas, the county board of revision (BOR) dismissed complaint. School board and former owner appealed. The Board of Tax Appeals (BTA) dismissed appeal for lack of jurisdiction. School board and former owner appealed.

The Supreme Court of Ohio held that:

- Former owner's failure to serve subsequent owners with notice of appeal did not warrant dismissal of appeal;
- Initial appeal to court of common pleas did not deprive BTA of jurisdiction to consider subsequent appeal; and
- BOR was precluded by law of the case doctrine from dismissing complaint for lack of standing.

Former property owner's failure to serve subsequent owners with notice of appeal from dismissal of former owner's real property valuation complaint did not require dismissal of appeal. Although serving subsequent owners was required by statute, counsel for former owner had also appeared on behalf of subsequent owners, and counsel had pursued previous appeal on behalf of both former owner and subsequent owners.

Property owner's initial appeal to court of common pleas did not deprive Board of Tax Appeals (BTA) of jurisdiction, pursuant to subsequent-appeal rule, to consider property owner's and school board's subsequent appeal after court's remand to county board of revision (BOR). Although, in the context of appeals from decisions of county boards of revision, county courts of common pleas and the BTA had concurrent jurisdiction, school board was only statutorily permitted to appeal to BTA.

County board of revision (BOR) was precluded by the law of the case doctrine on remand from dismissing former owner's real property valuation complaint for lack of standing, where common pleas court had already determined that former owner had standing to file complaint.

Treasury, IRS Issue Rules that Will Help Facilitate P3s.

WASHINGTON — The Treasury Department and Internal Revenue Service have released final allocation and accounting rules that bond lawyers say will help in administering public-private partnerships for transportation and joint ventures involving hospitals.

"These final regulations are a great step forward for encouraging public and private funding for projects and therefore for encouraging public-private partnerships," said Vicky Tsilas, a partner at Ballard Spahr in Washington.

The rules, which lawyers said are much better than those proposed in 2006, were released Monday and are scheduled to be published in the Federal Register on Tuesday. Some provisions of the proposed rules were withdrawn rather than finalized.

The rules will generally apply to bonds sold on or after a date that is 90 days after publication in the Federal Register, and the provisions regarding remedial actions will apply to deliberate actions that occur on or after that date. The rules provide issuers with guidance for applying the private-activity bond restrictions. Under federal tax law, for governmental bonds, no more than 10% of the proceeds can be used by private parties and no more than 10% of the debt service can be paid for or secured by private parties. The thresholds are lowered to 5% for 501(c)(3) bonds. If these limits are exceeded, bonds become private-activity bonds and are not tax-exempt unless they fall within specific categories.

Two key parts of the rules are the flexible proportional allocation provisions for mixed-use projects and the look-through treatment of public-private partnerships, said John Cross, Treasury associate tax legislative counsel.

Issuers may want to develop "mixed-use" projects that have some governmental use and some private use, finance the public portion with tax-exempt bonds and finance the private portion with equity. Under the rules, qualified equity is allocated first to the private-business use of the mixed use project and then to governmental use, while bond proceeds are allocated first to governmental use and then to private business use.

Carol Lew, a shareholder at Stradling Yocca Carlson & Rauth in Newport Beach, Calif, said that the concept of allocating equity first to private business use is helpful and "issuer sensitive."

"These allocation provisions look good," said Matthias Edrich, an attorney at Kutak Rock in Denver, though there's a lot for bond lawyers to still consider.

The allocation rules for mixed-use projects are simpler in the new guidance than they were in the proposed rules, lawyers said. Under the proposed rules, there were two different allocation methods that could be used for mixed-use projects, and issuers had to elect to use one of the methods. But under the final rules, issuers do not have to make elections and bond proceeds and equity are always allocated using the "undivided portion" method, which is based on the percentage of use by an entity rather than the percentage of physical space used.

The rules expand the definition of a project that can be treated as partially financed with tax-exempt bond proceeds and partially funded by other means, a feature that bond lawyers praised.

"Under the new regulations, an issuer can choose to treat any property financed with the same bond issue as the same 'project' regardless of any functional relationship. That flexibility could provide for substantial post-issuance compliance relief," said Michael Bailey, a partner at Foley & Lardner in Chicago.

However, Bailey expressed concerns that the time limits placed on when equity contributions can be made might be overly restrictive for projects with long construction periods.

The rules also address allocating bond proceeds and other funds in cases where property is used by public-private partnerships.

In the proposed rules, partnerships were automatically treated as private entities unless all of its members were public. But the final rules take a different approach and treat partnerships as aggregates of their partners. Under the rules, the amount of private business use is the private partner's share of the amount of the use of the property by the partnership. The share is defined as the private partner's greatest percentage share of any of the partnership items attributable to the time during the measurement period that the partnership uses the property.

Tsilas said that "permitting aggregate treatment for all partnerships has become particularly important in recent years because of the need to implement policies of the Affordable Care Act that are intended to promote cooperation between the public and private sectors."

The look-through treatment of partnerships is in line with the recommendations made by the National Association of Bond Lawyers and the tax-exempt financing committee of the American Bar Association's taxation section.

The rules also provide guidance about when and how issuers can take "anticipatory remedial actions" and redeem tax-exempt bonds before they take actions that would cause there to be excessive private-business use. The proposed rules had set a lot of conditions that issuers had to meet to take anticipatory remedial action. The final rules are simpler and allow issuers to redeem or defease bonds if they declare their intent in advance. The declaration of intent has to identify the financed property or loan that the anticipatory remedial action would concern and describe the action that potentially may result in the private business tests being met.

Tom Vander Molen, a partner at Dorsey and Whitney in Minneapolis, praised the availability of anticipatory remedial actions under the rules but said, "the need to describe possible future private business use for anticipatory remedial actions is unnecessarily detailed."

Treasury and the IRS are also working on a separate project relating to remedial action rules, Cross said. One of the items that project will address is how leases fit with the remedial action rules.

THE BOND BUYER

BY NAOMI JAGODA

OCT 26, 2015 3:12pm ET

[Treasury Issues Final Private Activity Bond Allocation and Accounting Regs.]()

Treasury has issued final allocation and accounting regulations under Section 141 of the Code. The regulations are expected to be published in the Federal Register tomorrow. The Final Regulations generally apply to bonds sold on or after 90 days after publication in the Federal Register. The rules regarding remedial actions, however, apply to deliberate actions that occur on or after 90 days after publication.

The Final Regulations allow permissive application of (1) the partnership provisions, the allocation and accounting rules, and certain corresponding rules for qualified 501(c)(3) bonds in whole, but not in part, to bonds to which the 1997 Final Regulations apply; and (2) the multipurpose rule to bonds to which the refunding rules apply.

The text of the final regulations is available here.

IRS Announces Inflation Adjustments for 2016.

On October 21, 2015, the Internal Revenue Service (IRS) released Rev. Proc. 2015-53 setting out amounts for items in the tax code that are adjusted for inflation. The state PAB volume caps for 2016 will be the greater of $100 per capita or $302.88 million, a slightly higher minimum amount than 2015. The Revenue Procedure includes the 2016 figures for other bond-related items as well, such as safe harbor rules for brokers' commissions for GICs and yield restricted defeasance escrows.

Click here to read the Revenue Procedure (see pages 15-16).

SCHOOL TAX REFERENDUM - DELAWARE

Young v. Red Clay Consolidated School District

Court of Chancery of Delaware - October 7, 2015 - A.3d - 2015 WL 5895838

After voter referendum to increase school-related property taxes paid by owners of non-exempt real estate located within school district passed in special election, owners who opposed tax increase but did not vote filed suit against district, asserting under § 1983 that district deprived owners of their right to vote without due process of law and of equal protection, and that district violated Elections Clause of state constitution by discouraging and raising impediments to voting by elderly and disabled residents. District filed motion to dismiss for failure to state a claim.

The Court of Chancery held that:

- District's interventions in special election was not constitutionally-protected government speech under First Amendment right to advocate;
- Elections Clause was not equivalent to government speech doctrine, and thus it was not appropriate to interpret Clause in lockstep with cases applying doctrine;
- Elections Clause had meaning independent from federal protections for voting rights developed under Fourteenth Amendment;
- Owners sufficiently pled that district's interventions affected result of election, as would support voiding result;
- Attorney General's decision not to bring charges against school district did not dispose of owners' civil claim;
- Owners stated a claim under § 1983 for due process and equal protection violations; and
- Owners stated a claim for violation of Elections Clause.

School district's interventions in special election, during which voters passed referendum to increase school-related property taxes paid by owners of non-exempt real estate located within school district, was not constitutionally-protected government speech under First Amendment right to advocate. Government speech doctrine responded to Free Speech Clause claims, and did not mean that there were no restraints on government speech.

State constitutional Elections Clause was not equivalent to government speech doctrine under First Amendment, and thus it was not appropriate to interpret Elections Clause in lockstep with federal jurisprudence applying doctrine. Government speech doctrine only responded to Free Speech Clause claims and did not provide defense to claim under state law, federal parallel for Elections Clause was not the Free Speech Clause and cases applying government speech doctrine, but rather was federal regime of implied constitutional protection for voting rights that developed under Due Process and Equal Protection Clauses, and Elections Clause was both separate from and more protective of electoral rights than implied federal regime.

Elections Clause of state constitution had meaning independent from federal regime of implied constitutional protection for voting rights developed under Due Process and Equal Protections Clauses, and thus it was not appropriate to interpret Elections Clause in lockstep with federal jurisprudence developed under Fourteenth Amendment. Unlike state constitution, federal constitution did not explicitly provide individual with right to vote or explicit guarantee of free elections, history of Elections Clause indicated that it had meaning independent from Fourteenth Amendment, and differences in structure between federal and states constitutions demonstrated independent meaning of Elections Clause.

Complaint filed by residents who opposed increase in school-related property taxes but did not vote in special election in which increase was passed sufficiently pled that school district's interventions affected result of election in resident's action seeking to void result, based on district's alleged actions in discouraging and raising impediments to voting by elderly and disabled residents. According to complaint, district affected outcome by systematically encouraging and facilitating voting by residents with school-aged children who were more likely to vote in favor of increase, and that district's family-focused get-out-the-vote events reduced turnout by elderly and disabled voters by interfering with their ability to access polls.

Failing to contact Department of Elections on day of special election, in which residents voted on and passed referendum to increase school-related property taxes paid by owners of non-exempt real estate located within school district, did not preclude owners who opposed tax increase but did not vote in special election from bringing civil action against district, seeking to invalidate election. Statutory provisions create post-election day private rights of actions.

Attorney General's decision not to bring criminal charges against school district did not dispose of civil claim filed by residents to invalidate special election, alleging that district discouraged and raised impediments to voting by elderly and disabled residents on referendum to increase school-related property taxes paid by owners of non-exempt real estate located within district. Assuming that Attorney General concluded that there was insufficient evidence to prove guilt beyond a reasonable doubt as to criminal conduct, that assessment did not mean that evidence did not establish electoral misconduct under preponderance-of-the-evidence standard for purposes of civil claim, and Attorney General had no authority to enforce civil election violations.

School district residents who opposed increase in school-related property taxes but did not vote on referendum that proposed increase stated a claim under § 1983 against district for due process and equal protection violations based on district's electoral interventions as a whole. Although district's interest in fostering informed electorate was sufficient to justify engaging in government campaign speech, complaint alleged that district's intervention in election by providing rewards for voting designed to appeal to demographic group that district believed was likely to support tax increase had purpose and effect of discouraging voting by identifiable group district believed would oppose increase, and for pleading purposes, district's desire to educate electorate did not justify selective get-out-the-vote efforts.

In challenging school district's electoral interventions as a whole, district residents who opposed increase in school-related property taxes but did not vote on referendum that proposed increase stated a claim against district for violation of Elections Clause of state constitution. Residents contended that district provided selective rewards for voting, which allegedly made election less free and equal, residents alleged that district violated Elections Clause based on its government campaign speech, which included engaging in electioneering in close proximity to voting rooms, and complaint alleged that district engaged in selective get-out-the-vote efforts directed towards an identifiable group, which had negative effects on the elderly and disabled.

Arizona Cardinals Stadium Debt Jeopardized by Car-Tax Challenge.

To money manager Todd Curtis, the decade-long fight over a tax that helped build the stadium for the National Football League's Arizona Cardinals didn't look good for bondholders.

Last year, a state judge ruled that a vehicle-tax that pays for about a third of the stadium's $266 million of debt is illegal. Then August brought another legal blow: The state was ordered to pay tens of millions of dollars in refunds while it appeals the case, threatening to reduce funding for the Arizona Sports & Tourism Authority, which issued the bonds. Curtis sold the securities.

"If they lose, they could probably still make their bond payments, but they couldn't pay for much else," said Curtis, a portfolio manager with Aquila Group of Funds in Phoenix who runs a $280 million Arizona bond fund. "The sports authority has always run on a very thin line."

While stadiums in cities including Indianapolis and Oakland have put taxpayers on the hook for subsidies to professional sports teams, the challenge over funding behind the Glendale, Arizona, coliseum has left another constituency at risk: Investors who bought its bonds.

Financial Toll

The loss of the car-tax money, if upheld on appeal, would put an added squeeze on the financially struggling tourism authority, whose credit rating is at risk of a downgrade from Moody's Investors Service and Fitch Ratings. The operator of the stadium, which hosted this year's Super Bowl, has already failed to bring in enough tax money to cover its operations, which include promoting tourism and assisting professional baseball teams that come to Arizona for spring training.

"If they can't collect this tax, that compounds the issue," said Heather Macre, a Phoenix attorney who represents Saban Rent-A-Car LLC and others that are challenging the tax.

The companies say that the subsidies violate the law because Arizona's constitution requires vehicle taxes to be used for roads. On Oct. 5, the companies filed a motion to put the disputed funds into an escrow account until the case is resolved, which may take years.

Pricing Risk

The legal risk has lingered in the background since not long after the first bonds were issued in 2003, and the prices of the securities were little changed after the recent court decision. On Oct. 16, the $19 million of stadium bonds maturing in 2028 traded for an average yield of 3.3 percent, about 1.7 percentage points more than benchmark securities, according to data compiled by Bloomberg. That yield is down from 3.8 percent in early August.

"Depending on what level they're at, the risk can make it more attractive," said Craig Brandon, a portfolio manager of Eaton Vance Management, which holds $29.7 billion of municipal bonds, including some of the stadium debt. "If it's not going to continue generating income, we will be concerned. From an income perspective, we're comfortable with the level we're at."

While Brandon considers the risk of default to be low, he said the bonds may be downgraded if the authority can no longer collect the rental-car tax. Fitch Ratings and Moody's Investors Service put negative outlooks on the bonds in 2014 after the first decision, a first step toward a rating cut. Fitch grades the senior bonds A, the sixth-highest investment grade. Moody's rates them A1, one step higher.

"The negative outlook is a flashing red light," said Steve Murray, an analyst with Fitch in Austin. "Until this plays out, we're watching very closely."

Victory Seen

The authority expects to prevail in its appeal, which has yet to be filed, Timothy Berg, the agency's attorney in Phoenix, said in an e-mail. The final verdict could take as much as three years if it goes all the way to the state Supreme Court, said Macre, the lawyer for the plaintiffs.

So far the case has had no impact on the state budget, said Daniel Scarpinato, a spokesman for Governor Doug Ducey. What happens if the tax is struck down will be up to the governor and state lawmakers, who so far have taken no steps to find a backup revenue source.

"I don't think the state is going to let the sports authority go under," said Curtis, the portfolio manager with Aquila Group. "But they aren't going to do anything until their back is up against the wall."

Bloomberg Business

by Darrell Preston

October 18, 2015

Appellate Court Upholds TIF District Levy and Collection of Taxes.

The Illinois Appellate Court recently upheld the actions of a city council in its establishment and implementation of a TIF district (*Devyn Corp. v. City of Bloomington*). In this case, the Court addressed the adequacy of a TIF district's financial statements as well as when a TIF district's authority to collect taxes terminates.

This case arises out of the creation of the Downtown Bloomington Tax Increment Redevelopment Plan ("the TIF District") by the Bloomington City Council in December of 1986. The TIF District was scheduled to last 23 years and had an estimated date of completion of December 21, 2009. Through the duration of the TIF District, the city generated approximately $1.9 million, which was used to fund a number of projects focused on infrastructure improvements within the TIF District. During the city council meeting to approve the use of funds from the TIF District, Devyn Corp. objected, stating that the City's use of the funds was a violation of the TIF Act. Soon thereafter it filed a complaint alleging that the City's financial statements failed to account for certain expenditures and that the City unlawfully appropriated taxes from the TIF District by collecting taxes after the December 21, 2009 estimated date of completion.

The trial court found in favor on the City on both issues, holding that Devyn Corporation failed to establish that it lacked an adequate remedy at law to obtain the financial statements of the City regarding the funds collected from the TIF District. Additionally, the trial court held that the estimated date of completion for the TIF District served only as an estimate and therefore did not bar the City from levying taxes after December 21, 2009.

On appeal, the Fourth District Appellate Court affirmed the trial court's ruling. Specifically, the Court found no basis for an equitable accounting of the funds received and spent from the TIF District since Devyn Corp. could also obtain this information through the Freedom of Information Act or through discovery. The Court noted that Devyn Corp. did in fact make such a request after filing this lawsuit and received all financial information that would have been turned over in an equitable accounting. With respect to the estimated date of completion, the Court held that the legislature's intent was an estimate as opposed to a hard date of termination. As such, the City's levy and collection of incremental taxes on December 28, 2009 (after the estimated date of completion) was lawful.

This decision ultimately preserves the wide latitude municipalities are given in administering TIF Districts. Given this wide latitude afforded to municipalities, other taxing agencies should make the most of all the opportunities available to them to influence and monitor the creation of TIF Districts.

by Ares Dalianis, Jamel Greer, Scott R. Metcalf | Franczek Radelet P.C.

10/12/2015

TAX - NEW YORK

Level 3 Communications, LLC v. Erie County

Supreme Court, Appellate Division, Fourth Department, New York - October 2, 2015 - N.Y.S.3d - 2015 WL 5750574 - 2015 N.Y. Slip Op. 07104

Taxpayers brought hybrid article 78 proceeding and declaratory judgment action against city and school district, claiming that taxpayers' fiber optic cables did not conduct electricity and thus were not taxable real property. The Supreme Court, Erie County, dismissed the petition-complaint. Taxpayers commenced proceeding in the nature of mandamus.

The Supreme Court, Appellate Division, held that the Supreme Court could not dismiss taxpayers' hybrid article 78 proceeding and declaratory judgment action challenging a city's and school district's tax assessment on the basis of grounds not considered in administrative proceedings challenging the tax assessment, no matter how sound those grounds might be.

The appeals court remitted the matter to respondents for reconsideration of petitioners' applications, including determining whether the applications were timely and procedurally proper, whether the taxes that petitioners paid may be recovered despite the lack of protest by them, and whether the fiber optic cables at issue constitute taxable real property within the meaning of the RPTL.

ABA Submits Recommendations for Public-Private Partnerships.

The American Bar Association's (ABA) Section of Taxation sent its recommendation to the Treasury Department and the Internal Revenue Service concerning the guidance to facilitate the development of public-private partnerships (P3's). The ABA's recommendations include the creation of a new safe harbor to ensure that P3 arrangements won't give rise to private business use.

The ABA's recommendations can be seen here.

TAX INCREMENT FINANCING - IOWA

[Acciona Windpower North America, LLC v. City of West Branch]

United States District Court, N.D. Iowa, Cedar Rapids Division - September 4, 2015 - F.Supp.3d - 2015 WL 5189017

Wind turbine manufacturer brought action against city, alleging breach of tax increment development agreement for urban renewal project. Parties cross-moved for summary judgment.

The District Court held that:

- Manufacturer complied with agreement requiring it create approximately 110 new, full-time jobs within five-year period;
- Under terms of agreement, city did not have a legal obligation to appropriate funds for tax refund;
- City's cancellation of agreement was without legal excuse, and thus constituted anticipatory breach of contract;
- Manufacturer was not entitled, as award of damages for city's breach of agreement, to five years of unpaid tax rebates;
- Manufacturer was entitled to specific performance; and
- Genuine issue of material fact existed as to whether city had legal obligation to pay manufacturer a rebate obligated for appropriation in city resolution.

Under Iowa law, wind turbine manufacturer complied with terms of tax increment development agreement requiring it to create approximately 110 new, full-time jobs within a period of not to exceed five years, despite manufacturer's failure to maintain that number of jobs during entirety of five year period, where manufacturer created more than 110 new, full-time jobs almost immediately, and nothing in the agreement required manufacturer to maintain a certain number of jobs over any particular length of time.

Under Iowa law, terms of tax increment development agreement between city and wind turbine manufacturer, which stated tax rebate payment would be subject to annual appropriation of the city council, did not create a legal obligation to appropriate funds for a tax rebate in any given year, despite moral or practical reasons for doing so.

Under Iowa law, city's cancellation of tax increment development agreement, based on wind turbine manufacturer's alleged breach of contract, was without legal excuse, and thus constituted anticipatory breach of contract, where manufacturer had, in fact, complied with agreement.

Under Iowa law, wind turbine manufacturer was not entitled, as award of damages for city's breach of tax increment development agreement, to five years of unpaid tax rebates. Agreement required only that city consider whether tax rebate would be paid in any given year, and automatically awarding tax rebates for remaining five years of contract would place manufacturer in a better position than if the contract had not been breached.

Under Iowa law, wind turbine manufacturer was entitled to specific performance of tax increment development agreement, which had been breached by city.

Genuine issue of material fact as to whether, under terms of tax increment development agreement, city had legal obligation to pay wind turbine manufacturer a percentage of incremental taxes paid by manufacturer to be rebated in later fiscal year, which had been approved by city resolution, precluded summary judgment on claim that failure to pay such amount constituted breach of agreement under Iowa law.

Bill Includes AMT Exemption for PABs, But Also 28% Cap.

WASHINGTON – A lengthy tax relief and job creation bill recently introduced in the House would exempt private-activity bonds issued from 2015 through 2018 from the alternative minimum tax, repeal sequestration, and create an infrastructure bank. But it also would cap the value of the municipal bond tax exemption at 28%.

Muni experts were disappointed to see the 28% cap, saying it contradicts the bill's aim of increasing employment while improving the nation's infrastructure.

"It's very commendable that these members of Congress are proposing concrete, meaningful actions to promote infrastructure financing," said Chuck Samuels, a member of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo. "Unfortunately, the 28% proposal may take away with one hand what they are trying to give with the other hand."

The 299-page bill, H.R. 3555 called "Jobs! Jobs! Jobs! Act of 2015," was introduced by Rep. Frederica Wilson, D-Fla., and has more than 30 Democrats as co-sponsors. It has been referred to nine committees, including the House Ways and Means Committee and the House Transportation and Infrastructure Committee.

The bill includes a number of provisions aimed at tax relief for workers and businesses, putting workers back on the job while rebuilding and modernizing the country and providing pathways for job-seeking Americans to get back to work. Several of these provisions relate to infrastructure.

The measure also would repeal federal spending cuts known as sequestration. The sequestration cuts have included reductions in the subsidy payments issuers receive from the Treasury Department for their direct-pay bonds, such as Build America Bonds.

But one of the offsets for the bill would be a 28% limit on certain deductions and exclusions, including the exclusion for tax-exempt interest. This offset is similar to a proposal in recent budget requests from President Obama.

Other offsets include taxing carried interest in investment partnerships as ordinary income, closing the loophole for corporate jet depreciation and repealing oil subsidies.

The bill would exempt PABs issued from 2015 through 2018 from the AMT. Generally, these types of bonds are subject to the AMT, increasing their yields, but PABs issued in 2009 and 2010 were exempted from the AMT under the American Recovery and Reinvestment Act.

By exempting PABs from the AMT, but subjecting all bonds to the 28% cap, PAB issuers may not be better off than they are under current law, and issuers of other types of bonds would be worse off, said Bill Daly, director of governmental affairs for the National Association of Bond Lawyers. The bulk of the muni market is governmental and 501(c)(3) bonds, which are not subject to the AMT.

"For the market as a whole, it is a negative," Daly said.

Jessica Giroux, general counsel and managing director of federal regulatory policy for the Bond Dealers of America, said, "BDA believes the best way to finance infrastructure is to provide state and local governments access to numerous, cost-effective financing options and municipal bonds have been the best option for over a century and private-activity bonds also play an important role in many communities. However, Rep. Wilson's recommendation to put limitations on the value of the federal tax-exemption tied to municipal bonds runs counter to the intent of her legislation and would drive-up not only the cost of bonds to state and local governments but also the billions of dollars in infrastructure financed by the bonds in the past year alone."

The Council of Development Finance Agencies, whose members include issuers and borrowers in PAB transactions, does not support the bill on balance, said Jason Rittenberg, CDFA director of research and advisory services.

"Tax-exempt bonds are a proven and effective tool for infrastructure finance, and a cap on the exemption would cause unknown impacts on the market at a time when states and municipalities need access to stable and affordable financing," he said.

Micah Green, co-chair of Steptoe & Johnson's government affairs & public policy group, said that either the bill has an unintended consequence that needs to be fixed, or an intended consequence that makes it "far less attractive" to the muni market.

The bill also would create an infrastructure bank called the American Infrastructure Financing Authority that would provide loans and loan guarantees to facilitate transportation, water and energy infrastructure projects of regional or national significance.

Projects would generally need to have anticipated costs of at least $100 million to be eligible for assistance from the AIFA, but rural infrastructure projects would only need to have costs that are expected to be $25 million or more.

The AIFA could make up to $10 billion of loans and loan guarantees in each of its first two fiscal years of operation, up to $20 billion in each of fiscal years three through nine of its operations, and up to $50 billion in years after that.

The bill would appropriate $10 billion to the AIFA. In each of fiscal 2016 and 2017, no more than $25 million of those funds could be used for administrative costs, and in fiscal 2018, no more than $50 million could be used for administrative costs.

Also, the bill would make available $2 billion to the Secretary of Transportation to carry out airport improvements; $27 billion for certain surface transportation, passenger and freight rail, and port infrastructure projects; $4 billion for grants for high-speed rail and intercity passenger rail projects; $3 billion for grants for transit capital assistance; and $5 billion for capital investments in surface transportation infrastructure that would be distributed under a competitive grant program.

THE BOND BUYER

BY NAOMI JAGODA

OCT 2, 2015 11:12am ET

Bill Would Create Clean Energy Tax-Advantaged Bonds.

WASHINGTON — An energy bill offered by Senate Democrats would create Clean Energy Bonds that could be used as either tax-credit or direct-pay bonds with an initial 28% subsidy rate and that would not be subject to volume cap.

The bill, S. 2089 or the “American Energy Innovation Act,” was introduced late last month by Sen. Maria Cantwell, D-Wash., the ranking minority member of the Senate Energy and Natural Resources Committee. It is co-sponsored by 30 Senate Democrats, including Senate Finance Committee ranking minority member Ron Wyden, D-Ore., and Senate Minority Leader Harry Reid, D-Nev.

The bill contains a number of provisions, including some aimed at encouraging investment in clean energy technologies.

The measure’s proposed creation of Clean Energy Bonds would build upon current law. At present, several tax-advantaged bonds can be used to finance certain clean renewable energy facilities and conservation improvements. These include Clean Renewable Energy Bonds, Qualified Energy Conservation Bonds, tax-exempt bonds for public power providers and tax-exempt private-activity bonds for certain green buildings.

Like New CREBs, the proposed Clean Energy Bonds would be tax-advantaged bonds that could be issued by state, local and tribal governments, public power providers and electric cooperatives. But there would be some differences between the two types of bonds. A key difference is that Clean Energy Bonds would not be subject to volume cap. New CREBs have a national volume cap, and issuers have to request allocations of it from the Internal Revenue Service. Congress has not provided any new national volume cap for New CREBs since 2009, so issuers can only issue these bonds from allocations of the existing cap.

The American Public Power Association is appreciative that Cantwell and Wyden created a program that’s longer-term and has no volume cap. The bill is a “step in the right direction,” said John Godfrey, senior government relations director for the group.

He added that APPA also likes the fact that Clean Energy Bonds would supplement, rather than replace, tax-exempt bonds.

However, the bill does not appear to address the sequester cuts to subsidy payments to issuers of direct-pay bonds. Given how long it will take to pass an energy bill, “it would be a shame for it to be undermined from the start by the threat of sequestration,” Godfrey said.

Clean Energy Bonds could be used for both facilities that produce clean electricity and those that produce clean transportation fuels. New CREBs are to be used for renewable energy projects. They cannot be used to finance clean transportation fuel projects.

The credit and subsidy rate for Clean Energy Bonds would start at 28% of interest costs, which is less than the 70% subsidy rate for New CREBs. If federal officials determine that the annual greenhouse gas emissions from electrical production or transportation fuel produced and sold at retail are equal to or less than certain percentages, the credit rate would be phased out for bonds issued for facilities producing that type of product in calendar years after the determination is made. The credit and subsidy rate would be zero for any bond issued more than three calendar years after the determination is made. Regardless of the emission levels, the phase outs would start in 2026.

Susan Collet, president of H Street Capitol Strategies, pointed out proposals to revive the Build America Bond program would do so at a 28% subsidy rate. That percentage is thought to be revenue neutral.

While issuers might choose to issue tax-exempt bonds over Clean Energy Bonds because tax exempts are simpler, the bill recognizes that there is a need for financing tools that can be used by nonprofit electric utilities, which can’t take the production tax credit or investment tax credit.

Collet said that the legislation is “a message bill at this point” and reflects the priorities of Democrats. The Senate Energy Committee has approved a bipartisan energy bill, and the Democrats’ bill includes items that the Senators could not get included in the bipartisan bill, she said.

The energy committee doesn’t have jurisdiction over taxes, so Godfrey said he would expect Cantwell to offer an amendment to the bipartisan bill that includes tax provisions when the bill is considered on the Senate floor. However, the specifics of that amendment are unclear, he said.

The Democrats’ energy bill could also be discussed in the context of a bill that would renew expired tax provisions known as extenders, Godfrey said. Some of the expired provisions relate to energy.

THE BOND BUYER

BY NAOMI JAGODA

OCT 6, 2015 2:37pm ET

Louisiana Election 2015: Should Governments Pay Taxes to Other States?

Louisiana is letting voters decide whether local governments should be allowed to tax property in their borders that’s owned by other governments.

For four years, West Carroll Parish in the northwest corner of Louisiana billed the Memphis Light, Gas, and Water Division about $100,000 per year in property taxes for storing some of its natural gas in the parish limits.

But in 2013, Memphis stopped paying its bill. The Tennessee city argued that the natural gas storage site was government-leased property and used for a public purpose and therefore exempt from a property tax. Two years and a few court battles later, West Carroll Parish lost the argument and had to refund Memphis more than $400,000.

The problem? Louisiana’s constitution doesn’t clarify that the public-use exemption only applies to property owned by a Louisiana government, so outside state and local governments don’t have to pay a tax either.

Many state exemptions are silent about this issue. Only 11 expressly allow local governments to tax property that’s owned by another government, according to the Lincoln Institute on Land Policy. The bad news for Louisiana is that it is literally surrounded by states that do specify that other state and local governments have to pay property taxes in their state.

The state is trying to remedy the situation with a proposed constitutional amendment that would allow Louisiana to tax property owned by out-of-state governments like the Memphis utility.

“This will basically level the playing field for Louisiana and mirrors the current law in Texas, Arkansas, Mississippi and Tennessee,” said State Rep. Charles Chaney, whose district includes West Carroll Parish.

Among the handful of states with laws about this issue, Ohio has a unique approach. Its law says that property in Ohio used for public purposes out-of-state can be tax-exempt only if that state can offer

Ohio the same exemption.

Chaney said he won’t push for the issue again if the ballot measure fails next month. Still, he’s concerned the measure won’t survive voter fatigue — Louisiana voters must choose a new governor, state legislators and other local officers. By the time they get to the statewide ballot measures, voters could be more inclined to vote “no” or leave the box blank, rather than decide for the measure on its merits, said Chaney.

“It’s a down ballot issue and placement and that is very worrisome to me,” he said.

GOVERNING.COM

BY LIZ FARMER | SEPTEMBER 29, 2015

TAX INCREMENT FINANCING - COLORADO

1405 Hotel, LLC v. Colorado Economic Development Commission

Colorado Court of Appeals, Div. I - September 10, 2015 - P.3d - 2015 WL 5259813 - 2015 COA 127

Hotels brought judicial review and declaratory judgment action challenging decision of Colorado Economic Development Commission (CEDC) to award city a tax increment subsidy under the Regional Tourism Act (RTA). The District Court dismissed action. Hotels appealed.

The Court of Appeals held that:

- As a matter of apparent first impression, point of administrative finality of award to city under RTA, as would trigger time period for filing of judicial review action, was time when CEDC adopted resolution memorializing terms of award;
- Hotels’ premature filing of judicial review complaint did not render complaint untimely; and
- Hotels’ alleged injury was indirect and incidental, and therefore hotels lacked standing to bring action.

Point of administrative finality of grant to city by the Colorado Economic Development Commission (CEDC) under the Regional Tourism Act (RTA), as would trigger time period for filing of action for judicial review, was time when CEDC adopted resolution memorializing terms of grant, not when CEDC gave it preliminary approval. Preliminary approval contained conditions which city had 120 days to fulfill, and to hold that conditional approval constituted final agency action would require parties affected by a conditional approval of a grant under the RTA to commence litigation before knowing whether the recipient of the RTA grant would fulfill those conditions and receive final approval.

Hotels’ alleged injury from decision of Colorado Economic Development Commission (CEDC) to make grant to city for hotel and conference center development project, pursuant to the Regional Tourism Act (RTA), was indirect and incidental to city’s alleged wrongdoing, and therefore hotels lacked standing to bring judicial review and declaratory judgment action challenging CEDC’s and city’s alleged failure to comply with RTA, including failure to require city to make new application for grant following change in developer. Even assuming project would cause hotels economic harm by drawing away some of their existing customers, such harm was not directly caused by CEDC’s or city’s alleged failure to comply with RTA but rather would result from development project’s subsequent lawful conduct of competing in the tourism marketplace.

TAX - CALIFORNIA

[Myers v. State Board of Equalization]

Court of Appeal, Second District, Division 3, California - September 25, 2015 - Cal.Rptr.3d - 2015 WL 5656124

A taxpayer brought a mandamus and declaratory judgment action to compel state officials to collect a gross premium tax from two health care service plans on the basis that they were “insurers.” The Superior Court sustained state officials’ and health care service plans’ demurrers without leave to amend. Taxpayer appealed.

The Court of Appeal held that:

- On issue of first impression, health care service plans were “insurers” subject to gross premium tax if indemnifying against future contingent claims represented a significant financial proportion of their businesses;
- Prior final judgment denying declaratory and injunctive relief on same issue was within public interest exception to res judicata rule; and
- Taxpayer’s action did not improperly seek to prevent or enjoin the collection of any tax.

Two taxpayers were “insurers” subject to the state constitution’s gross premium tax if indemnifying against future contingent claims represented a significant financial proportion of taxpayers’ businesses, even if the taxpayers were designated as “health care service plans” for regulatory purposes under the Knox–Keene Health Care Service Plan Act.

Trial court’s prior final judgment denying declaratory and injunctive relief to compel a health care service plan to pay the state constitutional gross premium tax as “insurers” was within the public interest exception to the res judicata rule, in a new mandamus and declaratory judgment action against the same health care service plan and another plan, since the applicability of the gross premium tax presented a pure question of law, the matter affected public finances, and the prior judgment did not result in an appellate opinion.

The constitutional provision stating that no legal or equitable process shall issue to prevent or enjoin the collection of any tax did not bar taxpayers’ mandamus and declaratory judgment action to compel state officials to collect a gross premium tax from two health care service plans on the basis that they were “insurers,” since the action did not seek to enjoin the state from collecting any other taxes or fees. Whatever effect the “in lieu of” clause of the gross premium tax provision would have on the corporate franchise taxes the state had previously collected from the health care service plans was a matter for the plans to raise in a subsequent tax refund action.

TAX - ILLINOIS

[Hertz Corp. v. City of Chicago]

Appellate Court of Illinois, First District, Second Division - September 22, 2015 - N.E.3d - 2015 IL App (1st) 123210 - 2015 WL 5578591

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 held that:

- Tax which ordinance imposed on any lessee of personal property who entered into any lease transaction in the city, irrespective of where leased property was used, and on lessees who used leased personal property more than 50 percent of the time in the city, irrespective of where lease transaction took place, was a use tax rather than a transaction tax, and therefore tax did not exceed city's home rule authority by taxing non-city vehicle lease transactions, even though ordinance imposing tax was titled "Personal Property Lease Transaction Tax." Taxable event was the privilege of using leased personal property inside the city. and
- Ruling did not exceed scope of ordinance.

Ruling by city's department of revenue requiring car rental companies to maintain records relating to whether vehicles were used within city and whether customers were residents of city, as proof of claimed exemption for vehicles used outside of city for more than 50% of time, was not unreasonable, in declaratory judgment action brought by companies challenging ruling, which was promulgated pursuant to ordinance which taxed use of vehicles within city even if lease transaction took place outside city but within three miles of city's border, where companies already obtained such records from its customers in form of driver license information and form requiring customer to check box next to question on intended use of vehicle.

NABL: SLGS Window May Re-Open in 5 Weeks.

Few things are certain when it comes to legislating, but news from the Treasury Department yesterday could mean that the SLGS window will reopen in late October or early November. The window has been closed since the Federal government's debt ceiling was reinstated last March. Treasury has been using its "extraordinary measures" to allow the government to continue to pay its bills and avoid default. Yesterday, Treasury Secretary Lew sent a letter to the Congressional leadership that tax receipts have not been as high and expenses have been higher than earlier projections indicated. The net result is that he now projects that on or about Thursday, November 5, the Treasury Department will have exhausted the extraordinary measures and have less than $30 billion in cash on hand. The following day is a payday for Federal employees and the following Tuesday is a payment date for some Social Security recipients. No doubt some Treasury bonds or notes will also mature around that time.

To read the full article, click here.

TEB Resources Allocation for FY 2016.

In a message released by IRS Tax Exempt and Government Entities Division (TE/GE) Commissioner Sunita Lough, half of the resources allocated to Tax-Exempt Bonds will be used for examination casework. Additionally, 30 percent of the resources will be used for the VCAP program to ensure its continued transparency and efficiency.

More information regarding the TE/GE workplan can be seen here on pages 12 and 13.

IRS Tax Exempt & Government Entities Priorities for FY2016.

Read the IRS report.

BDA Submits Issue Price Comment Letter to IRS.

BDA letter to IRS on Issue Price highlights potential negative impact to market and smaller issuers

Today, BDA submitted a comment letter to IRS in response to its request for comment on a proposed rule to re-define 'issue price'. The proposal partially withdraws the 2013 issue price proposal.

The BDA's draft letter focuses on:

- Problems for issuers and the marketplace that will be caused by an actual sales approach and the absence of a reasonable expectation standard
- Issues associated with the unworkable proposed alternative to the general rule, including compliance concerns
- The rule's negative impact on smaller issuers, especially due to the 10% maturity-by-maturity 'substantial amount'/actual-sales requirement
- The need for a safe harbor or alternative standard for competitive deals

BDA's previous issue price letters, including the BDA letter to IRS in May 2015 can be read here.

09-22-15

Fitch: Fewer Uninsured Brighten U.S. Nonprofit Hospitals.

Fitch Ratings-New York/Chicago-23 September 2015: The reduction in the number of uninsured patients served by nonprofit hospitals is positive for the sector overall, Fitch Ratings says. The increased numbers of patients with coverage have helped hospitals sustain operating margins even as inpatient volumes have remained largely flat and top-line revenue growth continues to be pressured. Fitch expects the positive impact on performance to continue over the near term, especially as the healthcare exchanges mature and additional states consider expanding Medicaid.

The U.S. Census Bureau reported that the number of Americans without health insurance fell to 33 million in 2014 from 41.8 million in 2013. Moreover, the number of uninsured declined in every state, even those that did not expand Medicaid. In our view, this is positive for the sector as hospitals are now receiving reimbursement for patients that previously would have been written off as charity care or bad debt. Fitch believes the sharp drop in the number of uninsured Americans also reflects a greater awareness of the eligibility under state Medicaid programs, as Medicaid enrollments have risen in a number of states that did not expand Medicaid.

Fitch's rating actions over the last 18 months support this, as affirmations, upgrades and downgrades have shown little difference between those states that have expanded Medicaid and those that have not. The effect on individual hospital performance varies depending on a number of factors, even among states that have expanded Medicaid. In New York, for example, which already had a robust Medicaid program in place, the subsidized healthcare exchanges have proven more beneficial to hospitals, as the underinsured have fuller coverage, helping increase utilization in a state where medical costs to patients can be high.

The benefit of wider insurance coverage has helped mitigate the impact of tighter reimbursement increases from managed care and Medicare payors. Over the medium, Fitch expects Medicare's value-based reimbursement programs and managed care "risk-based contracts," combined with increasing consumerism among patients, could pressure sector profitability. Furthermore, the expected reduction and redistribution of federal disproportionate share funds could mute what has been solid performance for the healthcare sector.

TAX INCREMENT FINANCING - ILLINOIS

Devyn Corp. v. City of Bloomington

Appellate Court of Illinois, Fourth District - September 15, 2015 - N.E.3d - 2015 IL App (4th) 140819 - 2015 WL 5430992

Property owner brought action against city, seeking equitable accounting and declaratory judgment for city's alleged failure to comply with various provisions of Tax Increment Allocation Redevelopment Act. The Circuit Court granted summary judgment to city and denied owner's motion for leave to amend its complaint. Owner appealed.

The Appellate Court held that:

- City could take activities in furtherance of tax increment redevelopment plan after plan's estimated date of completion;
- Property owner was not entitled to reconsideration on ground of newly discovered evidence;
- Owner was not entitled to equitable accounting; and
- Owner was not entitled to leave to amend its complaint.

TAX SALE - ALASKA

Tagaban v. City of Pelican

Supreme Court of Alaska - September 18, 2015 - P.3d - 2015 WL 5474352

Lienholder filed suit to challenge city's tax foreclosure sale on property in which he claimed an interest. Lienholder moved for summary judgment and city cross-moved. The Superior Court denied lienholder's motion and granted city's motion. Lienholder appealed.

The Supreme Court of Alaska held that:

- Statute governing municipalities' enforcement of tax liens did not violate lienholder's due process interests by limiting its foreclosure notice requirement to property owners;
- Because lienholder had actual knowledge of tax foreclosure during redemption period, and did not seek to redeem the property, he was precluded from raising a due process challenge to the redemption notice statute; and
- Prevailing party fees should not have been awarded for time city spent litigating lienholder's standing to sue as a class representative.

Even if judicial lienholder's interest was reasonably ascertainable, statute governing municipalities' enforcement of tax liens did not violate his due process interests by limiting its foreclosure notice requirement to property owners, where another statute that allowed mortgagees and lienholders to request foreclosure notice, provided a reasonable mechanism by which interest-holders such as the lienholder could protect their property rights.

Alaska's municipal foreclosure notice scheme, requiring lienholders to affirmatively request notice of pending tax sale, is reasonably calculated, under all circumstances, to apprise lienholders of the pendency of the action and afford them an opportunity to present their objections, as required by due process guarantees. Statutory structure reasonably balances lienholder's interest in preserving the ability to enforce a property interest against a governmental entity's interest in efficiently collecting taxes.

TAX - CALIFORNIA

Seibold v. County of Los Angeles

Court of Appeal, Second District, Division 3, California - September 22, 2015 - Cal.Rptr.3d - 2015 WL 5561222

After county assessment appeals board denied taxpayer's application for a refund of property taxes paid to county relating to ground lease and hangar at municipal airport, taxpayer filed complaint against county for declaratory relief and a refund of taxes paid for hangar and ground lease.

The Superior Court granted taxpayer summary judgment with respect to hangar, and following bench trial, found that ground lease constituted taxable possessory interest, but only entered judgment in favor of taxpayer for refund of taxes paid attributable to hangar. After taxpayer's motion to vacate was denied, county and taxpayer appealed. The Court of Appeal dismissed appeals and remanded with instructions, concluding that appeals were not taken from final appealable judgment. On remand, the trial court ruled in favor of taxpayer with respect to ground lease and entered orders enjoining collection of possessory interest taxes and ordering county to refund all possessory interest taxes paid on hangar and ground lease. County appealed.

The Court of Appeal held that:

- Taxpayer's right of possession under ground lease was sufficiently independent to establish taxable possessory interest in lease, and
- Fact issue as to whether hangar was taxable improvement on tax-exempt land precluded summary judgment with respect to hangar.

Taxpayer's right of possession under ground lease at municipal airport was sufficiently independent to establish a taxable possessory interest in lease. Ground lease conferred private benefit on taxpayer to use leased premises for storage of taxpayer's aircraft and aircraft-related equipment, use restrictions did not limit measure of control granted to taxpayer with respect to his authorized private use, but rather restrictions were fully consistent with airport's responsibility to safeguard use of public property and in no way required taxpayer to act as governmental agent when he enjoyed private benefit of storing his aircraft on leased premises.

Genuine issue of material fact existed as to whether taxpayer's airplane hangar located on leased premises at municipal airport was a privately-owned improvement on exempt public land taxable as a possessory interest, precluding summary judgment in favor of taxpayer in action against county for refund of property taxes paid for hangar.

IRS Chief Counsel Blasted for Favorable Ruling on Total Return Swaps.

WASHINGTON — Former Internal Revenue Service official Mark Scott is urging the IRS to revoke a private-letter ruling that was favorable for a total return swap, or TRS, arguing that they are "arbitrage schemes" that have "resulted in hundreds of millions of dollars of illegal tax benefits being stolen."

Scott, who spent 18 years at the IRS, was director of the tax-exempt bond office, or TEB, for several years before he left for private practice. He was also an ex-special assistant U.S. attorney for the Justice Department, who made the request in a blisteringly critical letter sent to William J. Wilkins, chief counsel in the IRS Office of Chief Counsel on Sept. 8. In an interview, Scott would not comment on whether he has launched a whistleblower case on TRS', but said this is irrelevant to his concerns about these transactions.

The website for his law practice says that he has been "specializing in representing whistleblowers on issues relating to tax-exempt bonds and taxes owed by state and local government," as well as arbitrage rebate payments.

Scott's letter to Wilkins refers to the favorable but limited PLR 201502008 that was dated May 21, 2014, but not publicly released by the IRS until Jan. 9 of this year. The ruling did not identify the parties involved but concluded that an extension of a TRS entered into between a borrower and a bank at the same time the underlying tax-exempt bonds were sold "will not be an abusive arbitrage device."

These transactions, possibly hundreds of which have been done, involve long-term bonds and a short-term TRS. In such deals, a hospital or other borrower through an issuer privately places long-term bonds with a bank, which then enters into a much shorter term TRS with the borrower. The bank becomes the holder of the bonds as well as the swap counterparty.

The borrower typically swaps fixed for variable rates to lower its cost of borrowing. It also takes risk and provides price protection for the bank/bondholder/swap counterparty. When the TRS terminates, or is terminated, the bonds are valued.

If the bonds' value is below par, the hospital pays the bank. If the value is above par, the bank pays the hospital. However, many TRS' are rolled over or replaced with new negotiated terms for the life of the bonds. The borrower could be forced to pay if interest rates rise.

The bank/bondholder/swap counter party can make money from the higher tax-exempt bond rate and also from a deduction of its loss from the swap payments. In the case underlying the PLR, the bond proceeds had all been used to current refund some previous bonds, as well as to pay issuance costs. As a result there were no bond proceeds remaining and there was no debt-service reserve fund, from which arbitrage might have generated. If there had been bond proceeds or a reserve fund outstanding, the IRS could have questioned whether calculations should have been based on the bond yield or on the integrated bond and swap. But the facts of this case rendered this issue moot.

The borrower/bondholder/swap counterparty wanted to extend the TRS for another five years. The PLR essentially had to examine the bond and TRS transaction done several years ago to respond to the issuer about whether the extension would violate tax requirements.

In his letter, Scott took issue with the fact that, in this transaction and in any typical TRS, “one party wears two hats as both the swap counterparty and the holder of the tax-exempt debt.” As a result, he said, “the swap counterparty/bondholder, through pricing terms applicable to the ‘total return’ portion of the TRS, can lower its taxable income in exchange for greater tax-exempt income.”

“The ruling, therefore, describes an arbitrage scheme that is quite easy to abuse,” Scott said. “The scheme has been abused using billions of dollars of bonds, and has resulted in millions of dollars of illegal tax benefits being stolen,” he said. In an interview, he said: “The net effect is the bank is reducing its taxable income and increasing its tax-exempt income in a way that looks to be a tax shelter. It’s a way to convert taxable income to tax-exempt income through the use of a tax-exempt bond issue and a TRS. It raises tax issues for the outstanding bonds and the bank.”

TEB GETS UNDERCUT

Scott criticized the chief counsel’s office for issuing the private-letter ruling, while the enforcement side of IRS’ tax-exempt bond office is auditing these deals and finding the bonds taxable. He suggested the chief counsel’s office be completely undercut, or steamrolled over, TEB. It “is well aware of this abuse” and “has investigated a number of high-coupon, tax-exempt bond issues where the bondholder/swap counterparty deployed TRS structures with phony terms to illegally generate greater tax-exempt income for a longer period of time in exchange for lower taxable income,” Scott told Wilkins.

“These audits have been ongoing for some time and the office of tax-exempt bonds has, rightfully, issued adverse findings. Your office knew about these audits and the TRS scheme,” Scott said.

Very few IRS audits of TRS’ have been disclosed on the Municipal Securities Rulemaking Board’s EMMA system: the Electronic Municipal Market Access website. In one that was, the IRS in 2013 found that revenue bonds issued by the New Jersey Health Care Facilities Authority for the Deborah Heart and Lung Center were taxable because the borrower entered into a total return swap. The $37.4 million of revenue bonds had been issued in 1993 and about $17.6 million remained outstanding. Neither the IRS nor the parties involved publicly disclosed the amount paid in settling the tax dispute.

Scott called this latest PLR “a mistake” and said that, “although innocent looking factual representations were presented, the favorable ruling, even with this ostensibly limited application, has emboldened the use of the TRS scheme.” Some lawyers said that while PLRs are only supposed to apply to those taxpayers that requested them, this one has been taken as an encouragement that TRS’ can be done without violating tax requirements.

Scott also claimed that the PLR was wrong by being limited and failing to address several tax issues. For example, the PLR declined to take a position on whether the TRS caused a reissuance, which would cause the bonds to be reissued and subject to the latest tax requirements. Lawyers had said a reissuance would not have been a problem because there have been no recent tax law changes that would have applied. The chief counsel’s office also did not express any opinion on whether the interest paid on the bonds may be excluded from gross income.

Scott said: “The ruling was wrongly reasoned and overlooked the proper application of several long-standing regulations. The ruling should have pointed out that the payment to the issuer for ‘price protection’ results in additional gross proceeds, the TRS is investment property, and significant modifications made to outstanding tax-exempt debt by a person other than the governmental issuer results in the reissuance of taxable debt.”

“By agreeing to entertain this ruling request and to restrict the scope of its legal analysis, your office was used to promote an abusive arbitrage scheme,” he told Wilkins. Scott also claimed the chief counsel’s office violated IRS procedures, which state that PLRs will not be issued for outstanding transactions. He accused the office of “erasing the distinction between private-letter rules and technical advice memorandums” and helping transaction participants “game the audit process.”

“By expressing legal conclusions on outstanding bonds the ruling violates the clear standards set forth in [Revenue Procedure] 96-16, Section 5.04(1)” on rulings and determination letters, according to Scott. That section of the revenue procedure states: “The Service will not issue a nonreviewable ruling on whether an issued and outstanding obligation that is part of an issue of obligations meets one or more conditions for the exclusion of interest on the obligation from gross income under § 103 unless the request is received by the Service before interest on any obligation in that issue is required to be reported by a holder.”

“It would be inexcusable to leave this mixed ruling (part technical advice memorandum/part private-letter ruling) on the books to serve as an example of how to game the audit process,” Scott told Wilkins.

THE OTHER SIDE

Some lawyers disagreed with Scott.

“I think the ruling was sound and it was consistent with tax policy,” said Hobby Presley, Jr. a partner at Balch & Bingham in Birmingham, Ala. “I can’t tell from Mark’s letter what his concern is. If people are using a total return swap structure in the existing environment, it’s highly unlikely they are motivated by arbitrage. Because of the prevailing [low] investment rates, there’s no arbitrage to be earned.”

Other lawyers agreed, saying that in the TRS in the PLR, there was no real opportunity for arbitrage earnings because no bond proceeds remained outstanding and there was no debt service reserve fund. Milton Wakschlag, a partner at Katten Muchin Rosenman in Chicago, said that while Scott wants the ruling rescinded, “the IRS feels strongly about the quality of the guidance it issues in the first place and the process it goes through.”

“In my anecdotal experience, they are not keen on interventions,” he said. Wakschlag said the late, former House Ways and Means Committee chair Dan Rostenkowski, D-Ill., once tried to get one of his PLRs overturned, but did not succeed. “I suspect nothing will happen with this,” Wakschlag said. The PLR “seems to have taken longer to be released than the norm,” likely meaning it was reviewed by many IRS officials, he said. Some lawyers have said that there are questions in TRS’ about whether a bank, which often serves as both the swap counterparty and issuer, should be allowed to take tax deductions for loss carry forwards. However, this is an issue for a different IRS division or bank regulators, not TEB, they said.

THE BOND BUYER

BY LYNN HUME

SEP 21, 2015 1:10pm ET

SIFMA Submits Comments to the IRS on Re-proposed Issue Price Rules.

SIFMA provided comments to the Internal Revenue Service (IRS) and their recently re-proposed rules related to establishing the issue price on tax-exempt bond issuance transactions. In its release, the IRS withdrew the 2013 issue price proposal, which SIFMA opposed, and offered an alternative approach. The new proposal maintains the requirement that issue price is established when underwriters have firm orders for a threshold amount of each maturity in an offering. However, the new proposal offers an alternative means of establishing issue price when there are insufficient firm orders to meet the threshold test.

View SIFMA's letter.

NABL Submits Issue Price Comments.

NABL has filed its comments on the arbitrage regulations proposed on June 24, 2015. NABL requested several items, including:

- (1) confirmation that an issuer need not choose between the general method and the alternative method prior to the issue date;
- (2) confirmation that, under the alternative method, the issuer's obligation is limited to obtaining a covenant from the sole or lead underwriter;
- (3) clarification that the issuer's due diligence obligation with respect to issue price is that of a prudent person;
- (4) elimination of the uncertainty in the definition of "underwriter;"
- (5) additional alternative methods for determining issue price for bonds sold pursuant to a competitive bid;(6) confirmation that bonds purchased directly from an issuer by a bank or another party for its own investment would fall under the general private placement and buyer rules of Section 1273 of the Code; and
- (7) addition of a cross-reference to the definition of "issue price" for other similar concepts in the tax code.

NABL also requested to testify at the hearing on the proposed regulations to be held on October 28, 2015.

Click here to read NABL's comments.

SIFMA: Alternative Issue Price Method 'Not Workable' As Proposed.

WASHINGTON – The Internal Revenue Service's alternative method for determining issue price is "not workable," though the overall issue price rules proposed in June are a "significant improvement" over those floated in 2013, the Securities Industry and Financial Markets Association told the IRS.

SIFMA made the comments and recommended how the proposed rules can be improved in a comment letter sent to the IRS on Thursday.

"We believe that the 2015 proposed regulations are a significant step forward and with certain clarifications and modifications, can establish a regulatory structure that will impede neither the efficient and aggressive marketing of new issues nor enforcement of the limitations mandated by Congress," SIFMA wrote in the letter, signed by managing director Michael Decker.

The general rule in the 2015 proposal is that the issue price of a maturity is the first price at which 10% is sold to the public. The public would be anyone other than the underwriters or a related party, with underwriters defined as the underwriting syndicate and anyone who enters into a contract or other arrangement to sell the bonds with any of the syndicate members.

If 10% of a maturity hasn't been sold by the sale date, an issuer could use the alternative method to determine issue price. Under this method, the issuer could use the initial offering price as the issue price for bonds sold to the public as of the sale date as long as certain conditions are met.

One condition is that underwriters fill all orders placed by the public and received by the underwriter on or before the sale date at the initial offering price. Another is that the lead or sole underwriter certifies that no underwriter will fill an order from the public after the sale date, and before the issue date, at a higher price than the initial offering price unless the market moves after the sale date.

The 2015 proposal is markedly better than rules proposed in 2013 and then withdrawn because it provides an alternative way to establish issue price when there are unsold maturities as of the sale date, SIFMA wrote. But because of ambiguities and constraints, the alternative method, as proposed, "does not provide a workable alternative for establishing issue price, principally due to the requirement that lead underwriters certify as to the actions of others," it added.

Lead underwriters can't certify about actions that haven't happened yet, and the lead underwriters can't certify that the syndicate members actually won't sell the bonds at a higher price during that period. Instead, SIFMA is recommending that under the alternative method, lead underwriters certify that all members of the syndicate have agreed in the agreement among underwriters or a related document to not sell bonds at a price higher than the initial offering price between the sale date and the closing date unless the market moves.

SIFMA also argued that it would be "exceedingly difficult" for the market change exception to be implemented, since there's no effective way to demonstrate market movement. "Price indicators, such as the Thomson Reuters Municipal Market Data (MMD) AAA Curve, are not traded actively on a two-way basis and do not necessarily reflect actual sales, intraday market movement, or the localized nature of the tax-exempt market," the group wrote.

Decker told The Bond Buyer that there's no good way to clarify market movement, so SIFMA asked Treasury and the IRS to make clarifications about the period between the sale and the issue dates under the alternative method.

The group also wants Treasury and the IRS to clarify that underwriters are only restricted from selling bonds above the initial offering price during this period until 10% of the maturity is sold. SIFMA also wants the agencies to clarify that underwriters can fill orders at prices lower than the initial offering price during the period between the sale date and the closing date. Sales during this period should only establish the issue price under the general rule at a price lower than the initial offering price at the option of the issuer, SIFMA wrote.

SIFMA also had several suggestions for improvements to facilitate the application of the general rule.

One recommendation is for there to be a special rule for competitively bid and sealed bid offerings. It is common for bidders in these types of transactions to submit bids with little-to-no premarketing, and as a result, it is likely that many will not meet the 10% threshold on the sale date, SIFMA wrote.

For competitive and sealed bid transactions, SIFMA would like issuers to be able to treat the offering price specified in the winning bid as the issue price, without the restrictions on sales occurring between the sale date and the issue date that are set forth in the alternative method.

Other suggestions pertain to the definition of the public and the underwriter. SIFMA would like the agencies to include a provision similar to one in the 2013 proposal that would count as a sale to the public a sale to anyone, including an underwriter, who holds the bonds for investment and not for redistribution. SIFMA would also like Treasury and the IRS to clarify what is meant by an arrangement with an issuer to sell bonds, other than a contract, that would cause someone to be treated as an underwriter.

Additionally, SIFMA would like Treasury and the IRS to clarify the meaning of "the first price" at which 10% of the bonds are sold to the public.

THE BOND BUYER

BY NAOMI JAGODA

SEP 18, 2015 4:24pm ET

[IRS Rules that No Abusive Arbitrage Device Was Used in Connection With Bond Issue: Tax Analysts]

In technical advice, the IRS concluded that no abusive arbitrage device was used in connection with bonds used to refund in advance a portion of the issuer's outstanding indebtedness.

Under section 148, the tax exemption for interest on state and local bonds does not apply to any arbitrage bond. Reg. section 1.148-10(a)(1) provides that bonds of an issue are arbitrage bonds if an abusive arbitrage device is used in connection with the issue.

The IRS found no evidence to indicate that any action was taken by the issuer to enable it to exploit the difference between tax-exempt and taxable interest rates to obtain a material financial advantage. Therefore, the IRS determined that no abusive arbitrage device was used in connection with the issue.

The IRS also concluded that neither the reserve portion nor the current portion of the bonds constitutes excess gross proceeds under reg. section 1.148-10(c)(2) because both are replacement proceeds in sinking funds for the refunding issue. Lastly, the IRS determined that the bonds were not an advance refunding in which a device was employed to obtain a material financial advantage apart from savings attributable to lower interest rates.

Summary by Tax Analysts®

Continue reading (subscription required).

Citations: TAM 201538013

SEPTEMBER 30, 2014

[NABL: IRS Updates Sequestration Effects for FY 2016.]

The Internal Revenue Service announced the FY 2016 updates on the effects of sequestration on State & Local Government Filers of Form 8038-CP. According to the IRS, refund payments processed on or after October 1, 2015 and on or before September 30, 2016 will be reduced by the fiscal year 2016 sequestration rate of 6.8 percent, unless a law is enacted that cancels or otherwise impacts the sequestration.

A press release from the IRS with more information can be seen here.

NABL: TEB Announces VCAP Changes.

The Internal Revenue Service Tax Exempt Bonds office (TEB) announced several changes to its tax-exempt bonds Voluntary Closing Agreement Program. The changes were announced during a September 3, 2015, webinar hosted by Karen Skinder, Acting TEB Program Manager for Compliance and Program Management.

The changes will be reflected in revised IRM sections 7.2.3 and 4.81.6, both of which will be published soon, according to the IRS. The changes include no longer providing relief for post-issuance compliance procedures (effective 6 months after publication in the IRM) and template agreements for certain violations.

The IRS TEB office will post the webinar, including copies of the slides, to their website here.

TAX - MASSACHUSETTS

Russell Block Associates v. Board of Assessors of Worcester

Appeals Court of Massachusetts, Suffolk - September 16, 2015 - N.E.3d - 2014 WL 10399795

City sought review of decision of the Appellate Tax Board, granting taxpayer an abatement of tax on its parking garage.

The Appeals Court held that:

- Evidence supported classification of parking garage as partially “residential” property, and
- The phrase “used exclusively,” in statute defining accessory residential property to include property used exclusively by the residents of the property or their guests, refers to that portion of mixed-use property used exclusively for residential accessory purposes.

Parking garage was an “accessory” building “incidental to habitation” within the meaning of tax statute, thus supporting “residential” classification. Parking garage was part and parcel of residential development plan, residents of the development needed a place to park their vehicles, and garage was designed and built to serve the development’s tenants’ parking needs and was required to do so to meet zoning and lending requirements for the development of the project.

In the context of a multiple-use property classified as mixed use, the phrase “used exclusively,” in statute defining accessory residential property to include property used exclusively by the residents of the property or their guests, refers to that portion of the property used exclusively for residential accessory purposes.

TAX - OREGON

City of Seattle v. Department of Revenue

Supreme Court of Oregon, En Banc - September 11, 2015 - P.3d - 2015 WL 5306744

Cities appealed from Tax Court’s summary judgment ruling that their interest in electrical transmission capacity could be taxed by Department of Revenue as a property interest “held” by taxpayers.

The Supreme Court of Oregon held that:

- Cities’ interest in electrical transmission capacity could be taxed, and
- Senate bill which repealed property tax exemption benefiting out-of-state municipal corporations was not a “bill for raising revenue” within meaning of state constitutional provision requiring that bill for raising revenue originate in House of Representatives.

Cities’ interest in electrical transmission capacity, purchased from electrical cooperative and used to transmit electricity over region’s federally administered power grid, could be taxed by Department of Revenue as a property interest “held” by the cities pursuant to statute under which real and personal property of the United States held by a taxpayer comes within exception of general exemption of federal property from taxation.

Senate bill which repealed property tax exemption benefiting out-of-state municipal corporations was not a “bill for raising revenue” within meaning of state constitutional provision requiring that bill for raising revenue originate in House of Representatives and pass by three-fifths vote, where bill, although generating revenue by removing a tax exemption, did not directly levy a tax.

Legality of Tax-Exempt Status for P3 Projects Scrutinized in Texas.

The long-standing practice of classifying student housing projects built through public-private partnerships on state university-owned land as tax-exempt is being questioned by a Texas county attorney’s office.

County Attorney Rodney Anderson of Brazos County has asked state Attorney General Ken Paxton to deliver a legal opinion on whether taxes should be levied on two Texas A&M student housing P3s in College Station, which collectively will house more than 4,500 students. The projects are among five P3s the university has negotiated and from which it expects to earn $900 million in revenues over several decades.

In his letter to Paxton, Anderson points out that each developer of the two projects will own the facilities and improvements they build, finance and operate during the 32-year and 40-year ground leases that were negotiated. After the leases expire the university will take ownership of the properties.

One of the P3 agreements stipulates that the student accommodations can be used only by people associated directly with the university. However, language in the other, more recent contract does not rule out the option to sublease the housing to "persons who are not faculty, staff or students of Texas A&M or [the university-associated] Blinn College," Anderson pointed out.

The county attorney questions whether these elements of the P3 agreements meet the requirement that, to be accorded tax-exempt status, the property must be both publicly owned and used for public purposes.

He also pointed out that the P3-developed projects will compete with private housing projects that do not enjoy tax-exempt status, which puts owners of non-P3 housing units at a "competitive disadvantage."

In defense of the P3s' eligibility for tax exemptions, the university has cited case law that favors its position, including a 1992 court ruling that improvements to state land are tax exempt even if the state doesn't hold legal title to their improvement, reported the Houston Chronicle.

NCPPP
By Editor September 17, 2015

S&P's Pubic Finance Podcast (The U.S. Health Care Sector Outlook and Special Tax Ratios).

In this week's Extra Credit, Senior Director Kevin Holloran explains what's behind our outlook for the U.S. health care sector and Director Russell Bryce discusses special tax ratios.

Listen to the Podcast.

Sep. 18, 2015

IRS Conducting Targeted Audit of Troubled Wayne County Jail Bonds.

WASHINGTON – The Internal Revenue Service is conducting a targeted audit of $200 million of recovery zone economic development bonds issued in 2010 by the Wayne County Building Authority in Michigan to finance a jail facility that was never completed.

The county disclosed the audit in an event notice posted on the Municipal Securities Rulemaking Board's EMMA system on Sept. 9 in the "Other Event-Based Disclosures," rather than the "Communication from the Internal Revenue Service" or "Adverse Tax Opinion or Event Affecting Tax-Exempt Status" categories of event notices. The IRS audit notice is the latest in a series of headaches for the county tied to the abandoned jail site in downtown Detroit, the county seat.

The authority received the audit notice from the IRS on July 28. The Service said it decided to audit the bonds "because of information we received from external sources or developed internally that causes a concern" that the bonds may fail one or more of the bond provisions in the federal tax code. Bond lawyers have said that language like this is an indication that the audit is targeted.

If the IRS determines that the authority's bond issue violates any tax requirements, the federal subsidy payments the authority receives for the bonds could be at risk. The authority could lose part or all of the subsidy payments, and those losses could be retroactive to the issue date, or prospective, or both. A loss of the subsidy payments "could materially adversely impact the county's ability to pay debt service with respect to the Series 2010 jail facilities bonds or other obligations of the county," the county said.

The authority receives subsidy payments equal to 45% of the interest costs, minus any reductions due to sequestration. As of the date of the event notice, the authority has received about $36.88 million from the Treasury. The event notice said that the county and the authority are currently unable to determine if the audit will lead to the loss of the subsidy payments.

The county said it has hired Miller Canfield to handle the IRS review. A spokesman also said the county is not aware of the information the IRS says it received that suggest the bonds may not be compliant.

"Nothing has come to our attention which suggests that bond usage was non-compliant," county spokesman James Canning said in a statement. "The full amount of authorized bonds have not been spent and are being held in the project fund," said Canning. "Wayne County is cooperating with the IRS and believes that it is in full compliance with all tax requirements."

The county's building authority floated the $200 million bond issue in 2010 to consolidate three aging jail facilities into one adjacent to the Frank Murphy Hall of Justice in downtown Detroit. The bonds were structured as RZEDBs, carrying the county's limited-tax general obligation pledge. RZEDBs are federally taxable, direct-pay bonds whose available project proceeds have to be spent on purposes that promote development or other economic activities in recovery zones.

Wayne broke ground on the $300 million, 2,000-bed project in 2011 and halted it by the summer of 2013 as the estimated cost climbed to $390 million. The site has since sat vacant, with County Executive Warren Evans saying the cash-strapped county does not have the money to finish the project and cannot borrow the money without paying a hefty penalty. The county has the authority to issue another $100 million of bonds to complete the project.

Meanwhile, in 2014, the county's former chief financial officer and two others connected to the project were indicted by a grand jury for misconduct in office and willful neglect of duty tied to the jail financing.

Michigan Gov. Rick Snyder declared Wayne to be in a financial emergency in July, and the county is currently operating under a consent agreement with the state. As part of the decree, Wayne is required to present the state with a plan for the jail by Jan. 31. Officials are reportedly trying to sell the site to a local businessman.

Wayne is paying $14 million annually for the abandoned project, with debt service structured as cash rental payments from the building authority to the county, as well as an additional $3 million in storage costs.

Some of the bonds matured in 2014, and others mature in 2015, 2016, 2025 and 2040. Bonds maturing after 2021 have an optional redemption starting in December 2020. The bonds are also subject to an extraordinary optional redemption due to sequestration cuts to subsidy payments, but not due to any actions of the building authority.

The bulk of the $200 million of taxable bonds — $143.33 million — feature a 2040 maturity and a 10% coupon. The bonds were yielding 11.5% in Wednesday trading, according to EMMA. That's down from 12.3% on July 15 trading and up from a 7.5% to 8% yield in January.

Fitch Ratings has warned that the jail debt could be particularly vulnerable to cuts or default because it is not subject to abatement or appropriation and the project is politically controversial.

"Debt service comprises a relatively small share of governmental spending, but Fitch believes the jail debt could be vulnerable given the failure to complete the project," Fitch said in a March 2015 ratings commentary.

JP Morgan was the senior manager on the original deal. Government Finance Associates Inc. was the county's financial advisor, and Miller, Canfield, Paddock and Stone, PLC was bond counsel, according to the official statement for the bonds.

THE BOND BUYER

BY NAOMI JAGODA and CAITLIN DEVITT

SEP 16, 2015 4:07pm ET

Wayne County's $200 Million Debt for Jail Fiasco Audited by IRS.

The U.S. Internal Revenue Service is auditing $200 million of bonds that built an unfinished jail in Wayne County, Michigan, seeking to determine whether to revoke federal subsidies given to the cash-strapped government.

Wayne County, which includes Detroit, sold the federally taxable debt in December 2010 to build a new jail, only to shut down the project in the middle of construction about three years later because of cost overruns. The U.S. Treasury pays 45 percent of the interest under a program aimed at spurring development in economically distressed areas.

The IRS told the county it is scrutinizing the bonds "because of information we received from external sources or developed internally that causes a concern that the debt issuance may fail one or more provisions" of the tax code, according to a Sept. 9 filing with the Municipal Securities Rulemaking Board.

A move to revoke the subsidies could foist added costs on Wayne County, which is already operating under state oversight to avoid bankruptcy after years of budget deficits. The county has received $36.9 million in tax credits so far for the ill-fated project, according to the filing, and spends about $14 million a year on debt service for the securities.

The IRS could put a stop to the credits or seek to recoup subsidies if the county ran afoul of U.S. tax law. That could affect its ability to pay debt service on the jail bonds or other obligations, according to the filing. The county said it can't determine "at this time" whether this audit will lead to a loss of funds.

Wayne is cooperating with the IRS, said James Canning, a county spokesman. Some of the money raised by the bond issue hasn't been spent and is held in the project fund, he said.

"Nothing has come to our attention which suggests that bond usage was non-complaint," Canning said in an e-mail. "Wayne County is cooperating with the IRS and believes that it is in full compliance with all tax requirements."

The disclosure of the audit hasn't affected the price of the bonds. A portion of the securities maturing in 2040 traded Wednesday at an average of 87 cents on the dollar to yield 11.6 percent, little changed from Sept. 8, the day before the filing.

Bloomberg News

by Elizabeth Campbell

September 17, 2015 — 9:16 AM PDT

Moody's: U.S. FY 2014 NFP Hospital Medians Show Stronger Profitability Margins and Revenue Growth.

New York, September 11, 2015 — The median annual revenue growth rate for not-for-profit hospitals and health systems in fiscal 2014 broadly surpassed the median expense growth rate, which reverses a two-year trend of expense growth outpacing revenues, Moody's Investors Service says in its annual medians for US NFP hospitals and health systems, "Strong Business Conditions Bolster Profitability and Growth, Moderating Fundamental Sector Risks."

"Notably, the spread in these growth rates is at a historic high," report author and Moody's VP — Senior Credit Officer Beth Wexler says. "The median annual revenue growth was 5.2%, while median expense growth was 4.6% in 2014."

Consolidation in the NFP sector, enrollment on the public health exchanges, and Medicaid expansion combined with generally favorable patient demand trends fueled the increase in revenues.

Moody's anticipates these favorable trends to continue in 2015 and into 2016, and supports Moody's stable outlook for the industry.

Balance sheets strengthened in 2014, with a 10% median growth in unrestricted cash and investments and a median decline in total direct debt of almost 2%. The median unrestricted cash and investments increased to $340 million in 2014 from $312 million in 2013.

However, the regional 2014 medians reveal varying market demographics, legislative oversight and strategic initiatives have resulted in a divergence of financial performance medians among the four US regions.

"The Northeast's performance is most striking, owing to its flat median operating cash flow margin, and reflects the difficult environment in which it operates," says Wexler in a related medians report, "Regional Hospital Medians Show Historically Weaker Financial Performance in the Northeast."

The Midwest has a history of consolidation and physician alignment which supports its high growth rates, over 18% in median absolute cash flow, well above the rest.

In the West, strong investment returns and robust profitability facilitated growth in liquidity, while the South reports the highest level of self-pay & other in the payor category.

The reports are available to Moody's subscribers here.

Bond Ruling Emboldens Abusive Scheme, Former IRS Official Says: Tax Analysts

A recent private letter ruling has emboldened the use of an abusive arbitrage scheme and should be withdrawn, says William Mark Scott, former director of the IRS Office of Tax-Exempt Bonds.

Summary by Tax Analysts®

September 8, 2015

William J. Wilkins, Esq.
Chief Counsel, IRS Office of Chief Counsel
1111 Constitution Ave., NW
Washington, DC 20224
Re: Priv. Ltr. Rul. 201502008

Dear Mr. Wilkins,
I write to you to lend my voice to the discontent over Priv. Ltr. Rul. 201502008 (dated May 21, 2014, and released Jan. 9, 2015). I believe your office erred when it issued this ruling, and that the ruling should be revoked per Rev. Proc. 2015-1, § 11.04. And, with full knowledge of the errors, I am hopeful you will act accordingly.

Priv. Ltr. Rul. 201502008 addresses the use of a total return swap (TRS) in conjunction with an issue of tax-exempt bonds. In the ruling, one party wears 2 hats as both the swap counterparty and the holder of the tax-exempt debt. Because of this dual role, the swap counterparty/bondholder, through pricing terms applicable to the "total return" portion of the TRS, can lower its taxable income in exchange for greater tax-exempt income. The ruling, therefore, describes an arbitrage scheme that is quite easy to abuse.

Continue reading (subscription required).

TAX - WASHINGTON

Automotive United Trades Organization v. State

Supreme Court of Washington, En Banc - August 27, 2015 - P.3d - 2015 WL 5076289

Industry group brought action challenging agreements under which Indian tribes agreed to buy taxed fuel and State agreed to refund portion of fuel tax receipts to tribes. The Superior Court granted summary judgment in favor of state. Industry group appealed.

The Supreme Court of Washington, en banc, held that:

- Fuel tax refund agreements between Indian tribes and State did not violate constitutional provision

governing fuel tax receipts, and
- Agreements did not violate separation of powers provision of state constitution.

Agreements under which Indian tribes agreed to buy taxed fuel and the State agreed to refund a portion of the fuel tax receipts to the tribes did not violate state constitutional provision that limited use of state fuel tax receipts to highway purposes, where refunds were paid to tribal governments under contracts that limited their use to various government purposes, and governor was statutorily authorized to enter into such agreements.

Legislative authorization for executive to enter into agreements under which Indian tribes agreed to buy taxed fuel and the State agreed to refund a portion of the fuel tax receipts to the tribes did not constitute delegation of legislative authority in violation of separation of powers doctrine of state constitution, where legislature had provided fairly detailed standards and guidelines for such agreements, legislature defined objective of agreements, and legislature required regular audits and reports regarding agreements.

TAX - PENNSYLVANIA

GAI Consultants, Inc. v. Homestead Borough

Commonwealth Court of Pennsylvania - July 8, 2015 - A.3d - 2015 WL 4095523

School district brought declaratory judgment action against redevelopment authority, other taxing bodies, and waterfront partners, asserting authority had the contractual duty to direct bank holding tax increment financing (TIF) fund to pay any assessment appeal refunds on properties pledged to waterfront district at the direction of the taxing body, regardless of tax year.

Owner of parcel pledged to waterfront district brought action in assumpsit in order to recover $34,535 from borough taxing authority following assessment appeal. The Court of Common Pleas entered order declaring authority had a contractual duty under TIF agreement to direct payment of assessment appeal refunds, and ordered authority to direct reimbursement to county and school district of refunds paid to owner of pledged parcel. Borough appealed.

The Commonwealth Court held that four-year statute of limitations for contract actions did not bar claims of taxing authorities for pre-2010 property tax assessment appeal refunds.

TAX - ALABAMA

Bonedaddy's of Lee Branch, LLC v. City of Birmingham

Supreme Court of Alabama - September 4, 2015 - So.3d - 2015 WL 5192185

City brought action against limited liability company (LLC) that operated restaurant and member of LLC seeking payment of business-license, occupational, and sales taxes. Following a bench trial, the Circuit Court entered judgment in favor of city and permanently enjoined LLC and member from operating a business within the city’s corporate limits until all tax liabilities were satisfied. LLC and member appealed.

The Supreme Court of Alabama held that:

- City’s failure to follow administrative procedures prior to suing LLC member deprived court of

subject matter jurisdiction over sales tax claim;
- Failure to follow administrative procedures did not deprive court of subject matter jurisdiction over business-license and occupational tax claims;
- Member was not personally liable for business-license and occupational taxes owed by LLC; and
- LLC was provided with notices of final assessments.

IRS Auditing Minnesota BAB Issue.

WASHINGTON — The Internal Revenue Service is auditing $91 million of Build America Bonds issued by the Minnesota Public Facilities Authority in fall 2010.

The authority disclosed the audit in an event notice posted on the Municipal Securities Rulemaking Board's EMMA system on Sept. 3.

The IRS informed the authority of the audit in a notification dated Aug. 26. The IRS' notice said that at that time, it had no reason to believe that the authority's BABs fail to comply with applicable tax requirements, according to the event notice.

The authority said that it is responding to the IRS' information document request. The bonds under audit are the authority's taxable state revolving fund revenue bonds, series 2010D, which were issued as BABs. Proceeds of the bonds were to be used to make or purchase clean water and drinking water loans, according to the official statement.

Bank of America Merrill Lynch was the underwriter of the bonds, which were sold competitively. Briggs and Morgan was bond counsel, and Public Financial Management and Springsted were financial advisors.

The Bond Buyer

by Naomi Jagoda

SEP 9, 2015 7:49am ET

TAX - ALASKA
DeVilbiss v. Matanuska-Susitna Borough
Supreme Court of Alaska - August 28, 2015 - P.3d - 2015 WL 5061501

Following borough assembly's denial of property owner's request that they remove his property from road service area, property owner filed a complaint against borough, contesting validity of road service tax. The Superior Court granted borough's cross-motion for summary judgment. Property owner appealed.

The Supreme Court of Alaska held that:

- Borough was not required to exclude owner's property from road service area;
- Road service tax was not an invalid special assessment;
- Borough was authorized to provide special services within road service area, thus it could levy taxes to finance those services;

- Validity of a tax does not depend on whether a taxpayer receives a special benefit; and
- Property owner had sufficient economic incentive to bring his claim, entitling borough to attorney fees.

What Will Tax Abatement Disclosures Mean for Economic Development Groups?

State and local governments will begin disclosing financial information about tax abatements under new guidance from the Governmental Accounting Standards Board (GASB). The requirements take effect for financial statements for periods beginning after December 15, 2015.

Tax abatements are defined by GASB as agreements between one or more governments and an entity or individual that reduce the taxes the entity or individual would otherwise owe, and in which the business or individual promises to take a specific action that contributes to economic development or otherwise benefits the governments or their citizens.

Continue reading.

Smart Incentives

Posted by Ellen Harpel | August 31, 2015

Not All Muni Interest Reported by High Earners.

WASHINGTON – Nearly half the tax-exempt interest reported on 2013 individual income tax returns was reported on returns filed by single or married taxpayers or heads of households with adjusted gross income of less than $200,000, according to recently released Internal Revenue Service statistics.

But a majority of the returns showing tax-exempt interest were from a primary taxpayer who was at least 65 years old, the report showed.

“Tax exempt municipal bonds are held by millions of middle-class investors but, in particular, half the holders of these bonds are over 65 and have presumably chosen to invest in the safety of municipal bonds for retirement,” said Jessica Giroux, general counsel and managing director of federal regulatory policy for the Bond Dealers of America. “This is a significant demonstration of support for municipal bonds as a solid investment and a secure source of financing for local governments.”

The statistics are from the IRS’ recently released complete report on tax year 2013 individual tax returns, which include the returns of those who are single and married. They are estimates based on a sample of unaudited individual tax returns filed by U.S. citizens and residents during the 2014 calendar year, the latest full year for which the data is publicly available. The tax-exempt interest reported by taxpayers includes interest on municipal bonds and tax-exempt dividends from mutual funds, the IRS said.

Typically, IRS annual reports about high-income tax returns focus on returns with income of over $200,000.

The report showed that most of the tax-exempt interest reported was from high income households. About 44.06% of the tax-exempt interest reported was from taxpayers with AGI of under $200,000 (including those with no AGI), and about 25.84% of the tax-exempt interest was from taxpayers with AGI of under $100,000. These percentages are similar to the ones in 2012, according to the IRS estimates.

However, most returns with tax-exempt interest were filed by households with AGI below $200,000. Specifically, almost 76% of the number of returns with tax-exempt interest showed AGI of less than $200,000, including no AGI.

Less than 4% of the number of all tax returns, regardless of whether tax-exempt interest was reported, were filed by taxpayers with AGI of at least $200,000, according to the IRS.

The income distribution of tax-exempt interest is not new and is probably a driver behind proposals to curb the municipal bond tax exemption for high earners, such as President Obama’s proposal to cap the value of the exemption at 28%, said Michael Decker, managing director and co-head of municipal securities at the Securities Industry and Financial Markets Association.

But to the extent that the 28% cap would apply to a sizable amount of tax-exempt bond interest, it would cause changes in the market. A 28% cap would cause investors to seek higher yields, which would translate to higher borrowing costs for state and local governments, Decker said.

In 2013, married taxpayers filing jointly would be in tax brackets above 28% if they had taxable income of more than $223,050. Taxable income tends to be less than adjusted gross income.

Howard Gleckman, a senior fellow at the Urban Institute, said that the most successful argument for the muni market to make to preserve the exemption is not to focus on the investors but instead to focus on how it helps state and local governments finance projects. Democrats like new projects and Republicans would prefer that projects be controlled at the state and local levels, he said.

Most tax-exempt interest reported on individual tax returns in 2013 was reported on returns with primary filers on the older side. Roughly 3.15 million of returns, or a little over half of the returns with tax-exempt interest, were filed by primary taxpayers who are 65 and older. Returns from those taxpayers reported interest of about $42.4 billion. An additional 1.39 million of returns with a total of about $15.04 billion tax-exempt interest were filed by primary taxpayers with ages of 55 to 64. In cases of joint tax returns, the age is based on the primary taxpayer’s age, the IRS said.

“Munis tend to be a good product for retirees who are living off their savings,” said Decker, who added that people shift from investing in equities to investing in the fixed-income markets as they approach retirement because bonds are safe and income bearing.

But Gleckman said it doesn’t always make the most sense financially for seniors to invest in tax-exempt bonds, for example, if they live in a state without state income taxes and don’t make much money.

About 5.99 million of the returns reported tax-exempt interest in 2013 of about $68.1 billion in current dollars, the IRS estimated. The number of returns with tax-exempt interest was half a percent higher in 2013 than it was the previous year, but the dollar amount was 4.2% less than in 2012.

The increase in the number of returns with tax-exempt interest comes after a decline in that category each year since 2008. The amount of tax-exempt interest has declined every year after 2010.

Decker said that the decline in tax-exempt interest in 2013 could be due to the fact that the muni market shrunk during that time. Also, in the low-interest rate environment, bonds are being refinanced and investors are holding bonds with lower interest rates, he said.

THE BOND BUYER

BY NAOMI JAGODA

AUG 31, 2015 4:41pm ET

TAX EXEMPTION - NEW YORK

Drug Policy Alliance v. New York City Tax Com'n

Supreme Court, Appellate Division, First Department, New York - September 1, 2015 - N.Y.S.3d - 2015 WL 5098407 - 2015 N.Y. Slip Op. 06693

Applicant for real property tax exemption petitioned under article 78 for order to annul determination of the New York City Department of Finance to deny that application. The Supreme Court, New York County, denied Department's motion to dismiss and directed Department to grant exemption. Department appealed.

The Supreme Court, Appellate Division, held that Department was entitled to answer petition after denial of its motion.

After court denied its motion to dismiss article 78 petition by applicant for real property tax exemption, seeking to annul determination by New York City Department of Finance to deny application, Department was entitled to answer petition prior to court effectively granting summary judgment to applicant, even though record was arguably substantial and Department had conceded that its motion would be same whether viewed as pre-answer motion to dismiss or one for summary judgment, where parties were not given adequate notice that court would indeed treat motion as one for summary judgment.

TAX SALES - MARYLAND

Kona Properties, LLC v. W.D.B. Corp.

Court of Special Appeals of Maryland - August 28, 2015 - A.3d - 2015 WL 5090056

"These cases contain a common thread tying each together and furnishing the reason we granted the motions to consolidate. In each case, subsequent to the tax sale, the tax sale certificate was transferred to another limited liability company that shared either the same address, attorney and/or incorporator. The new holder of the tax sale certificate foreclosed the property owner's right of redemption and, for some unexplained reason, the certificate holder later decided that it did not want the property and failed to pay the bid price or the outstanding taxes and fees—payment of which is a prerequisite to obtaining the deed to the property. The original property owner or mortgage holder in each case later filed a motion in the circuit court to enforce the judgment against the certificate holder, requiring the certificate holder to pay taxes accruing after the tax sale and to pay the surplus bid to the property owner or mortgage holder. The circuit court granted all three motions to enforce and required the certificate holders to pay the taxes and bid surpluses to the collector."

The Court of Special Appeals granted holders' motions to consolidate appeals and held that:

- Orders granting motions to enforce judgment for surplus bids constituted final judgments;
- Trial court had jurisdiction to enforce judgments;
- Court did not abuse its discretion in finding lack of good cause to strike judgments foreclosing rights of redemption;
- Court had discretion to deny motion to strike mortgagee's motion for monetary judgment against holder;
- Former property owner was entitled to request that court enter judgment for surplus bids against holder;
- Mortgagees were entitled to request that court enter judgments against holders;
- Owner and mortgagees were not unjustly enriched by judgments; and
- Public policy considerations did not preclude court from entering judgments against holders.

Orders granting motions to enforce judgment constituted final judgments for purposes of appeal, in actions in which trial court granted motions to enforce judgment for surplus bids from tax sales owed to former property owner and mortgagees. Orders were entered as separate documents from docket entry, were signed by judge, and decided issue of whether tax sale certificate holders were obligated to pay bid surplus and taxes and interests and penalties due under original judgments to foreclose redemption rights, orders had hallmark of finality in that they put parties out of court, and, by directing holders to pay surplus bids and all taxes together with interest and penalties on taxes due on properties, there was nothing left for court to do to ensure that owner and mortgagees received bid surplus, as parties knew amounts of surplus and, thus, knew exactly how much holders had to pay.

Trial court had jurisdiction to enforce judgments for surplus bids from tax sales owed to former property owner and mortgagee of another property against tax sale certificate holders, following foreclosures of right to redemption, and, thus, owner and mortgagee had standing, despite claim that court lacked jurisdiction because owner and mortgagee were not properly served. Holders could not have asserted allegedly defective service as justification for vacating judgments foreclosing rights to redeem, and owner and mortgagee had actual notice, as mortgagee filed affidavit stating that it received service and counsel for mortgagee proffered that officer for owner and mortgagee would have testified that they received notice.

Public policy considerations did not preclude trial court from entering monetary judgments against tax sale certificate holders for surplus bids owed to former property owner and mortgagees, despite claim that judgment would send signal to property owners that it was acceptable not to pay property taxes. None of the parties paid taxes due on properties before or after sale, and, thus, city had been subject to cycle of tax delinquency, whereby tax sale purchaser or certificate holder failed to pay its own property taxes after foreclosing title owner's right of redemption, which could not have been intent of Legislature in crafting provisions of tax sale statute.

TAX - OHIO

Schwartz v. Cuyahoga Cty. Bd. of Revision

Supreme Court of Ohio - August 27, 2015 - N.E.3d - 2015 WL 50383212015 -Ohio- 3431

Property owner sought review of decision of the county board of revision (BOR), which retained fiscal officer's valuation of property. The Board of Tax Appeals (BTA) affirmed. Property owner appealed.

The Supreme Court of Ohio held that:

- Constitution did not repeal by implication statutory restriction on using prices from auctions and forced sales as evidence of property value, and
- Forced sale of real property by United States Department of Housing and Urban Development (HUD) was voluntary and at arm's-length.

State constitutional provision requiring legislature to pass law taxing real property "according to its true value in money" did not repeal by implication statutory restriction on using prices from auctions and forced sales as evidence of property value. Auction-and-forced-sale statutory provision codified a general presumption that a sale price from an auction or forced sale was not good evidence of a property's value because the underlying transaction was not voluntary and at arm's-length, merely instructing assessors how to determine a property's value.

Forced sale of real property by United States Department of Housing and Urban Development (HUD) was voluntary and at arm's-length, and therefore purchaser rebutted statutory presumption that sale price was not evidence of property's value for tax purposes, where property was on the market for three years (including one year after the property was transferred to HUD), a for-sale sign was posted at the property and purchaser made several offers to buy it, owner rejected purchaser's offers and was planning to sell to a different prospective buyer, when that sale fell through, owner contacted purchaser and advised him that property would be razed unless he wanted to buy, and other sales on street evidenced that the market could not bear a higher sale price at that time.

TAX - NEW JERSEY

Highpoint at Lakewood Condominium Ass'n, Inc. v. Township of Lakewood

Superior Court of New Jersey, Appellate Division - August 14, 2015 - A.3d - 2014 WL 10222380

Condominium association challenged township's foreclosure of unbuilt condominium units, and sought declaration that township did not hold title to undeveloped portion of parcel removed from condominium's common property. The Superior Court dismissed quiet title complaint. Association appealed.

The Superior Court, Appellate Division, held that:

- As matters of first impression, declared but unbuilt condominium units are "units" for property tax purposes;
- Association was not entitled to separate notice of foreclosure;
- Township had not obtained fee simple ownership of undeveloped parcel of land; and
- Uncertainty as to whether condominium common expense assessment charged to undeveloped units owner should be equal to those imposed on finished units warranted remand.

SPECIAL ASSESSMENTS - MINNESOTA

McCullough and Sons, Inc. v. City of Vadnais Heights

Court of Appeals of Minnesota - August 17, 2015 - N.W.2d - 2015 WL 4877761

Landowner appealed city's imposition of a special assessment. The District Court denied city's motion for summary judgment and city appealed.

The Court of Appeals held that:

- As a matter of first impression, right to appeal a special assessment to the district court is forfeited unless taxpayer files the statutorily required written objection before or at the special assessment hearing, and
- Although landowner had objected orally at special assessment hearing, his actions did not satisfy statutory written-objection requirement, and, therefore, his appeal was not properly perfected.

TAX - ARIZONA

Hub Properties Trust v. Maricopa County

Court of Appeals of Arizona, Division 1 - August 20, 2015 - P.3d - 2015 WL 4965889

This appeal concerns a property tax assessment for real property in Maricopa County for tax year 2011. Hub purchased the Property from the City of Phoenix on March 4, 2011. When the City owned the Property, it was exempt from property taxes.

After Hub purchased the Property, the County Assessor's Office determined the Property was no longer exempt municipal commercial property. As a result, the Property was included in the Assessor's roll as taxable property and was included in the County's tax roll for tax year 2011. The Maricopa County Board of Supervisors then fixed, levied and assessed property taxes for the Property for the County's assessment and tax roll for the 2011 tax year.

On appeal, Hub argued that because the City owned the Property "during the entire assessment period for the tax year 2011, on the tax lien date, and for more than two full months of the tax year at issue herein," the Property was exempt during tax year 2011. Thus, Hub contended, the Property was illegally taxed that year. Hub's argument presumed that once property is exempt, it is exempt for the entire tax year even if there is a change of use or ownership.

The Court of Appeals affirmed the Tax Court's conclusion that the period of exemption begins on the date the property enters government ownership and ends on the date it leaves government ownership.

Although the Property was tax exempt while the City owned it in 2011, the exemption was lifted when Hub purchased the Property in March.

IRS: Mailing Address for Notices of Defeasance and Certain Elections Required by Treasury Regulations.

The following Treasury Regulations – 1.141-12(d)(3), 1.142(f)(4)-1(b)(1), and 1.142-2(c)(2) – require that written notice be given to either the Internal Revenue Service or the IRS Commissioner within 90 days of the establishment of the defeasance escrows under Regs. 1.141-12 and 1.142-2, or the election under 1.141(d)(4)-1.

Treasury Regulations 1.150-5 provides that the notices required by these regulations be filed:

Internal Revenue Service
1111 Constitution Avenue NW
Attention: T:GE:TEB:O
Washington, DC 20224

Tax Analysts: IRS Details Tax Treatment of Police, Firefighter Uniforms.

The IRS Federal, State & Local Governments division has provided guidance on the tax treatment of casual items of clothing issued as uniforms to police officers and firefighters.

According to the directive, police officers and firefighters may treat the costs of the clothing as excluded from wages if two criteria are met: The employer requires the employees to wear the clothing as a condition of their employment; and the employer prohibits off-duty workers from wearing their designated uniforms as casual wear, such as a polo shirt or cap bearing official insignia.

Continue reading (subscription required).

Summary by Tax Analysts®

Court Decisions Extend Chicago's Transfer Tax Ordinance to Cover Mortgage Assignment: Seyfarth Shaw

Earlier this month, in a case of first impression, the Circuit Court of Cook County, Illinois in the consolidated cases of *City of Chicago v. KTCP 225, LLC*, Case No. 13 L 050290, and *City of Chicago v. Horizon Group XXI, LLC,* Case No. 13 L 050291 (the"KTCP/Horizon Cases"), reviewed and analyzed the Chicago Real Property Transfer Tax Ordinance (the "Ordinance") to determine whether one who purchases a loan and mortgage through an assignment of mortgage acquires a "beneficial interest in real property" such that the parties are subject to transfer taxes on the assignment, and further whether the transaction qualifies under Exception C of the Ordinance, which exempts from taxation the granting of mortgages. Just last week the Circuit Court of Cook County again addressed these issues in *Halsted West v. City of Chicago*, Case No. 11 CH 19010, consolidated in the *City of Chicago v. Elm State Property* and *Halsted West*, Case Nos. 14 L 050273 and 14 L 050274 (the "Halsted West Cases").

Although there are parts of the court's opinions with which we take exception, the purpose of this memorandum is to report not to present a critical analysis. While a trial court's decision is of limited precedential value and is subject to appeal, the tenor of the City's litigation position and the court's decisions cannot be ignored.

The Ordinance

The Ordinance in relevant part provides that "a tax is imposed upon the privilege of transferring title to, or *beneficial interest in*, real property located in the city." (Emphasis added.) The Ordinance does not define "beneficial interest in real property," but provides examples of what qualifies, "including, but not limited to:" a beneficial interest in an Illinois land trust, a lessee interest in a ground lease that provides for a term of 30 or more years, and controlling interest in a real estate entity.

However, the Ordinance contains numerous exemptions. Prior to May 8, 2013, Exemption C of the Ordinance exempted from tax "[t]ransfers in which the deed, assignment or other instrument of transfer secures debt or other obligations."

Although not germane to the cases in question, note that, under a May 8, 2013 amendment to the Ordinance, Exemption C applies to "[t]ransfers in which the deed, assignment or other instrument of transfer secures debt or other obligations; *provided, however, that any transfer must be to a mortgagee or secured creditor*." (Emphasis added.) In addition to the revision of Exemption C, the Ordinance as amended defines a "mortgagee" and "secured creditor" as "a lender, such as a bank, credit union, mortgage company or other person who acquires a mortgage or other instrument of transfer *primarily for the purpose* of securing a loan, and *not primarily for the purpose of acquiring the real property or beneficial interest in real property* that is the subject of the mortgage or other instrument of transfer." (Emphasis added.)

The Cases

In the KTCP/Horizon Cases, the court recited facts that had the taxpayers entering into deed-in-lieu of foreclosure (DIL) agreements before the mortgages were assigned (and received the borrowers' deeds contemporaneously with the mortgage assignments), and ruled that: (1) assignments of mortgages did convey a "beneficial interest in real property"; (2) the assignment and DIL transactions in this case cannot be separated when applying Exemption C; (3) the assignments of mortgage did not secure debt, and therefore the taxpayers did not qualify for Exemption C.

The first ruling would put all mortgage transactions under the Ordinance, subject to the availability of an applicable exemption. The court concluded that "if a mortgage was not a 'beneficial interest in real property' then the inclusion of the C Exemption…would be superfluous." The court held that since legislation must be interpreted to avoid making a provision superfluous, a mortgage must be a beneficial interest: "[s]ince mortgage liens are not actual title, they must be beneficial interests in real property."

The second ruling, that the assignments of mortgages and deeds must be considered together would seem to be limited to the facts of the case wherein the two parts of the transaction (mortgage assignment and deed) were expressly linked and simultaneous.

The court's third ruling, that the transactions were not entitled to Exemption C, will engender the most uncertainty. The court acknowledges that the granting of a mortgage as security for debt was exempt under Exception C, but reasoned that the assignment of a mortgage did not secure a debt or obligation (the requirement for Exemption C) but rather was a "transfer of debt": "…the Assignments conveyed rights to immediate possession and did not secure debt or other obligations." Perhaps the opinion can be limited to its narrow facts based on the court's own conclusion that due to the express ties between the mortgage assignments and the deeds, there was no debt existing at that time: "the Assignments conveyed rights to immediate possession and did not secure debt."

In the Halsted West Cases, the opinion is devoid of any discussion about the linking of the assignment of mortgage and deeds-in-lieu of foreclosure either in the facts or the legal analysis and thus would appear to broaden even further the taxability of mortgage assignments. In ruling that the mortgage assignments were taxable under the Ordinance, the court simply reiterated its earlier opinion that an assignment of a mortgage constituted a transfer of a beneficial interest in real property and that while Exemption C exempted mortgages from the transfer tax, it does not exempt assignments of mortgage:

> "The Assignments are transfers of an instrument, which instrument is a transfer that

> secures debt or other obligations. The Assignments themselves are not instruments of transfer which secure debt. They are an assignment of a document which assigns a lien to secure debt. The Assignments did not secure anything, they simply transferred rights. There was no amount loaned in exchange for the Assignments. Therefore, by the plain meaning of the C Exemption, the Assignments are not exempt as they do not secure debt or other obligations. The Assignments did not secure debt between Taxpayers and the original mortgagees."

In the Halsted West Cases, the court makes no mention of DIL agreements, but recites, without connecting the fact to its argument, that deeds to the taxpayers from the borrowers were delivered many months after the mortgage assignments.

Conclusion

If nothing else, the rulings show the direction of the City's litigation posture in similar cases. At worst, the cases make taxable the numerous mortgage assignments made each year where the underlying collateral is Chicago real estate. At its most favorable to taxpayers, perhaps the cases can be limited to the narrow facts wherein there are both mortgage assignments and deeds in-lieu of foreclosure.

Last Updated: August 21 2015

Article by Jeffrey Jahns and Daniel J. Hagedorn

Seyfarth Shaw 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.

TAX - OHIO

[MacDonald v. Shaker Hts. Bd. of Income Tax Rev.]

Supreme Court of Ohio - August 19, 2015 - N.E.3d - 2015 WL 4937143 - 2015 -Ohio- 3290

Taxpayer challenged assessment of municipal income tax on present value of taxpayer's annuity payments from employer's retirement plan. The Municipal Tax Board held that amount at issue was not pension exempt from municipal income tax, and taxpayer appealed. The Board of Tax Appeals (BTA) reversed. City tax administrator and Municipal Tax Board appealed. The Court of Appeals affirmed. City tax administrator and Municipal Tax Board appealed.

The Supreme Court of Ohio held that:

- Even assuming that statute governing appeal to BTA applied same standard of review as statute governing judicial review by Court of Common Pleas of administrative agency ruling, BTA's review of tax board's legal conclusion that present value of taxpayer's annuity from retirement pension did not come within pension exclusion from municipal income tax was de novo, with no deference to board, and
- On appeal to BTA, standard of review on questions of both law and facts was de novo.

NRA Sues Seattle Over Tax on Sales of Guns, Ammunition.

The National Rifle Association and other gun rights groups sued Seattle over the city's new tax on the sales of firearms and ammunition, echoing the legal battle that followed a similar measure adopted by Chicago three years ago.

The Second Amendment Foundation Inc. and the National Shooting Sports Foundation joined the NRA and two firearms retailers in Seattle in a complaint alleging municipalities are prohibited from enacting regulations of firearms that aren't authorized by state law.

Seattle Mayor Ed Murray said the city is committed to fighting back against an "ongoing national epidemic of gun violence," according to a statement issued after the city council's unanimous approval of the tax Aug. 10.

Seattle will levy a $25 tax on each retail firearm sale and collect two cents on each round of ammunition sold, according to the complaint. The ordinance is scheduled to take effect in January. Chicago, which also imposed a $25 tax on retail firearm sales, lost a bid in March to dismiss a constitutional challenge to its ordinance by area gun shops.

The gun rights advocates seek a court order barring the Seattle ordinance from taking effect, according to the complaint.

"The city believes it is well within its legal authority to tax the sales of firearms and ammunition, and will vigorously defend the ordinance in court," Kimberly Mills, a spokeswoman for Seattle City Attorney Pete Holmes, said in a phone interview.

A copy of the complaint was provided by the Second Amendment Foundation and the filing couldn't immediately be confirmed in Seattle state court records.

"We've been down this path before with Seattle when we sued them and won, knocking out their attempt to ban guns in city park facilities," Second Amendment Foundation founder and Executive Vice President Alan Gottlieb said in a statement. "The city does not seem to understand that no matter how they wrap this package, it's still a gun control law and it violates Washington's long-standing preemption statute."

Bloomberg

Joel Rosenblatt

August 24, 2015

Moody's Revises U.S. Not-for-Profit Healthcare Outlook to Stable from Negative as Cash Flows Increase.

New York, August 26, 2015 — Moody's Investors Service has revised the outlook for the US not-fo--profit and public healthcare sector to stable from negative due to improvement across the industry's fundamental business, financial and economic conditions. The outlook had been negative since 2008.

"The outlook revision represents significant gains in the number of people with insurance, growing patient volumes, and sizeable reductions in bad debt that are contributing to very strong growth in operating cash flow," Moody's Vice President — Senior Analyst Daniel Steingart says.

Following several years of flat growth, operating cash flow growth increased to 12.3% in 2014 from 0.3% in 2013. The metric remains solid at 11.5% through March 2015, Moody's says in "Not-Fo--Profit Healthcare Outlook Stabilizes; Cash Flow Buffers Long-term Pressures."

Moody's says factors driving the stronger operating cash flow are increases in the number of insured individuals and a reduction in bad debt, particularly in states which expanded Medicaid eligibility.

Further, pent-up demand among the newly insured as well as a strong flu season in 2014/2015 facilitated increases in inpatient volumes during the last several quarters.

While these factors are anticipated to continue, momentum is expected to taper to levels at or below historical levels.

The outlook change to stable from negative expresses Moody's views for the sector will neither erode nor significantly improve materially for the 12 to 18 months. Looking beyond that horizon, pressures linger.

"The not-for-profit and public healthcare sector industry faces long-term challenges stemming from who pays for care, how providers are reimbursed, and changes in patient behavior. These risks may weigh on profitability and growth," Steingart says.

The report is available to Moody's subscribers here.

States, Localities Saved More than $700B Due to Muni Exemption.

WASHINGTON — The municipal bond tax exemption saved state and local government borrowers more than $700 billion in debt service expenses from 2000 to 2014, according to a white paper released this week by two local government groups.

The estimated savings amount was in 2014 dollars, according to the paper, which was issued by the International City/County Management Association and the Government Finance Officers Association.

The paper was written by Justin Marlowe, a professor at the University of Washington. It was released as proposals from Congress members, the White House and other sources have suggested limiting or eliminating the federal tax exemption for munis.

The "vast majority" of state and local capital spending is financed through bonds. The muni market is complex, since there are many issuers that can issue many different types of bonds, Marlowe wrote. Some past analysis of how a major change to the tax exemption would affect state and local governments' cost of capital have assumed that ending the exemption would uniformly increase interest rates for all munis. However, there are drawbacks to this approach, Marlowe wrote. There is no evidence that ending the exemption would impact all bonds in the same way. Also, if analysts assume that repealing the exemption has a uniform effect on munis, they're not taking into account day-to-day market movements that affect both tax-exempt and taxable obligations.

Spreads between tax-exempt munis and taxable Treasuries are smaller and greater at different points in time. Since the financial crisis, it is typical for there to be a wide spread between muni and Treasury interest rates. The widening spread could be due to the lower overall liquidity of munis, concerns about state and local governments' credit quality, and changes in the value to investors of the tax exemption for munis, according to the paper.

Marlowe came up with estimates of the credit, liquidity and tax components of muni spreads that were based on market prices for more than 10 million muni transactions between 2000 and 2014. He found that from 2000 to 2014, the tax component of the muni spread was generally between -225 and -150 basis points, meaning that the muni exemption lowered interest rates on a typical bond by 1.50% to 2.25%.

Then he computed the amounts that borrowing costs would increase if the muni exemption was repealed. The calculations involved: increasing each bond's interest rates by the average tax component for all munis with the same maturity on the day the bond was sold; creating a "taxable equivalent" interest expense for each bond; and comparing the expense for the taxable equivalent to the expense for the actual bond.

Savings due to the tax exemption were much lower after the financial crisis than before it. This is not surprising because interest rates on Treasuries have been at record low levels for most of the post-crisis period, according to the paper.

Different types of borrowers had fairly consistent amounts of savings per $1,000 of borrowed money due to the exemption. Since the financial crisis, the exemption has meant savings of about $70 per $1,000 of borrowed money for cities in 2009 dollars, $76 per $1,000 of borrowed money for counties and $79 per $1,000 of borrowed money for schools, according to the paper.

The paper discussed two main alternatives to financing infrastructure through tax-exempt bonds — pay-as-you-go financing and public private partnerships.

"At the moment, there's no robust alternative to tax-exempt financing," Marlowe said in an interview with The Bond Buyer. While PAYGO financing and P3s definitely have a place in state and local finance, they're not as broadly useful as tax-exempt bonds, he said.

PAYGO is more flexible and more transparent than tax-exempt financing, but is hard to use for large projects such as new water treatment facilities, port infrastructure and major bridge replacements.

P3s provide state and local governments with access to new sources of capital and give governments the chance to improve their infrastructure capacity through a private partner. However, P3s carry a variety of risks, and it's unclear if they can work well to finance non-revenue generating infrastructure and smaller projects, according to the paper.

THE BOND BUYER

BY NAOMI JAGODA

AUG 19, 2015 3:10pm ET

GASB Requires Governments to Disclose Information on Tax Abatements.

The Governmental Accounting Standards Board (GASB) issued final guidance on August 14, 2015 that requires state and local governments for the first time to disclose information about tax abatement agreements.

Governments often agree to abate or reduce the taxes of individuals and corporate taxpayers to promote economic development, job growth, redevelopment of blighted or underdeveloped areas, and other actions that are beneficial to the government or its citizens.

The disclosure requirements in GASB Statement No. 77, Tax Abatement Disclosures, are designed to provide financial statement users with essential information about these agreements and the impact that they have on a government’s finances.

IRS Seeks Applications for Advisory Committee for the Tax Exempt and Government Entities Division.

The Internal Revenue Service seeks applicants for vacancies on the Advisory Committee on Tax Exempt and Government Entities (ACT). The committee provides advice and public input on the various areas of tax administration served by the Tax Exempt and Government Entities Division (TE/GE).

News Release

TAX - CONNECTICUT
Town of Stratford v. Jacobelli
Supreme Court of Connecticut - August 18, 2015 - A.3d - 2015 WL 4727134

Town and its tax assessor brought action against owners of aircraft hangars located at airport for declaration that the hangars were subject to municipal taxation. The trial court rendered judgment in favor of town and assessor. Owners appealed.

The Supreme Court of Connecticut held that:

- Hangars were buildings subject to municipal taxation as real property;
- Hangars were not exempt as held in trust for State;
- Trial court did not clearly err in finding that owners failed to show a substantial measure of supervision and control over the hangars by the city; and
- Hangars were not exempt under statute requiring Office of Policy and Management to determine the amount due to each town for a municipally owned airport.

Portable aircraft hangars located on city land at airport were “buildings,” similar to sheds, which were enumerated in statute making buildings used for business and sheds liable to taxation and, thus, hangars were subject to municipal taxation as real property, where hangars had shed-like metal walls with wooden cross-beams mounted with studs, were affixed to the ground by means of heavy spikes driven through openings in the metal base into the asphalt paving, and, although the hangars were capable of being disassembled, it would have required much effort, as the spikes and boards would have to be removed and the walls collapsed.

Aircraft hangars were not exempt from municipal taxation as held in trust for the State or belonging to any general aviation airport or other airport, where airport was not a general aviation airport, and airport was not owned by the State or the State Airport Authority.

Trial court did not clearly err in finding that hangar owners failed to show a substantial measure of supervision and control over the hangars by the city such that ownership should more properly be placed with the city, although terms of owners' occupancy pursuant to sublease and month-to-month lease with the city evinced some control by city over lessee's access to the airport, where terms did not necessarily amount to substantial control over the hangars such that ownership of the hangars was more properly placed in the city, and each hangar was for the private use of their respective owners or occupants, some hangars could be purchased with various options, and owners could purchase their hangars from any supplier.

Aircraft hangars were not exempt from taxation under statute that required Office of Policy and Management to determine the amount due, as a state grant in lieu of taxes, to each town for a municipally owned airport, where there were no facts in the record to suggest that city submitted the assessed value of the hangars to the State, received a grant in lieu of taxes that took into consideration lost tax revenue relating to the hangars, and also sought to assess the hangars to the owners.

TAX - WASHINGTON

Wedbush Securities, Inc. v. City of Seattle

Court of Appeals of Washington, Division 1 - August 10, 2015 - P.3d - 2015 WL 4726868

Registered securities broker sought review of decision of hearing examiner upholding city's business and occupation (B&O) tax assessment. The Superior Court affirmed. Broker appealed.

The Court of Appeals held that because broker's service income was derived from customer contacts by telephone and the Internet, the entire amount was subject to B&O tax.

TAX - NEW YORK

AJM Capital II, LLC v. Incorporated Village of Muttontown

Supreme Court, Appellate Division, Second Department, New York - July 29, 2015 - N.Y.S.3d - 130 A.D.3d 1018 - 2015 WL 4546740 - 2015 N.Y. Slip Op. 06335

Assignee of tax lien certificates for liens on three parcels owned by village brought action to enforce payment under the certificates. The Supreme Court, Nassau County, granted village's motion to dismiss. Assignee appealed.

The Supreme Court, Appellate Division, held that real property tax law that generally permitted municipalities to sell publicly owned land to satisfy tax liens on it did not apply to land held for public use.

Real property tax law that generally permitted municipalities to sell publicly owned land to satisfy tax liens on it did not apply to land held for public use, and thus village was not permitted to consent to the sale of parcels containing public streets in order to satisfy tax lien on property. Property containing public streets was held for public use, property's use as dedicated public streets had not been discontinued, real property tax law only authorized collection of validly levied or charged taxes, and property held for public use was exempted from taxation.

New Rule to Lift Veil on Tax Breaks.

Cities and states have plied companies with tax breaks for decades hoping to attract jobs and commerce. A new accounting standard will force many to disclose the total annual cost.

The rule approved Monday by the Governmental Accounting Standards Board, the municipal equivalent of the board that sets the standards for corporate reporting, will require government officials to show the value of property, sales and income taxes that have been waived under agreements with companies or other taxpayers. It kicks in starting next year.

Shelby County, Tenn., which includes the city of Memphis, waived about $48.7 million in property taxes last year, equivalent to 6.5% of its property tax receipts. Chicago channeled $372 million to nearly 150 special taxing districts in 2014, or $1 for every $13 of property taxes billed in the city, according to figures from the Cook County clerk's office, which collects city taxes. Before it was shut down in 2012, a major California tax-incentive program sent about 12% of statewide property taxes to redevelopment agencies—and more than 25% in some counties—often benefiting private industry.

Small towns can make big tax commitments as well. Belleville, Ill., with just 43,000 people about 20 miles east of St. Louis, sent $15.6 million of property- and sales-tax receipts—a big part of the city's nearly $97 million in total revenue—to its 19 special taxing districts last year, where the beneficiaries include developers that built shopping centers and residential homes. Special tax districts typically are created for private or public entities to finance, build or operate infrastructure or facilities.

The numbers show how the costs of discounted tax bills, special tax zones or outright waivers are piling up for local governments that in some cases have pressing problems with pensions and other budgetary issues. Deals like Nevada's promise last fall to give Tesla Motors Inc. up to $1.3 billion in tax breaks for building a battery plant there and the $8.7 billion of incentives Washington offered Boeing Co. and its suppliers to expand jetliner production in the state have long been subject to complaints that they increase the burden on existing businesses and individual taxpayers while creating too few jobs.

Now, investors, some government officials and others are becoming concerned that the combined effect of such deals over the years may be significantly limiting the financial flexibility of some cities. Governments rarely sum up the value of the tax breaks they have granted, and the accounting board worries that this leaves investors in the dark about the toll.

"These agreements reduce the amount of tax revenue you get, but you never see that, because it's not reflected in the accounting system," said Dean Mead, a research manager at the Governmental Accounting Standards Board. "To understand what they can collect, you need to know about things that would prevent them from collecting taxes."

Cities use a number of incentives to lure businesses or keep them there. They may reduce or even suspend tax collections of businesses for years, or transfer tax receipts directly to developers and employers. Another popular approach is to agree to spend any tax revenue from projects to improve the surrounding areas. That spending then benefits the companies that set up shop, directly or indirectly.

The choices can be difficult, because cities have to compete against rivals in neighboring states for investments that could create jobs. If they don't bid aggressively, they could lose out entirely. But being too aggressive means missing out on tax revenue.

"Anything that gives more transparency to what a government is doing and what is behind government finances, I'm all for it," said Hugh McGuirk, head of mutual-fund company T. Rowe Price Group Inc.'s municipal-bond team. "If we find out that, of the potential tax revenue, they're only realizing 60%, versus another entity that's realizing 98% of potential, maybe they've been a little too generous with their tax incentives."

In Shelby County, Tenn., which competes with neighboring Arkansas and Mississippi for many industrial and commercial businesses, Memphis and other local governments have entered into more than 500 multiyear agreements with companies like Nike Inc., typically waiving 70% and often more of the property taxes that would otherwise be owed.

In a 2013 deal with Nike, Shelby County agreed to abate $30 million of property taxes over 15 years. That was on top of $28 million that Memphis had waived. In return, the sportswear company said it would invest $301 million to expand a distribution center and improve another facility, adding 250 jobs and $8.75 million in payroll.

Nucor Corp. paid just $300 in taxes last year on property in Shelby County that ordinarily would have been taxed at $1.3 million thanks to pacts that extend out as far as 2028. One, a 15-year deal signed in 2012, involved a promise by the steelmaker to add 27 jobs and invest $113 million in its facility there.

In January, a joint economic-development board for Memphis and the county voted to give Swedish home-furnishings retailer IKEA a combined $9.5 million in tax breaks over 11 years if it builds one of its stores in the county. An IKEA spokesman said the company plans to break ground this fall and open the store a year later. Spokesmen for Nucor and Nike declined to comment.

Absent such agreements, the county's overall tax rate could be reduced, said Shelby County Trustee David Lenoir, who collects the county's taxes, to about $4.07 from the current $4.37 per $100 of assessed property value. For a house assessed at $100,000, that would amount to a $300-a-year tax cut.

"It is a significant amount," Mr. Lenoir said.

County economic-development officials said the incentives have paid off. The joint city-county economic development agency that negotiates many of the tax-incentive agreements estimates that they have created or saved nearly 9,500 jobs and spurred $2 billion in capital investment since 2011, in the process generating another $715 million in tax revenue. The estimate includes partial payments by the companies and a computer model's projection of the taxes that will be generated by newly hired employees and the businesses they patronize.

Critics of economic-development incentives say such calculations are only as good as the assumptions that underlie them.

Chicago, meanwhile, has announced plans to eliminate some of the tax districts and freeze spending at others. In Belleville, Mayor Mark Eckert said the city's special tax districts are critical to its economic health. With neighboring troubled East St. Louis, Ill., Belleville has had to fight to retain car dealerships and other businesses.

THE WALL STREET JOURNAL

By THEO FRANCIS

Aug. 4, 2015 5:50 p.m. ET

Write to Theo Francis at theo.francis@wsj.com

GASB Statement Requires Governments to Disclose Information on Tax Abatements.

Norwalk, CT, August 14, 2015—The Governmental Accounting Standards Board (GASB) has issued final guidance that requires state and local governments for the first time to disclose information about tax abatement agreements.

The disclosure requirements in GASB Statement No. 77, Tax Abatement Disclosures, are designed to provide financial statement users with essential information about these agreements and the impact that they have on a government's finances.

Governments often agree to abate or reduce the taxes of individuals and entities to promote economic development, job growth, redevelopment of blighted or underdeveloped areas, and other actions that are beneficial to the government or its citizens. Many state and local governments have tax abatement programs in place and the effects of tax abatements on their financial health and ability to raise revenue can be substantial. However, until now it has been difficult to determine the extent and nature of these effects from financial statements.

“This new guidance will result in people who use governmental financial statements having access to essential information about the tax abatements governments enter into,” said GASB Chair David A. Vaudt. “Not only will this mean that they'll have access to information that will allow them to better assess a government's financial health, but it will also make the impact of these agreements much more apparent.”

Statement 77 requires governments to disclose information about their own tax abatements separately from information about tax abatements that are entered into by other governments and reduce the reporting government's tax revenues. The new disclosures about a government's own tax abatement agreements include:

- The purpose of the tax abatement program
- The tax being abated
- Dollar amount of taxes abated
- Provisions for recapturing abated taxes
- The types of commitments made by tax abatement recipients

Other commitments made by a government in tax abatement agreements, such as to build infrastructure assets.
The new disclosures about tax abatements that are entered into by other governments and reduce the reporting government's tax revenues include:

- The name of the government entering into the abatement agreement
- The tax being abated
- Dollar amount of the reporting government's taxes abated.

TAX - NEW YORK

[George W. & Dacie Clements Agr. Research Institute, Inc. v. Green]

Supreme Court, Appellate Division, Third Department, New York - July 30, 2015 - N.Y.S.3d - 2015 WL 4557775 - 2015 N.Y. Slip Op. 06399

After applying for property tax exemption, property owner, which was not-for-profit corporation and which operated farm, restaurant, and bed and breakfast on property, and provided public training and educational information concerning organic and biodynamic farming and gardening, brought proceedings for tax relief urging that its property was tax exempt for several tax years. All proceedings except one were consolidated. Town's board of assessment review determined property was exempt. Petitioner moved for summary judgment. The Supreme Court denied motion. Property owner appealed.

The Supreme Court, Appellate Division, held that no binding agreement had been reached between board and property owner.

Writings between town's attorney and president of property owner were merely agreement to agree to amplified terms of future writing, and were incomplete as to all terms necessarily material to settlement, and thus no binding agreement had been reached between town's board of assessment review and property owner in proceedings brought by property owner urging that its property was tax exempt. Writings described proposed settlement hypothetically referencing terms that settlement would involve, including that town's attorney "would draw the appropriate settlement papers and provide a copy to" property owner "for approval before submitting them to" court, and writings did not anticipate potential statutory conflict identified with respect to refund.

IRS Webcast: Voluntary Closing Agreement Program Updates for Tax Exempt Bonds.

Watch this free webcast about Voluntary Closing Agreement Program Updates for Tax Exempt Bonds

When: September 3, 2015; 2 p.m. (Eastern)

How: Register for this event (link to registration page). You will use the same link to attend the event.

Learn about:

- Updates to the Voluntary Closing Agreement Program
- Background
- Procedural Updates
- Request Submission
- Resolution Standards
- Other updates

Continuing Education Credit will not be offered for this event.

Special Report: Multitude of Local Authorities Soak Illinois Homeowners in Taxes.

(Reuters) – Mary Beth Jachec lives in a three-bedroom house in Wauconda, a village of 14,000 in Illinois, 45 miles northwest of Chicago. Her semi-detached brick home is unassuming. Her tax bills are not.

The 53-year-old insurance manager gets a real estate tax bill for 20 different local government authorities and a total payout of about $7,000 in 2014. They include the Village of Wauconda, the Wauconda Park District, the Township of Wauconda, the Forest Preserve, the Wauconda Area Public Library District, and the Wauconda Fire Protection District.

Then there is Wauconda Road and Bridge, not to be confused with Road and Bridge, Wauconda Gravel, or with Wauconda Special Road Improvement and Gravel unit – all three of which have imposed separate taxes on her and the village's other homeowners.

Those three road entities come under the auspices of Wauconda Township. Officials there struggled to explain exactly what they each do, and why three separate taxing bodies are needed. The Wauconda Township Highway Commissioner, Joe Munson, said: "They are all for road maintenance." So why three? "I don't know why," Munson said. "It's always been that way."

Jachec, looking at her property tax bill, is dismayed. "It's ridiculous," she said.

A lot has been said about the budget crisis faced by Illinois – the state government itself is drowning in $37 billion of debt, and has the lowest credit ratings and worst-funded pension system among the 50 U.S. states. But at street level, the picture can be even more troubling.

The average homeowner pays taxes to six layers of government, and in Wauconda and many other places a lot more. In Ingleside, 55 miles north of Chicago, Dan Koivisto pays taxes to 18 local bodies. "I pay $271 a month just to the school district alone," he said. "And I don't have children."

DUPLICATION OF SERVICES

The state is home to nearly 8,500 local government units, with 6,026 empowered to raise taxes, by far the highest number in the U.S. Texas – whose population is more than twice that of Illinois – is second highest with about 5,150 local government units. Florida, with a population 54 percent greater than Illinois, has just 1,650, according to the U.S. Census Bureau.

Many of these taxing authorities, which mostly rely on property tax for their financing, have their own budget problems. That includes badly underfunded pension funds, mainly for cops and firefighters.

The Illinois authorities range from those typical across the nation, such as school and fire districts, to the unusual: for example, districts that raise taxes solely for the purpose of killing mosquitoes, lighting streets or maintaining cemeteries.

A Reuters analysis of property tax data shows that the sheer number of local government entities, and a lack of oversight of their operations, can lead to inefficient spending of taxpayer money, whether through duplication of services or high overhead costs. It leads to a proliferation of pension funds serving different groups of employees. And there are also signs that nepotism is rife within some of the authorities.

There is no central repository of data on the size and geographical boundaries of the local government authorities. The state comptroller does not audit the annual financial reports the local governments submit to it, said Rich Carter, a spokesman for the Comptroller's office.

The state's revenue department does keep data on property taxes collected by counties, but does not track taxes on individual properties. This makes it virtually impossible to systematically determine how many taxing districts overlap on parcels of land, or how much tax residents in a particular area pay unless they are individually surveyed. Because of these gaps and omissions, it is difficult to assess whether multiple layers of government lead to higher taxes.

On average, Illinois' effective property taxes are the third highest in the U.S. at 1.92 percent of residential property values, only behind New Jersey and New Hampshire, according to the non-partisan Tax Foundation. (New Hampshire, unlike Illinois and New Jersey, doesn't have a state income tax or a state sales tax.)

Critics of both the high taxation and the state's governance structure say that it takes too much of a toll on homeowners, discouraging people from either coming to the state or staying in it. Illinois saw net migration of 95,000 people out of the state last year, the greatest in its history and second only to New York, according to U.S. Census data. It is unclear how much, if any, of that exodus might be due to high taxes.

In many Illinois cities and towns, high taxation still isn't enough to keep up with increasing outlays, especially soaring pension costs, and some services have been cut. For example, in the state capital Springfield, pension costs for police and fire alone will this year consume nearly 90 percent of property tax revenues, according to the city's budget director, Bill McCarty. Since 2008, Springfield has cut 11 percent of its police force, closed three libraries, and tapped into other funds to pay pensions, McCarty added.

Sam Yingling, a state representative who until 2012 was supervisor of Avon Township, north of Chicago, has become an outspoken critic of the multiple layers of local government.

Yingling said when he left the township three years ago, the township supervisor's office had annual overheads from salaries and benefits of $120,000. He claimed its sole mandated statutory duty was to administer just $10,000 of living assistance to poor residents. Lisa Rusch, the current Avon Township supervisor, disputed the welfare figure, saying her office provides between $50,000 to $70,000 in emergency and general assistance.

Yingling also criticizes the township for its road program. In its budget for the current fiscal year, more than $1.4 million has been appropriated for road and bridge maintenance. Bob Kula, Avon Township's highway commissioner, says the township maintains just under 13 miles of roads.

BORROWING RESTRICTIONS

The large number of local governments is a legacy of Illinois' 1870 constitution, which was in effect until 1970. The constitution limited the amount that counties and cities could borrow, an effort to control spending.

So when a new road or library needed building, a new authority of government would be created to get around the borrowing restrictions and to raise more money. Today, for example, there are over 800 drainage districts, most of which levy taxes.

A succession of Illinois governors over 20 years has called for a reduction of the number of government units, but made little progress, partly because of Byzantine regulations. To dissolve one of Illinois' 1,432 townships, for example, state law stipulates that three-quarters of voters in every township in that county must vote to approve.

When that state's newly elected Republican Governor Bruce Rauner established a commission to address the problem of local government, the group quickly discovered that the taxing units continue to proliferate. The net number of local government units increased by 148 between 1998 and 2015, the governor's office reported last month.

"You could probably get by with half as many," said Bill Brandt, the recently retired chair of the Illinois Finance Authority, which funds economic development projects. "But knocking out a local government is easier than it sounds. It requires legislation, and a lot of lawmakers on both sides of the aisle come from local government."

And it isn't only the number of authorities that is a concern. Illinois has about one sixth of America's public pension plans – 657 out of almost 4,000.

Local authorities in Illinois are mandated by law to keep the Illinois Municipal Retirement Fund, with 400,000 local government members, fully funded. They had to contribute $923 million in 2014, up from $543 million in 2005.

However, there is no such requirement for the local pension funds. The result: Many of these funds throughout the state are woefully underfunded, and some have less than 20 percent of what they need to meet obligations.

"Pension costs have been going up and up, so pension contributions have been going up and up, and property taxes are the single largest source of revenue to pay for them," Brandt said.

Townships alone provide a striking example of duplicated and costly services.

Cook County is the largest county in Illinois and second largest in America, with Chicago in its borders. There, property tax assessment and collection is done at the county level. But most of Cook County's 30 townships have elected and salaried property tax assessors. They neither assess nor collect property taxes, said Louise Muszynski, an assistant in the Cook County assessor's office.

"They do work," Muszynski said. "They help people at a local level to understand their bills, and help them with appeals."

Northfield Township's road district raised almost $1.4 million in property taxes in the last fiscal year – even though it contains parts of seven cities. Each of those cities has a government that provides road maintenance services, yet Northfield Township maintains its own network of 29 miles of roads, as well as sewers. It has six plow trucks and other equipment, and a full-time workforce of seven, said Wally Kehr, the township road district foreman, who earns more than $110,000 a year, according to the main Illinois pension database.

"We give a better service to local people than if the cities provided it," Kehr said.

In a rare instance of local government consolidation, officials in DuPage County, west of Chicago, managed to pass legislation in 2012 giving them the power to cut waste. Since then, they have abolished defunct sanitary and fire protection districts, cut duplicate staff and reduced benefits. Officials estimate savings to taxpayers of $100 million over 20 years.

EMPLOYING RELATIVES

The multiplicity of local governments also affords opportunity for nepotism. Looking at the database of the Illinois Municipal Retirement Fund, the main pension system for local government workers, Reuters identified nearly a dozen instances where husbands employ wives, mothers employ daughters, and fathers hire sons.

In Collinsville Township, in southwestern Illinois, the elected Highway Commissioner, Larry Trucano, employs his son James as a laborer, earning $71,000 a year, plus pension and health benefits, according to the Illinois Municipal Retirement Fund database. An official at Collinsville confirmed that James was employed by his father. Four telephone calls to Larry Trucano went unanswered.

In Venice Township, Andrew Economy, the township supervisor who earns $46,300 plus pension – he also runs a local auto repair and tow service – employs his wife, Debra Economy, as administrator. She earns almost $62,000 plus pension.

Andrew Economy said his wife does the jobs of two employees who retired in 2003 and 2008, and does them efficiently.

In the Village of Rosemont, population 4,000, which services Chicago's O'Hare Airport with hotels and a convention center, eight relatives of Mayor Bradley A. Stephens are village employees, including the police chief.

"Rosemont has never made an apology for the people they hire," said Gary Mack, a village spokesman. "The mayor holds any employees who happen to be related to him to a much higher standard than others."

By REUTERS

AUG. 5, 2015, 9:04 A.M. E.D.T.

(Reporting by Tim Reid in Los Angeles and Selam Gebrikadan in New York; Editing by David Greising and Martin Howell)

TAX - NEW JERSEY

AHS Hospital Corp. v. Town of Morristown

Tax Court of New Jersey - June 25, 2015 - N.J.Tax - 2015 WL 3956132

Hospital, as taxpayer, sought review of town's denial of property tax exemption under statute granting exemption for nonprofit organizations.

As matters of first impression, the New Jersey Tax Court held that:

- For-profit activities of physicians and nonprofit activities carried out by hospital were unable to be separately stated and accounted for;
- Operation and use of hospital property was for benefit of affiliated and non-affiliated for-profit entities;
- Contracts for physicians employed directly by hospital had profit-making purpose; but
- Management agreement between hospital and contractor related to parking garage was not entered into with profit-making purpose;
- Hospital's agreement with company to provide services including food and nutrition and laundry

distribution demonstrated profit-making purpose;
- Gift shop was not reasonably necessary for hospital purpose; and
- Hospital auditorium and fitness center were not operated or used for profit.

For-profit activities of voluntary physicians and exclusive contract physicians and nonprofit activities carried out by hospital were unable to be separately stated and accounted for, such that areas in hospital in which physicians practiced were not exempt from property tax under statute granting exemption for nonprofit entities. For-profit voluntary and exclusive contract physicians were subject to taxation, and voluntary and exclusive contract physicians worked throughout hospital and were not contained within any particular area.

Hospital operated and used its property for profit-making purpose by entangling its activities with affiliated and non-affiliated for-profit entities, such that hospital did not qualify for property tax exemption for nonprofit organizations, since commingling of effort and activities with for-profit entities was significant and substantial benefit was conferred on for-profit entities as a result. Hospital provided substantial subsidies to affiliated and unaffiliated for-profit entities in form of working capital loans, capital loans, and recruitments loans, hospital employees worked at affiliated for-profit entity, and hospital executives also served affiliated entities in executive capacities, making arm’s-length transactions impossible.

Compensation hospital paid its executives was not reasonable, as factor weighing in favor of determination that hospital’s operation and use of its property was conducted for profit, rendering hospital ineligible for property tax exemption for nonprofit organization, absent evidence of salaries paid for similar positions by similar institutions.

Contracts for physicians employed directly by hospital had profit-making purpose, in violation of requirement under statute granting property tax exemption for nonprofit organizations that property must not be used for profit. Employed physicians were given incentive component in addition to their base compensation, incentive pools were derived from departmental expenses, and profit was split between hospital and physicians, indicating that revenue-sharing operation was conducted for profit-making purpose.

Management agreement between hospital and private, for-profit contractor to provide services related to visitors’ parking garage on hospital property was not entered into with profit-making purpose, such that agreement satisfied requirement that property not be used for profit under statute granting property tax exemption for nonprofit organizations. Hospital paid fixed management fee and bore expenses of operating parking garage, such that fee arrangement with contractor was no different from compensation paid to hospital employees, and hospital operated parking garage at a loss.

Hospital’s arrangement with company to provide food and nutrition services, environmental services, laundry and linen distribution, patient transportation, and plant operations maintenance demonstrated profit-making purpose, in violation of requirement that hospital property not be used for profit under statute granting property tax exemption for nonprofit organizations, such that areas of hospital in which company operated were subject to taxation. Hospital’s agreement with company demonstrated that both parties contemplated generation of additional revenue in form of reduced expenses, and additional revenue was split between hospital and company.

Gift shop was not reasonably necessary for hospital purpose, but rather served as form of competition to commercially-owned facilities, such that gift shop was not actually and exclusively used for tax-exempt purpose of hospital, as required for gift shop to be exempt from taxation under statute granting property tax exemption for nonprofit organizations. Gift shop did not provide any medical service required by hospital patient, but rather gift shop simply sold items that visitor might bring to patient or use for his or her own purposes, and gift shop was merely a convenience for hospital visitors.

Hospital auditorium was not used for profit, as required for area of hospital in which auditorium was located to be exempt from property taxes under statute granting exemption for nonprofit organizations. Payments were not collected by hospital for use of auditorium.

Hospital fitness center was not used or operated for profit, as required for fitness center to be exempt from property tax under statute granting exemption for nonprofit organizations. Although small amount of hospital employees who used fitness center paid a minor fee, there was not considerable business activity involving fitness center, and no profit was made from fitness center.

Hospital day care center was not exempt from property taxes under statute granting exemption for nonprofit organizations, absent demonstration that day care center was not used or operated for profit.

"If it is true that all non-profit hospitals operate like the Hospital in this case, as was the testimony here, then for purposes of the property tax exemption, modern non-profit hospitals are essentially *legal fictions*; and it is long established that "fictions arise from the law, and not law from fictions." Accordingly, if the property tax exemption for modern non-profit hospitals is to exist at all in New Jersey going forward, then it is a function of the Legislature and not the courts to promulgate what the terms and conditions will be. Clearly, the operation and function of modern non-profit hospitals do not meet the current criteria for property tax exemption under N.J.S.A. 54:4–3.6 and the applicable case law."

IRS Grants Extension of Expenditure Period for Bond Proceeds: Tax Analysts.

The IRS granted a city authority an extension of the expenditure period for qualified new clean energy renewable bond proceeds after determining that the authority had reasonable cause for its failure to spend all the proceeds and that the remaining proceeds will be spent for qualified purposes with due diligence.

Summary by Tax Analysts®

To read the Private Letter Ruling, click here (subscription required).

APRIL 28, 2015

Citations: LTR 201531002

S. 1753 Would Modify and Extend Tax-Exempt Zone Academy Bonds: Tax Analysts

S. 1753, the Rebuilding America's Schools Act, introduced by Senate Finance Committee member Sherrod Brown, D-Ohio, would expand and permanently extend qualified zone academy bonds, and treat them as specified tax credit bonds.

Summary by Tax Analysts®

The full text of the bill is available here (subscription required).

JULY 13, 2015

Citations: S. 1753; Rebuilding America's Schools Act

TAX - MONTANA

Zinvest, LLC v. Anderson

Supreme Court of Montana - July 21, 2015 - P.3d - 2015 WL 4541239 - 2015 MT 204

Purchaser of tax lien brought quiet title action against owner of real property. The District Court nullified tax deed and quieted title in owner. Purchaser appealed.

The Supreme Court of Montana held that county failed to record its acquisition of tax lien, so as to render subsequent assignment invalid. Although there was an untitled document that stated that property was "struck off" to the county following tax lien sale, amount listed as paid in document did not correspond to amount of taxes owed on property at issue, and property was not individually identified in document.

Memo Provides Interim Guidance on Audits of Direct-Pay Bonds.

WASHINGTON – A memorandum recently issued by Rebecca Harrigal, director of the Internal Revenue Service tax-exempt bond office, provides examiners and managers in the office with interim guidance on conducting audits of Build America Bonds and other direct-pay bonds.

The guidance became effective July 20 and will be incorporated into the Internal Revenue Manual, which provides instructions to employees, within the next 12 months.

Direct-pay bonds are taxable bonds for which issuers receive subsidy payments from the federal government equal to some or all of their interest costs. In addition to BABs, direct-pay bonds include new clean renewable energy bonds, qualified energy conservation bonds, qualified zone academy bonds and qualified school construction bonds.

"The examination and processing of resolutions of these bonds present unique situations that require procedures specifically tailored to these bonds," Harrigal said in the memo.

In audits of tax-exempt bonds, the bondholders are relevant because if bonds are determined to be taxable, the bondholders will then have to pay taxes on the interest. However, in audits of direct-pay bonds, the bondholders are not relevant because the bonds are already taxable.

Instead, the eligibility for and the amount of the subsidy payments to the issuers is at stake. Issuers file Form 8038-CP tax returns to request subsidy payments.

Under the interim guidance, examinations of direct-pay bonds will follow the procedures generally applicable to audits of tax-exempt bonds, but with the modifications and additional procedures described in the 39-page memo.

The examination of bonds' qualification as direct-pay bonds and the examination of the 8038-CP forms will generally be handled under the guidance in coordinated but separate ways, said Tom Vander Molen, a partner at Dorsey & Whitney in Minneapolis.

An audit of direct-pay bonds will generally be initiated on the issuer's information return to the IRS that reported the bond transaction. Audits of the 8038-CP forms will generally be opened as related cases when the IRS issues a notice suggesting a problem with the bonds, according to the interim guidance.

Additionally, the memo said that the IRS can choose to audit an individual form 8033-CP to look at matters relating to the amount of the subsidy payment that do not relate to the bonds' status as qualified direct-pay bonds, such has if the issuer filed duplicate returns or did not request a subsidy payment in a timely manner.

The interim guidance addresses the statute of limitations for assessing a penalty on subsidy payments in audits. "For purposes of calculating assessment statute expiration dates, the examiner will treat the period for assessment of tax on Form 8038-CP returns as three years from the date the return is filed," the memo said.

This is similar to the statute of limitations on taxing tax-exempt bond interest as a result of an audit. Generally, if the IRS thinks a bondholder needs to pay tax on bond interest in a certain year, the service needs to take action within three years of when the taxpayer filed his or her return for that year.

The interim guidance states that the procedures for settling an audit of direct-pay bonds will generally follow existing procedures that apply to tax-advantaged bonds.

The guidance also describes what should be done if an issuer agrees that its bonds don't qualify for subsidy payments, enters into a closing agreement where future payments are reduced, or receives a final adverse determination letter. It provides procedures for examiners about the collection of payments from issuers.

Bond lawyers viewed the interim guidance positively.

Vander Molen said that for the most part, the procedures seem to be "appropriate."Carol Lew, a shareholder at Stradling Yocca Carlson & Rauth in Newport Beach, Calif, said she was happy to see the memo come out because it standardizes procedures.

Matthias Edrich, of counsel at Kutak Rock in Denver, said that the future publication of this guidance in the IRM "suggests that the Internal Revenue Service is continuing to look at its procedures proactively to make sure its processes are current and tailored to the characteristics of individual categories of bonds."

The Bond Buyer

by Naomi Jagoda

JUL 24, 2015 3:41pm ET

PAB Issuance Up in 2014, Reversing Three-Year Trend.

WASHINGTON — Issuance of private-activity bonds subject to state volume caps rose in 2014 following three years of declining issuance, according to an annual survey conducted by the Council of Development Finance Agencies.

The increase in PAB issuance is in line with issuance in the municipal bond market as a whole, which "bounced back" in the second half of 2014, CDFA said. States reported cap-subject PAB issuance of $11.61 billion in 2014 — $2.79 billion or 31.57% more than the $8.82 billion issued in 2013.

"Hopefully, this is the start of a trend that will continue, reversing the shrinking private-activity bond market that has occurred recently," CDFA officials wrote in their report on the survey. "Increased tax-exempt bond issuance may be a sign that businesses are investing in more projects, or at least larger projects, than have been initiated in recent years. Certainly a variety of indicators suggest that the economy has been improving, and private-activity bond issuance may be another sign of recovery."

Tax-exempt PABs face competition from bank loans and taxable bonds, particularly when interest rates are low. Rates are expected to increase in the near future, and "this change, coming on the back of a private-activity bond market that is already growing, could result in ample opportunity for bond issuance," the group said.

Private-activity bonds are issued by public entities to provide low-cost financing for the projects of nonprofit organizations or companies that serve a public purpose.

Issuance of most types of PABs are subject to state volume caps based on a formula published by the Internal Revenue Service. In 2014, state volume caps for PAB issuance were the greater of $100 per capita or $296.83 million. Unused cap can be carried forward for up to three years but must be abandoned after that.

The types of bonds subject to the volume caps include certain types of exempt-facility bonds (such as multifamily housing bonds, water and sewer bonds and bonds for hazardous waste facilities), as well as mortgage-revenue bonds, industrial development bonds, student-loan bonds and agricultural bonds.

PABs that are not subject to the state volume caps include 501(c)(3) bonds, veterans' mortgage revenue bonds and certain types of exempt-facility bonds, such as those for airports, docks and wharves. Data on the issuance of these types of bonds was not included in CDFA's report.

CDFA's survey is based on data voluntarily reported each year by officials of the state and District of Columbia authorities that allocate PABs based on the state caps. The Internal Revenue Service, which oversees the program, only releases this data on a delayed basis.

Not every state provides data in every year, so some variation in the data can be attributed to their differing participation. Additionally, some of the numbers states report may not be accurate.

CDFA found that issuance of exempt-facility bonds, mortgage revenue bonds and student loan bonds increased in 2014, while issuance of IDBs declined.

The states that reported the most cap-subject PAB issuance in 2014 were New York, California, Massachusetts, Pennsylvania and Washington. All of those states except for Pennsylvania were also in the top five states for PAB issuance the previous year.

In 2014, the 50 states and D.C. received $34.53 billion of new volume cap allocation and carried forward $59.12 billion from 2011 to 2013. In total, states could issue about $92.08 billion of cap-subject PABs, according to CDFA.

Issuance in 2014 was about 12.61% of the total volume cap, a slightly greater percentage than the percent of total capacity that was used in 2013. With a greater percentage of total capacity being used in 2014, states reported that they expected to carry forward less cap into 2015 than they carried into 2014, CDFA said.

Housing Bonds

Issuance of multifamily housing bonds increased 37.13% in 2014 and issuance of tax-exempt, single-family mortgage-revenue bonds increased 55.39%.

Barbara Thompson, executive director of the National Council of State Housing Agencies, said that the numbers confirm what the group has heard anecdotally from its members, which is that "the bond market is truly coming back."

Multifamily housing bonds are used to finance multifamily rental real estate with units set aside for lower income households. The rental market as a whole has been "booming" since the financial crisis, said Richard Froehlich, chief operating officer and general counsel of the New York City Housing Development Corp.

Also, the U.S Department of Housing and Urban Development's Rental Assistance Demonstration (RAD) program has encouraged issuance, Froehlich said. The RAD program allows public housing agencies and owners of other HUD-assisted properties to convert their assistance for units to project-based Section 8 contracts. Public housing agencies that make RAD conversions can finance repairs for properties with private money.

Thompson said that the RAD program has created more demand for low income housing tax credits. If a project is financed with tax-exempt PABs, developers can get 4% LIHTCs.

Froehlich and Thompson said MRBs, which allow housing finance agencies to provide mortgages to first-time home buyers who meet certain income restrictions, are becoming more attractive compared to other financing tools. Housing finance agencies are again able to use MRBs to finance mortgages with rates lower than the conventional rates, Thompson said.

Student Loan Bonds/IDBs

Student-loan bond issuance rose in 2014. States reported issuing $754.3 million of student-loan bonds, compared to $480.2 million the previous year.

New Jersey did not provide 2013 data to CDFA but reported $226.1 million of student-loan bond issuance in 2014. States reporting increased issuance of these types of bonds in 2014 included Michigan and Vermont.

Debra Chromy, president of the Education Finance Council, said that student-loan bond issuers in some states can offer loans with more competitive interest rates than Federal Direct PLUS loans, which are made to graduate students and the parents of undergraduate students. People are becoming more aware of this, she said.

Also, for Direct PLUS loans, there's a loan origination fee, but issuers in some states don't have upfront fees for their loans, Chromy said.

Issuance of IDBs, which provide financing for small manufacturers, fell to $269.5 million in 2014 from $355.8 million the previous year.

IDB issuance in recent years has been far less than the nearly $1 billion of IDBs states issued in 2009, according to CDFA.

Twenty-two states reported at least one IDB issuance in 2014. The Midwest region was the most active for IDB issuance, CDFA said.

Bolstering Issuance

Actions could be taken at the local, state and federal levels to increase PAB issuance, CDFA said.

At the state and local levels, bond programs could be branded better and marketed more. Also, issuers could standardize issuing documents or create private-activity bond banks to help borrowers save costs. And issuers could create their own credit-enhancement programs, CDFA said.

At the federal level, Congress could pass legislation to increase issuance of certain types of PABs, CDFA said. One such bill, backed by CDFA, is the Modernizing American Manufacturing Bonds Act. The bill, which was introduced in June by Reps. Randy Hultgren, R-Ill. and Richard Neal, D-Mass., would increase the types of projects that could be financed with IDBs and the maximum size of an IDB issue.

President Obama's fiscal 2016 budget included a 28% cap on the value of the tax-exemption for municipal bonds, but it also proposed some changes to ease restrictions on PABs. The president proposed creating a new type of PAB called qualified public infrastructure bonds, which could finance certain types of governmentally owned infrastructure projects and would not be subject to state volume caps or the alternative minimum tax. Sens. Ron Wyden, D-Ore., and John Hoeven, R-N.D., have also proposed creating a new type of PAB to finance infrastructure projects. Those bonds, called Move America Bonds, could finance projects that are privately owned and would not be subject to the AMT but would be subject to new volume caps that could be converted to tax-credit allocations.

The Bond Buyer

by Naomi Jagoda

JUL 31, 2015 12:45pm ET

TAX - GEORGIA

Fulton County Bd. of Tax Assessors v. Piedmont Park Conservancy

Court of Appeals of Georgia - July 16, 2015 - S.E.2d - 2015 WL 4314595

Charitable corporation appealed county board of tax assessor's denial of its charitable tax exemption as to its building in park owned by the corporation but occupied in part by lessees operating two restaurants. The trial court granted the corporation a tax exemption as to those portions of the building not occupied by the restaurants. Board appealed.

The Court of Appeals held that corporation was entitled to a proportional ad valorem tax exemption.

Charitable corporation was entitled to a proportional ad valorem tax exemption as to portions of its building not occupied by income producing restaurant tenants, where its building remained devoted entirely to its mission of furthering recreational and educational activities in park, its activities continued to be undertaken for the benefit of the public, and the organization's use of income generated at the property was used in furtherance of its religious, educational, and charitable purposes.

[Nonprofit Hospitals in 2015: 15 Findings and Thoughts.]

Wells Fargo Securities, the capital markets and investment banking division of Wells Fargo & Company, recently released a [report on the state of nonprofit hospitals] and how they fared in the first half of 2015.

In the report, called "NFP Hospitals H2 2015 Update," George Huang, municipal securities research director at Wells Fargo Securities, provided some thoughts on recent developments and looked ahead to the remainder of the year.

Here are 15 findings and thoughts from the report.

Political and legal challenges

1. The Supreme Court decision in the King v. Burwell case to uphold subsidies on federal exchanges provides stability for hospitals' strategic and operational planning.

2. The Affordable Care Act is a key issue in the 2016 presidential election. However, there is no consensus on Republican "repeal and replace" plans.

3. Congress is pursuing minor amendments to the ACA, but repealing the 2.3 percent medical device tax and the Independent Payment Advisory Board would require bipartisan compromises.

Health insurance exchanges

4. Health insurance enrollment in 2015 under the ACA totaled 10.2 million at the end of March, down from an estimate given earlier that month of 11.7 million people and exceeding the 9.1 million HHS year end-target.

5. Further enrollment growth is likely as individual mandate penalties increase, according to the report. However, adverse selection risk remains, as there is a continued lack of consumer awareness and poor healthcare and health insurance literacy.

Medicaid expansion

6. Although the optional nature of Medicaid expansion limited implementation, Wells Fargo believes most states will eventually opt in. Governors and legislatures in 29 states, plus Washington, D.C., have already made the decision to accept Medicaid expansion.

7. At least seven state governors (Ala., Alaska, Mo., S.D., Tenn., Utah, Va. and Wyo.) are currently open to expansion but may lack sufficient state legislative support. After failing to persuade his legislature to expand Medicaid, Alaska Gov. Bill Walker, a Republican-turned-independent, said he plans to unilaterally accept additional federal and Mental Health Trust Fund Authority money to

expand Medicaid in his state.

8. If no other states expand Medicaid in 2016, the Washington, D.C.-based Urban Institute estimated there would be 4.2 million people who otherwise could have gained coverage through expansion.

9. Member hospitals of St. Louis-based Ascension Health benefited more from Medicaid expansion than health insurance exchange enrollments, while hospitals in non-expansion states experienced noticeably less improvement in payer mix. Ascension Health hospitals located in states that expanded Medicaid saw 32 percent fewer uninsured patients in 2014 than in 2013, while the system's hospitals in non-expansion states only experienced a 4 percent decline during the same time period, according to a Kaiser Family Foundation study. Ascension Health hospitals in Medicaid expansion states also saw a 7.4 percent increase in Medicaid discharge volumes from 2013 to 2014. That compares to a 1.4 percent increase for hospitals in non-expansion states during the same time period. Additionally, Ascension Health hospitals in Medicaid expansion states saw an 8.2 percent increase in Medicaid gross revenues from 2013 to 2014 and a 63.2 percent decrease in revenue from self-pay, according to the study. Ascension Health hospitals in non-expansion states saw a 9.4 percent decline in Medicaid gross revenues from 2013 to 2014 and a 2.6 percent increase in revenue from self-pay.

Medicaid enrollment

10. As of April 2015, there were 71.1 million total people enrolled in Medicaid.

11. As of that time, Medicaid enrollment was up 21.3 percent over average monthly enrollments prior to the ACA's 2014 open enrollment period.

Capital markets

12. Hospital bonds continue to be high demand, and that demand has outpaced supply, even in a higher issuance year.

13. In the first half of 2015, hospital bond volume was up dramatically — 87.5 percent year-ove--year.

14. About 80 percent of the hospital bond volume increase in the first half of this year was refunding/combined money deals, so issuance pace is likely to slow when rates rise.

15. Hospital bonds have still been good investments in the first half of 2015, as they are delivering positive returns in excess of other classes of municipal bonds. As of July 16, investing in hospital bonds would have earned an investor a total return of 0.83 percent for year-to-date 2015. By comparison, investing across asset classes as measured by broader indices like the Municipal Bond Index and the Revenue Bond Index, the year-to-date total return would have been 0.18 percent and 0.53 percent respectively.

Becker's Hospital Review

Written by Kelly Gooch | July 22, 2015

Senate Panel Passes Tax Extenders Bill with Bond, P.R. Provisions.

WASHINGTON — The Senate Finance Committee on Tuesday approved a bipartisan, modified two-year tax extenders bill that includes several provisions relating to bonds and Puerto Rico.

The modified bill, which the Senate's Joint Committee on Taxation estimated would result in $95.62 billion of lost revenues, was passed by a vote of 23 to 3 and is being referred to the full Senate.

Committee members proposed more than 100 amendments, but most of them were withdrawn for not being germane or after members said they would bring them up before the Senate. The vote came as several committee members complained a number of the tax provisions should be made permanent rather than extended.

"My goal is to see many of these provisions made permanent," said committee chairman Sen. Orrin Hatch, R-Utah, who explained that he postponed this issue "for the sake of making this markup less contentious." Sen. Ron Wyden, D-Ore., the panel's top Democrat, noted that the bill will extend the tax provisions "past the next election."

The modified bill "expresses the sense of the Senate that Congress should pursue comprehensive tax reform that eliminates temporary provisions from the tax code, thus making permanent those provisions that merit such treatment and allowing others to expire, and that a major focus of tax reform should be fostering economic growth and lowering tax rates by broadening the tax base."

Ahead of the vote, Hatch modified the bill to, among other things, ease restrictions on qualified zone academy bonds and enterprise zone facility bonds.

The bill would provide a $400 million national volume limitation for qualified zone academy bonds for each of 2015 and 2016. These bonds are tax-credit bonds whose proceeds can be used to finance renovations, equipment, course materials and teacher training at public schools or in academic programs that meet certain requirements. The volume cap is allocated to states, which can carry forward unused capacity under the limitation for up to two years.

Under current law, issuers have to certify that private entities will contribute property or services to the school with a value of at least 10% of the QZAB proceeds, but the bill was modified to lower that amount to 5%.

The modified QZAB provision in the bill is estimated to lead to revenue losses of $258 million over 10 years, according to the JCT.

The $400 million volume cap would be the same as the caps for each year from 2011 to 2014 and less than the caps of $1.4 billion for each of 2009 and 2010. As is the case with QZABs from allocations of the caps for 2011 and later, the QZABs from allocations of the 2015 and 2016 caps could not be issued as direct-pay bonds.

The legislation also would extend empowerment zone designations through the end of 2016. By extending the designations, certain distressed communities would remain eligible for tax incentives. The incentives include enterprise zone facility bonds, though issuers would only be able to issue the bonds in empowerment zones if the zones have remaining volume cap. Additionally, public schools in empowerment zones could be eligible to have projects financed with QZAB proceeds.

The modified bill would ease a requirement for enterprise zone facility bonds. Under current law, after three years businesses that benefit from the proceeds of the bonds must have 35% of their employees as residents of the empowerment zone or enterprise community where the business is located. Under the bill, this requirement can be met if 35% of the employees are from an empowerment zone, enterprise community or qualified low-income community within the locality where the empowerment zone is located.

The JCT estimated that the modified empowerment zone provision would cost the federal government $647 million over ten years.

The bill would allow taxpayers in their 2015 and 2016 tax years to deduct state and local general sales taxes instead of state and local income taxes. This is particularly beneficial for taxpayers in states without income taxes for individuals, including Texas, Florida and Washington.

The JCT estimated that extending the sales tax deduction for two years would cost about $6.7 billion from fiscal years 2016 to 2025.

Sen. Dean Heller, R-Nev., introduced an amendment he sponsored along with Sens. Maria Cantwell, D-Wash., John Thune, R-S.D. and John Cornyn, R-Texas, that would make the deduction permanent. But he withdrew it.

Cantwell said this provision had been in the tax code for years before it was repealed and then reinstated on a temporary basis. She said Congress should make the provision permanent. The House earlier this year passed a bill to make the deduction permanent.

In addition, the extenders bill would extend through the end of 2016 two Puerto Rico-related tax provisions.

One provision would temporarily increase the limit on the amount of excise taxes on rum that are covered over to Puerto Rico and the U.S. Virgin Islands. Under the bill, the territories would be able to receive $13.25 rather than $10.50 per proof gallon. The JCT estimated that extending this provision would lead to federal outlays of $336 million over ten years.

The other provision would allow a domestic production activities deduction to be applied to activities in Puerto Rico. Under current law, special domestic production activities rules for the commonwealth apply for the first nine years of a taxpayer beginning after Dec. 31, 2005 and before Jan. 1, 2015. Under the bill, the rules would apply for the first eleven years of a taxpayer beginning after Dec. 31, 2005 and before Jan. 1, 2017.

Extending this provision would cost $234 million over ten years, the JCT estimated.

Several other bond-related amendments were offered but not discussed during the committee meeting. One by Sens. Robert Menendez, D-N.J. and Michael Crapo, D-Idaho, that would exempt water and sewer private-activity bonds from state volume caps. Another By Sen. Chuck Schumer, D-N.Y., and four colleagues, would provide disaster relief, including by reinstating and extending several provisions enacted in previous years including disaster-specific bond authority.

The Bond Buyer

by Naomi Jagoda and Lynn Hume

JUL 21, 2015 3:13pm ET

IRS Memo: Procedures for Conducting Examinations of Direct Pay Bonds.

The IRS has issued a memo to all employees entitled, “Interim Guidance – Procedures for

Conducting Examinations of Direct Pay Bonds."

The memo provides guidance to tax-exempt bond examiners and managers on conducting examinations of direct pay bonds, such as Build America, clean renewable energy, and qualified zone academy bonds.

The memo is available here.

NABL: Disaster Tax Relief Bills Introduced in House and Senate.

Legislation has been introduced in both the House and Senate that would provide tax relief to areas affected by disasters. The bills, which include several bond provisions, would create a new section in the Internal Revenue Code for qualified disaster area recovery bonds (which will inevitably be referred to as QDARBs). These bonds would be treated as an exempt facility bond and would not be subject to section 146, but the maximum amount a state can issue would be $10 billion. The bonds must be issued by a state or political subdivision that is part of the federally-declared qualified disaster area. At least 95% of the proceeds must be used for qualified project costs.

Both bills have bipartisan support. In the Senate, S. 1795 has been referred to the Finance Committee. H.R. 3110 has been referred to the House Committee on Ways and Means.

Texas' Property Tax Infrastructure Districts: Ongoing Growth Contributes To Credit Stability Despite Concerns Over Low Oil Prices.

We recently affirmed our ratings on 116 unlimited property tax infrastructure districts in Texas. The primary purpose of these districts is utility service or infrastructure provision; they are usually created at the request of real estate developers seeking to benefit from tax-exempt financing of infrastructure improvements to serve future development. The sector has seemingly demonstrated favorable credit quality over the past four years, and we expect continued credit stability for the foreseeable future despite concerns over the impact of currently low oil prices. The energy sector, which has historically been the state's predominant industry, helped to insulate Texas from the effects of the national economic downturn and has more recently contributed to its recent growth. However, we have seen recent growth and diversification in other sectors, including Houston's medical industry and Austin's technology sector.

The full S&P report is available for purchase here.

Auditor: TIFs good for Denver

Tax-increment financing use by the Denver Urban Renewal Authority has been good overall for Denver, according to a new white paper by the Denver auditor's office.

The sometimes controversial urban-renewal tool has been used to redevelop many areas in Denver. An audit shows that 42 tax-increment financing districts in place between 2004 and 2014 showed that TIF areas and projects were generating significant revenues and that overall, 80 percent of the total TIF amount outstanding has been paid off.

Tax-increment financing defers taxes for property declared as blighted for a specified period of time, allowing developers to invest in improvements on property that otherwise wouldn't be developed. The smaller tax burden leaves more money available to finance the project and often is the difference between whether a project gets built or not.

Proponents of TIF say that it draws developers that might not otherwise be interested in a particular project or piece of property, but it hasn't been without controversy.

Opponents say such programs need more oversight and unfairly allows cities to make tax decisions that impact counties, school districts and other taxing entities.

Of the 42 projects analyzed by the auditor's office, 31 of them are still considered active. Of those, eight have generated more tax revenue than the original amount of the TIF, the report said. These projects have resulted in total tax collections of $446 million from 2004 to 2014, exceeding the $385 million in TIF initially awarded to them.

Another 23 TIF districts are partially repaid, ranging in percentages paid back between .02 percent and 96 percent. Eight of these fall on the very low end of the spectrum for repayment, from .02 percent to 25 percent and have an average remaining term of 17.6 years.

Seven TIF districts are between 25 percent and 75 percent paid back, according to the auditor's report. Finally, five active TIF districts have paid back 75 percent or more of their TIF.

Two TIF districts in Denver are performing "marginally," the report said.

Alameda Square, at West Alameda Boulevard and South Zuni Street received $7.3 million in tax increment financing, of which 40 percent has been paid back. A Lowe's home improvement store that was once the anchor of the redevelopment closed, leaving the building vacant for years until it was acquired earlier this year. Costco Wholesale Corp. has plans to open a Costco Business Center there.

The Cherokee redevelopment site, formerly the Gates Rubber Plant, is also listed as a "marginally" performing TIF district, with 1.8 percent of its $85 million in TIF paid back, with 13 years left on its TIF term. Last September, the site was acquired by Frontier Renewal which is working on plans to develop the highly anticipated site into a mixed-use, transit-oriented development.

"As this analysis shows, TIFs over the last decade have not only met their pay-off obligations, they have in some cases generated additional tax revenue prior to their pay-off dates," said the auditor's report. "More importantly, because the properties were generating limited or no tax revenue prior to TIF funding, the projects have provided additional tax revenue to help the city and county of Denver."

Other parts of the metro are beginning to raise concerns about tax-increment financing. Littleton recently passed a ballot measure that will allow residents to vote on any TIF deal by the city, and Wheat Ridge plans to vote on a similar measure this November.

Likewise, Northglenn and Glendale have recently been involved in eminent domain struggles, another component in urban-renewal law that is often contested.

Earlier this year, the state Legislature passed, and Gov. John Hickenlooper signed a controversial piece of urban-renewal law that gives non-city entities such as counties and special districts three voting seats on 13-member urban renewal authorities that have been formed by municipal officials.

Development officials and financiers said at the time of the bill's signing that it could bring high-profile projects, including the redevelopment of the Gates Rubber site, to a halt.

KATHLEEN LAVINE | DENVER BUSINESS JOURNAL

Jul 20, 2015, 2:19pm MDT

Morristown Memorial Hospital: A Tax Exemption Ruling All Nonprofit Hospitals Need to Know About.

A recent New Jersey Tax Court decision has nonprofit entities on edge. The decision may offer tax authorities the opportunity to pursue payments from nonprofit hospitals and may result in the redefining of tax exemptions by state legislators.

On June 25, 2015, the Tax Court of New Jersey held that Morristown Medical Center, a federally tax-exempt organization and New Jersey nonprofit corporation, should pay property taxes on virtually all of its 40-acre property in Morristown, New Jersey. Judge Vito Bianco ruled that the hospital failed to meet the legal test that it operated as a nonprofit, charitable organization under the state tax law for tax years 2006 through 2008. The ruling puts $2.5 million per year in play for each year covered by the decision.

The decision is unique in that it evaluated the entangled nature of the hospital's for-profit and nonprofit affiliates as compared to the more traditional approach of counting charitable contributions as the principal indicator of nonprofit status in order to decide to eliminate the hospital's property tax exemption. The ruling was limited to the hospital's state property tax exemption and did not affect its federal tax status as a nonprofit.

The Court stated that for-profit activities carried out on tax-exempt property must be "conducted so as to be evident, readily ascertainable, and separately accountable for taxing purposes." In rendering the decision the Court focused on the "blurred lines" between the hospital's nonprofit and for-profit activities with a specific focus on several aspects of its "labyrinth" and "entangled infrastructure." Specifically, Judge Bianco focused on the hospital's executive compensation arrangements with hospital executives, compensation paid to employed physicians, and third-party arrangements with service providers.

In evaluating the hospital's executive compensation arrangements, the Court held that the hospital failed to meet its burden of proof concerning the reasonableness of the compensation paid to some of its senior executives. In certain instances, executives were paid unreasonably high salaries (e.g., $5 million to its CEO in 2005) and received other benefits (such as automobile stipends and golf club memberships) that were unreasonable and excessive as compared to executive compensation arrangements for similarly situated executives. In making such a decision, the Court ruled that the hospital failed to convince it that the standard applied by the IRS to determine appropriate compensation should be adopted in New Jersey. The ruling also identified that productivity incentive payments contained in the hospital's contracts with its employed physicians demonstrated a "profit-making purpose" in instances in which employed physicians received additional compensation based on, in one instance, the number of new patients and number of surgeries performed.

Lastly, the hospital's management contract with a third-party service provider to manage the cafeteria was problematic for Judge Bianco since it included a split of budgetary savings and resembled incentive compensation or profit sharing disguised as cost savings. Specifically, Judge Bianco stated that the management contract "demonstrates that both parties contemplated the generation of additional revenue in the form of reduced expenses. This additional revenue was then split between the hospital and the third party. The Court found there is no meaningful distinction whether profit comes in the form of increased revenues or decreased expenses. Only the hospital's auditorium, fitness center and visitor's garage were held to be exempt from property taxes.

The activities which the Court found to be evidence of a "profit-making purpose" are activities in which federally tax-exempt hospitals have routinely engaged throughout the United States. If upheld, the ruling could have significant precedential value in New Jersey and beyond. As of July 9, 2015, the hospital and the municipality announced that they were engaging in "talks in an effort to end the court case." One possible resolution would be for the parties to enter into a PILOT program, which allows nonprofits to negotiate voluntary and arranged payments to municipalities in lieu of making payments for taxes. These types of arrangements can preempt the tax-exempt litigation on display in this case.

Regardless of the outcome, tax-exempt hospitals and nonprofit entities nationwide should be on notice. Municipalities suffering from budgetary constraints may use the ruling as the basis for additional challenges to a hospital's tax-exempt status. Hospitals and nonprofit entities should use this decision as the catalyst to audit their internal infrastructure to ensure sufficient distinctions between their for-profit and nonprofit activities.

Ballard Spahr LLP

by Denise M. Keyser, Patricia A. Smith, John W. Devine, and Holly V. Horsley

July 21, 2015

Attorneys in Ballard Spahr's Health Care Group represent clients across the health care industry, including hospitals, health systems, clinical laboratories, pharmacies, long-term care facilities, insurance companies, and pharmaceutical manufacturers. Our attorneys counsel clients on regulatory, compliance, privacy and data security, transactional, financing, benefits and compensation, and labor and employment matters.

If you have any questions regarding this alert or the potential effects of the decision outlined in this alert, please contact Denise M. Keyser at (856) 761-3442 or keyserd@ballardspahr.com, Patricia A. Smith at (856) 873-5521 or smithpa@ballardspahr.com, John W. Devine at (215) 864-8322 or devinej@ballardspahr.com, or Holly V. Horsley at (856) 761-3472 or horsleyh@ballardspahr.com.

have.

Municipal Bond Dealers Lobbying Congress for Tax Exemption.

Municipal bond advocates are pressing lawmakers to preserve their tax exempt status.

The Municipal Bonds for America Coalition (MBFA) organized a fly-in lobbying day on Tuesday, where advocates met with congressmen and senators to “discuss the benefits of municipal bonds.”

More than 50,000 state and local governments rely on municipal bonds to finance the construction of new roads, bridges, and schools, according to MBFA.

But they are concerned that the tax exempt status of the $3 trillion industry may be under threat.

“As conversations about tax reform continue, we want to be out in front, talking about the issue and why this exemption is important,” said Samantha DeZur, spokeswoman for MBFA.

“We want to make sure they understand how important municipal bonds are to state and local governments,” she added.

Groups participating in the lobbying day include the American Public Power, American Public Transportation Association, Bond Dealers of America, Council of Development Finance Authorities, Investment Company Institute, Large Public Power Council, National Association of State Treasurers, National Council of State Housing Agencies, and National Development Council.

The Hill

By Tim Devaney – 07/21/15 03:57 PM EDT
