
Shrinking Office Building Values Are Becoming a Dilemma for City Budgets.

Office landlords appeal property-tax assessments, which could lead to reductions in jobs or programs in some jurisdictions

The sharp decline in office building values is likely to become a growing problem for the budgets of cities, schools and other jurisdictions that depend heavily on property taxes from these building owners.

Most municipal budgets haven't suffered much yet. For a variety of reasons, declines in property values typically take years before they are reflected in the real-estate assessments of most taxing jurisdictions.

But municipalities might soon start feeling pain, say lawyers and appraisers throughout the country. Property tax is the largest single expense for most office landlords. Many hope to reduce it to help offset lost revenue from the sluggish return of employees to their desks and the cascading damage it is causing to local businesses catering to these workers. More recently, job cuts in the tech sector are reducing demand for workspace.

Continue reading.

The Wall Street Journal

By Peter Grant

Dec. 13, 2022

Chicago Taps Brakes on Gentrification With a Tax on Teardowns.

With multi-unit dwellings giving way to single-unit homes, Logan Square leaders pushed for measures to keep the neighborhood's Latino population in place.

Right next to the California stop on Chicago's Blue Line, one-bedroom apartments in a new luxury building start north of $2,000 a month. Recently built single-family homes on adjacent streets frequently go for $1 million or more. Coffee shops and craft breweries have become neighborhood staples.

Scattered throughout: taquerias marked with a single dollar sign on Google Maps, and traditional duplexes and triplexes. These multi-unit dwellings have housed members of Logan Square's Latino population since a wave of immigration in the 1960s, but lately the flow has gone in the opposite direction. The Latino population in the neighborhood has diminished to 36% from 65% in 2000,

according to the US Census Bureau, as wealthy, and often White, residents find appeal in the area's trendy businesses and proximity to The 606, a 2.7-mile railway-turned-walking and biking path that opened in 2015.

"Living in a gentrifying neighborhood is like living with a live and open wound," said Christian Diaz, who was born in Mexico but has called Logan Square home for most of his life. "It turns our streets into an emotional minefield because it just seems like our neighborhood is valuable now because White people want to live here. And it wasn't before, because it was predominantly Latinx."

Continue reading.

Bloomberg CityLab

By Mackenzie Hawkins

December 14, 2022

BAB: The Only ETF In The Taxable Municipal Bond Sector

Summary

- The Invesco Taxable Municipal Bond ETF is the only ETF I found that focuses on the taxable municipal segment of the US bond market.
- Unlike the three CEFs I covered in this segment, BAB gives investors a leverage-free option to invest in. I compare returns between these four, plus corporate bond ETF.
- Based on how BAB has performed against the CEFs and several long-term corporate bond ETFs, the best I can muster is a Hold. A good candidate for tax-loss swapping.

Continue reading.

Seeking Alpha

Dec. 16, 2022

Housing Tax Credit Bill Gains Bipartisan Support in Congress.

Dive Brief:

- There is bipartisan support in Congress for a bill that would provide tax credits to developers covering a portion of the cost of building or rehabilitating homes in struggling communities.
- The Neighborhood Homes Investment Act, which aims to produce 500,000 starter homes over the next decade, has garnered the support of 100 members of the U.S. House and 24 members of the U.S. Senate, according to the Neighborhood Homes Coalition. The bill, introduced last year, has been backed by the NHC, which represents various advocacy organizations and trade groups in housing and real estate.
- "The affordable housing crisis has touched every community in the country," said U.S. Rep. Brian Higgins, D-N.Y., who authored the bill, in a press release. The bipartisan support for the bill "shows the desire for new tools to address the affordable housing shortage, invest in our

neighborhoods, and create opportunities for first-time homeownership, especially among those who are historically left out," Higgins added.

Continue reading.

Smart Cities Dive

by Danielle McLean

Published Nov. 30, 2022

Ohio Tax Talk: One Step Closer To Telework Income Tax Clarity - Frost Brown Todd

On Sept. 26, Ohio's Cuyahoga County Court of Common Pleas held in Morsy v. Dumas that the city of Cleveland, Ohio, must reimburse all local income tax withholdings or payments collected on Manal Morsy's income while she was working remotely from her home in Blue Bell, Pennsylvania. Cleveland appealed the decision. On Nov. 2, Ohio's Eighth District Court of Appeals granted a stay and abeyance, effectively placing a hold on the appeal until a similar case, Schaad v. Alder, is decided at the Ohio Supreme Court level.

Remote work policies are a significant area of contention as states and localities attempt to clarify withholding tax obligations in a post-COVID work environment.[1] The initial ruling in Morsy is significant as it demonstrates a victory for employees when it comes to telecommuting during the COVID-19 pandemic.[2]

Background

During the COVID-19 pandemic, many states, including Ohio, enacted legislation that offered employers an alternative to the existing income tax withholding mandate, which required employers to withhold municipal income taxes based on an employee's principal place of work.[3]

Continue reading.

Frost Brown Todd LLP – Raghav Agnihotri and Rachael High Chamberlain

December 6 2022

TAX - WASHINGTON

Moses Lake Irrigation and Rehabilitation District v. Pheasant

Court of Appeals of Washington, Division 3 - November 22, 2022 - P.3d - 2022 WL 17098311

Irrigation and rehabilitation district petitioned for a writ of mandamus directing county treasurer to send statements of district assessments on land and improvements to district residents.

The Superior Court granted treasurer's requests for declaratory and summary judgments. The district appealed.

The Court of Appeals held that:

- Portion of district's proposed assessments which relied on its authority as irrigation district to fix reasonable rates or tolls and charges was an invalid tax;
- Portion of district's proposed assessments which relied on its authority as an irrigation and rehabilitation district was not an invalid tax; and
- Term "land" in statutory chapter governing irrigation districts includes improvements.

The portion of irrigation and rehabilitation district's proposed assessments on district residents, which relied on its authority as an irrigation district to fix reasonable rates or tolls and charges, and to collect them from all persons for whom district service was made available for irrigation water, was an invalid tax; after legislature reduced amount district could assess for lake improvement and rehabilitation, and in light of its members' diminished need for irrigation service, district could have sought approval from its electors of higher rehabilitation assessment or taken other actions, but instead it ensured itself an undiminished revenue stream by ratcheting up a uniform "irrigation service" rate on assessed value and charging it to irrigation users and nonusers alike.

The portion of irrigation and rehabilitation district's proposed assessments of $0.25 per $1,000 in assessed value, which relied on its authority as an irrigation and rehabilitation district, was not an invalid tax, where the most significant part of district funds was being spent on rehabilitation rather than irrigation purposes.

As used in statutory chapter governing irrigation districts, but not as used in statute authorizing the directors of a rehabilitation and irrigation district to "specially assess land" for benefits, the term "land" includes improvements.

TAX - WASHINGTON

Petrogas Pacific LLC v. Xczar

Court of Appeals of Washington, Division 1 - November 28, 2022 - P.3d - 2022 WL 17246775

Taxpayer, the owner and operator of a liquefied petroleum gas terminal and wharf, petitioned for judicial review of decision of Board of Tax Appeals concerning property tax valuation.

The Superior Court certified the case for direct review and affirmed. Taxpayer appealed.

The Court of Appeals held that:

- Intangible personal property was required to be included in properties' taxable value;
- Aquatic lands lease would be considered when determining properties' market value; and
- Substantial evidence supported Board's decision to reject taxpayer's appraisal.

Intangible personal property was required to be included in taxable value of taxpayer's liquefied petroleum gas (LPG) terminal and wharf for property tax purposes, including an increased demand for LPG in Asian markets, properties' proximity to these markets, properties' uniqueness and scarcity as the only LPG export facility on the West Coast, and utility as an integrated unit since wharf would have had no ability to ship LPG via ocean-going vessels without terminal.

Aquatic lands lease pertaining directly to use of taxpayer's wharf, which directly contributed to business of taxpayer's liquefied petroleum gas (LPG) terminal, affected the highest and best use of

taxpayer's properties, and thus lease would be considered when determining properties' market value for property tax purposes; terminal used wharf to ship LPG across the Pacific Ocean, lease allowed taxpayer to dock 48 ships at the pier per year, and value of wharf would have been diminished without this permitted use.

Substantial evidence supported decision of Board of Tax Appeals to reject taxpayer's appraisal that failed to account for sales of wharf and liquefied petroleum gas (LPG) terminal to taxpayer, which had occurred within five years of valuation, when determining properties' market value for property tax purposes; taxpayer's appraisal failed to consider intangible characteristics including proximity to Asian markets, scarcity of LPG facilities on the West Coast, aquatic lands lease, and the number of ships that could land at the wharf annually.

The Numbers Don't Lie: Challenges with the Property Tax - GFOA Webinar

December 7, 2022 – 3 p.m.-4 p.m. ET

Details:
Property tax is the most important source of revenue for local governments. Given that local governments are defined by their geographical boundaries, their property tax revenues are a function of the value of the land within their jurisdiction, and how it is used. Local governments need to take a closer look at how the land in their community is valued and if they are optimizing land usage so that property tax revenues align with the costs of development.

Local assessors are charged with determining the accuracy and fairness of a community's property tax. Property taxes are often regressive with lower priced properties assessed at a higher value relative to their sale price than more highly valued homes. This means that lower value properties bear a disproportionate burden on the owners of lower value homes. This webinar will explore potential explanations for this pattern as well as possible policy solutions. It will also delve into how local governments can rethink their current land usage patterns, especially ways in which land use planning and finances can be used to boost the revenue productivity of the tax base. Please join us to hear from Chris Berry about issues with the way property tax assessments create persistent inequities, as well as from Joe Minicozzi about the underlying structural problems in the way local governments align land usage and their revenue needs.

Learning Objectives:
Understand how land value assessments can impact the fairness and accuracy of property valuations and taxes
Explore an economic financial analysis of how the pricing structure works how this creates inherent inequities
Gain an understanding of how land usage patterns impact property tax revenue generation and how they can be improved

Click here to learn more and to register.

Property Taxes Fuel K-12 Budgets. How Well Does That Work?

Local property tax revenue covers more than a third of all of America's annual spending on K-12

public schools. But is that a best-case scenario, a necessary evil, or an outdated relic?

A new report from the Lincoln Institute for Land Policy, a nonprofit think tank based in Massachusetts, poses those questions by examining the landscape of school funding in five states. The authors conclude that it makes sense to continue using property taxes to pay for public education—but with some reforms to eliminate existing inequities.

Here's why this report matters. Property taxes are rising as home values soared during the pandemic and inflation puts the squeeze on consumers' wallets. Political fights over property taxes are a perennial fixture of election season. And the complexities of school funding may be opaque to educators, even as it undergirds their livelihood.

Continue reading.

Education Week

By Mark Lieberman — November 28, 2022

TAX - WISCONSIN

Saint John's Communities, Inc. v. City of Milwaukee

Supreme Court of Wisconsin - November 22, 2022 - N.W.2d - 2022 WL 17099914 - 2022 WI 69

Taxpayer, which was a nonprofit entity and a benevolent association, brought action against city under statute providing for recovery of unlawful taxes, arising from city's property-tax assessment on land containing a new high-rise tower.

The Circuit Court denied city's motion to dismiss for failure to state a claim and entered summary judgment for taxpayer. City appealed. The Court of Appeals reversed and remanded with direction to grant the city's motion to dismiss. Taxpayer petitioned for review, which was granted.

The Supreme Court held that statute providing for a taxpayer aggrieved by "the levy and collection of an unlawful tax" on property to file a claim against taxation district to recover the unlawful tax requires the taxpayer to pay the challenged tax prior to filing such claim.

Federal Watchdog Calls for National Online Sales Tax Standards.

Lawmakers on Capitol Hill have shown interest in the idea. But any plan along these lines is sure to draw skepticism from states and localities worried about ceding their power over tax policy.

The federal government's main watchdog agency is urging Congress to create nationwide standards for taxing the sale of goods, saying a U.S. Supreme Court ruling has led to a "complex patchwork" of state and local regulations that are burdensome and unfair to some businesses.

There's at least some support for the idea in Congress.

Senate Finance chairman Ron Wyden, who has proposed national standards along these lines,

argues that trying to follow regulations that vary from state to state, and even city to city, is difficult, particularly for small businesses selling products online around the country. Notably, Wyden's home state of Oregon doesn't impose a general sales for online or brick-and-mortar transactions.

Continue reading.

Route Fifty

By Kery Murakami

NOVEMBER 22, 2022

With the Grand Hyatt Dead or Stalled, What Happens to its Tax Incentives?

The lingering fallout from the death of the Grand Hyatt at One Beale has repercussions for Downtown's hotel market and the city's convention business, but it also raises the issue of what happens to the project's tax incentives.

The One Beale development has a special 5% sales tax added to rooms and anything else sold at the site. The 5% tax, known as a Tourism Development Zone surcharge, was supposed to pay for the municipal bonds that would've been issued to pay for part of the Grand Hyatt.

The tax has been collected by the whole development since Hyatt Centric hotel opened in April 2021.

If the project doesn't happen, the money is returned to the city's general fund like it is any other local sales tax. That has not happened yet. And so, perhaps, there could be still some hope that the Grand Hyatt moves forward.

Dan Springer, the city's deputy chief operating officer, said of the surcharge, "That was approved specifically for the Grand Hyatt. If the project doesn't go forward, the incentive is revoked and unused money returned."

He said discussions between the city and the developer have not occurred.

Chance Carlisle, the project's primary developer, said "The 5.0% surcharge tax is a competitive disadvantage to our open hotels and restaurants and will stop being collected when all paths forward are no longer workable."

The return of the money, when and if it occurs, would be an awkward coda to a saga that has stretched for most of 2022 and had Carlisle and Memphis Mayor Jim Strickland sniping at one another through the media this fall.

The sniping and disappointment over the scuttled 350-room hotel is part of the city's yearslong effort to bring a new convention center hotel to Memphis. At present, the Renasant Convention Center, which was just renovated for $220-plus million, is served by the Downtown Sheraton.

The Grand Hyatt, One Beale's two existing hotels — the Caption by Hyatt and Hyatt Centric — and new convention space on the site would've helped fill the void of more hotel rooms to serve the convention center. Instead, the project stalled as bond yields rose and prices fell, lowering how much money could be generated from the sale of the municipal debt backed by the 5% tax.

The Strickland administration agreed to provide a $10 million loan to the project but when bond prices fell further and Carlisle asked for a $15 million loan instead, the city declined. That decision prompted Carlisle to say the hotel deal was dead.

Carlisle canceling the surcharge would be the final nail in the project's coffin. Until then, there's still a chance.

Memphis Commercial Appeal

by Samuel Hardiman

Nov 25, 2022

Samuel Hardiman covers Memphis city government and politics for The Commercial Appeal. He can be reached by email at samuel.hardiman@commercialappeal.com or followed on Twitter at @samhardiman.

Cities Like Vacancy Taxes, Despite Mixed Results.

Voters in San Francisco and Berkeley, Calif., approved new taxes on vacant dwellings. Meant to tame speculation and increase supply for renters, the measures have raised revenue in other cities but the impact on housing markets remains unclear.

The trend line on housing prices in San Francisco looks a lot like one of the city's famous hills: It only seems to climb higher and higher until it disappears into the fog. With the average price of a home now hovering at unattainable heights — $1.42 million last month, a small decrease from last year — it's increasingly impossible for typical wage earners to find anywhere to live.

So it's a galling experience, says Shanti Singh, the communications and legislative director for the advocacy group Tenants Together, to observe the same darkened windows in the same high-end condos night after night, and know that someone is making money from a San Francisco housing unit without even having to rent it out.

That's why Singh thinks she had such an unexpectedly easy time gathering signatures for Proposition M, a ballot measure to create a tax on vacant housing units in San Francisco. The tax is intended to discourage speculators from letting apartments go empty, and to raise money for housing programs from those that continue to do so.

Continue reading.

governing.com

by Jared Brey

Nov 18, 2022

Fitch: Leaning Into Tax Cuts Could Pressure Some U.S. States Over Time

Fitch Ratings-New York-31 October 2022: Most U.S. states will be able to absorb the short-term revenue effects brought on by more aggressive 2022 tax cuts even when confronted with a mild U.S. recession next year; however, a small number of states with more expansive tax reduction packages could experience budgetary pressure, according to a new report by Fitch Ratings.

A total of 31 U.S. states adopted tax cuts in some form during the 2022 legislative sessions, a dramatic increase over 18 states that cut taxes in 2021. Fitch expects the combination of rate reductions, tax holidays and tax exemptions adopted by states will translate into short-term revenue losses and a slowdown in the pace of revenue growth for a number of states. Fitch, however, expects the collective revenue effects will be small compared to the overall size of the budgets for most states that implemented tax cuts in 2022.

“Faster population growth generally translates into more rapid growth in tax collections, which will help states with more rapid population growth to better withstand the revenue declines, or in some cases slowdowns in the pace of new revenue formation, associated with tax cuts,” said Director Michael D’Arcy. This is good news for states seeing rapid population growth such as South Carolina and Idaho.

Iowa and Nebraska, in particular, would face more risk in a severe downturn and could be forced to rely on reserves as a “bridging measure” to absorb shortfalls until the economy recovers. This is because Iowa and Nebraska have enacted several rounds of tax reductions since 2020 and their populations are growing at a rate below the US average. By contrast, Idaho and South Carolina, which have also enacted sizable tax cuts that don’t include revenue triggers or other guardrails, may fare better given their strong job markets and rapidly growing populations.

Fitch’s “States Lean into Tax Cuts as Revenue Surge Continues” is available at www.fitchratings.com.

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TAX - CALIFORNIA

Morgan v. Ygrene Energy Fund, Inc.

Court of Appeal, Fourth District, Division 1, California - November 1, 2022 - Cal.Rptr.3d - 2022 WL 16569194

Homeowners who had entered into Property Assessed Clean Energy (PACE) loans to finance energy and water conservation improvements to their properties brought actions against private companies that made loans, were assigned rights to payment, or administered PACE programs for

municipalities for violations of Unfair Competition Law (UCL), seeking property tax refunds, injunction against future tax assessments, and removal of tax liens.

Defendants demurred on basis that homeowners failed to exhaust administrative remedies by seeking property tax refunds. The Superior Court sustained demurrers without leave to amend and dismissed action. Homeowners appealed. Appeals were consolidated.

The Court of Appeal held that:

- As a matter of apparent first impression, homeowners were required to exhaust administrative remedies since they sought relief from tax assessments;
- County boards of equalization could provide adequate remedy to homeowners;
- County boards of equalization had competence to resolve issues of loan validity;
- Doctrine of primary jurisdiction did not apply; and
- Merits of homeowners' claims were not properly before Court of Appeal.

Homeowners' claims under Unfair Competition Law (UCL) against private companies which made loans to homeowners under Property Assessed Clean Energy (PACE) program, were assigned rights to payment of PACE loans, or administered PACE loans for municipalities sought relief from special assessments and tax liens placed on homeowners' properties to repay loans, and, thus, homeowners were required to exhaust administrative remedies before bringing claims; homeowners sought tax refunds, injunction against future tax assessments, and removal of tax liens, determination that PACE loans were void due to defendants' UCL violations would negate sole basis of homeowners' liability for assessments and liens at issue, and administrative procedure existed to provide relief.

County boards of equalization could provide adequate remedy for homeowners' alleged injury, namely imposition and enforcement of special tax assessment on their properties resulting from Property Assessed Clean Energy (PACE) loans that homeowners contended were void due to lenders' and other private entities' violations of Unfair Competition Law (UCL), and, thus, inadequate-remedy exception to requirement of administrative exhaustion did not apply to homeowners' claims against private entities under UCL, by which homeowners sought property tax refunds, injunction against future tax assessments, and removal of tax liens, where statute required boards to refund property tax that was erroneously or illegally assessed, and homeowners contended assessments, which repaid loans, were illegal.

County boards of equalization had competence to resolve issues of loan validity raised by homeowners' complaints against private entities, including lenders, for violations of Unfair Competition Law (UCL), for which homeowners sought relief from property tax assessments imposed to repay loans under Property Assessed Clean Energy (PACE) program, and, thus, policies underlying nullity exception to administrative exhaustion rule did not permit homeowners to assert claims in court rather than exhausting remedies before boards, even though claims did not involve property valuation; board, with its quasi-judicial powers, could address factual issues such as whether lenders exercised high-pressure sales efforts, and applying exhaustion doctrine would serve interests of judicial economy.

Homeowners' claims against private lenders for violations of Unfair Competition Law (UCL), by which homeowners sought relief from tax assessments imposed to repay loans under Property Assessed Clean Energy (PACE) program, were not originally cognizable in court, and, thus, doctrine of primary jurisdiction did not permit homeowners to assert claims in court rather than before county boards of equalization, where homeowners had failed to satisfy administrative exhaustion requirement for claims for tax-related relief.

TAX - NEW JERSEY

Options Imagined v. Parsippany-Troy Hills Township

Tax Court of New Jersey - October 31, 2022 - N.J.Tax - 2022 WL 16584951

Taxpayer, a non-profit corporation, appealed after county tax board denied charitable property tax exemption for property at issue, which was located in township, for multiple years.

Township moved for summary judgment to dismiss appeals, and taxpayer cross-moved for summary judgment entreating Tax Court to grant exemption.

The Tax Court held that taxpayer's property was used in furtherance of organizational purpose.

Property of taxpayer, a non-profit corporation created to provide support services to adults with disabilities, was reasonably necessary for accomplishment, and integral part, of activities in pursuit of function forming basis for property tax exemption, and thus was used in furtherance of organizational purpose, as necessary for taxpayer to obtain property tax deduction; property was used to provide resident with housing and support services approved by Department of Human Services, Division of Development Disabilities (DDD), and was reasonably necessary and integral to care and well-being of resident, while sole resident was son of taxpayer's creator, additional resident was anticipated to reside in property and receive similar support services, and taxpayer absorbed some costs other taxpayers would otherwise have borne.

Fitch: US State Taxes, Credit Quality Remain Strong Ahead of Downturn

Fitch Ratings-New York-27 October 2022: Monthly state tax collections continue to show strong yoy gains through fiscal 1Q23 ended Sept. 30, 2022, but will slow as economic activity cools, Fitch Ratings says. Even with lower revenue growth, US states' credit quality will remain strong and ratings stable, given generally prudent budget management in recent years that has resulted in robust fiscal reserves.

Total tax revenues from July through September 2022 grew at a median rate of 7.6% yoy, with only California reporting a yoy decline, based on Fitch's review of the 15 largest states with available data. Sales tax and income tax revenues continued to grow at a healthy pace, driven by the strong labor market, consumer spending and inflation. Two of the states included in the analysis, New York and Texas, have fiscal years that begin on April 1 and Sept. 1, respectively.

Inflation is a key driver of revenue growth, given the fixed nature of most tax rates. Forecast lower inflation in 2023 will put downward pressure on revenue, although we expect tax revenues will continue to grow, albeit at a slower pace. Even on an inflation-adjusted basis, consumer spending is still increasing, suggesting continued near-term economic and revenue gains. Real personal consumption expenditures were up 0.1% for the month and 1.8% for the year in August, according to the US Bureau of Economic Analysis. However, with slower job growth and rising unemployment in 2023, inflation and rising rates will take a toll on consumer spending.

Continue reading.

Changes to Streaming Media Monetization Could Affect State Taxes.

As more streaming services start to offer lower-cost, ad-supported plans, there's been plenty of chatter about what these developments may mean from a competitive and product point of view. But this shift could also prompt changes on state and local taxes, says Avalara's Toby Bargar.

The last few months have ushered in a string of new developments around the changing landscape of streaming entertainment: mergers and bundling, rising availability of free alternative services, and—perhaps biggest of all—the imminent arrival of cheaper, ad-supported plans from some of the biggest names in the business. There has been no shortage of chatter about what these developments may mean from a competitive and product point of view. However, a significant and overlooked dimension to this area is what these shifts could mean for the tax purses of state and local governments.

New Streaming Models Are Upon Us
With economic uncertainty prominent in the news and customers emerging from pandemic lifestyles, streaming platforms are looking to make their offerings more financially attractive. Not only are streaming media companies having to compete again with outside entertainment like theaters, restaurants, and in-person concerts—there also is an ever-growing universe of competitors within the space.

The major brands are not sitting still. Most notably, Disney+ and Netflix are in the process of adding multiple pricing tiers with lower-cost, ad-supported plans. In theory, these cheaper offerings will help retain newly price-sensitive customers. Not to be outdone, several completely free, ad-supported services like Tubi and Amazon Freevee have stormed onto the scene. Peacock offers a free, ad-supported tier as the entry point, with an available buy up to a paid, ad-free service. This proliferation of free and lower-cost services has a hidden cost: State and local tax receipts stand to suffer as a result.

The Taxman Was Already Struggling to Keep Up
Cord-cutting and the overall move to streaming services has already shown a propensity to take a bite out of tax revenue. Cable television services have historically been subject to sales tax as well as a menu of alternative and additional communications or utility taxes, regulatory fees, economic activity taxes, and municipal franchise fees.

Tax authorities are struggling to keep up. Most streaming services are offered "over-the-top" of the customer's internet connection, which poses a potential problem in relation to many of the various taxes and fees associated with cable. Utility taxes, regulatory, and franchise fees associated with pay TV are often imposed on the basis of public policy rationales around the actual physical cable lines using public rights of way and traditional communications infrastructure to reach the customer. Most streaming providers can avoid directly using any of this infrastructure and, in the process, sidestep the associated taxes and fees.

State and local authorities have not sat idly by while cable revenue shifted toward streaming. Florida has leaned into a generous definition of pay TV to assert that streaming services are subject to state and local communications taxes, which were historically collected from phone and cable companies. Chicago applies its historic amusement tax to streaming, and a raft of California cities have fought with streaming providers over whether the services are subject to municipal utility taxes. Perhaps most aggressively, a series of class-action lawsuits have been filed in various states on behalf of

municipalities claiming that streaming companies should be subject to cable franchise fees due to their use of other companies' physical internet infrastructure to reach the customer. These arguments may be eyebrow-raising, but if nothing else, they demonstrate the degree to which the changes in consumer spending have put municipal revenue streams under extreme pressure.

However, if consumers migrate toward ad-supported services that either are free or significantly cheaper, all of this maneuvering around extending taxability to cover retail streaming bills may be too little, too late. The math is pretty simple: At free or reduced cost, ad-supported services are likely to result in an even further reduction in the already stressed tax base.

So Where Do They Turn?
If free and reduced-cost streaming does take a bite out of retail receipts—and by extension, tax collections—state and local legislators may already have a model solution in front of them: tax the ads themselves. In February 2021, Maryland enacted a first-of-its-kind "digital ads tax" targeting the revenue of technology platforms that generate a substantial amount of receipts from advertising in the state.

The rollout of the digital ad tax in Maryland has still had some challenges. The state has faced a daunting amount of litigation over whether the tax is an unconstitutional violation of due process and commerce clause protections, as well as challenges over vagueness, sourcing, and implementation. In addition, it has been argued that the tax falls afoul of federal Internet Tax Freedom Act restrictions against discrimination. Nearly everything about the Maryland tax has been controversial and subject to dispute—not least of all, who is even subject to it. That said, the stakes for states and cities are high enough that this model likely cannot be ignored.

Major streaming companies like Netflix and Disney+ clearly are hoping to make up for any eroding growth in consumer receipts with ad revenue. Perhaps the litigation and controversy in Maryland would ordinarily scare legislators in other states away from the concept entirely. But can they really afford to ignore advertising receipts? Not only does a tax on advertising revenue match the direction the industry appears to be headed; it also offers the political benefit of being largely invisible to the consumer. Look for more news about more states tinkering with taxes aimed at advertising revenue in the future.

Bloomberg Tax

Toby Bargar

Oct. 13, 2022

This article does not necessarily reflect the opinion of The Bureau of National Affairs, Inc., the publisher of Bloomberg Law and Bloomberg Tax, or its owners.

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Netflix, Hulu Beat Reno's Bid to Tax Streaming at Ninth Circuit.

Netflix Inc. and Hulu LLC beat another proposed class action alleging municipalities can tax

streaming services, as the Ninth Circuit ruled against an effort by the city of Reno, Nevada.

Nevada's Video Service Law allows local governments to impose franchise fees that don't exceed 5% of a video service provider's gross annual revenue from subscribers within the jurisdiction. It doesn't expressly provide a right of action for those localities to recover underpayment of the fees, though; it only allows the attorney general to file such a suit.

The US Court of Appeals for the Ninth Circuit rejected Reno's argument that the act creates an implied right of action. "In vesting enforcement of the VSL in state agencies, the Legislature seems to have deprived local governments of enforcement powers intentionally," the court ruled in an unsigned opinion Friday.

The court also rejected Reno's argument that the federal Declaratory Judgment Act gives it the right to sue, finding Reno can't use the act to obtain affirmative relief when it lacks a cause of action under a separate statute.

The suit is one of more than a dozen class actions going after streaming services playing out across the country. Several municipalities saw early victories as state courts ruled their cases shouldn't be sent to federal court. But since then courts in at least eight states have dismissed cases after finding the broadband and cable laws relied on by the localities don't apply to services like Netflix and Hulu, or don't give the localities a basis to sue.

Judges Susan P. Graber, Michelle T. Friedland, and Lucy H. Koh joined the opinion.

Jason H. Kim of Schneider Wallace Cottrell Konecky LLP, who argued the case for Reno, Robert C. Collins of Latham & Watkins LLP, who argued for Netflix, and Victor Jih of Wilson Sonsini Goodrich & Rosati, who argued for Hulu, didn't immediately respond to requests for comment.

The case is *Reno v. Netflix, Inc.*, 9th Cir., No. 21-16560, 10/28/22.

Bloomberg Tax

by Perry Cooper

Oct. 28, 2022

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TAX - NEW HAMPSHIRE

Appeal of Porobic

Supreme Court of New Hampshire - October 18, 2022 - A.3d - 2022 WL 10208757

Taxpayer appealed from decision of the Board of Tax and Land Appeals (BTLA) granting her only a partial abatement of taxes assessed by town.

The Supreme Court held that taxpayer failed to demonstrate that BTLA's decision was unsupported by the evidence.

Taxpayer failed to demonstrate that Board of Tax and Land Appeals' (BTLA) decision granting her only a partial abatement of real estate property taxes assessed by town was unsupported by the evidence or the result of legal error; record contained reports of both parties' experts which in turn contained information from several comparable properties, and while the BTLA did not credit the experts' ultimate opinions of value, it had before it the raw data on comparable properties on which the experts based their opinions, and thus, the information and values ascribed to these similar properties provided basis for the BTLA's factual findings and its decision.

TAX - NEW HAMPSHIRE

Appeal of Porobic

Supreme Court of New Hampshire - October 18, 2022 - A.3d - 2022 WL 10208757

Taxpayer appealed from decision of the Board of Tax and Land Appeals (BTLA) granting her only a partial abatement of taxes assessed by town.

The Supreme Court held that taxpayer failed to demonstrate that BTLA's decision was unsupported by the evidence.

Board of Tax and Land Appeals (BTLA) was free to consider town's assessment and other valuation evidence in determining real property's fair market value, as BTLA was not bound by the technical rules of evidence.

Taxpayer failed to demonstrate that Board of Tax and Land Appeals' (BTLA) decision granting her only a partial abatement of real estate property taxes assessed by town was unsupported by the evidence or the result of legal error; record contained reports of both parties' experts which in turn contained information from several comparable properties, and while the BTLA did not credit the experts' ultimate opinions of value, it had before it the raw data on comparable properties on which the experts based their opinions, and thus, the information and values ascribed to these similar properties provided basis for the BTLA's factual findings and its decision.

How to Escape State Taxes Without Leaving New York or California.

Municipal bonds are a relatively safe investment with tax-free interest that gives them an advantage over other fixed-income assets.

There's an easy way to hide from high taxes in states like New York and California that doesn't involve packing up a moving van to Florida or Texas.

US municipal bonds are offering the highest yields in more than a decade after a record-breaking selloff this year. What makes them unique relative to other fixed-income securities like Treasuries, corporate bonds or even bank certificates of deposit is they usually pay interest that's exempt from both state and federal taxes — a perk that can make a big difference.

Interest income from most bonds and ordinary dividends from stocks are taxed at the same rate as someone's salary. That means for every $1,000 collected, New York state residents in the highest tax bracket could end up with as little as $483 after accounting for all taxes, while those in California may be left with as little as $459. With in-state munis, none of the interest earned would be taxed.

Continue reading.

Bloomberg Wealth

By Amanda Albright and Claire Ballentine

October 20, 2022 at 6:13 AM PDT

Limitations on the Ability to Tax: Blank Rome

In the post-*Wayfair* age, the challenges to a jurisdiction's ability to tax have decreased. However, the pandemic brought a slew of new tax considerations and emergency rules and legislation, which have resulted in a steady uptick in challenges to a jurisdiction's ability to tax. One such successful challenge is the recent decision in *Morsy v. Dumas*, No. CV 21 946057 (Ohio Ct. Com. Pleas, Sept. 26, 2022).

The decision in *Morsy* examined Ohio's emergency legislation, which provided that if an employee provided personal services from home during the Stay at Home Executive Order, then the employee would be deemed to have provided those services at the employer's principal place of business. See H.B. 197. Dr. Morsy lived in Blue Bell, Pennsylvania, and commuted over six hours each way to work during the week in Cleveland, Ohio.

The Facts: From March 13, 2020, through December 31, 2020, Dr. Morsy worked from her home in Pennsylvania. Nevertheless, the City of Cleveland refused to refund the municipal income tax Dr. Morsy paid for that period as a result of the emergency legislation. Dr. Morsy challenged the refund denial. The City defended the tax, in part, on the basis that "the ability to continue performing her job duties through a virtual network connection with her employer, located in Cleveland, created a substantial nexus." The City argued that providing services and protections to the employer's offices (notably not to the employee though) and maintaining an infrastructure to allow Dr. Morsy to work from home was a sufficient basis for the imposition of the tax.

The Decision: The Court of Commons Pleas was not swayed by the City's expansive arguments. Instead, the court focused on the distinction between the two other Ohio cases on this issue and the current case—specifically that the other cases dealt with Ohio residents. See *Buckeye Institute v. Kilgore*, 2021-Ohio-4196 (Ct. App. Ohio, Nov. 30, 2021) and *Schaad v. Alder*, 2022-Ohio-340 (Ct. App. Ohio, February 7, 2022). The court held that the Ohio General Assembly "cannot create jurisdiction to levy a tax on the income of persons who are not residents of Ohio, and that was earned for work performed outside of the State of Ohio."

While this case focused on the emergency legislation enacted as a result of the pandemic, states that use a convenience of the employer test to assert taxing authority should be wary. In those states, tax is often imposed if the employee only worked one day in the state and spent the rest of the year working from home. This case serves as an important reminder that merely having a tenuous connection with a jurisdiction does not grant that jurisdiction the authority to impose tax over a nonresident's income.

Blank Rome LLP – Nicole L. Johnson

October 21 2022

A Bridge Too Far: Ohio Court of Common Pleas Finds Convenience Rule Unconstitutional

On September 26, 2022, the Ohio Court of Common Pleas in *Morsy v. Dumas*, held that Cleveland's municipal income tax on remote workers was unconstitutional on an "as applied" basis. The taxpayer lived in Pennsylvania and was employed by a company located in Cleveland, Ohio.

Prior to the COVID-19 pandemic, Morsy would stay in Cleveland Monday through Friday returning home for the weekend. In response to the pandemic, however, the Governor of Ohio declared a state of emergency and a stay-at-home order was issued. The Ohio legislature also passed a law that required Morsy's employer to treat days Morsy worked from home due to the pandemic as days worked at the employer's place of business in Cleveland. As a result, Morsy's employer continued to withhold municipal income tax from her wages even though Morsy was not physically located in Cleveland when performing her duties. Claiming that the deemed-work-from-Cleveland rule was unconstitutional, Morsy sought a refund of her withheld income tax.

The City of Cleveland argued that Morsy's physical presence in the City prior to the pandemic satisfied any due process jurisdictional concerns, and that "the ability to continue performing her job duties through a virtual network connection with her employer, located in Cleveland, created a substantial nexus" thereby satisfying the constitutional requirements for taxing remote workers.

Morsy countered that physical presence in the early part of 2020 did not give rise to ongoing personal jurisdiction for the entire year when she was not otherwise physically present. Citing case law that explained physical presence is necessary to a municipality's income tax jurisdiction, the taxpayer argued that there was no case law authorizing tax jurisdiction over an employee on the basis of a virtual connection with the employer's place of business.

The Court of Common Pleas agreed with Morsy. The court explained that "[t]raditional due process is a minimal requirement for acquiring jurisdiction to impose an income tax on an individual." Observing that "an employee enjoys the protections, opportunities and benefits" of a taxing authority when the employee is physically present, the court concluded that "[t]he ability of an employee to communicate virtually with her office and to perform her job duties from home does not create the fiscal relation required by the case law." As a result, the court held that the law requiring Morsy's work from home days be treated as work from Cleveland days was unconstitutional in the case at bar.

Eversheds Sutherland (US) LLP – Eric J. Coffill and Cyavash N. Ahmadi

October 10 2022

TAX - MASSACHUSETTS

Pelleverde Capital, LLC v. Board of Assessors of West Bridgewater

Appeals Court of Massachusetts, Suffolk - September 21, 2022 - N.E.3d - 101 Mass.App.Ct. 739 - 2022 WL 4360064

Owner of solar power facility sought judicial review of decision of Appellate Tax Board affirming decision of town's board of assessors denying owner abatement of personal property tax on its solar power facility under exemption from taxation for certain solar powered systems.

The Appeals Court held that:

- Owner was not entitled to exemption from personal property tax, and
- Municipal property held for a public use is not within the class of property taxable under tax statutes for purposes of tax exemption for solar facilities.

Owner of solar power facility that provided energy to town was not entitled to exemption from personal property tax for solar facilities that supplied energy needs of property taxable under Commonwealth tax statutes, as output of solar facility went only to tax-exempt properties, where town used energy only at municipal properties held for public use.

Municipal property held for a public use is not within the class of property taxable under tax statutes as that phrase is used in statute providing property tax exemption for certain solar or wind powered systems supplying energy needs of property that is taxable under Commonwealth tax statutes.

IRS Asks for Comments on Upcoming Energy Guidance.

WASHINGTON — The Internal Revenue Service today issued six notices asking for comments on different aspects of extensions and enhancements of energy tax benefits in the Inflation Reduction Act.

The IRS anticipates that constructive comments from interested parties will aid the agency in drafting the guidance items most reflective of the needs of taxpayers entitled to claim energy credits.

- Notice 2022-46 requests comments on credits for clean vehicles.
- Notice 2022-47 requests comments on energy security tax credits for manufacturing.
- Notice 2022-48 requests comments on incentive provisions for improving the energy efficiency of residential and commercial buildings.
- Notice 2022-49 requests comments on certain energy generation incentives.
- Notice 2022-50 requests comments on elective payment of applicable credits and transfer of certain credits.
- Notice 2022-51 requests comments on prevailing wage, apprenticeship, domestic content, and energy communities requirements.The IRS is requesting that those interested in providing feedback to the questions in the notices follow the instructions in the notices to reply by November 4, 2022.

IR-2022-172, October 5, 2022

The Fighting Over Online Sales Taxes Isn’t Finished.

Deals worked out between local governments and companies before the Supreme Court cleared the way for taxing e-commerce are drawing increased scrutiny. If the agreements fall apart, it could blow a hole in some city budgets.

Welcome back to Route Fifty’s Public Finance Update! I’m Liz Farmer and this week I’m writing about sales taxes. More than four years after the U.S. Supreme Court issued its landmark decision

clearing the way for states to collect taxes from online sales, there are still issues to work out. In this newsletter, I'll explain one of them, which involves longstanding sales tax incentives, rule changes for remote sales and, in Texas and elsewhere, has pit cities against states.

Located in Central Texas just outside of Austin, the suburb of Round Rock is in the heart of one of the country's fastest-growing regions. It's home to major employers, like Amazon and UPS. Dell Technologies has been headquartered there since the mid-1990s. The sales taxes collected from those companies and others help pay for servicing the city's rapid growth.

Continue reading.

Route Fifty

By Liz Farmer |

SEP 20, 2022

TAX - OHIO

Beachwood City School District Board of Education v. Warrensville Heights City School District Board of Education

Supreme Court of Ohio - September 6, 2022 - N.E.3d - 2022 WL 4074673 - 2022-Ohio-3071

Plaintiff school district filed complaint against defendant school district for promissory estoppel, unjust enrichment, conversion, fraud, and two counts of breach of contract, and sought monetary damages, declaratory judgment, and permanent injunction in relation to agreements between school districts under which they would share tax revenue from territory annexed by plaintiff's city.

The Court of Common Pleas granted defendant's motion for summary judgment. Plaintiff appealed. The Court of Appeals reversed and remanded. Defendant sought discretionary review.

The Supreme Court held that:

- Approval by state board of education was not required to validate agreement;
- Fiscal-certificate requirement of statute governing expenditures of political subdivisions did not apply; and
- Fiscal-certificate requirement of statute governing school district expenditures did not apply.

Approval by state board of education was not required to validate agreement between school districts to share tax revenue generated from nonresidential and nonagricultural property within territory annexed by city, pursuant to which agreement school district associated with city withdrew its request to transfer territory to itself, and thus agreement was enforceable; while prior version of statute charging state board of education with approving or disapproving transfers of territory required that a division of funds and "indebtedness incident thereto," for a transfer of school-district territory, be completed in manner prescribed by the statute, including obtaining board approval, a division of funds could not be incident to a nonexistent transfer of school-district territory.

Agreement between school districts to share tax revenue generated from nonresidential and nonagricultural property within territory annexed by city did not involve an "expenditure" of money within meaning of prior version of statute governing authority of political subdivisions to enter into contracts involving such expenditures, and thus statute's requirement that fiscal certificate be

attached did not apply; agreement simply allocated collectable tax revenue between districts, and district's entitlement under agreement to collect 70% of tax revenue from relevant portions of territory did not require it to expend the other 30% to be diverted to other district, but instead county treasurer would pay agreed-on percentages of tax revenue directly to districts.

Prior version of statute governing school district expenditures and requiring that fiscal certificate be attached to contracts adopted by school district applied only to contracts involving expenditures of money, and thus certificate requirement did not apply to agreement between school districts to share tax revenue generated from nonresidential and nonagricultural property within territory annexed by city; certification addressed school district's ability to satisfy its financial commitments while maintaining adequate educational program, consequence for failing to attach certificate when required was that no payment under contract was to be made, and other actions for which certificate was required under statute involved commitments to spend money.

TAX - CONNECTICUT

Wind Colebrook South, LLC v. Town of Colebrook

Supreme Court of Connecticut - August 2, 2022 - 344 Conn. 150 - 278 A.3d 442

Taxpayer, which was a limited-liability company (LLC) that owned and operated a wind turbine facility, commenced a municipal property tax appeal after town board of assessment denied taxpayer's appeal of town's classification of the wind turbines and their associated equipment as real property for purposes of taxation.

The Superior Court entered judgment for taxpayer on claim that a late-filing penalty was improper but entered judgment for town in all other respects. Taxpayer appealed.

The Supreme Court held that:

- The turbines were "buildings" under statute on taxation of real property;
- The turbines were "structures" under statute on taxation of real property;
- Statute on equalization of assessments did not preclude classifying commercial wind turbines as real property for property-tax purposes;
- The turbines were not "fixtures" of an electric company pursuant to definition of personal property in statute on filing of declarations for personal property; but
- The equipment associated with the turbines constituted "fixtures" of an electric company pursuant to definition of personal property in statute on filing of declarations for personal property.

Commercial wind turbines used for the generation of electricity were "buildings" under statute on taxation of real property and thus were taxable as "real property" rather than "personal property"; turbines were virtually permanent and were suitable for occupancy or storage.

Commercial wind turbines used for the generation of electricity were "structures" under statute on taxation of real property and thus were taxable as "real property" rather than "personal property"; turbines were virtually permanent and were suitable for occupancy or storage.

Commercial wind turbines used for the generation of electricity were not "machines" so as to be taxable as "personal property"; even if the turbines had characteristics of machines, they did not constitute "machinery used in mills and factories," which the statute on filing tax declarations for personal property included in its definition of personal property.

Statute on equalization of assessments did not preclude classifying commercial wind turbines as real property for property-tax purposes, despite argument that the only other commercial wind turbine in the state was assessed as personal property; other turbine was in a different municipality, and statute required only that assessors equalize the assessments of property in the town.

Different property-tax classification of hydroelectricity generating turbine did not preclude classifying commercial wind turbines in different municipality as real property for property-tax purposes; unlike the wind turbines, the hydroelectric generating turbine was moveable and removed when not in use.

Commercial wind turbines were not "fixtures" of an electric company pursuant to definition of personal property in statute on filing of declarations for personal property, and thus such an alleged status could not warrant classifying turbines as personal property as opposed to real property; unlike other articles that had been found to be fixtures, the turbines, as constructed, were not once chattels that only became real property through physical annexation to the land.

Equipment associated with commercial wind turbines constituted "fixtures" of an electric company pursuant to definition of personal property in statute on filing of declarations for personal property, and thus equipment was "personal property" for property-tax purposes.

Statute on remedy for wrongful assessment of property was not a basis on which taxpayer, which was a limited-liability company (LLC) that owned and operated a wind turbine facility, could be entitled to relief in property-tax appeal of assessment of wind turbines and association equipment; although the equipment associated with the turbines was improperly was classified as real property, relief was not available under that statute in the absence of evidence of misfeasance or malfeasance.

Impact of the Inflation Reduction Act of 2022 on Renewable Energy Tax Credits: Stinson

On August 16, 2022, President Biden signed the Inflation Reduction Act of 2022 (Act) into law. The Act, while not as expansive as the previously proposed Build Back Better Act, addresses numerous areas of policy and law including health care, corporate taxation and energy. Two particular focuses for the energy community, in addition to incentives for domestic manufacturing of clean energy technology and developing technologies such as geothermal, carbon capture, clean hydrogen and biofuel, are the Act's 1) extension and modification of the production tax credit under Code Section 45 (PTC) and investment tax credit under Section 48 (ITC) and 2) creation of the new Clean Electricity Investment Credit (Clean ITC) under Section 48D and Clean Electricity Production Credit (Clean PTC) under Section 45Y.

NEW PTC AND ITC BASE RATES
Under the Act's modified tax credit program, certain renewable energy projects which place in service after December 31, 2021 will be eligible to receive the new base credit amount. Eligible wind, solar (which previously had expired), closed-loop biomass, open-loop biomass, geothermal, landfill gas, municipal solid waste, qualified hydropower and geothermal facilities would qualify for a PTC base credit amount of 0.3 cents per kWh (adjusted for inflation). Additionally, a new ITC base credit amount of 6% would be available to solar energy property, fuel cell property and waste energy recovery property, as well as the newly added energy storage technology, qualified biogas property and microgrid controllers, which begin construction by December 31, 2024. The 6% credit for energy property includes amounts paid or incurred for qualified interconnection property on

projects with a nameplate capacity not greater than 5MWac.

CLEAN PTC AND CLEAN ITC

The Act also provides a new production tax credit and investment tax credit for projects generating electricity that place in service after December 31, 2024 and have a greenhouse gas emission rate of zero or less. An eligible project may receive either the Clean PTC or the Clean ITC but not both. The Clean PTC and Clean ITC will provide the same revised base credit rate available under the PTC and ITC. As with the ITC, costs incurred in connection with qualified interconnection property will qualify for the Clean ITC.

Both the Clean PTC and Clean ITC will have a phase-down period beginning on the later of 1) the year in which greenhouse gas emissions from the electric power sector are equal to or less than 25% of 2022 sector emission levels or 2) 2032 (Applicable Year). The credit will remain at 100% of the applicable credit percentage in the year following the Applicable Year and then decrease to 75% in the second year and 50% in the third year. After the third year, the credit will expire.

MULTIPLIER REQUIREMENTS

A taxpayer can increase a project's base credit amount by a multiplier of five (up to 1.5 cents per kWh for PTC or Clean PTC and up to 30% for ITC or Clean ITC) by satisfying certain prevailing wage rate and apprenticeship requirements (Multiplier Requirements). Under the prevailing wage requirements, laborers and mechanics employed by the taxpayer or any contractor or subcontractor during the construction, alteration or repair of the facility during the applicable credit period must be paid local prevailing wages as established by the Secretary of Labor (Secretary). A taxpayer can cure a failure to satisfy the prevailing wage requirements by paying underpaid laborers or mechanics the difference in pay, plus interest, as well as paying a $5,000 penalty per underpaid laborer or mechanic to the Secretary. Further guidance on the prevailing wage requirements will be issued by the Secretary.

The apprenticeship requirements establish a minimum number of labor hours on a project that must be completed by qualified apprentices participating in a registered apprenticeship program under Code Section 3131(e)(3)(B). These apprenticeship programs, as well as a project's requisite apprentice-to-journeyman ratios, are established by the Department of Labor or the applicable state apprenticeship agency. Projects beginning construction before January 1, 2023 need only 10% of total labor hours completed by a qualified apprentice. That percentage increases to 12.5% for projects beginning construction in 2023 and 15% for projects beginning construction on or after January 1, 2024. Additionally, each taxpayer, contractor or subcontractor which employs four or more individuals to perform construction, alteration or repair work on the project must employ at least one qualified apprentice. A taxpayer can cure a failure to satisfy the apprenticeship requirements if it 1) pays the Secretary of Labor a penalty equal to $50 per labor hour not in compliance (this amount increases to $500 if the failure is determined to have been intentional disregard) or 2) establishes a good faith effort to obtain apprentices which failed due to a denial or failure to respond by apprenticeship programs.

The Multiplier Requirements apply to projects that begin construction 60 days or more after the Secretary publishes guidance on the requirements. Projects that begin construction earlier, as well as facilities with a maximum net output of less than 1MWac, will automatically qualify for the tax credit multiplier without having to satisfy the Multiplier Requirements.

ADDITIONAL PERCENTAGE BOOSTS

The Act also provides that projects satisfying the Multiplier Requirements and Placed in Service after December 31, 2022 can receive an additional 10% credit increase for containing certain levels of steel, iron or manufactured products that are made in the United States. The taxpayer may certify

that any steel or iron used in the project is produced in the U.S. but at least 40% of manufactured products used on a project (20% for offshore wind facilities) must be produced in the U.S. to qualify for the boost. However, a project that does not use projects produced in the U.S.can still receive the 10% boost if not enough materials were produced in the United States or if using U.S. made materials would increase the project cost more than 25%.

Similarly, a project that satisfies the Multiplier Requirements can receive a 10% credit boost for being located in specified energy communities. Such energy communities include brownfield sites, areas with certain employment related to coal, oil or natural gas experiencing unemployment above the national average, and areas with closed coal mines or coal-generating plants.

Regardless of whether the Multiplier Requirements are satisfied, solar and wind projects can also receive additional boosts for being involved in certain low-income policy goals. Projects located in low-income communities or on Indian Land are eligible for an additional 10% boost, and projects that are part of a low-income residential building project or economic benefit project can receive a 20%. The Act also establishes that energy credits under Section 48 will not apply for purposes of determining eligible basis for LIHTC under Section 42.

DIRECT PAY AND CREDIT TRANSFERABILITY
As many in the energy community anticipated, the Act includes provisions allowing eligible taxpayers to treat tax credits as a direct payment of taxes to the IRS (Direct Pay). Many renewable energy credits, including the PTC if placed in service by December 31, 2022, the ITC, the Clean PTC and the Clean ITC, are eligible for Direct Pay treatment. However, the Act only allows tax-exempt entities, states and political subdivisions, the Tennessee Valley Authority, Indian tribal governments, Alaska Native Corporations and rural electricity co-ops to use Direct Pay for these credits. Other taxpayers can only elect to use Direct Pay for clean hydrogen, carbon oxide sequestration and advanced manufacturing production for the first five years after the facility is placed in service. An election to use Direct Pay must be made no later than the due date for the tax return for the year in which the election is made. For the PTC and Clean PTC, the Direct Pay election will apply for a 10-year period beginning on the eligible facility’s placed in service date.

While most taxpayers cannot use Direct Pay, the Act does permit taxpayers to transfer certain tax credits, including the PTC, ITC, Clean PTC and Clean ITC, to an unrelated party. Beginning in taxable year 2023, a tax credit may be transferred once and may not be transferred again. Such transfer must be made in cash, and any gain is not included in the seller’s gross income or deducted by the buyer. In the case of a partnership, payment received for the transfer of credits will be treated as tax exempt income and would pass-through to the partners of the seller. Transfers of credits can begin in approximately mid-February 2023 and must be made no later than the tax return due date for the taxable year for which the credit is determined. Transferrable credits would also receive extended carryback and carryforward periods. The carryback period would be increased from one to three years and the carryforward period would increase from 20 to 22 years.

This alert spotlights just a few of the developments included in the 300-page Act. Stinson’s Tax Credit & Impact Finance team will continue to monitor the Act’s implementation and its potential impact on firm clients.

Stinson LLP

September 9, 2022

S&P: Most U.S. Hospitality Tax-Backed Ratings Have Remained Stable Despite The Pandemic

Key Takeaways

- Out of 93 hospitality tax-backed ratings, S&P Global Ratings has affirmed 81% since April 3, 2020, and now 84% have stable outlooks.
- We lowered 18 of our hospitality tax-backed ratings because of declining pledged revenues and debt service coverage (DSC) primarily in tourism-driven economies.
- Most issuers with these ratings recorded an increase in pledged revenues for fiscal 2021, with stronger growth expected for fiscal 2022, although gains could be dampened by recessionary pressures.

Continue reading.

15 Sep, 2022

American Dream Bondholders Move to Challenge Mall's Tax Appeals.

- **Payments on $800 million of muni debt linked to assessed value**
- **Nuveen is biggest holder of American Dream's muni bonds**

American Dream, the super mall in New Jersey's Meadowlands, has appealed its tax assessment from the borough of East Rutherford for the last four years.

Mutual funds that hold the vast majority of the $800 million of municipal bonds that were issued for the mall and that are backed by property-tax-like payments are pushing back.

The trustee representing fund companies Nuveen LLC, Invesco Ltd. and Lord Abbett & Co. has moved to intervene in cases filed by America Dream in New Jersey Tax Court. The funds hold bonds backed by payments in lieu of taxes made by the project. Known as "Pilots," they were used to spur the development and are dictated by the annual assessed value of the venture, which was dealt a financial blow by the pandemic.

Continue reading.

Bloomberg Markets

By Martin Z Braun

September 14, 2022

TAX - PENNSYLVANIA

In re Coatesville Area School District

Commonwealth Court of Pennsylvania - August 19, 2022 - A.3d - 2022 WL 3567766

City and school district sought judicial review of county board of assessment's grant of a partial real estate tax exemption in separate actions, which was based on purported charitable purposes of tax-exempt taxpayer's property.

Following remand by the Commonwealth Court, the Court of Common Pleas issued two essentially identical, but differently captioned decisions and orders upholding the county board of assessment's grant of partial real estate tax exemption, the Commonwealth Court consolidated appeals and dismissed, holding that appeal of the trial court decision and order was precluded by unappealed essentially identical decision and order, which the Supreme CourT vacated and remanded for decision on the merits.

The Commonwealth Court held that:

- Trial court properly held that taxpayer's purpose of preservation of historic resource constituted advancement of charitable purpose;
- Taxpayer's service of preservation and maintenance of historic structure was rendered gratuitously;
- Trial court properly found that beneficiaries of taxpayer's activities of preservation and conservation included the public at large
- Taxpayer's maintenance and preservation of historic building had relieved Commonwealth of its assumed burden of preserving and maintaining historic structures;
- Revenue that taxpayer received from tenants occupying offices in historic building that taxpayer owned did not preclude taxpayer from receiving exemption from property taxes as a purely public charity; and
- Taxpayer was entitled to 100% exemption from property taxes.

Trial court properly held that taxpayer's purpose of preservation of historic resource constituted advancement of charitable purpose, as supported finding that taxpayer was purely public charity exempt from property taxes under provision of state constitution and statute providing for real property tax exemption for purely public charities, although taxpayer was wholly-owned subsidiary of trust; deed restrictions on property required that it only be used as office building and for purposes consistent with preservation and conservation as historic structure, property had consistently been operated at loss with subsidization of shortfalls by trust, and preservation of historic and esthetic values was matter of express public policy.

Taxpayer's service of preservation and maintenance of historic structure was rendered gratuitously, as weighed in favor of finding that taxpayer was purely public charity exempt from property taxes pursuant to provision of state constitution and statute providing for real property tax exemption for purely public charities, although taxpayer had derived income from charging rents to occupants for renting out space in building; costs of preservation and maintenance of building had exceeded income derived from rents, and law did not require that gratuitous services rendered by entity seeking exemption had to provide a tangible benefit.

Trial court properly found that beneficiaries of taxpayer's activities of preservation and conservation included the public at large, which enjoyed a historic resource it would otherwise lack, as supported finding that taxpayer was purely public charity exempt from property taxes pursuant to provision of state constitution and statute providing for real property tax exemption for purely public charities, although property was not open to the public; preservation and maintenance of property would not be within resources of general public, property was accessible to general public through museum operated on site, and historic and architectural features of building could be publicly viewed and appreciated.

Taxpayer's maintenance and preservation of historic building had relieved Commonwealth of its assumed burden of preserving and maintaining historic structures, as weighed in favor of finding that taxpayer was purely public charity exempt from property taxes pursuant to provision of state constitution and statute providing for real property tax exemption for purely public charities, although Commonwealth was not statutorily required to preserve historic structures; Environmental Rights Amendment (ERA) to state constitution and statute declaring policy that Commonwealth was trustee for the preservation of the historic values of the environment vested Pennsylvania Historical and Museum Commission with duty to conserve and maintain historic structures.

Revenue that taxpayer received from tenants occupying offices in historic building that taxpayer owned did not preclude taxpayer from receiving exemption from property taxes as a purely public charity; property operated at substantial loss that was subsidized by taxpayer's parent entity, and tenants benefited from taxpayer's mission of preserving and maintaining the property as taxpayer provided heat, electricity, ventilation, air conditioning, basic janitorial services, repairs, and exterior maintenance to all tenants.

Taxpayer was entitled to 100% exemption from property taxes assessed by school district as a purely public charity pursuant to provision of state constitution and statute providing for real property tax exemption for purely public charities, where rents collected by property were used to support its charitable purpose of preserving and maintaining historic property by offsetting some of the expense to maintain it, and property had operated at a deficit.

Inflation Reduction Act: Implications for Solar and Wind Tax Credit Equity Markets - Jones Walker

President Biden signed into law the Inflation Reduction Act on August 16, 2022 (IRA). The IRA included a number of provisions to strengthen the investment tax credit (ITC) and production tax credit for wind projects (PTC).

Elimination of Phasedowns

Under prior law, the ITC and PTC were subject to a gradual, phased reductions of the applicable credit percentage, including elimination of the PTC for projects after 2021. For the PTC, projects that began construction after December 31, 2021, were ineligible for the PTC altogether, while projects that began construction after December 31, 2016, but before December 31, 2021, were allowed a "phased down" PTC, tied to the begun construction date.

Similarly, the ITC was set to phasedown from a 30% rate for projects that began construction before January 1, 2023, phasing down to a 22% rate for projects that began construction during 2023.

Under the IRA, solar projects beginning construction in 2022, 2023, and 2024 will be eligible for the full 30% ITC and will no longer be subject to the phasedowns described above.

For wind projects qualifying for the PTC, the IRA extends the construction commencement deadline to December 31, 2024.

It is important to note that for projects that were placed in service prior to 2022, the IRA does not retroactively change the credit rate available for those projects. Thus, projects placed in service in 2021 will remain subject to the phasedowns and will not qualify for additional credits. On the other hand, projects placed in service in 2022, including projects placed in service before passage and

enactment of the IRA, may be able to take advantage of higher ITC and PTC rates and thus qualify for additional credits.

Eligibility of Interconnection Costs and Storage Property for ITC

Historically, the ITC was limited solely to costs (or, in a lease passthrough structure, value) associated with energy-producing equipment. Thus, interconnection costs have traditionally been ineligible for the ITC. However, the IRA expanded the definition of "energy property" eligible for the ITC, to include "amounts paid or incurred by the taxpayer for qualified interconnection property…"

"Qualified interconnection property" is defined by the IRA to mean tangible property (other than property associated with a qualified microgrid controller), which: (i) is part of an addition, modification, or upgrade to a transmission or distribution system which is required at or beyond the interconnection point; (ii) is either constructed, reconstructed, or erected by the taxpayer, or the cost of construction, reconstruction, or erection is paid or incurred by the taxpayer; and (iii) the original use of which commences with a utility pursuant to an interconnection agreement.

Additionally, batteries historically were only eligible for the ITC to the extent incorporated into an ITC project. Thus, standalone storage systems were traditionally ineligible for the ITC. However, the IRA amends the definition of "energy property" to now include certain "energy storage technologies," defined generally as property that receives, stores, and delivers energy for conversion to electricity.

Transferability of Credits

The IRA now permits a one-time transfer of tax credits to a taxpayer who is not related to the transferor (within the meaning of Section 267(b) or 707(b)(1) of the Code), beginning in 2023. IRA further provides that amounts received as consideration for such transfer shall be excluded from the transferor's gross income. A transferee may not further transfer the credits. Credits which are subject to a credit carryforward or credit carryback under Section 39 of the Code are not eligible for transfer.

Though the transferability rules provide for further flexibility, a number of significant questions remain, including the potential effects transferability may have on the tax equity market. For example, while the IRA clearly states that a credit may only be transferred once, presumably, this rule would not restrict a transferee that is a passthrough entity from further allocating the transferred credit to its partners or shareholders, but this issue is not specifically addressed in the IRA text.

While transferability provides additional flexibility in structuring investments and provides the potential to avoid exit costs associated with traditional tax equity investments, it is important to note that transferability may limit the amount of equity a project sponsor is able to raise. For example, pricing in the ITC space is driven, in large part, by the desire to monetize accelerated depreciation deductions. Thus, it is likely that traditional tax equity structures will remain prevalent in ITC transactions. On the other hand, the PTC, which is calculated based upon production rather than cost, is not dependent upon depreciation, and therefore is more likely to benefit from transferability.

Credit Carryforward/Carryback

IRA extends the existing one-year credit carryback period under Section 39 to three years, and the credit carryforward period from 20 years to 22 years. With respect to PTCs, this appears to apply only to qualified facilities placed in service after December 31, 2022.

New Sections 45Y and 48E

As noted above, the IRA extends the PTC until December 31, 2024, which effectively phases out the PTC beginning in 2025. The IRA similarly includes a phaseout for the ITC for projects that begin construction after 2024. However, the text of IRA includes new Code Sections 45Y (Clean Electricity Production Credit, or CEPTC) and 48E (Clean Electricity Investment Credit, or CEITC), which effectively replace the PTC and ITC beginning in 2025.

The CEPTC and CEITC each provide for a base credit along with an alternative rate if the project satisfies certain requirements.

By Nicholas James Irmen, Jonathan Katz & Shawn J. Daray

Jones Walker LLP

Thursday, September 1, 2022

TAX - NEW YORK

Eisenhauer v. Watertown City School District

Supreme Court, Appellate Division, Fourth Department, New York - August 4, 2022 - N.Y.S.3d - 2022 WL 3096652 - 2022 N.Y. Slip Op. 04832

Homeowners brought declaratory judgment and article 78 proceeding, seeking to annul results of school district election to extent that results enacted proposition for a tax on real property within school district for purposes of constructing a public library.

The Supreme Court granted city and school district's motion to dismiss. Homeowners appealed.

The Supreme Court, Appellate Division, held that:

- City was not a proper party to the proceeding;
- Homeowners were not required to exhaust their administrative remedies before filing suit;
- School district had authority to levy, collect, and appropriate taxes for construction of public library;
- School district's proposition did not violate equal protection clause; and
- Homeowners' due process rights were not violated.

City was not a proper party to homeowners' declaratory judgment and article 78 proceeding, seeking to annul results of school district election to extent that they enacted a proposition for tax on real property to fund construction of a public library, where homeowners failed to show city had any involvement in the approval, certification, or passage of the new tax, and homeowners did not seek specific relief against city.

Homeowners were not required to exhaust administrative remedies before they brought declaratory judgment and article 78 proceeding against school district and public library, seeking to annul results of school district election to extent that results enacted proposition to tax real property within school district to fund construction of a public library; validity of school district election was not at issue, rather, homeowners were challenging legality of school district's approval and certification of tax and validity of the proposed tax itself.

School district had authority to levy, collect, and appropriate taxes as part of proposition in school district election to tax real property within school district to fund construction of public library; provisions under Education Law did not foreclose other entities from providing public library with additional funding or preclude school district's ability to submit proposition to fund public library through taxes, and proposition did not unconstitutionally shift burden of cost to operate public library to taxpayers outside city limits as public library was not a governmental service or function of the city.

School district's proposition in school district election to tax real property within school district to fund construction of public library did not violate equal protection clause of the United States Constitution; although certain residents outside city and school district could use public library without directly supporting it by way of tax, that did not render tax an example of hostile and oppressive discrimination against homeowners, and homeowners did not demonstrate how school district's proposition treated them disparately.

Homeowners' due process rights were not violated by school district's proposition in school district election to tax real property within school district to fund construction of a public library, where homeowners were afforded opportunity to vote in the school district election as eligible voters and school district residents.

TAX - MINNESOTA

Under the Rainbow Early Education Center v. County of Goodhue

Supreme Court of Minnesota - August 24, 2022 - N.W.2d - 2022 WL 3641789

Early childhood education center, a licensed childcare facility for infants through children 12 years of age, filed petition against county challenging county assessor's denial of its application for a property tax exemption as a seminary of learning.

The Tax Court denied summary judgment to center and granted summary judgment to county. Center petitioned for certiorari.

The Supreme Court held that:

- Center was an educational institution, as required to be tax-exempt seminary of learning;
- Center provided a general education, as required to be tax-exempt seminary of learning; and
- Center provided a thorough and comprehensive education, as required to be tax-exempt seminary of learning.

Early childhood education center, a licensed childcare facility for infants through children 12 years of age, was an "educational institution," as required to be tax-exempt seminary of learning; to maintain its license with Department of Human Services (DHS), center followed program plan with goals to promote physical, intellectual, social, and emotional development of children in its care, it performed regular evaluations of the children and hosted regular conferences with parents, its staff had to meet educational requirements to qualify as teachers and assistant teachers, and DHS rating and certification program required that center teach a preapproved curriculum developed by independent childhood education professionals to foster early learning and development.

County forfeited argument before Supreme Court that, even if other portions of early childhood education center's operations were tax-exempt, the programs caring for infants and school-age children did not qualify as tax-exempt seminary of learning because infants were too young to learn

from formal teaching and standards used for center's licensing and rating from Department of Human Services (DHS) were not relevant to school-age children, where county made no arguments before the tax court below about dividing center's services into exempt and nonexempt portions, presented no evidence on the effect of education on infants, and presented no evidence that the educational standards governing center's operations were inappropriate for school-age children.

The required showing for determining whether a program teaches a general curriculum, as required for an institution to qualify as a tax-exempt seminary of learning, is whether the program embraces a sufficient variety of academic subjects to give the student a general education.

Early childhood education center, a licensed childcare facility for infants through children 12 years of age, provided a general education, as required to be tax-exempt seminary of learning; to maintain its license with Department of Human Services (DHS), center had to demonstrate that its educational programming provided daily learning opportunities in eight categories specified by rule, it performed child evaluations using comprehensive forms developed by DHS, and to maintain its four-star rating with DHS certification program, center used age-appropriate daily lesson plans for each child, followed current best practices for early education, and taught curriculum that was preapproved by the State, and that curriculum addressed emotional, physical, and intellectual development.

Early childhood education center, a licensed childcare facility for infants through children 12 years of age, provided a thorough and comprehensive education, as required to be tax-exempt seminary of learning; DHS regulations required that center's staff meet training and educational standards and that it limit the number of children each teacher could oversee, in order to ensure that children received individual attention and support, to maintain its rating with DHS certification program, center's staff had to complete more the minimum required professional development hours, and center had to implement a preapproved curriculum and be inspected and approved by state university's center for early education development.

TAX - KANSAS

Dodge City Cooperative Exchange v. Board of County Commissioners of Gray County

Court of Appeals of Kansas - July 22, 2022 - P.3d - 2022 WL 2898814

Taxpayer filed petition for judicial review of Board of Tax Appeals decision affirming county's determination that equipment associated with grain storage bins were taxable fixtures rather than personal property.

The District Court reversed, and county appealed.

The Court of Appeals held that:

- County continued to have burden to prove in trial de novo that tax classification was correct;
- Pieces of equipment attached to grain storage bins were not "fixtures" for tax classification purposes; and
- Taxpayer, which only challenged tax assessments for two years, was only entitled to refunds for those two years.

On trial de novo in the district court, county continued to have burden to prove that classification for

tax purposes of various equipment associated with grain storage bins was correct; as county had burden before the Board of Tax Appeals, on trial de novo county retained that burden.

Various pieces of equipment attached to grain storage bins were not "fixtures" for tax classification purposes, although equipment was large and bolted to the storage bins, where equipment could be easily removed, and removal would not damage the bins and would not be unduly complicated or costly, and similar pieces of equipment had been removed and placed on different bins.

Taxpayer which challenged only two years of tax assessments, on grounds that pieces of equipment attached to grain storage bins were not fixtures, was only entitled to refunds for those two years and could not recover refunds for taxes collected after those years; at time of appeal to the Board of Tax Appeals, taxpayer could not challenge future assessments, and there was no indication that taxpayer attempted to challenge those future assessments when they were made by exhausting its administrative remedies.

Why Is Chicago's Rail Extension Funding Considered Controversial?

The Chicago Transit Authority is hoping to finally make good on a promise to expand a subway line to the southern edge of the city. First it needs the City Council to agree to a plan for raising billions of dollars to support the project.

By the end of the decade, Chicago's Red Line train could finally extend past its current terminus at 95th Street and into the far South Side, connecting some of the city's poorest communities to its sprawling transit network and fulfilling a mayoral promise made more than half a century ago.

The project, known as the Red Line Extension (RLE), has been in active planning by the Chicago Transit Authority since at least 2006. It would add four new stations and 5.6 miles of elevated and ground-level track to one of the busiest routes on Chicago's "L" system. It's an expansion of urban railway infrastructure on a rare scale in an age of funding crises and shrinking ridership for public transit agencies. But local leaders say it's a long-overdue investment that could cut travel time from the far South Side to the Loop by as much as 30 minutes while providing a host of economic benefits to underserved communities during and after construction.

The CTA completed the environmental review process for the project earlier this month, and is hoping to move into the engineering phase by next year. It's seeking more than $2 billion in federal funds, with the city and CTA required to put up about $1.6 billion of their own. To raise the local funds, the authority is proposing a new twist on an old tool called tax increment financing (TIF), which has been used extensively to fund economic development in Chicago. And despite some concerns about the proposal raised by several of the city's aldermen this summer, the project's planners say they're confident the Red Line Extension will move forward.

Continue reading.

governing.com

Aug. 25, 2022 • Jared Brey

Fatally Flawed? Illinois Municipal League's Model Streaming Subscription Tax - McDermott Will & Emery

The Illinois Municipal League (IML) represents the interests of 219 home rule municipalities in Illinois.[1] The IML recently released a revised draft model, "Municipal Streaming Tax Ordinance," (the model) for use by the home rule municipalities in imposing an "amusement tax" on, inter alia, music and video streaming services and online gaming.[2] If the subscriber's residential street address is within the corporate limits of the municipality, the subscription fee would be subject to the tax.[3] However, the tax proposed by the model has at least two fatal flaws: it is barred by the Internet Tax Freedom Act (ITFA) as a discriminatory tax on electronic commerce and is an unconstitutional extraterritorial tax under the home rule article of the Illinois Constitution.[4]

NATURE OF THE STREAMING TAX

The model proposes a tax on the privilege of viewing an amusement, including electronic amusements that either "take place within the" municipality or are delivered to subscribers "with a primary place of use within the jurisdictional boundaries of" the municipality.[5] The model incorporates the definition of "place of primary use" from the Illinois Mobile Telecommunications Sourcing Conformity Act.[6] That statute requires sourcing to the subscriber's "residential street address."[7] The streaming tax operates like a familiar sales tax in that it is imposed on the subscriber but collected by the streaming provider and remitted to the municipality.[8] The model tax would also be imposed on "paid television programming" (sat TV), but not paid radio programming (sat radio), transmitted by satellite.[9] The tax is not imposed on transactions that confer "the rights for permanent use of an electronic amusement" on the customer.[10]

Continue reading.

McDermott Will & Emery – Stephen P. Kranz, Mark Nebergall, Catherine A. Battin and Jonathan C. Hague

August 24 2022

Public Finance Impact of the Inflation Reduction Act's New Corporate Alternative Minimum Tax: Holland & Knight

President Joe Biden signed into law the Inflation Reduction Act (the IRA) on Aug. 16, 2022. The IRA (H.R. 5376, 117th Congress) includes a variety of legislation concerning energy, climate change, federal income tax, healthcare and deficit reduction matters. Notably for those in the public finance sector, the IRA includes a new limited corporate alternative minimum tax that is effective for tax years ending after Dec. 31, 2022, which could impact the demand for tax-exempt municipal bonds. The corporate alternative minimum tax had previously been repealed in 2017 as part of the Tax Cuts and Jobs Act.

The IRA creates a new revenue-generating 15 percent corporate alternative minimum tax (the Corporate AMT) (also known as the book minimum tax), which, when effective, applies to an "applicable corporation," namely, a domestic corporation with average "adjusted financial statement income" (AFSI) in excess of $1 billion over a three-taxable-year period or a foreign-parented corporation with a three-taxable-year average annual AFSI of $100 million or more if they are part of a foreign-parented multinational group with an average AFSI exceeding $1 billion. An applicable

corporation does not include an S Corporation, a real estate investment trust or a regulated investment company. A corporation that is determined not to be an "applicable corporation" will remain exempt from the corporate alternative minimum tax consistent with its repeal in 2017 as part of the Tax Cuts and Jobs Act.

While the Corporate AMT is projected to generate $220 billion of tax revenue over 10 years, it is expected that the Corporate AMT, the applicability of which could be expanded in the future, will have very limited immediate impact in terms of the number of corporate taxpayers affected. The U.S. Congress Joint Committee on Taxation has estimated that 150 companies (most of which are in the manufacturing sector) will be affected by the new Corporate AMT. With regard to the public finance sector, the affected taxpayers are banks, insurance companies, and property and casualty insurers, which are often purchasers of tax-exempt municipal bonds. It is also expected that tax disclosure language in offering statements and tax opinion language will have to be revised in order to account for the enactment of the Corporate AMT. Further, bond purchase agreements should be reviewed to determine whether this change will affect any of the so-called "outs" under such agreements.

Holland & Knight attorneys are working with borrowers, issuers, underwriters and lenders to address the impact of the Corporate AMT. If you have any questions regarding this alert, please contact one of the bond attorneys on Holland & Knight's Public Finance Team.

For an in-depth summary of the full IRA legislation, see Holland & Knight's previous alert, "The Inflation Reduction Act: Summary of the Budget Reconciliation Act," Aug. 8, 2022.

Holland & Knight Alert

by Faust Bowerman | Michael L. Wiener | Vlad Popik

AUGUST 19, 2022

Inflation Reduction Act: Tax Implications for Public Finance Transactions - Kutak Rock

On August 16, 2022, President Biden signed into law the Inflation Reduction Act (H.R. 5376, 117th Congress) (the "IRA"). The enactment of the IRA caps a tumultuous period of many months of negotiations involving the original Build Back Better Act (the "BBBA") on which the IRA is based. The BBBA did not progress beyond approval in the House of Representatives in November 2021. The IRA is considered a "light" version of the BBBA with many original provisions scaled back significantly or removed altogether in an effort to ensure passage. Nevertheless, the IRA represents a significant federal investment to address climate change and curb inflation.

Key provisions of the IRA relate to energy (including tax credits), healthcare, tax reform and deficit reduction. *Unfortunately, the IRA falls short of including any tax-exempt financing tools.* Communities relying on public financing have been requesting, among other things: a provision to protect direct pay subsidy bonds from continued federal sequestration; an expansion of volume cap for exempt facility bonds especially to satisfy the demand for affordable low-income housing; a reduction in the 50% bond financing requirement to unlock 4% low-income housing tax credits; and an update and increase to the $10 million bank qualified provision for small issuers. *The IRA includes none of the requested provisions.*

Relevant to the public finance community, however, is the reintroduction by the IRA of a corporate

alternative minimum tax (the "AMT"). As a reminder, the AMT for corporations had been eliminated by the 2017 legislation commonly referred to as the Tax Cuts and Jobs Act. The new corporate AMT imposes a 15% alternative minimum tax on annual adjusted financial statement income of "applicable corporations." Corporations that do not fall within the category of "applicable corporations" will continue to be exempt from the AMT altogether. "Applicable corporations" generally include domestic corporations (including banks but excluding Subchapter S corporations, regulated investment companies, real estate investment trusts, and businesses owned by private equity) with profits of more than $1 billion, and certain foreign-parented multinational corporations with profits of more than $100 million, over a specified three-year period, effective beginning in the 2023 taxable year.

From the perspective of tax-exempt legal documentation, the reintroduction (albeit in limited form) of the corporate AMT may require adjustments to offering statements, tax opinions and tax covenants going forward. We have already been working closely with our clients to discuss the new AMT provision and draft necessary documentation changes, including revised tax disclosure for official statements.

Within Kutak Rock LLP, there are several working groups who are also assisting clients with the application of energy, tax credit and healthcare provisions of the IRA. The firm's National Public Finance Tax Group would be happy to assist with efforts to coordinate with these working groups.

Please also note that in certain cases the use of tax-exempt financing for IRA-assisted projects can impact the availability of IRA tax credits or subsidies for such projects.

Please reach out to any member of the Kutak Rock LLP National Public Finance Tax Group if you have questions about the IRA and its impact on tax exempt bond financings. Questions, comments or corrections to this client alert may be addressed to the attorneys listed below.

This client alert was prepared for the general informational use of the clients and attorneys of Kutak Rock LLP and reflects our understanding of the matters set forth herein as of the time of its release. The views on the topics presented may change as our experience with the matters discussed herein deepens.

August 16, 2022

Tax Implications of the Inflation Reduction Act: Cooley

On August 7, 2022, the US Senate passed the Inflation Reduction Act (House Resolution 5376), which contains tax, climate and healthcare provisions. The legislation is widely expected to be passed by the House of Representatives without changes and signed into law by President Joseph R. Biden shortly thereafter. The Inflation Reduction Act contains a number of revisions to the Internal Revenue Code (the "Code"), including a 15% corporate alternative minimum tax and a 1% excise tax on corporate stock repurchases. Despite earlier proposals, the legislation does not contain any changes to the tax treatment of carried interest or the cap on deductions for state and local taxes.

This alert highlights a few key provisions of the Inflation Reduction Act that may be applicable to Cooley clients.

Corporate alternative minimum tax

In tax years beginning after December 31, 2022, the Inflation Reduction Act imposes a 15% alternative minimum tax (the "Corporate AMT") on US corporations with financial accounting profits exceeding a certain threshold. This provision is expected to impact large corporations that have previously reported high income on their financial statements but have significantly reduced – or even eliminated – their cash tax liability as a result of certain attributes or book-tax differences, such as companies with significant stock-based compensation. Very few corporations are expected to be subject to the Corporate AMT as currently proposed. In an analysis of an earlier version of the proposal, the Joint Committee on Taxation estimated that about 150 taxpayers would be subject to the tax each year.

The Corporate AMT would generally apply to US corporations – excluding S corporations, regulated investment companies and real estate investment trusts – with an average of more than $1 billion of annual adjusted financial statement income (AFSI) during a three-year measurement period. The Corporate AMT would also apply to a US corporation (including, for these purposes, a trade or business engaged in by a foreign corporation within the US) in a foreign-parented multinational group if, over the three-year measurement period, the US corporation's average annual AFSI is at least $100 million and the multinational group's average annual AFSI exceeds $1 billion. A corporation's AFSI is the net income or loss set forth on the corporation's applicable financial statement (generally a Securities and Exchange Commission Form 10-K or other audited financial statement) for the taxable year, subject to certain adjustments to reflect accelerated tax depreciation and certain other items. The provision was amended with the intention that otherwise unrelated companies under common ownership of an investment fund will not have their AFSI aggregated for purposes of the $1 billion threshold.

In some cases, the Corporate AMT may simply accelerate taxes, as payments made under the Corporate AMT can be used as a credit in future years when a corporation's regular tax liability exceeds its liability under the Corporate AMT. In other cases, the Corporate AMT may permanently increase overall tax liability. For example, taxpayers with significant net operating losses from tax years prior to 2020 may realize a permanent increase in tax liability because the Inflation Reduction Act precludes carryforwards for financial statement net operating losses arising in such years.

Excise tax on corporate stock repurchases

For publicly traded US corporations and certain US subsidiaries of publicly traded non-US corporations, the Inflation Reduction Act imposes a 1% excise tax on the fair market value of any stock that is repurchased by the corporation or its "specified affiliate" (generally, corporations or partnerships of which the corporation owns more than 50%) during the tax year. The taxable amount is reduced by the fair market value of any stock issued by the repurchasing corporation during the taxable year, including the fair market value of any stock issued or provided to employees of the corporation or a specified affiliate. The excise tax is subject to several exceptions (the contours of which are uncertain), including carve-outs for repurchases that are part of a tax-free reorganization, contributions to employee retirement or stock ownership plans, repurchases that are treated as dividends, and corporations that repurchase stock with a total value of no more than $1 million during a taxable year. The excise tax applies to repurchases of stock after December 31, 2022.

While the excise tax only applies to repurchases of stock after December 31, 2022, corporations may already have shares outstanding that are subject to repurchase rights, including redeemable preferred stock and stock issued in the initial public offering of special purpose acquisition companies (SPACs). The excise tax could also be triggered in transactions not conventionally viewed as stock repurchases, including:

- Mergers or other reorganizations involving cash payments to the target's shareholders to the

extent that such payments are funded with the target's cash or debt incurred or assumed by the target in the transaction.
- Payments of cash in lieu of fractional shares.
- Payments to dissenters.
- Divisive reorganizations that use a "split-off" structure.

In addition, the Secretary of the Treasury is authorized to define "repurchase" to include "economically similar" transactions. Unless the fair market value of stock treated as repurchased in a tax year is less than the fair market value of stock issued by the covered corporation in that tax year, or another exception applies, such transactions could expose a covered corporation to the excise tax.

Other tax provisions

Other notable tax-related provisions in the Inflation Reduction Act include:

- A two-year extension (to tax years beginning before January 1, 2029) of the loss limitation rules applicable to noncorporate taxpayers under Section 461(l) of the Internal Revenue Code.
- An increase in the research tax credit available to offset the payroll taxes of qualified small businesses under Section 41(h) of the Internal Revenue Code.
- An increase in IRS funding of approximately $80 billion over 10 years, with nearly $46 billion for enforcement efforts such as "digital asset monitoring and compliance activities."
- A new excise tax on drug producers who fail to comply with new drug pricing requirements.
- The reinstatement of a Superfund excise tax on crude oil and certain imported petroleum products at a rate of 16.4 cents per barrel (indexed to inflation) beginning January 1, 2023.
- The permanent extension of an excise tax on coal from US mines.
- Climate- and energy-related taxes, tax credits and other incentives.

Cooley Alert

August 11, 2022

Biden Signs Climate Bill With Transformative Changes to Clean Energy Tax Incentives: Latham & Watkins

Key Points:

- Wind and solar tax credits receive a multi-year extension at full rates, and solar projects are eligible for the production tax credit.
- New tax credits are available for emerging technologies, including energy storage and clean hydrogen.
- Carbon capture tax credit rules are simplified and expanded.
- New manufacturing tax credits are available to support and grow the clean energy supply chain in the US.
- Most tax credits may be converted to cash payments from the Treasury Department under a new direct pay program or sold in the market under new tax credit transfer procedures.

Continue reading.

Latham & Watkins LLP – James H. Cole, Enrique Rene de Vera, Eli M. Katz, Ben A. Cheatham,

Andrea Herman, Michael J. Rowe and Michael Syku

August 16 2022

Wayfair: The Sequel - Baker McKenzie

A new lawsuit filed by Wayfair, LLC in Jefferson County Court (Colorado) seeks to address a question left open by the U.S. Supreme Court's landmark 2018 *Wayfair* decision that permits states to impose a sales or use tax collection obligation based on an economic nexus threshold: Does this decision apply to locally-administered sales or use taxes? While many localities have asserted that the same economic nexus standards should apply at the state and local levels, the devil is in the details as there are thousands of local taxing jurisdictions, many of which do not have uniform laws or centralized administration.

To briefly recap the *Wayfair* landscape, the U.S. Supreme Court blessed the brightline economic nexus standard used by South Dakota, stating that a tax "will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits." *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018). In concluding that South Dakota's law did not impose an undue burden on interstate commerce, the Court cited to three key features of the South Dakota tax system: (1) the economic nexus standard at issue included a safe harbor that required considerable business in the state; (2) the economic nexus standard was not applied retroactively; and (3) most notably, South Dakota had adopted the Streamlined Sales and Use Tax Agreement ("SSUTA"), which requires a single point of state-level administration for all state and local sales and use taxes along with other simplification measures. In this most recent Wayfair filing, Wayfair asks the court whether the City of Lakewood's locally administered sales tax should be invalidated because of its excessive burdens.

The taxpayer alleges that the City of Lakewood improperly assessed it roughly $600,000 in sales tax for the period May 2018 through June 2021, along with penalties and interest. As discussed in an earlier SALT Savvy blog post, Colorado state law provides for the local administration of local sales taxes in over 70 home-rule counties and municipalities. Further exacerbating the issue, the state has done little to require the simplification of theses local taxes. While the state offers a centralized single remittance portal that home-rule localities may use, the portal is optional and the City of Lakewood is not yet part of the program, though they have taken the preliminary step of signing the agreement to join the program. Due to this inaction, Wayfair's lawsuit also includes an affirmative claim against the Executive Director of the Colorado Department of Revenue alleging that the state failed to provide adequate safeguards and support to mitigate the burdens of Colorado's local tax system on out-of-state businesses.

Some within Colorado's state and local governments appear to recognize the compliance burdens and the concomitant litigation risk that could arise from them. For example, the Colorado Municipal League ("CML"), a non-profit, nonpartisan organization representing the cities and towns of Colorado stated that "part of the reason South Dakota did not overburden interstate commerce was due to an easy way for businesses to remit to all taxing jurisdictions." In response, the CML developed a Model Ordinance on Economic Nexus and Marketplace Facilitators ("Model Ordinance") with standardized definitions "as part of a sales tax simplification effort," because the CML acknowledged that "various home rule municipalities giving the same term different meanings is a source of complexity in our tax system for businesses that operate in multiple municipalities." However this standardized statutory language has not been adopted by all home rule jurisdictions in

the state. As of the writing of this publication, 270 cities and towns of Colorado are members of the CML, out of a total of 272, indicating widespread local support for the organization's purpose. But as of 2021, only about 43 out of the 70 home rule jurisdictions had adopted the Model Ordinance.

As noted above, Colorado itself also established an optional single point of remittance portal with a uniform remittance form for use by home rule localities. Additionally, in April the state enacted a law that prohibits localities from imposing local license fees on retailers without a physical presence or with only an incidental physical presence within the locality as long as the retailer has a standard state retail license. Moreover, the bill summary states, "[t]he department is required to consult with local taxing jurisdictions when determining what information to collect and how to make the information collected available to local taxing jurisdictions and making and testing modifications. The department is also required to consult with retailers and address any reasonable concerns they may have." It remains to be seen if this positive step in the right direction will lead to changes sufficient to overcome the serious Commerce Clause concerns with respect to the administration and collection of local taxes in Colorado.

The situation in Colorado is analogous to the situation in Louisiana. In a November 2021 suit filed by Halstead Bead Inc. in the Eastern District of Louisiana, the taxpayer likewise alleged that Louisiana's decentralized sales tax system violates the Commerce Clause of the U.S. Constitution. However, that case was dismissed on procedural grounds.

As illustrated in prior U.S. Supreme Court precedent, *Pike v. Bruce Church*, and reaffirmed by the Court in *Wayfair*, navigating such complex, overlapping, and competing obligations between and amongst local jurisdictions can create an undue burden on and discriminates against interstate commerce, thereby violating the Commerce Clause of the U.S. Constitution. *Pike v. Bruce Church*, 90 S. Ct. 844 (1970). The Colorado complaint alleges that neither Lakewood, nor the Colorado Department of Revenue, took reasonable steps to mitigate such burdens and that therefore requiring Wayfair to collect and remit the local tax is unconstitutional.

The problems of decentralized tax collection are not unique to Colorado and Louisiana. Other states have recently placed themselves in similar situations through their economic nexus and/or marketplace facilitator laws that apply to general sales and use taxes or other locally administered taxes (e.g., hotel occupancy taxes). For example, North Carolina, West Virginia, and Wisconsin require marketplace facilitators to individually register with each locality in the state for certain tax types once that marketplace facilitator has met or exceeded the state-level economic nexus threshold. These requirements are subject to the same balancing test that will be reviewed in Colorado.

We will continue to monitor this lawsuit and further developments on this issue.

Baker McKenzie – Lindsay LaCava, Mike Shaikh, David Pope and Rob Galloway

August 16 2022

Collateral Damage: Inaccurate US Tax Reporting Can Give Rise to Customer Damages: Mayer Brown

Financial institutions, corporations, and other payors of income are keenly aware that the Internal Revenue Service ("IRS") will impose tax penalties on them if they issue inaccurate tax information returns to either the IRS or customers. A recent case, however, points out that inaccurate reporting may have another, less obvious, downside: liability to the customer who received the inaccurate information. On June 30, 2022, a United States district court in New Jersey allowed a brokerage customer to proceed to seek damages from a brokerage that provided inaccurate tax reporting to the customer.1 While the opinion did not decide whether the brokerage was liable for damages, it has allowed the customer to continue its lawsuit.

In Goodman, the brokerage customer (the "plaintiff") purchased a number of taxable municipal bonds at a premium to the face amount of the bonds. The plaintiff held the bonds in a brokerage account. When a taxpayer purchases bonds for an amount greater than their face value (i.e., at a premium), U.S. tax law permits the taxpayer to amortize the premium over the remaining life of the bond. The premium amortization reduces the taxpayer's taxable income.2 Treasury Regulations contain certain presumption rules relating to a broker's IRS Form 1099 reporting obligations when a customer holds instruments that were purchased at a premium in an account with that broker.3 In Goodman, the plaintiff alleged that the broker incorrectly reported the amount of amortized bond premium on the plaintiff's IRS Forms 1099 for tax years 2015 – 2018. The plaintiff alleged that the misreporting caused the plaintiff to overpay U.S. federal income taxes in those years. The plaintiff brought contract and tort claims on behalf of himself and similarly situated individuals. In response, the broker filed a motion to dismiss.

The court looked to the underlying agreements governing the relationship between the plaintiff and broker in determining whether the plaintiff had a claim against the broker. While nothing in the account agreements specifically addressed the broker's tax reporting policies related to municipal bonds, the agreements did contain provisions relating to specific tax forms, including, for example, the electronic delivery of IRS Forms 1099. The court further noted that the broker also has a Form 1099 guide that it provides to clients. The guide, consistent with the Treasury Regulations, stated that the broker would report a gross amount for both the interest paid to the holder and the premium amortization for the year unless a holder requests otherwise.

The broker sought to have the litigation dismissed. The court denied the broker's motion to dismiss based on the possibility that the client had two potentially viable claims: (i) breach of contract and (ii) negligence. The court found it plausible that the broker violated implied terms of the agreements, providing the plaintiff a breach of contract claim. The court held that the agreements clearly contemplate that the broker would provide the plaintiff with tax forms, including IRS Form 1099. The court explained a promise to provide the client with tax forms, to be meaningful, implies that the forms be accurate to the best of the broker's knowledge. Second, it implies the broker would follow its own stated policies (i.e., the Form 1099 guide) when providing tax forms, even if those stated policies were not themselves part of the account agreements.4

The court held, with respect to the negligence claim, the threshold question is whether the broker had a state law duty to accurately report tax information on the forms it provided to the plaintiff. The court, recognizing this is a fact-intensive inquiry, denied the broker's motion to dismiss and found it appropriate to allow the parties to proceed to discovery. (We note that this claim could be rejected in a future motion for summary judgment made by the broker.)

Takeaways

Tax reporting has never been as complicated as it is today. Basis reporting, wash sale reporting, and a host of other relatively new reporting requirements substantially increase the likelihood that payors inadvertently misreport information. The Goodman opinion highlights the need to carefully review existing client/customer documentation to see what, if anything, is agreed or promised to clients, customers, or payees in terms of information reporting. At the very least, taxpayers should consider whether such documentation should contain an acknowledgement by the client/customer/payee that the broker is not liable for inadvertent tax reporting errors.

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1 Goodman v. UBS Fin. Servs., Inc., No. Civ. No. 21-18123 (KM) (MAH), 2022 BL 228030 (D.N.J. June 30, 2022).

2 See Internal Revenue Code section 171.

3 Treasury Regulation section 1.6045-1(n)(5).

4 The court's opinion provided the following: "A client who wonders how his or her income will be reported would naturally look for answers in the materials provided by [the broker] and would expect [the broker] to follow those policies. Here, [the broker] 1099 Guide stated 'unless you notified [the broker] in writing in accordance with Regulations section 1.6045-1(n)(5) that you did not want to amortize the premium under section 171, we will report a gross amount for both the interest paid to you and the premium amortization for the year.' The contract implies, therefore, that the Form 1099 that [the broker] was contractually and legally obligated to provide to clients such as [the plaintiff] would 'report a gross amount for both the interest paid to you and the premium amortization for the year.' [The plaintiff] alleges that the Form 1099s provided to him did not report the premium amortization for that year and therefore has plausibly alleged a breach of contract."

Mayer Brown – Jared B. Goldberger, Mark H. Leeds and Amit S. Neuman

August 15 2022

TAX - CALIFORNIA

Zolly v. City of Oakland

Supreme Court of California - August 11, 2022 - P.3d - 2022 WL 3270058

Solid waste disposal customers brought action to challenge constitutionality of franchise fees which city charged waste management entities, a portion of which was redesignated as a solid waste management fee.

The Superior Court sustained city's demurrer, and taxpayers appealed. The First District Court of Appeal affirmed in part and reversed in part, holding, among other things, that customers adequately alleged city's challenged fees did not bear reasonable relationship to franchises' values. The Supreme Court granted city's petition for review.

The Supreme Court held that:

- Customers alleged adequate injury-in-fact to support standing;
- Voluntary franchise fees were levies, charges, or exactions "imposed by" city within meaning of constitutional definition of "tax";

- Customers adequately alleged that waste disposal franchise did not constitute local government property; and
- Customers adequately alleged that franchise fees did not constitute charges imposed for use of local government property.

Alleged economic injury caused to solid waste disposal customers by franchise fees which city charged to waste management entities constituted injury-in-fact that conferred standing upon customers to challenge city's fees under constitutional provision governing taxes, even though customers were not obligated to pay charges related to franchise fees directly to city, where customers alleged that fees caused their waste collection rates to increase every month.

Fees that city required waste management entities to pay in exchange for waste disposal franchise rights within city, pursuant to contractual negotiations, were levies, charges, or exactions imposed by local government, as necessary to constitute "tax" within meaning of California Constitution, even if negotiations were voluntary rather than coerced; term "impose" meant "establish," without any coercive connotation, as indicated by constitutional provision's use of term "imposed" in context of voluntary charges.

Waste disposal customers adequately alleged that solid waste disposal franchise did not constitute "local government property" within meaning of constitutional exemption from definition of "tax" for charges imposed to enter or use local government property or to purchase, rent, or lease local government property, supporting customers' claim against city for violation of constitutional requirements for approval of taxes; term "local government property" in constitutional article governing voter approval of local tax levies referred to physical objects under control of local government, such as streets, franchise did not exist as local government's property before it vested in franchise owner, and fees were not paid for city's property interest in antecedent right to grant franchise.

Waste disposal customers adequately alleged that fees franchisees paid to city for waste disposal franchises did not constitute "charges imposed for use of local government property" within meaning of Constitution's exemption of such charges from definition of "tax," as necessary to support customers' claim against city for violation of constitutional requirements for voter approval of special taxes, even though ordinances stated franchises included right to use public streets or other public places; entities did not pay fees in exchange for specific use of government property that they would not have otherwise enjoyed, and provision exempted only fees paid as consideration for specific use of government property, such as park entrance fee, as indicated by statutory language "imposed for."

TAX - CONNECTICUT

Wind Colebrook South, LLC v. Town of Colebrook

Supreme Court of Connecticut - August 2, 2022 - A.3d - 344 Conn. 150 - 2022 WL 3048353

Taxpayer, which was a limited-liability company (LLC) that owned and operated a wind turbine facility, commenced a municipal property tax appeal after town board of assessment denied taxpayer's appeal of town's classification of the wind turbines and their associated equipment as real property for purposes of taxation.

The Superior Court entered judgment for taxpayer on claim that a late-filing penalty was improper but entered judgment for town in all other respects. Taxpayer appealed.

The Supreme Court held that:

- The turbines were “buildings” under statute on taxation of real property;
- The turbines were “structures” under statute on taxation of real property;
- Statute on equalization of assessments did not preclude classifying commercial wind turbines as real property for property-tax purposes;
- The turbines were not “fixtures” of an electric company pursuant to definition of personal property in statute on filing of declarations for personal property; but
- The equipment associated with the turbines constituted “fixtures” of an electric company pursuant to definition of personal property in statute on filing of declarations for personal property.

Commercial wind turbines used for the generation of electricity were “structures” under statute on taxation of real property and thus were taxable as “real property” rather than “personal property”; turbines were virtually permanent and were suitable for occupancy or storage.

Commercial wind turbines used for the generation of electricity were not “machines” so as to be taxable as “personal property”; even if the turbines had characteristics of machines, they did not constitute “machinery used in mills and factories,” which the statute on filing tax declarations for personal property included in its definition of personal property.

Statute on equalization of assessments did not preclude classifying commercial wind turbines as real property for property-tax purposes, despite argument that the only other commercial wind turbine in the state was assessed as personal property; other turbine was in a different municipality, and statute required only that assessors equalize the assessments of property in the town.

Different property-tax classification of hydroelectricity generating turbine did not preclude classifying commercial wind turbines in different municipality as real property for property-tax purposes; unlike the wind turbines, the hydroelectric generating turbine was moveable and removed when not in use.

Commercial wind turbines were not “fixtures” of an electric company pursuant to definition of personal property in statute on filing of declarations for personal property, and thus such an alleged status could not warrant classifying turbines as personal property as opposed to real property; unlike other articles that had been found to be fixtures, the turbines, as constructed, were not once chattels that only became real property through physical annexation to the land.

Equipment associated with commercial wind turbines constituted “fixtures” of an electric company pursuant to definition of personal property in statute on filing of declarations for personal property, and thus equipment was “personal property” for property-tax purposes.

Statute on remedy for wrongful assessment of property was not a basis on which taxpayer, which was a limited-liability company (LLC) that owned and operated a wind turbine facility, could be entitled to relief in property-tax appeal of assessment of wind turbines and association equipment; although the equipment associated with the turbines was improperly was classified as real property, relief was not available under that statute in the absence of evidence of misfeasance or malfeasance.

TAX - COLORADO

Chronos Builders, LLC v. Department of Labor and Employment, Division of

Family and Medical Leave Insurance

Supreme Court of Colorado - June 21, 2022 - 512 P.3d 101 - 2022 CO 29

Employer brought action challenging the constitutionality of collection of premiums from employers to fund the Paid Family and Medical Leave Insurance Act.

The District Court dismissed the action. Employer appealed. On parties' joint petition, certiorari review was granted.

The Supreme Court, as matter of apparent first impression, held that premiums collected to fund paid leave under Paid Family and Medical Leave Insurance Act did not amount to "added tax or surcharge" pertaining to income tax law.

Premiums collected from employers and employees to fund paid leave from employment under the Paid Family and Medical Leave Insurance Act did not amount to "added tax or surcharge" pertaining to income tax law that would be prohibited under State Constitution's Taxpayer's Bill of Rights (TABOR); unlike taxes, which were designed to raise revenues to defray general governmental expenses, the premiums were fees used "to defray the cost" of providing paid family and medical leave to employees.

TAX - MISSOURI

Johnson v. Springfield Solar 1, LLC

Supreme Court of Missouri, en banc - August 9, 2022 - S.W.3d - 2022 WL 3219292

County assessor filed petition seeking review of Missouri State Tax Commission's decision that solar energy system was exempt from property taxes as a solar energy system not held for resale, or alternatively, for declaratory judgment that statute exempting solar energy systems not held for resale from property taxes violated constitutional provision limiting tax exemption to specifically-enumerated property.

County was joined as a plaintiff. Taxpayer filed counterclaim seeking declaratory judgment that prior tax assessments were void. The Circuit Court dismissed claim seeking judicial review of Commissioner's decision, and entered declaratory judgment that exemption was constitutional and prior assessments were void. County and county assessor appealed.

The Supreme Court held that legislature did not have authority to enact statute exempting solar energy systems not held for resale from property taxes.

Constitutional provisions granting legislature authority to create subclasses of tangible personal property and fix tax rates for such subclasses did not implicitly permit legislature to enact statute exempting solar energy systems not held for resale from property taxes, since separate constitutional provision limited tax exemptions to specifically-enumerated property and explicitly stated that all non-enumerated exemptions were void, solar energy systems did not fall within any category of enumerated property, and permitting legislature to use its authority to fix tax rates to set 0% tax rate for any type of real or personal property would effectively create backdoor for tax exemptions not enumerated in constitution.

Mintz: Inflation Reduction Act Includes Expansive Tax Incentives for Clean Energy Investors and Developers

On July 27, 2022, Senator Joe Manchin and Senate Majority Leader Chuck Schumer reached an agreement on a budget reconciliation bill and released the "Inflation Reduction Act of 2022" (the "Act"). A significant part of the Act focuses on energy tax changes aimed at fighting climate change and promoting domestic energy security. To those ends, the Act extends and expands existing tax credits and adds several new energy tax credits for clean energy projects. The benefits of this historic legislation for investors and developers in the clean energy infrastructure space cannot be overstated.

Here are key highlights.[1]

- Extension of the production tax credit under I.R.C. Section 45 (the "PTC")[2] for eligible wind, solar, geothermal, biomass, hydropower, municipal waste, and marine and hydrokinetic projects that start construction before January 1, 2025. The extension includes a renewal of the PTC for solar, which had previously expired.
- Extension of the Section 48 energy investment tax credit (the "ITC") for solar, combined heat and power, qualified fuel cell, microturbine, waste energy, small wind, biogas, storage technology, and microgrid controllers projects that start construction before January 1, 2025.
- For geothermal, the Act extends the ITC for projects that start construction before January 1, 2035.
- Significantly, the Act makes stand-alone storage eligible for the ITC. The inclusion of biogas and microgrid controllers as ITC-eligible property is also new. Further, for installations of energy property with a maximum net output not greater than 5 megawatts, the Act permits the ITC-eligible basis to include certain expenditures on upgrades to a utility's interconnection system.
- Subject to a new two-tier rate structure (discussed below), the Act restores the full ITC rate of 30 percent and full PTC rate of 1.5 cents per kWh (subject to inflationary adjustments).
- The Act, in effect, extends the ITC and PTC at full rates under new tax credits available for electricity produced by zero-emissions projects placed in service in 2025 or later, which start construction before 2033.
- Extension of the Section 45Q carbon capture credit for projects that start construction before January 1, 2033. In addition, the Act reduces the minimum carbon capture requirement and includes an enhanced credit for certain direct air capture facilities.
- The Act adds a new production tax credit for clean hydrogen produced after December 31, 2022 at a qualifying facility that starts construction before January 1, 2033. Taxpayers also have the option to elect to claim the ITC in lieu of the new production tax credit.
- The Act adds a new tax credit (the Advanced Manufacturing Production Credit) to incentivize domestic production and sale of components used in solar, wind, and storage projects (e.g., solar modules, solar-grade polysilicon, inverters, battery cells, blades, and towers) and critical minerals.
- The Act expands the Section 48C credit to include facilities that equip or expand certain manufacturing facilities in the clean energy sector.
- The Act also includes new tax credits for zero-emissions nuclear power production and transportation fuels with lower emissions rates.
- Under a new two-tier rate structure, the Act only permits projects that satisfy prevailing wage and apprenticeship requirements to claim the full credit. Otherwise, the credit rate is 20 percent of the full rate. For example, if an eligible solar project does not satisfy the requirements, the ITC rate would be 6 percent rather than 30 percent. The full rate applies until 60 days after the Secretary publishes regulations. This rate structure applies to the ITC, PTC, and most other energy tax credits.

- The Act makes available a 10 percent bonus credit when domestic content requirements are satisfied. In some cases, the Act provides a separate 10 percent bonus credit for qualifying facilities located in enhanced energy or low-income communities.
- Other positive changes for promoting clean energy include (i) transferability of most energy tax credits; (ii) a direct pay option generally available only to governmental agencies and certain other tax-exempt entities; and (iii) a 3-year carryback period for energy credits.

The Senate is expected to vote on the Act during the first week in August, just before its scheduled August recess. If passed by the Senate, the legislation would then go to the House for approval. The House is currently in recess.

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[1] These highlights do not address any tax incentives for individuals, residential properties, agriculture, or electric vehicles and charging stations.

[2] Unless otherwise stated, all capitalized Section references are to the Internal Revenue Code of 1986, as amended.

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TAX - NEW YORK

DP Fuller Family LP v. City of Canandaigua

Supreme Court, Appellate Division, Fourth Department, New York - July 8, 2022 - N.Y.S.3d - 2022 WL 2574326 - 2022 N.Y. Slip Op. 04497

Taxpayer, the owner of commercial property that was located within nonparty city school district, petitioned for review of taxing authorities' real property tax assessments for three different years.

The Supreme Court granted defendants' motion to dismiss and dismissed the petitions. Taxpayer appealed.

The Supreme Court, Appellate Division, held that:

- Taxing authorities had standing to seek dismissal of petitions for taxpayer's failure to comply with notice requirements;
- Motions to dismiss for taxpayer's failure to comply with notice requirements complied with

amended scheduling order, and timing of motions was well within range of when such motions were routinely brought and entertained;
- Fact that taxpayer failed to adhere to notice requirements, proceeded with obtaining an appraisal anyway, and later faced appropriate motions to dismiss for failure to comply with notice requirements did not support denial of motions; and
- Taxpayer failed to establish good cause to excuse its failure to comply with notice requirements.

Taxpayer failed to establish good cause to excuse its failure to comply with requirement to provide notice of tax certiorari proceeding to school district and treasurer, even if taxpayer made a good faith effort to comply but simply made a mistake, and regardless of absence of prejudice to school district.

Mistake or omission of taxpayer's attorney, including a factual mistake during an attempt to provide notice of tax certiorari proceeding to school district or treasurer, does not constitute good cause shown so as to excuse a taxpayer's failure to comply with notice requirement.

NJ Tax Court Clarifies Exemption from Non-Residential Development Fee: Day Pitney

New Jersey's Non-Residential Development Fee (NRDF) is a fee paid by non-residential developers toward a municipality's affordable housing obligation. The fee can be substantial, but certain types of projects are exempt from payment of the NRDF under N.J.S.A. 40:55D-8.4(b). In a decision reported on July 29, the New Jersey Tax Court clarified the exemption provided for payment of the NRDF for projects located within a specifically delineated urban transit hub pursuant to N.J.S.A. 40:55D-8.4(b)(4).

In *Jaguar Land Rover North America v. Director, Division of Taxation et al.*, the Tax Court affirmed the director's denial of an exemption from the NRDF, holding that to be exempt from the NRDF, a project must be within a specifically delineated urban transit hub and must be located within a one-half-mile radius surrounding the midpoint of a New Jersey Transit Corp., Port Authority Transit Corp. or Port Authority Trans-Hudson Corp. rail station platform area. The taxpayer claimed that because the subject property was within one-half mile of a New Jersey Transit rail station platform (in Suffern, New York), it was exempt from payment of the NRDF on its project. The director ruled that it was not sufficient that the project be within a one-half-mile radius of a train station of one of the transit entities, but the project also had to be in an area that the New Jersey Economic Development Authority (NJEDA) named as an urban transit hub under the authority granted by N.J.S.A. 34:1B-209(e)(1). The taxpayer appealed, claiming the project could meet either one of these requirements to qualify for the exemption. The taxpayer conceded for purposes of the case that the municipality where the project was located was not a specifically delineated urban transit hub designated by the NJEDA. The Tax Court found that the plain language of N.J.S.A. 34:1B-208 (defining an urban transit hub) was unambiguous and that to meet the definition of an urban transit hub, a project needed to be both within a one-half-mile radius of a transit corporation rail platform and delineated by the NJEDA. The Tax Court therefore held that although the project was within a one-half-mile radius of the New Jersey Transit Corp. Suffern Station, it had not been specifically delineated by the NJEDA as an urban transit hub, and therefore it was not exempt from the NRDF. The Tax Court noted that the NJEDA provided a list of 10 large, urban New Jersey municipalities eligible for urban transit hub classification on its website, although the Tax Court indicated that the statutory definition under N.J.S.A. 34:1B-208 might include other municipalities.

The upshot of the Tax Court's decision is that a developer should not assume, simply because a project is being developed within one-half mile of a rail transit platform, that it will be exempt from payment of the NRDF. Further investigation at the municipal and the NJEDA levels is necessary to determine if a particular municipality in which a project is located has been designated as an urban transit hub pursuant to N.J.S.A. 34:1B-209(e)(1).

Day Pitney LLP – Christopher John Stracco and Katharine A. Coffey

August 3 2022

TAX - NEW JERSEY

Galloway Education, LLC v. Township of Galloway

Tax Court of New Jersey - June 24, 2022 - 2022 WL 2286327

The Atlantic Community Charter School, Inc. (ACCS), a New Jersey not-for-profit corporation, was issued a charter by the New Jersey Department of Education to operate a charter school pursuant to the Charter School Program Act of 1995.

ACCS sought to expand the school facilities. Comprehensive Recovery Services, Inc., a nonprofit corporation of the State of Colorado, established Galloway Education, LLC, a Delaware limited liability company. The sole member, which has all the interest in Galloway Education, is Comprehensive Recovery Services.

To fund the expansion project, bonds which totaled $11,165,000 were sold by Galloway Education to investors of Hamlin Capital Management, LLC, a for-profit investment firm located in New York. Hamlin is designated the Bondholder Representative so long as the majority of the outstanding bonds are owned by persons for whom Hamlin serves as an investment advisor. The proceeds of the bonds were utilized by Galloway Education to purchase the land and construct an addition to the school.

Galloway Education sought exemption from property taxes as a not-for-profit entity. Galloway sought the exemption under a 1931 amendment exempting properties utilized for the moral and mental improvement of men, women and children that are owned by a holding company.

The Tax Court noted that, although there exists a lease agreement between Galloway Education and ACCS, a closer review of the lease agreement shows that the Bondholder Representative exercises significant control as would a landlord. Even outside default, the Bondholder Representative has significant control over the property and also has a say over the operations of the school.

Essentially, the school is merely a tenant of the property under a lease and pledge agreement in which the Bondholder Representative has extensive control. The powers conferred to the Bondholder Representative ensure the flow of revenues from the school to the bondholders and that this situation is not much different than a for-profit entity directly leasing its property to the school.

"It is one thing for a lender or a Bondholder Representative to have a mortgage on a property owned by a non-profit, it is quite another thing for a profit-making entity to have the ability to seize and obtain full and unfettered control of the not-for-profit entity for its own purposes."

"Here, the structure of deal is plainly for the benefit of the bondholders represented by the Bondholder Representative. Control of the nominally not-for-profit Galloway Education can be

transferred at the demand of the Bondholder Representative to a for-profit to protect the profits of the bondholders. The not-for-profit in this case exists to benefit a for-profit endeavor."

"There is nothing sinister or wrong with the Bondholder Representative ensuring that a profit is made. The court realizes that the avenues for financing would be limited without the potential for a profit. However, a tax exemption here would allow 'indirect taxpayer subsidization' of the bondholders. This would confer a competitive advantage upon the bondholders at the expense of the other taxpayers in the municipality."

Legacy Retailer Rebates Costing States Billions Under Scrutiny.

- **Illinois, Missouri consider reform to vendor discounts**
- **Retailers fight back pointing to sales tax complexity**

When states started levying sales taxes almost a century ago, some gave shopkeepers small rebates for manually collecting and submitting the money. Now those rebates cost states more than $1 billion a year, and critics say they make no sense in the age of automated tax systems.

Budget hawks in a handful of states are exploring options to either jettison or trim these "vendor discount" arrangements, which were intended to compensate sellers for serving as agents of state revenue departments. Illinois Gov. J.B. Pritzker (D) often refers to the programs as "corporate tax loopholes." And Missouri's state auditor, Nicole Galloway, worries that her state offers the most generous vendor discount in the country.

"Missouri's discount gives the biggest benefits to the wealthiest retailers just for turning over sales tax paid by consumers," Galloway said in a recent statement. "Ordinary citizens don't get a discount for paying taxes on time."

Continue reading.

Bloomberg Tax

by Michael J. Bologna

July 25, 2022,

KBRA Releases Research - EVs' Popularity Could Diminish State Gasoline Taxes for Transportation Funds

NEW YORK–(BUSINESS WIRE) — KBRA releases research that examines the dramatic growth in electric vehicles (EV) in recent years, with sales in 2022 up nearly 40% from the prior year. EV demand represents about 2.85% of total cars sold in the U.S. and is expected to increase to 6% by 2035.

Much of the recent growth has been supported by a favorable tax structure, including tax incentives to purchase EVs as well as lower taxes associated with their ownership compared to gasoline-powered cars. This favorable tax environment reflects the public policy goal to increase the use of EVs because of their lower carbon footprint. However, public policy will have to recognize the

effects of lower tax revenues from gasoline taxes and consider implementing modifications to the tax laws. In this report, KBRA reviews the tax incentives for the purchase of electric vehicles and the longer-term revenue implications of the shift toward EVs, including the potential effects on outstanding municipal bonds.

Key Takeaways

- The demand growth for electric vehicles will reduce greenhouse gas emissions, but also gasoline taxes and related revenues. Lost tax revenues are already significant.
- Public policy will likely have to unwind the fiscal trade-off of encouraging EVs through incentives if the related reduction in revenues becomes more significant.
- The loss of gasoline-based revenues could pressure municipal bond issues that rely on them. That said, most major state borrowing programs that heavily rely on this revenue stream have room to adjust their tax structures if needed.

Click here to view the report.

July 18, 2022

Legacy Retailer Rebates Costing States Billions Under Scrutiny.

- **Illinois, Missouri consider reform to vendor discounts**
- **Retailers fight back pointing to sales tax complexity**

When states started levying sales taxes almost a century ago, some gave shopkeepers small rebates for manually collecting and submitting the money. Now those rebates cost states more than $1 billion a year, and critics say they make no sense in the age of automated tax systems.

Budget hawks in a handful of states are exploring options to either jettison or trim these “vendor discount” arrangements, which were intended to compensate sellers for serving as agents of state revenue departments. Illinois Gov. J.B. Pritzker (D) often refers to the programs as “corporate tax loopholes.” And Missouri’s state auditor, Nicole Galloway, worries that her state offers the most generous vendor discount in the country.

“Missouri’s discount gives the biggest benefits to the wealthiest retailers just for turning over sales tax paid by consumers,” Galloway said in a recent statement. “Ordinary citizens don’t get a discount for paying taxes on time.”

Continue reading.

Bloomberg Tax

by Michael J. Bologna

July 25, 2022

No Room at the Inn? Prospects for the Lodging Tax.

Earlier this year a version of the headline, “Hotel vacancies are up, and so are hotel room rates” appeared in newspapers around the world. This seems to defy the basic laws of economics. If demand for hotel rooms is down, we would expect room rates to decrease. This trend, although quirky, could have a major impact on state and local finance. If local governments are to find a long-term, dependable solution to their structural revenue and expenditure imbalances, they need to become more intentional about making financially savvy land use decisions.

Download.

by Justin Marlowe

June 2022

Government Finance Officers of America

TAX - NEW YORK

DCH Auto v. Town of Mamaroneck

Court of Appeals of New York - June 16, 2022 - N.E.3d - 2022 WL 2162629 - 2022 N.Y. Slip Op. 03929

Net lessee, which was contractually obligated to pay real estate taxes on the leased parcel of real property on which it operated its car dealership, challenged tax assessments by town and village by filing grievance complaints with local board of assessment review and, after the board reviewed and denied the challenges, filed petitions for judicial review.

Town and village jointly moved to dismiss. The Supreme Court, Westchester County, dismissed petitions, and net lessee appealed. The Supreme Court, Appellate Division, affirmed. Leave to appeal was granted.

The Court of Appeal held that a net lessee who is contractually obligated to pay real estate taxes on the subject property is a “person whose property is assessed” within meaning of the Real Property Tax Law (RPTL) provision setting forth the requirements for initiating administrative review of a tax assessment, and so an initial administrative complaint filed with the assessor or board of assessment review by a net lessee satisfies the provision, such that the net lessee may properly commence a proceeding for judicial review upon rejection of its grievance, abrogating *Circulo Housing Development Fund Corp. v. Assessor of City of Long Beach*, 96 A.D.3d 1053, 947 N.Y.S.2d 559.

TAX - COLORADO

Chronos Builders, LLC v. Department of Labor and Employment, Division of Family and Medical Leave Insurance

Supreme Court of Colorado - June 21, 2022 - P.3d - 2022 WL 2207478 - 2022 CO 29

Employer brought action challenging the constitutionality of collection of premiums from employers to fund the Paid Family and Medical Leave Insurance Act.

The District Court dismissed the action. Employer appealed. On parties’ joint petition, certiorari review was granted.

The Supreme Court held that as matter of apparent first impression, premiums collected to fund paid leave under Paid Family and Medical Leave Insurance Act did not amount to "added tax or surcharge" pertaining to income tax law.

Premiums collected from employers and employees to fund paid leave from employment under the Paid Family and Medical Leave Insurance Act did not amount to "added tax or surcharge" pertaining to income tax law that would be prohibited under State Constitution's Taxpayer's Bill of Rights (TABOR); unlike taxes, which were designed to raise revenues to defray general governmental expenses, the premiums were fees used "to defray the cost" of providing paid family and medical leave to employees.

TAX - MAINE

State Tax Assessor v. TracFone Wireless, Inc.

Supreme Judicial Court of Maine - June 23, 2022 - A.3d - 2022 WL 2252165 - 2022 ME 36

Tax Assessor and taxpayer, a provider of telecommunications services, both petitioned for review of decision of Board of Tax Appeals as to assessment of prepaid wireless fee and service-provider tax.

The Business and Consumer Court denied taxpayer's motion to compel release of information in discovery and granted summary judgment to Assessor. Taxpayer appealed.

The Supreme Judicial Court held that:

- Particular service offered by provider was not "paid for in advance" and thus was not a prepaid wireless telecommunications service that would be subject to prepaid wireless fee;
- Process by which provider operated such service was a "sale" that would trigger telecommunications service-provider tax; and
- Statute requiring Tax Assessor to publish notice of significant change in bureau policy or practice within 60 days of such change provides neither any defense for those who have been affected by the Assessor's actions, or lack thereof, nor any consequence for the Assessor should it fail to comply.

Service operated by telecommunications provider pursuant to Federal Communications Commission (FCC) program, through which low-income consumers received set number of telephone minutes each month for an amount which did not exceed subsidy received by provider from government, was not "paid for in advance" and thus was not a prepaid wireless telecommunications service that would be subject to prepaid wireless fee, even though service did not have monthly billing relationship with consumers, where there was no consistent practice of payment by government to provider in advance of provider's rendering the service.

Process by which telecommunications provider operated service under which low-income consumers received set number of telephone minutes per month was a "sale" that would trigger telecommunications service-provider tax, even if consumers themselves did not pay provider; process amounted to a consumer signing up for service and receiving minutes from provider, following which provider received payment from government.

Statute requiring Tax Assessor to publish notice of significant change in bureau policy or practice within 60 days of such change provides neither any defense for those who have been affected by the Assessor's actions, or lack thereof, nor any consequence for the Assessor should it fail to comply.

TAX - TEXAS

Jones v. Turner

Supreme Court of Texas - June 3, 2022 - S.W.3d - 2022 WL 1815031 - 65 Tex. Sup. Ct. J. 1324

City residents filed suit against city officials seeking a declaration that they must fund city drainage fund according to formula stated in city charter.

The 281st District Court denied the plea to the jurisdiction. City officials filed interlocutory appeal. The Houston Court of Appeals reversed and rendered judgment dismissing the case for want of jurisdiction due to residents' lack of standing. Residents' petition for review was granted.

The Supreme Court held that:

- Residents' allegations were sufficient to confer taxpayer standing, and
- Fact questions precluded grant of officials' plea to the jurisdiction.

City residents' allegations that officials were misallocating a considerable amount of tax revenue by spending it on other city services and not spending it exclusively for drainage and street maintenance in violation of city charter's express mandate were sufficient to confer taxpayer standing to assert their ultra vires claim against officials, even though residents did not specifically allege illegal expenditure of public funds; although city services to which funds were allocated were themselves lawful, the law required certain amount of money be directed to specific services, so that the allegedly unlawful act was officials' actions in budgeting and spending money that should have been allocated to those specific services.

Fact questions as to whether city officials calculated the allocation of ad valorem tax proceeds for drainage and street renewal fund in manner that conformed to city charter requirements and as to how they actually allocated the tax proceeds in fiscal year at issue precluded grant of officials' plea to the jurisdiction, on governmental immunity grounds, for city residents' claim that officials acted ultra vires in directing tax proceeds to other city services instead of allocating them to the drainage and street renewal fund.

TAX - TEXAS

Perez v. Turner

Supreme Court of Texas - June 10, 2022 - S.W.3d - 2022 WL 2080868 - 65 Tex. Sup. Ct. J. 1396

Taxpayer filed action against mayor, director of public works, and city, contesting city drainage fee ordinance.

The District Court entered order granting defendants' plea to the jurisdiction, and dismissing taxpayer's claims. Taxpayer appealed, and, on rehearing, the Houston Court of Appeals affirmed. Taxpayer petitioned for review, which was granted.

The Supreme Court held that:

- Taxpayer's claims for reimbursement for allegedly illegal drainage fees paid to city were ripe;

- Taxpayer had standing, as a taxpayer, to seek an injunction against city's expenditures of allegedly illegal drainage fees;
- Taxpayer had standing to bring her reimbursement claim against city to recover allegedly illegal drainage fees;
- City's drainage fee ordinance did not impermissibly conflict with the Municipal Drainage Utility Systems Act (MDUSA); and
- Taxpayer was entitled to the opportunity to replead on remand.

TAX - MISSOURI

State ex rel. City of Maryland Heights v. James

Missouri Court of Appeals, Eastern District - April 12, 2022 - 643 S.W.3d 896

City filed petition for writ of prohibition to void decision of city's tax increment financing (TIF) commission denying city's proposed TIF-financed redevelopment plan.

Commission filed motion for summary judgment, which the Circuit Court granted. City appealed.

The Court of Appeals held that:

- As matter of first impression, amended population savings statute applied to provision governing appointment of commission members for county's with population more than 1 million;
- Savings statute did not conflict with commission appointment provision;
- Savings statute did not impliedly repeal provision governing appointment of commission members for county's with population more than 90,000 but less than 1 million; and
- Application of amended population savings statute was not retroactive.

Amended population savings statute, which prevented political subdivisions from falling outside the operation of a previously applicable population-based statute, applied to provision of the Real Property Tax Increment Allocation Redevelopment Act establishing a procedure for appointing members of a tax increment financing (TIF) commission for counties with a population more than 1 million, in city's action for writ of prohibition to void decision of city's TIF commission denying city's proposed TIF-financed redevelopment plan.

Amended provision of population savings statute, which prevented political subdivisions from falling outside the operation of a previously applicable population-based statute, did not conflict with provision of the Real Property Tax Increment Allocation Redevelopment Act establishing a procedure for appointing members of a tax increment financing (TIF) commission for counties with a population more than 1 million, in city's action for writ of prohibition to void decision of city's TIF commission denying city's proposed TIF-financed redevelopment plan; savings provision clarified how to determine whether and when a county should be considered a county with a population exceeding 1 million under the Act.

Provision of the Real Property Tax Increment Allocation Redevelopment Act establishing a procedure for appointing members of a tax increment financing (TIF) commission for counties with a population more than 900,000, but less than 1 million was not impliedly repealed by the application of the amendment to population savings statute, which prevented political subdivisions from falling outside the operation of a previously applicable population-based statute; even though a county's population decline would be saved from falling out of Act provision governing counties with populations more than 1 million, that did not mean that no other political subdivision could ever come within the remit of provision governing subdivisions with less than 1 million inhabitants.

Application of amended provision of population savings statute, which prevented political subdivisions from falling outside the operation of a previously applicable population-based statute, was not retroactive, in city's action for writ of prohibition to void decision of city's tax increment financing (TIF) commission denying city's proposed TIF-financed redevelopment plan, alleging commission members were improperly appointed under provision of the Real Property Tax Increment Allocation Redevelopment Act establishing an appointment procedure for county's with a population more than 1 million; amendment was in effect when commission was constituted, and amendment did not impair vested rights or change the effect of past transactions.

NABL Submits Comments for IRS 2023 Priority Guidance Work Plan.

The NABL Tax Law Committee sent comments on June 2, 2022, in response to the Internal Revenue Service's (IRS's) request for input on its 2023 priority guidance work plan.

Each spring, the IRS publishes such a request for its upcoming July to June work plan year. Stakeholder comments help the IRS identify and prioritize the tax issues that should be addressed through regulations, revenue rulings, revenue procedures, notices, and other published administrative guidance.

Muni Issuers Face Pressures from Remote Work.

Credit and income sensitive municipal bond investors are well served to note recent comments by industry experts citing remote work as an emerging credit risk.

In affirming its negative outlook on Kansas City, Missouri, Fitch Ratings cautioned that based on increased remote work, it anticipates a slow recovery in payroll taxes – the city's largest source of general fund revenue.

The narrative continued with Bloomberg Intelligence strategist Eric Kazatsky's observation that "a handful of cities in Ohio, such as Cincinnati and Toledo, that rely heavily on income taxes could also see weakness in their revenue streams from remote working and potentially be subject to a downgrade."

The cautionary sentiment ironically came shortly on the heels of JP Morgan Chase CEO Jamie Dimon's begrudging acknowledgment that "working from home will become more permanent in American business."

Indeed, Dimon's concession to "the new normal" echoes what seems to be the growing consensus despite efforts by President Biden, governors, and mayors to encourage workers to return to their offices to help revive urban economies.

While the path back to pre-pandemic office life remains uncertain, a protracted work from home reality may be a harbinger for future credit rating downgrades of cities heavily dependent on commuter-driven revenues, especially after federal stimulus funds run dry.

The potential drag on tax revenues extends well beyond wages – sales taxes, transit systems, toll roads and small businesses will, to varying degrees, also feel the pinch.

A shrinking commuter base could also be a double whammy for big cities such as Los Angeles and New York, which are already grappling with population losses.

For example, the migration of millionaires leaving New York has diminished a primary demand component for the state's municipal debt.

The demographic shift has presented an unusual opportunity for highly taxed NYC residents who remain to invest in-state "triple tax-free" at higher absolute yields than offered by states with no income tax, such as Florida.

As remote work becomes an increasingly relevant credit driver, income-focused investors and investment managers will likely have similar opportunities to capture higher yields as impacted issuers come to market at cheaper levels.

Conversely, cities that rely more heavily on property taxes relative to earnings and sales taxes are likely to be more resilient to long-term shifts to remote work.

Also, smaller towns and suburban areas outside larger business districts would be the logical economic beneficiaries should hybrid work become the new paradigm.

A study by Pew Research Center, using 2019 Census Bureau data, reveals that among the workforces of 10 large metropolitan hubs, Richmond, Virginia had the highest share of workers commuting from outside the city at 77%.

Surprisingly, New York City had the lowest commuter share at 28%, but this result was somewhat misleading as the survey counted anyone residing within the city's five boroughs as a non-commuter.

Further complicating the credit calculus is the daunting task of determining which state collects taxes on wages for employees that live in a different state from the company for which they work.

While the rules governing taxation are literally all over the map, the guiding principle is that states that do not impose "double taxation" on employees working from a different state than their employer have the greatest exposure to lost earnings tax revenues.

Currently, there are only five states – Connecticut, Delaware, Nebraska, New York, and Pennsylvania – that assert the right to impose income tax on wages earned while working for an employer based in that state, even if performed remotely from another state.

However, neighboring states might strike a reciprocal agreement, such as the one between New Jersey and Pennsylvania, stipulating conditions under which remote employees only owe taxes to their resident state.

Given these complexities, portfolio managers will want to perform an issuer-by-issuer analysis in order to determine exposure to remote work risks as part of a broader credit assessment after which they can evaluate if yields adequately compensate for such risks.

An instructive case in point is last week's Moody's upgrade of New York State to Aa1 even as the ratings agency noted "risks associated with the Metropolitan Transit Authority, a component unit of the state, and uncertainties regarding recovery of the office-intensive New York City metropolitan area, which is the key driver of the state's economy."

The takeaway is that municipal investors need to consider remote work in their credit analysis to inform their buy/sell decisions.

Evidently, the ratings agencies are already paying increasingly close attention.

By Michael Wolfson

BY SOURCEMEDIA | MUNICIPAL | 06/02/22

Think Twice Before Buying a Muni Below Par.

Thinking about buying a municipal bond at a price below its par value? You may want to think twice, because if it's acquired at too deep a discount it could be subject to an additional tax, known as the de minimis tax, which would take a bite out of the after-tax return.

In short: The larger the discount, the greater the risk that an investor will face a higher tax rate. Here are some issues to consider.

What is a discount?

Municipal bonds, or munis, are usually issued with a $1,000 par value, which is the amount you can expect to receive when the bond matures. However, after the initial issuance date, a muni's value can rise and fall in the secondary market. Events such as rising interest rates or deteriorating credit quality can cause the value of the bond to fall below $1,000. When that happens, the bond is trading at a discount.

Continue reading.

advisorperspectives.com

by Cooper Howard of Charles Schwab, 6/1/22

Ready to Buy Muni Bonds Again? Consider this Hidden Tax Before Piling In.

KEY POINTS

- After a rough period for municipal bonds, also known as muni bonds, investors may be returning for higher yields and credit strength.
- These assets may appeal to higher earners because interest generally avoids federal taxes and may also bypass state and local levies.
- However, muni bond interest may trigger Medicare premium hikes for some retirees, financial experts say.

Continue reading.

CNBC.COM

BY Kate Dore, CFP®

JUN 3 2022

TAX - KANSAS

Bicknell v. Kansas Department of Revenue

Supreme Court of Kansas - May 20, 2022 - P.3d - 2022 WL 1593903

Taxpayers petitioned for review after Board of Tax Appeals, on remand from Court of Appeals' vacatur of Court of Tax Appeals' affirmation of Department of Revenue's determination that taxpayer was Kansas resident, determined taxpayer was Kansas resident.

The District Court determined taxpayer was domiciled in Florida, and the Court of Appeals reversed and remanded. Taxpayers filed petition for review and Department filed conditional cross-petition for review, both of which were granted.

The Supreme Court held that:

- District Court was not required to transfer venue;
- District Court did not impermissibly shift burden of proof from taxpayer to Department;
- District Court's comment on Department's failure to produce witnesses to rebut taxpayer's evidence that established his absence from city in Kansas did not shift burden of proof;
- Substantial and competent evidence supported District Court's determination regarding taxpayer's physical presence in Kansas and other jurisdictions;
- Taxpayer's testimony that he was retired and became Florida resident was probative of and material to question of domicile;
- District Court properly applied Kansas law in determining whether taxpayer was domiciled in Kansas; and
- District Court did not improperly use regulation governing factors for determining whether person's domicile was in Kansas as formula for determining taxpayer's domicile.

MSRB Guide to 529 Savings Plans.

The new edition of the MSRB's Investors Guide to 529 Savings Plans provides an overview of how individuals and families can invest in a 529 savings plan, a tax-advantaged vehicle to save for college and other education expenses.

Read the guide.

Fitch: U.S. State Tax Collections Outperform National GDP and Personal Income

Fitch Ratings-New York/San Francisco-17 May 2022: State tax revenue collections are outperforming U.S. GDP growth, as states with high population growth and those with high personal income taxes were the best performers, according to Fitch Ratings.

"Idaho, Arizona, California, New Hampshire and Utah saw the fastest coronavirus pandemic-era personal income growth, principally from wage growth," said Olu Sonola, Head of U.S. Regional Economics. "Idaho stands out as the top performer overall, with its tax collections up nearly 40% in 2021 compared to 2019."

An unexpected surge in consumer spending and personal income has powered state tax revenues out of the deep, albeit short-lived, pandemic-induced recession of 2020. Retail sales expanded by 18% yoy in 2021 as U.S. consumers shifted discretionary spending into tangible goods, many of which are taxable.

All state economies grew in 2021, with most states also experiencing sufficient growth to erase GDP losses from 2020. The median state lost just over 3% of GDP in 2020 before rebounding over 5%, for net growth of 2% from 2019 through 2021.

Utah, New Hampshire, Washington and Idaho exhibited the highest cumulative GDP growth. Hawaii lags all states in net economic recovery. Oil and gas-rich Alaska, Wyoming, Oklahoma and North Dakota had four of the 10 slowest GDP growth rates. This is likely to change with the recent surge in oil prices.

Wyoming, Alaska, New York and Hawaii experienced the lowest wage growth through the pandemic. Wyoming experienced major downward pressure in its extraction industries, while Alaska, New York and Hawaii saw sustained contraction in the leisure and hospitality sectors.

Idaho, Montana, Utah, Arizona and Texas are notable beneficiaries of sustained positive population trends that are likely to continue, aided by strong economic growth. The pandemic exacerbated the trend in population loss for New York and Illinois, which realized the steepest population declines of the pandemic.

For more information, a special report titled “U.S. States — Revenue and Economic Monitor 1Q22” is available at www.fitchratings.com.

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Additional information is available on www.fitchratings.com

TAX - ARIZONA

South Point Energy Center LLC v. Arizona Department of Revenue

Supreme Court of Arizona - April 26, 2022 - P.3d - 2022 WL 1218639

Non-Indian lessee of land owned by the federal government in trust for Indians initiated lawsuits seeking refund of payments for county property taxes imposed on power plant it operated on the land.

The Arizona Tax Court consolidated the lawsuits and granted summary judgment for the county. Lessee appealed. The Court of Appeals reversed and remanded. County's petition for review was granted.

The Supreme Court held that:

- As a matter of first impression, the Indian Reorganization Act does not expressly exempt state and local taxes imposed on permanent improvements affixed by non-Indian lessees to land owned by the federal government in trust for Indians when the parties agree that the lessee owns those improvements, and
- Ad valorem tax imposed on power plant was not preempted by the Act.

The Indian Reorganization Act does not expressly exempt state and local taxes imposed on permanent improvements affixed by non-Indian lessees to land owned by the federal government in trust for Indians when the parties agree that the lessee owns those improvements.

Non-Indian lessee owned power plant on land purportedly acquired by the federal government under the Indian Reorganization Act and held in trust for the benefit of the tribe, and thus, the Act did not expressly preempt county's ad valorem property tax on the plant, since the lease provided that lessee owned the permanent improvements.

Permanent Dial-In Option Makes TEFRA Hearings Easier Than Ever - Forever: K&L Gates

The Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) requires a public hearing as a form of public approval for certain types of tax-exempt private activity bonds. Thanks to COVID-19, holding a hearing is easier than ever with the new permanent option to have the hearing via teleconference. Of course, issuers still have to be careful to meet state open public meeting laws when applicable.

For a long time, the Treasury Department and the IRS resisted requests to allow phone teleconferences to satisfy the public comment hearings required by TEFRA. New Treasury Regulations in 2018 specifically noted public entities' desire to hold teleconference hearings and denied the request, saying, "although these technologies may be effective for other purposes, they cannot replace a conventional public hearing conducted in-person because they are not sufficiently reliable, publicly available, susceptible to public response, or uniform in their features and operation." 83 FR 67685.

THEN CAME COVID-19

With in-person hearings often impossible, issuers either had to hold virtual hearings or not issue bonds at all. The IRS stepped in to address the problem by issuing temporary guidance that allowed teleconference hearings through 31 March 2022. Rev. Proc. 2020-21, Rev. Proc. 2020-49, Rev. Proc. 2021-39. The new guidance permitted virtual TEFRA hearings so long as the public could join by

calling a toll-free telephone number.

Video conference services – whether Zoom, WebEx, Microsoft Teams, Google Meet, GoTo Meeting, etc. – have proven to be reliable channels for public participation, and also generally offer the option to dial in on a toll-free line. The experience gained by governmental entities in offering meetings over video services and teleconference during the pandemic convinced the IRS to allow virtual meetings permanently.

In Rev. Proc. 2022-20, the IRS noted that "the experience using telephonic hearings during the COVID-19 pandemic has shown that telephonic access has in fact made it easier for the public to express its views regarding a proposed private activity bond issue." Therefore it determined to allow public hearings to be held telephonically indefinitely.

TELEPHONIC TEFRA HEARING REQUIREMENTS

As a practical matter, most governmental entities' virtual meeting offerings have been on a videoconference service that permits access by telephone (sometimes calling the participant's number, sometimes using computer audio, sometimes providing call-in numbers.). The requirement of the regulation, however, is to provide a toll-free telephone number for the public to dial into the meeting on:

> "A hearing that is held by teleconference accessible to the residents of the approving governmental unit by calling a toll-free telephone number will be treated as held in a location that, based on the facts and circumstances, is convenient for residents of the approving governmental unit for the purpose of § 1.147(f)-1(d)(2). Provided the requirements of the preceding sentence are satisfied, governmental units are not precluded from offering additional access to the hearing by other telephone numbers, internet-based meeting technology, or in-person attendance."

Rev. Proc. 2022-20 (emphasis added). As long as the toll-free number is available, the regulation acknowledges and allows videoconference to be offered as well.

Even though public participants in a virtual meeting may all be dialing in from the local area, a true toll-free number is required to satisfy the requirement (though the issuer may also offer a local number along with the toll free number).

BE AWARE OF ANY OPEN PUBLIC MEETING ACT REQUIREMENTS

The TEFRA regulations at 26 CFR § 1.147(f)-1(d)(3) give issuers broad latitude in procedures for holding the hearing, whether to create a hearing report, and which representative(s) of the issuer will hold the hearing, so long in each case that "interested individuals have a reasonable opportunity to express their views."

Depending on whom an issuer selects to hold the TEFRA hearing, it may trigger Open Public Meeting Act (OPMA) requirements under applicable state law.

For example, Washington State's OPMA (Chapter 42.30 RCW) passed in 2022 encourage governments to provide online and telephonic access to public meetings, but also require meetings to be held in a physical location accessible to the public (outside of a declared emergency). The Governor's Proclamation 20-28.14 requiring virtual meeting access is due to expire on 1 June 2022. After that date, all public entities in Washington will be required to hold meetings with a physical

location for the public to attend.

Therefore, if the governing body of a public entity in Washington is holding TEFRA hearing, the OPMA requirements may prevent it from holding the hearing as a teleconference. Washington Public entities may avoid triggering OPMA requirements by designating a representative to hold the TEFRA hearing. Similar situations may exist in other states.

With those few considerations understood, the new ability to hold TEFRA hearings as teleconferences is a valuable new tool provided by the IRS and should help public authorities save time and effort on coming bond issuances.

Click here to read Rev. Proc. 2022-20.

By Scott A. McJannet and Cynthia M. Weed

Thursday, May 12, 2022

State Sales Tax Breadth and Reliance, Fiscal Year 2021.

Key Findings

- Sales taxes account for 29.52 percent of state tax revenue, but most sales taxes are imposed on narrow—and still-narrowing—bases, with average sales tax breadth of only 29.71 percent and a median of 35.72 percent.
- Sales tax bases range from 19.32 percent of personal income in Massachusetts to 93.89 percent in Hawaii; the Massachusetts base is extremely narrow, while the Hawaii base features significant tax pyramiding.
- Within states with a sales tax, the mean taxpayer cost of sales taxes is $1,131, or about $199 per percentage point on the tax rate.
- An ideal sales tax is imposed on all final consumption, both goods and services, but excludes intermediate transactions to avoid tax pyramiding.
- Sales tax breadth has declined from a mean of 98 percent in 2000 to the current 29.52 percent, reflecting continued erosion that has largely been offset by an increase in the mean state rate from 5.16 to 6.00 percent over the period.
- The pandemic has yielded temporary fluctuations as the amount and composition of consumer expenditures has changed, though long-term sales tax trends remain highly visible in the data.

Continue reading.

Tax Foundation

by Jared Walczak

May 4, 2022

TAX - NORTH DAKOTA

Hudye Group LP v. Ward County Board of Commissioners

Supreme Court of North Dakota - April 28, 2022 - N.W.2d - 2022 WL 1260305 - 2022 ND 83

Taxpayer sought review of decision of county board of commissioners denying taxpayer's applications for abatement or refund of taxes.

The District Court affirmed. Taxpayer appealed.

The Supreme Court held that taxpayer's mailing of his applications to city assessor's office did not constitute filing of the applications in the county auditor's office, under statute requiring such applications to be filed in county auditor's office by particular date in order to be timely; city assessor's office and the county auditor's office were not the same.

TAX - MARYLAND

Mayor and City Council of Baltimore v. Thornton Mellon, LLC

Court of Appeals of Maryland - April 28, 2022 - A.3d - 2022 WL 1260300

Purchaser of residential property at tax sale filed complaint to foreclose right of redemption. After judgment foreclosing the right of redemption was entered, purchaser moved to substitute its assignee as the plaintiff and for order directing the city to issue a tax deed to its assignee, and city moved to strike the substitution and to strike, or alternatively, respond to motion for order directing it to issue a tax deed to assignee.

The Circuit Court granted purchaser's motions and denied city's motions. City appealed. The Court of Special Appeals affirmed. City petitioned for writ of certiorari, which was granted.

The Court of Appeals held that:

- Tax-sale statute providing that, in an action to foreclose the right of redemption, "[i]f the court finds for the plaintiff, the judgment vests in the plaintiff an absolute and indefeasible title in fee simple," when read in context of related statutory provisions including the requirement that the judgment order execution of a deed, does not mean that the judgment itself vests fee simple title in the certificate holder but rather that the certificate holder acquires equitable title upon the entry of the judgment and that the deed conveys legal title;
- Entry of judgment foreclosing owner's right of redemption does not extinguish the tax certificate; and
- A judgment foreclosing owner's right of redemption, following tax sale, is assignable.

TAX - RHODE ISLAND

Verizon New England Inc. v. Savage

Supreme Court of Rhode Island - February 9, 2022 - 267 A.3d 647

Taxpayer, a wireless network operator, sought judicial review of decision of Tax Administrator for the State of Rhode Island that upheld an assessment of taxpayer's tangible personal property (TPP) tax and denied taxpayer's request for a lower assessment and a partial refund for TPP taxes paid.

Municipality moved to intervene as of right, followed by motion to intervene by movants, two other cities. The Sixth Division District Court granted municipality's motion, but denied movants' motion. Movants petitioned for a writ of certiorari.

The Supreme Court held that:

- There was no tangible basis for intervention;
- Movants failed to overcome the presumption of adequate representation;
- Movants' proffer of a generalized grievance common to all municipalities was conclusory and insufficient to overcome underlying presumption of adequate representation; and
- Movants' concerns regarding taxpayer's depreciation calculation method that other parties might not raise were speculative and failed to overcome the presumption of adequate representation.

Movants, two cities, failed to demonstrate a cognizable difference in their interests as compared to interest of intervenor as of right, a municipality, in action by taxpayer concerning question of law regarding tax administrator's interpretation of accumulated depreciation and assessment of taxpayer's tangible personal property (TPP) tax, and thus there was no tangible basis for movants' intervention, notwithstanding possibility of a settlement; intervenor and movants presented identical goals, that the tax should be upheld.

TAX - OHIO

Colonial, Inc. v. McClain

Supreme Court of Ohio - April 7, 2022 - N.E.3d - 2022 WL 1038371 - 2022-Ohio-1149

Business sought a refund of local resort-area gross-receipts excise tax.

A Tax Commissioner denied the application and business appealed. The Board of Tax Appeals (BTA) affirmed. Business appealed.

The Supreme Court held that locality's failure to declare itself to be a "resort area" based on the most recent decennial census relative to the tax-year at issue did not preclude locality from collecting resort tax.

Locality's failure to declare itself to be a "resort area" based on the most recent decennial census relative to the tax-year at issue did not preclude locality from collecting resort tax, as argued by business owner in action for refund of local resort-area gross-receipts excise tax; no language in statute indicated that a previously enacted resort-area tax automatically ceased to be operative due to a new decennial census.

TAX - WISCONSIN

State ex rel. Nudo Holdings, LLC v. Board of Review for City of Kenosha

Supreme Court of Wisconsin - April 12, 2022 - N.W.2d - 2022 WL 1086496 - 2022 WI 17

Taxpayer filed petition for writ of certiorari, challenging city board of review's determination that taxpayer's real property was properly classified as residential, rather than agricultural, for property tax purposes and had taxable value of $10,000 per acre.

The Circuit Court affirmed board's determination. Taxpayer appealed. The Court of Appeals affirmed. Taxpayer petitioned for review.

The Supreme Court held that sufficient evidence supported classifying the property as residential.

Real property was not devoted primarily to agricultural use, and thus property could not be classified as agricultural for property tax purposes, despite argument that agricultural activities were only uses property was put to; property was essentially vacant and raw with several walnut and pine trees scattered throughout, any agricultural uses were minor and isolated, and just because sole productive activities, however small, could be described as agricultural did not mean that land's main use was agricultural.

Sufficient evidence supported classifying real property as residential for property tax purposes, despite argument that agricultural activities were only uses property was put to and that property neither was nor imminently would be used for housing; property was essentially vacant and raw with several walnut and pine trees scattered throughout, property was in neighborhood plan for future development in city, owner purchased property to develop it into residential lots, and any agricultural uses were minor and isolated.

TAX - MASSACHUSETTS

RCN BecoCom LLC v. Commissioner of Revenue

Appeals Court of Massachusetts, Suffolk - April 1, 2022 - N.E.3d - 100 Mass.App.Ct. 802 - 2022 WL 982654

Telephone company appealed decision of Appellate Tax Board upholding valuation certified by the Commissioner of Revenue as to the value of company's personal property, and Commissioner cross-appealed Board's ruling that it had jurisdiction.

The Appeals Court held that:

- Appellate Tax Board had jurisdiction to hear company's appeal of Commissioner's valuations;
- Company failed to meet its burden to demonstrate that Commissioner substantially overvalued property lying in each municipality;
- Company failed to substantiate that property had become so dated that reproduction costs ceased to be a useful measure of its value;
- Board was within its discretion in declining to credit opinion testimony of company's chief financial officer; and
- Board was not required to disqualify expert due to expert's work on case prior to disclosure of potential conflict of interest.

Telephone company's alleged deficiencies in tax form concerning values of certain personal property owned by telephone company did not deprive Appellate Tax Board of jurisdiction to hear company's appeal of valuations set by Commissioner of Revenue, although form did not include attestation from company's treasurer, as required, and deficiencies could have been viewed as material omissions or affirmative misstatements; at Commissioner's urging, company largely cured any deficiencies in its initial submittals, Commissioner did not suggest any reason to question accuracy of data that company eventually supplied, and Commissioner used information to make valuations without apparent prejudice from company's tardiness.

Telephone company, in focusing on the aggregate value of certain taxable personal property in 18

municipalities as a whole, failed to meet its burden to demonstrate that Commissioner of Revenue substantially overvalued property lying in each municipality in company's appeal to Appellate Tax Board contesting Commissioner's valuation of personal property for use by municipalities in assessing taxes against the property, although company's failure to take a municipality-b--municipality approach was not per se fatal to its appeal to Board; company made minimal efforts to apportion the aggregate value to individual municipalities, and value of physical equipment could not be determined from the overall sale of company's stock when company was taken private, as company argued.

Telephone company failed to substantiate that certain personal property had become so dated that reproduction costs ceased to be a useful measure of its value, as required to show that valuation based upon reproduction cost instead of replacement cost led to substantial overvaluation of the property in telephone company's appeal to Appellate Tax Board of valuation by Commissioner of Revenue of certain personal property pursuant to statute; there was evidence that telephone company portrayed its system as "state of the art," and company did not provide proof of how its suggested replacement cost adjustment in fact would have affected the value of the property in each municipality.

Machinery, poles, wires, and underground conduits and wires and pipes owned by telephone companies, the value of which is assessed by Commissioner of Revenue pursuant to statute, is a highly specialized species of property that does not lend itself to being valued in usual manner.

Appellate Tax Board was within its discretion in declining to credit opinion testimony of chief financial officer of telephone company as to the market value of company's machinery, poles, wires, and underground conduits and wires and pipes, in determining whether the Commissioner of Revenue's valuation of the property was substantially too high in company's appeal to Appellate Tax Board of valuations; Board determined officer's opinion of value was unsupported by a recognized valuation methodology, and did not provide evidence of value.

Appellate Tax Board was not required to disqualify Commissioner of Revenue's expert due to expert's work on case prior to his disclosure of a potential conflict of interest in telephone company's appeal to Board of Commissioner's valuation pursuant to statute of certain personal property owned by company; after company raised issue of expert's potential conflict of interest, arising from expert's separate work with various municipalities on valuation issues, expert formally apprised Commissioner of Revenue and State Ethics Commission of potential conflict, and Commissioner then expressly approved expert's continuing work on case.

Disney's $578 Million Tax Break Left Untouched in DeSantis Feud.

- **State benefit defrays costs of relocating staffers to Florida**
- **Entertainment giant is moving 2,000 of its employees**

Florida Governor Ron DeSantis may have put a bull's-eye on special perks that Walt Disney Co. has enjoyed in his state for more than 50 years, but he's keeping his hands off hundreds of millions of dollars in tax breaks recently lavished on the entertainment giant.

On Friday, DeSantis signed legislation to end a special municipal district Disney has operated in the state since the late 1960s. It's part of a drive to punish the company for speaking out against a law, championed by the governor, that bans discussion of sexual orientation or gender identity in kindergarten to third-grade classrooms.

But for now, at least, DeSantis is leaving alone another valuable perk: $578 million in credits Disney can use to reduce its state income taxes through 2040. Christina Pushaw, a spokesperson for the governor, said DeSantis hasn't asked the legislature to repeal the tax credits because "it's not a carve-out for a specific corporation." Any company can apply for the incentives, she said, and "the bigger investments will qualify for the bigger tax credits."

Florida economic development officials certified the credits in February 2020, according to documents obtained by Bloomberg News under a public records request. In its application for the incentives, Disney cited plans to move as many as 2,000 staffers, making an average of $120,000 a year, to a new corporate campus in the state. The campus will be in Lake Nona, about 20 miles southeast of downtown Orlando.

The company, one of the state's largest employers because of its theme parks there, is investing $864 million in the relocation, including office construction, supplies and software improvements. Disney considered other states, including California, New York and Connecticut.

The incentives were an "integral part of the overall decision in determining the location of this project," the company said in its application. It declined to comment further.

DeSantis, a Republican who is seeking re-election this year, has been at war with Disney since the company was pressured by employees to speak up about the school bill in early March. The governor, who is considered a likely candidate for president in 2024, has also said he regrets signing 2021 legislation that exempted Disney from a bill preventing social media companies from banning candidates from their platforms. Lawmakers removed the exemption in the special session this week.

The legislation signed Friday calls for dissolving Disney's Reedy Creek Improvement District, but leaves some crucial questions unanswered, like what will happen to the $1 billion in bonds backed by the district and who would take care of the services the company currently provides?

Who Pays?

If the district is dissolved, Florida taxpayers will likely bear the cost, according to Fitch Ratings. Orange and Osceola counties will likely assume title to all municipal property and debt of the district, which provides power, water and other services to the Walt Disney World resort complex.

"Fitch believes the mechanics of implementation will be complicated," the ratings agency said in a research note Friday.

At a signing event for the bills on Friday, DeSantis said residents shouldn't be concerned about the services provided by the improvement district. "We're going to take care of all that," he said. "Don't worry. We have everything thought out."

Anna Eskamani, a Democratic state representative, said in interview that not every business can qualify for the tax credits Florida offered Disney because they have high requirements for investment and job creation. The governor could ask the legislature to consider repealing them, if he wanted.

"He has never prioritized to close corporate tax loopholes," Eskamani said. "If he really wants to create an even playing field, these are issues that I've been bringing up since my first days in office."

Florida's Risk

Challenging the tax credits could lead Disney to abandon plans to move the 2,000 workers to the

state. The relocation has been controversial at the company, with many park designers presently in California preferring not to pack up and go to Florida. The issue has been one of the underlying elements fanning the internal opposition to the Florida schools bill, with a website created by employees specifically asking the company to halt the move.

Democratic governors meanwhile are seizing on the irony of DeSantis beating up on Disney for corporate perks, while also trying to lure its jobs. “THIS is what ‘business friendly’ means?” California’s Gavin Newsom said in tweet after DeSantis asked the legislature to disband Reedy Creek.

“In CO, we don’t meddle in affairs of companies like @Disney or @Twitter,” Colorado Governor Jared Polis said on Twitter. “Hey @Disney we’re ready for Mountain Disneyland.”

Bloomberg Markets

By Christopher Palmeri

April 23, 2022

TAX - WISCONSIN

State ex rel. Nudo Holdings, LLC v. Board of Review for City of Kenosha

Supreme Court of Wisconsin - April 12, 2022 - N.W.2d - 2022 WL 1086496 - 2022 WI 17

Taxpayer filed petition for writ of certiorari, challenging city board of review’s determination that taxpayer’s real property was properly classified as residential, rather than agricultural, for property tax purposes and had taxable value of $10,000 per acre.

The Circuit Court affirmed board’s determination. Taxpayer appealed. The Court of Appeals affirmed. Taxpayer petitioned for review.

The Supreme Court held that sufficient evidence supported classifying the property as residential.

Real property was not devoted primarily to agricultural use, and thus property could not be classified as agricultural for property tax purposes, despite argument that agricultural activities were only uses property was put to; property was essentially vacant and raw with several walnut and pine trees scattered throughout, any agricultural uses were minor and isolated, and just because sole productive activities, however small, could be described as agricultural did not mean that land’s main use was agricultural.

Sufficient evidence supported classifying real property as residential for property tax purposes, despite argument that agricultural activities were only uses property was put to and that property neither was nor imminently would be used for housing; property was essentially vacant and raw with several walnut and pine trees scattered throughout, property was in neighborhood plan for future development in city, owner purchased property to develop it into residential lots, and any agricultural uses were minor and isolated.

TAX - WASHINGTON

Sound Inpatient Physicians, Inc. v. City of Tacoma

Court of Appeals of Washington, Division 2 - April 5, 2022 - P.3d - 2022 WL 1013331

Taxpayer sought review of city hearing examiner's denial of refund for alleged overpaid business and occupation taxes. The Superior Court reversed. City appealed.

The Court of Appeals held that:

- Statute defining service income factor, as used in formula for apportionment of business and occupation taxes to city, providing in three subsections, separated by disjunctive "or," that service income is in the city if customer location is in the city and then setting out two circumstances in which service income is in the city, does not create a cascading hierarchy of apportionment methods but rather provides three alternative methods of apportioning;
- Provision of such statute stating that service income is in the city if specified location conditions are met and "the taxpayer is not taxable at the customer location," means there must be an explicitly authorized gross receipt tax at the customer location;
- City's method of apportionment was internally consistent, supporting finding that it did not violate commerce clause; and
- Apportionment was also externally consistent and thus not in violation of commerce clause.

Rising Rates Reduce Appeal of Taxable Bonds for Muni Issuers.

- **Taxable refundings down 57% in 2022 as savings 'evaporated'**
- **State and local taxable debt sales overall drop 39% this year**

States and localities are shying away from selling taxable bonds, a popular tool in the last two years, as rising interest rates reduce the chances for cost savings, especially from refinancing old debt.

Municipal issuers have sold $19.5 billion of long-term federally taxable bonds year to date, a 39% decrease from the same period a year ago, according to data compiled by Bloomberg. Sales of taxable munis surged in 2020 and the first half of 2021 to peak at almost a third of the primary market, before slowing to about 17% currently, according to Bloomberg data.

The Federal Reserve has begun to raise rates as part of a long-signaled plan to combat the highest inflation in four decades, and in doing so largely erased any savings governments could get from selling bonds to refinance outstanding debt. Taxable refunding bond sales have dropped almost 57% in 2022 from the year-ago period, and when tax-exempt refinancings are included, the decline is 33%, Bloomberg data show.

"Issuers are sensitive to interest rates and costs savings have evaporated," said Matt Thomas, portfolio manager for Belle Haven Investments. "That takes a huge chunk of the supply out of the market."

Kalamazoo, Michigan, for example, was planning to sell $76 million of taxable bonds to refinance debt in mid-March, but shelved the deal after rates jumped, said Warren Creamer, a managing director at Troy, Michigan-based MFCI LLC, an adviser on the proposed sale. The transaction is on hold as "the market continued to move away from us," Creamer said.

"Rates have gone up to a point that the difference between the debt service on the old bonds and the new bonds isn't enough to proceed with the transaction," he said. "We were hoping that at some

point we would start to see a new normal."

Sales of all types of long-term municipal bonds this year are down about 6.4% to $113 billion. The yields for AAA muni securities maturing in 10 years on Wednesday reached the highest since March 2020, while 10-year Treasury rates hover around the highest since 2019.

An uptick in taxable sales to levels seen the last two years may be difficult without a sharp drop in interest rates, said Brian Barney, a managing director for Parametric Portfolio Associates. Compared with traditional tax-exempt municipal bonds, the taxable version offers higher yields to investors and can be used for projects ineligible for tax-free financing.

The segment will continue to play a significant role in the municipal market given investors looking for taxable income can tap into sales from muni issuers rated, on average, AA versus BBB corporate sellers, he said.

"It's a big box in the muni market," Barney said. "It still holds credence and I wouldn't say this down tick in issuance pulls back the buying base."

Bloomberg Markets

By Shruti Singh and Danielle Moran

April 13, 2022

TAX - PENNSYLVANIA

Circle of Seasons Charter School v. Northwestern Lehigh School District

Commonwealth Court of Pennsylvania - March 14, 2022 - A.3d - 2022 WL 760385

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

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

The Commonwealth Court held that:

- County's property-tax assessment notices to charter school were facially defective, providing school with statutory remedy of hearing before county's board of assessment appeals;
- Charter school did not waive right to challenge county's defective tax assessment notice by paying real estate taxes owed under assessment; and
- Appropriate remedy was to transfer matter to county board of assessment appeals, rather than to dismiss complaint with prejudice.

County's property-tax assessment notices to charter school were facially defective, providing charter school with statutory remedy of a hearing before county's board of assessment appeals, and this remedy displaced trial court's exercise of equitable jurisdiction in charter school's action against school district to recover property taxes it erroneously collected on charter school's tax exempt property, where assessment notices did not include mailing date required by Consolidated County Assessment Law.

Charter school did not waive right to challenge county's defective tax assessment notice by paying real estate taxes owed under assessment to school district, in response to invoices sent by school district, where charter school paid taxes at direction of closing agent when it refinanced its properties, and, shortly thereafter, charter school appealed its properties' placement on the taxable rolls.

Appropriate remedy in charter school's action against school district to recover refund of real estate taxes that were erroneously collected was to transfer matter to county board of assessment appeals to consider charter school's challenge to county's assessment, rather than to dismiss charter school's complaint with prejudice, after trial court determined that county's assessment notices were facially defective; finding that county's assessment notices did not conform to statutory requirements established negligence that warranted nunc pro tunc appeal before the board of assessment appeals on whether county properly revised tax status of charter school's properties, and, to enable charter school to avail itself of hearing, trial court should have transferred charter school's complaint to the board for disposition.

Tax Pros and Cons to Municipal Bonds.

Municipal bonds—frequently called "munis" for short—are often attractive to investors in the highest income tax brackets. Nevertheless, despite the obvious benefits, there are potential drawbacks to watch out for as well.

Municipal bonds—frequently called "munis" for short—are often attractive to investors in the highest income tax brackets. Nevertheless, despite the obvious benefits, there are potential drawbacks to watch out for as well.

For starters, there are four main tax advantages to investments in munis.

1. Interest income generated by munis is exempt from federal income tax. The higher your tax bracket, the more important this is. For instance, if you're in the current top tax bracket of 37% and earn a 4% yield with a muni, the taxable equivalent yield is 6.92%.

2. The interest income is also exempt from any applicable state income tax as long as the munis are issued by an entity within the state where you reside. In effect, this tax break increases the overall after-tax return for most investors.

3. Muni interest income doesn't count toward the 3.8% tax on "net investment income tax" (NIIT). Thus, unlike most types of investments income, such as income from stocks and other bonds, it doesn't trigger or increase the NIIT.

4. Finally, muni interest doesn't increase your adjusted gross income (AGI) for other tax purposes. So investing in munis can provide other tax savings when you file your annual tax return.

Before you pull the trigger on munis, however, there are several disadvantages to consider, including the following:

- Interest income received from munis issued by an entity in another state is subject to state income tax. The state tax exemption, when available, only applies to muni income in the state where you reside state.
- The income from "private activity" bonds is an adjustment item for the alternative minimum tax

(AMT) calculation. This could result in you paying the AMT instead of regular income tax or increasing AMT liability.
- There's no tax benefit if you sell a muni purchased at a premium. For instance, if you buy a muni for $11,000 that will be worth $10,000 if you hold it until maturity, you can't subsequently claim a $1,000 loss on your tax return. The premium must be amortized over time.
- If you sell a muni at a profit, you owe pay capital gains tax on the sale. Example: Suppose you acquire a muni with a face value of $10,000 and sell it for $11,000. The $1,000 gain is taxable as a capital gain.
- The calculation of the tax on Social Security benefits includes tax-free municipal bond income. Depending on your situation, up to 85% of the Social Security benefits received may be subject to tax. This could be significant.

Lastly, take note of a savvy year-end tax strategy involving munis. If you "swap" a muni showing a current loss with another bond with somewhat different investment characteristics, you may be able to claim the loss on your 2022 return, even if the new bond carries a higher interest rate than the old one.

The upshot: Munis can be a good deal for savvy investors, but they aren't usually recommended for novices. Weigh all the pros and cons before you invest.

CPA Practice Advisor

By Ken Berry, J.D. – Tax Correspondent

April 7, 2022

TAX - VERMONT

Boyd v. State

Supreme Court of Vermont - March 18, 2022 - A.3d - 2022 WL 816411 - 2022 VT 12

Public high school student, taxpayer, and town brought action for declaratory and injunctive relief against State, alleging that State's statutory education funding and property taxation scheme violated the Education Clause, Proportional Contribution Clause, and Common Benefits Clause of the Vermont Constitution because it deprived student of equal educational opportunity, required taxpayer to contribute disproportionately to education funding, and compelled town to collect unconstitutional tax.

State moved for summary judgment.

The Superior Court granted motion. Plaintiffs appealed.

The Supreme Court held that:

- Taxation scheme did not deprive student of her right under Education Clause and Common Benefits Clause of Vermont Constitution to equal educational opportunities;
- Taxation scheme did not require taxpayer to pay disproportionate contribution to funding of education, and thus did not violate Vermont Constitution's Proportional Contribution Clause; and
- Town lacked capacity to bring action against State.

Statewide education funding and taxation scheme did not deprive student at public high school of

her right under Education Clause and Common Benefits Clause of Vermont Constitution to equal educational opportunities, although high school offered approximately half as many in-person courses as state's largest high school and high school's students performed somewhat worse than statewide average in testing and attendance, where high school's per-pupil spending was nearly highest in state, despite having average property values, and student's own expert admitted that school's education spending was above threshold at which increased spending was associated with increase in student performance and that more spending would not create higher levels of educational opportunity.

Education property taxation system did not require taxpayer to pay disproportionate contribution to funding of education, and thus did not violate Vermont Constitution's Proportional Contribution Clause; although town in which taxpayer lived had one of the highest education property tax rates in state because of its high per-pupil spending, high tax rate did not necessarily mean that taxpayer paid more taxes, in dollar terms, than similarly situated residents in other towns, and taxpayer failed to provide analysis of property tax rates, education spending, property values, and income levels in other towns or demonstrate that she was treated differently than other similarly situated taxpayers.

Town lacked capacity to bring action against State alleging that State's education property taxation scheme harmed town by depriving it of revenue and forcing town to collect illegal tax from its residents, where town failed to establish, as threshold matter, that taxation scheme forced town to violate constitution.

TAX - ILLINOIS

In re County Collector

Supreme Court of Illinois - March 24, 2022 - N.E.3d - 2022 IL 126929 - 2022 WL 869649

After order was entered to issue a tax deed to tax sale purchaser's assignee, transferee of real property, which had intervened in the tax sale proceedings, moved to vacate the order issuing the tax deed to assignee.

The Circuit Court granted the motion. Assignee appealed. The Appellate Court reversed and remanded. Transferee's petition for leave to appeal was allowed.

The Supreme Court held that:

- As a matter of first impression, specific purpose of "Sold for General Taxes of (year)" requirement of statutory post-tax-sale notice form is satisfied by listing the tax sale year of the delinquent taxes the purchaser acquired an interest in at the tax sale, and
- Assignee strictly complied with the statutory post-tax-sale notice form requirements by listing delinquent tax year for which the sale was held without listing the additional tax years for which it paid taxes to complete the sale.

TAX - COLORADO

Aurora Urban Renewal Authority v. Kaiser

Colorado Court of Appeals, Division II - January 6, 2022 - P.3d - 2022 WL 67850 - 2022 COA 5

City urban renewal authority, metropolitan districts, and limited liability company (LLC) brought action against county assessor and state Property Tax Administrator, alleging that apportionment methodology of Administrator's manual to calculate base and increment values in tax value of property violated urban renewal law seeking both declaratory and injunctive relief. T

he District Court determined metropolitan districts and LLC lacked constitutional standing, urban renewal authority and metropolitan districts lacked standing to sue Administrator, and granted county assessor's motion for summary judgment. Urban renewal authority, metropolitan districts, and LLC appealed.

The Court of Appeals held that:

- Metropolitan districts and LLC adequately alleged facts sufficient to demonstrate injury in fact;
- Metropolitan districts and LLC had legally protected interest;
- Metropolitan districts had standing to bring action against Administrator;
- Urban renewal authority had standing to bring action against Administrator and county assessor;
- Urban renewal authority, metropolitan districts, and LLC did not fail to exhaust administrative remedies by failure to seek judicial review of Stat Board of Equalization action within 35 days;
- Portion of Administrator's manual that allowed county assessor to proportionately adjust base and increment tax values of property any time there was general reassessment was not contrary to urban renewal law; and
- Distinction of manual between direct and indirect benefits was contrary to urban renewal law's express purpose of rehabilitating slum or blighted areas.

TAX - ARIZONA

Vangilder v. Arizona Department of Revenue

Supreme Court of Arizona - March 8, 2022 - P.3d - 65 Arizona Cases Digest 31 - 2022 WL 678899

Consumer filed complaint seeking to enjoin Department of Revenue (DOR), county, and regional transportation authority (RTA) from collecting and/or enforcing excise tax approved by voters and enacted to fund regional transportation plan, alleging tax was invalid and unconstitutional.

The Arizona Tax Court granted summary judgment for consumer and invalidated tax. County and RTA appealed the invalidation, and consumer cross-appealed, challenging the denial of his request for attorney fees. The Court of Appeals affirmed in part and reversed in part, upholding the tax as valid and affirming the denial of request for attorney fees.

The Supreme Court held that:

- Board of Supervisors' inclusion of a partial description of transportation excise tax did not invalidate resolution to request that Board place a transportation excise tax on the ballot or placement of tax on ballot;
- Publicity pamphlet provided the requisite notice for resolution;
- Transportation excise tax clearly applied to all transaction privilege tax (TPT) classifications, and therefore did not impermissibly apply only to retail sales;
- Two-tiered structure violated state law; and
- Statement of legislative intent did not support validity of two-tiered structure.

Transportation excise tax statute does not require the Regional Transportation Authority (RTA) to

specify or describe the details of the transportation excise tax that would later be placed on the ballot, such that county Board of Supervisors' inclusion of a partial description of transportation excise tax did not invalidate resolution to request that Board place a transportation excise tax on the ballot or placement of tax on ballot.

Publicity pamphlet, which was approved by county Regional Transportation Authority (RTA) and distributed to voters, provided the requisite notice for resolution to request that county Board of Supervisors place a transportation excise tax on the ballot, as would support validity of resolution and placement of transportation excise tax on the ballot; publicity pamphlet sent to voters before the election explained that transportation excise tax would be assessed on the same business transactions that were subject to the State of Arizona transaction privilege tax, and identified each of the business classifications subject to the transaction privilege tax, specifying the rate that would apply to each classification, including the two-tiered rate structure for retail sales.

Transportation excise tax clearly applied to all transaction privilege tax (TPT) classifications, and therefore did not impermissibly apply only to retail sales, such that county complied with state law in adopting transportation excise tax; publicity pamphlet listed the tax rate for each of the TPT classifications in addition to the rate for retail sales, indicating that the transportation excise tax would apply to all classifications, and ballot asked voters if they agreed to the levy of a transportation excise (sales) tax including a two-tiered tax on retail sales, indicating that the tax applied to all TPT classifications.

Two-tiered retail transaction privilege tax (TPT) that proposed new transportation excise tax to fund regional transportation plan, but which imposed a zero percent rate upon retail sales of a single item of personal property over $10,000, violated state law governing levying and collecting of county transportation excise tax, absent express delegation from legislature to counties for authority to implement tiered-rate tax on specified businesses; legislature delegated authority to establish a modified or variable rate, but TPT structure was not a variable or modified rate as it set fixed tax rates that never varied and were never subject to change, and county did not have an already-existing transportation excise tax that tax sought to change, and statutory scheme did not contemplate two-tiered retail tax structure.

Statement of legislative intent recognizing need to create a new source of funding for certain counties, and noting that transportation funding needs were unmet by any existing transportation-specific funding mechanisms within area, that there were constitutional limitations placed on the use of highway user revenues, that specific areas possessed unique characteristics, and that needs produced by these characteristics must be addressed by certain unique strategies did not support validity of county's two-tiered retail transaction privilege tax (TPT) structure for transportation excise tax, even if cities and towns, under the Model City Tax Code, could exempt proceeds from their retail tax; legislature did not indicate it was granting unrestricted, open-ended taxing authority to counties, and Model City Tax Code only applied to a city or town, not counties.

Don't Let The IRS Catch You With The Forgotten De Minimis Rule.

Woe be to the municipal bond investors who forgot the De Minimis Tax Rule. It has been 10 to 15 years since municipal bonds traded at discounts to their $1,000 face value for a lengthy period of time. Sure, munis got nuked during the March 2020 pandemic panic and sold at deep discounts as the panic worsened. But today's scenario is very different.

As the Federal Reserve and bond market push interest rates higher, all bond prices continue to decline. If you are looking to purchase low coupon discounted municipal bonds then heed these words. There may be tax consequences.

Investors buy municipal bonds for tax free safe income—period. But when rates rise and bond prices fall to a certain level then the IRS, in its infinite wisdom, has a rule. That rule is called the De Minimis Tax Rule. Here's the gobbly gook definition:

> The de minimis tax rule sets the threshold at which a discount bond should be taxed as a capital gain rather than as ordinary income. The rule states a discount that is less than a quarter-point per full year between its time of acquisition and its maturity is too small to be considered a market discount for tax purposes. Instead, the accretion from the purchase price to the par value should be treated as a capital gain, if it is held for more than one year. To determine if a municipal bond is subject to the capital gains tax or ordinary income tax, multiply the face value by 0.25%, then multiply the result by the number of full years between the discounted bond's purchase date and the maturity date. Subtract the derived de minimis amount from the bond's par value. If this amount is higher than the purchase price of the discount bond, the purchased bond is subject to the ordinary income tax rate. If the purchase price is above the de minimis threshold, capital gains tax is due. In other words, if the market discount is less than the de minimis amount, the discount on the bonds is generally treated as a capital gain upon sale or redemption rather than as ordinary income.

In plain English, if you purchase a discounted municipal bond make sure the discount doesn't come back to you on sale or at maturity as ordinary income or capital gains. These kinds of surprises can really wreck your tax planning.

With inflation everywhere, a strong economy and a Federal Reserve that has curbing high inflation as their top priority—interest rates will continue to climb. Therefore, all bond prices will continue to fall.

If you own 1.50% to 2.50% coupon municipal bonds and decide to sell them, beware. The bids on such bonds will run from low to terribly low. That's because educated buyers will demand deeper discounts to make up for the ordinary income or capital gains your bonds will cost them. Fair enough as long as the buyers and sellers each know the rules.

So dust off your Investopedia to make sure de minimis doesn't take a tax bite out of your tax free bonds.

Forbes

by Marilyn Cohen

Mar 22, 2022

Hawkins Advisory: RE: Rev. Proc. 2022-20 Permanently Extends Ability to Hold Telephonic TEFRA Hearing.

The Department of Treasury and the IRS have adopted guidance eliminating the time period limitation on the ability to hold public TEFRA hearings telephonically. Please see the attached Special Edition Hawkins Advisory describing the relief.

View the Hawkins Advisory.

Mar 18, 2022

Toll-Free Telephone TEFRA Hearings Available Permanently: Squire Patton Boggs

The IRS will permanently allow state and local governments to hold public hearings using a toll-free telephone number to satisfy the TEFRA hearing requirement for private activity bonds.[1] No in-person option will be required to satisfy the TEFRA public hearing requirement, but state and local governments must continue to follow applicable local laws, which may require public meetings to be held in person.

Continue reading.

By Johnny Hutchinson on March 19, 2022

The Public Finance Tax Blog

Squire Patton Boggs

MSRB Alerts Investors to Tax and Liquidity Considerations of Buying Discount Bonds.

Washington, DC – The Municipal Securities Rulemaking Board (MSRB) today published an issue brief that alerts investors to the tax and liquidity considerations of buying municipal bonds at a deep discount.

“With the rise in interest rates and corresponding decline in municipal bond prices since the beginning of 2022, there has been a significant increase in the amount of bonds being offered and trading at substantial discounts to their par value,” said John Bagley, MSRB Chief Market Structure Officer. “While these bonds may appear attractive because of their higher yields, investors need to understand that they could face tax consequences and have a harder time selling these bonds.”

The Internal Revenue Service’s (IRS) De Minimis Discount Rule determines whether the price appreciation of a bond purchased at a discount will be taxed at the capital gains tax rate or the ordinary income tax rate. The price appreciation realized on bonds purchased at significant discounts may be taxed at the ordinary income rate, which could significantly impact a bond’s after-tax return. In addition, bonds trading at a substantial discount can have significantly less liquidity than bonds trading around par or at a premium.

“Investors should look for yields that will compensate them for the tax consequences and potential liquidity challenges when buying deeply discounted bonds,” Bagley said.

The MSRB collects real-time municipal securities trade data, as well as primary market and secondary market disclosures. In addition to making the data and disclosures available for free on its Electronic Municipal Market Access (EMMA®) website and compiling quarterly and annual statistics, the MSRB conducts independent research and analysis to support understanding of market trends. Recent MSRB research examines the use of external and internal liquidity in the municipal market; assesses the impact of electronic trading technology in the market; and studies the evolution of the taxable municipal bond market. The MSRB is also exploring and prototyping new, more dynamic ways to make market data available to the public in its new EMMA Labs innovation sandbox, a key part of its long-term strategic goal to leverage data to deepen market insights.

Read the issue brief.

Date: March 18, 2022

Contact: Leah Szarek, Chief External Relations Officer
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MSRB Warns of Liquidity, Tax Concerns on Discounted Bonds.

Investors in municipal bonds should take into account that rising interest rates this year could lead bonds trading at a discount to be less liquid than those trading at par value, the Municipal Securities Rulemaking Board warned Friday.

Investors should also monitor their portfolios for bonds falling to a significant discount price, according to the MSRB's issue brief warning investors of the new tax and liquidity issues they could face in this new higher interest rate environment.

"With the rise in interest rates and corresponding decline in municipal bond prices since the beginning of 2022, there has been a significant increase in the amount of bonds being offered and trading at substantial discounts to their par value," said John Bagley, MSRB chief market structure officer. "While these bonds may appear attractive because of their higher yields, investors need to understand that they could face tax consequences and have a harder time selling these bonds."

The MSRB issued the brief in response to its own internal analysis, noting that bond yields were up 90 to 120 basis points. While those figures were not quite as large as those exhibited during the COVID-19 market dislocation in March 2020, they are still significant, Bagley said.

"Bonds trading at substantial discounts away from high yield is not something the market and individual investors have had to deal with very much in the last ten to fifteen years," Bagley said.

Bonds trading at a discount on the secondary market could trigger the Internal Revenue Service's de minimus discount rule, which, "determines whether the price appreciation (or accretion) of a bond that is purchased at a discount will be taxed at the ordinary income tax rate or if it will be taxed at the capital gains rate," the MSRB issue brief said.

"If the market discount is less than one quarter of 1% of the stated redemption price of the bond at maturity, multiplied by the number of complete years to maturity from when the taxpayer acquires the bond, the market discount will be deemed de minimis and treated as a capital gain for tax

purposes if the bond is held to maturity, redeemed or sold for a price above the purchase price," the MSRB issue brief said. "If the discount is greater than this de minimis threshold, the accrued market discount realized at maturity must be treated as ordinary income."

But tax concerns aren't the only consideration investors should have in mind in this new rate environment.

"It is important to note that bonds that reach a substantial discount can have significantly less liquidity than bonds trading around par or at a premium," the MSRB issue brief said. "If an investor needs to sell a bond that is at a significant discount, there may be fewer willing purchasers."

Investors also need to consider the fact that such a market discount would constitute material information and need to be disclosed by dealers under MSRB Rule G-47 on time of trade disclosure.

If interest rates continue to rise, regulators may take an interest in wider de minimis disclosure, but that may take time. Firms could also see the matter as a chance to better inform clients about liquidity risk, which may or not be a problem for each individual investor.

"This is not a message to not buy these types of bonds, it is just to make sure investors have all the information," Bagley said.

But what happens at the Federal Reserve in the coming months could have further influence on how these bonds trade and how exposed one is to tax and liquidity risk.

"If interest rates go back down, this could become less of an issue," Bagley said. "If interest rates stay here and go up, it could be an issue for a while."

By Connor Hussey

BY SOURCEMEDIA | MUNICIPAL | 03/18/22 02:43 PM EDT

TAX - VERMONT

Missisquoi Assoc. Hydro v. Town of Sheldon

Supreme Court of Vermont - March 4, 2022 - A.3d - 2022 WL 628507 - 2022 VT 8

Town appealed from decision of hearing officer for Property Valuation Division and Review Board, determining fair market value (FMV) of taxpayer's property consisting of 69.5 acres of land improved with run-of-the-river hydroelectric generating plant, upon concluding that income approach (IA), rather than town's direct sale comparison (DSC) methodology, provided best estimate of FMV for property.

The Supreme Court held that:

- Hearing officer's findings were not internally inconsistent;
- Hearing officer sufficiently explained capitalization rate determination;
- Hearing officer's application of income approach was not erroneous; and
- Hearing officer acted within his discretion in rejecting town's approach.

Property Valuation Division and Review Board hearing officer's findings were not internally inconsistent, in determining fair market value (FMV) of taxpayer's property consisting of land

improved with run-of-the-river hydroelectric generating plant upon concluding that income approach, rather than town's direct sale comparison methodology, provided best estimate of FMV, where hearing officer made typographical error in stating that town's 60-40% debt-to-equity ratio was more credible than taxpayer's 40-60% ratio, but he made clear in his discussion that he credited taxpayer's ratio and explained basis for that conclusion, and consistent with his rationale, he applied taxpayer's ratio in reaching his conclusion.

Property Valuation Division and Review Board hearing officer sufficiently explained why he rejected town's capitalization rate (CR) and adopted taxpayer's CR, in determining fair market value (FMV) of taxpayer's property consisting of land improved with run-of-the-river hydroelectric generating plant upon concluding that income approach, rather than town's direct sale comparison methodology, provided best estimate of FMV; hearing officer found it compelling that taxpayer's expert was consistent in identifying relevant companies as risk comparables in approaches to valuation, and hearing officer gave less weight to town's valuation approach that did not use same companies or include most comparable company in its CR analysis.

Property Valuation Division and Review Board hearing officer's application of income approach was not erroneous, in determining fair market value (FMV) of taxpayer's property consisting of land improved with run-of-the-river hydroelectric generating plant upon concluding that income approach, rather than town's direct sale comparison methodology, provided best estimate of FMV; hearing officer reasonably considered actual, rather than estimated, interconnection expenses, given significant differences between those figures, he was not required to justify actual figures or explain why he credited each particular expense identified by taxpayer's expert, and he explained how he calculated total expenses and why they differed from estimates.

Property Valuation Division and Review Board hearing officer acted within his discretion in rejecting town's direct sale comparison (DSC) methodology and instead relying on income approach (IA), in determining fair market value (FMV) of taxpayer's property consisting of land improved with run-o--the-river hydroelectric generating plant; officer deemed town's expert's proffered DSC value, that was calculated by adding $0.04 to medium value based on expert's own judgment, unreliable and unsupported by evidence, officer referenced town's failure to make any adjustments for differences between comparable sales and subject property, and officer's failure to include outliers was not harmful because same median value, on which he relied, resulted with or without those outlying comparables.

TAX - NEW JERSEY

Erez Holdings Urban Renewal, LLC v. Director, Division of Taxation

Tax Court of New Jersey - February 1, 2022 - N.J.Tax - 2022 WL 303536

Taxpayer sought review of a determination from the Director of Division of Taxation, which affirmed township's imposition of a non-residential development fee to taxpayer's tax-exempt property.

The Tax Court held that:

- Tax Court would treat taxpayer's new claim as if it had been raised in its original pleading;
- Improvements to taxpayer's property exempt from local property taxes could not be valued at $0.00 for non-resident development fee purposes;
- Long-Term Tax Exemption Law could not be read in pari materia with Local Redevelopment Housing Law;

- Non-residential development fee statute could not be read in pari materia with mansion tax statute; and
- Tax Court was not required to evaluate evidence of value of property's site improvements.

Tax Court would treat taxpayer's new claim, that township's non-residential development fee was incorrect because its equalized assessed value for improvements did not exclude value of subject property's parking lot, as if it had been raised in taxpayer's original pleading under rules governing amended and supplemental pleadings, where neither township nor Director of Division of Taxation objected to taxpayer's ability to raise the new parking lot issue, and they agreed that the subject property was developed with a parking lot, these parking lots were exempt from non-residential development fee, and neither of them objected to proof being adduced in this connection, nor contended that doing so would be prejudicial to them.

Improvements to taxpayer's property could not be assessed a value of $0.00, for purposes of calculating non-residential development fee based on property's equalized assessed value on review of Director of Division of Taxation's affirmance of township's non-development fee calculation for improvements made to taxpayer's tax-exempt property under Long-Term Tax Exemption Law; exemption classification under Long-Term Tax Exemption Law simply identified that property was tax exempt in that there was no tax to be paid on assessed value, and while phrase "taxable value" could imply a $0.00 value, it was $0.00 in the sense that no tax was forthcoming from tax-exempt property, not that the property had a $0.00 value.

Long-Term Tax Exemption Law could not be read in pari materia with Local Redevelopment Housing Law, as would make equalized assessed value of improvements to property $0.00, on review of Director of Division of Taxation's affirmance of township's calculation of a non-residential development fee based on equalized assessed value; plain language of non-residential development fee statute controlled, and even if court were to consider Long-Term Tax Exemption Law and Local Redevelopment Housing Law as having the same goals, there was nothing explicit or implicit in either law that would assign a $0.00 value to a tax exempted improvement, or equating a tax exemption to a $0.00 equalized assessed value.

Non-residential development fee statute could not be read pari materia with mansion tax statute, as would make equalized assessed value of improvements made to property $0.00, on review of Director of Division of Taxation's affirmance of township's non-resident development fee based on equalized assessed value of improvements made to tax-exempt property; there was no parity between the statutes, as the mansion tax statute was imposed to raise revenue for general state purposes, while non-residential development fee statute was to streamline imposition of development fees at a statewide level to fund affordable housing, and mansion tax was imposed based on status of grantee for income tax purposes, while non-residential development fee was not based on a tax-exempt status for income tax purposes.

Tax Court could not conclude value of land, and thus, it was not required to evaluate evidence of value of property's improvements in order to determine amount excluded for a parking lot from township's non-resident development fee based on land and improvements' equalized assessed value; even though taxpayer overcame presumptive correctness of township's valuation, it failed to show what the exemption amount for non-resident development fee should be as its valuation was based on a recent appraisal, rather than valuation at time taxpayer's general contractor submitted non-resident development fee form, and even if court were to consider vacant land comparables, it could not arrive at a meaningful value conclusion as it could not speculate adjustments for market conditions.

TAX - NEW JERSEY

Branchburg Hospitality LLC v. Township of Branchburg

Tax Court of New Jersey - February 25, 2022 - N.J.Tax - 2022 WL 590735

Following Tax Court's dismissal of taxpayer's direct appeal due to taxpayer's withdrawal of claim and township's withdrawal of counterclaim, taxpayer sought judicial review of decision of County Board of Taxation dismissing taxpayer's challenge to township's property tax assessment relating to hotel that taxpayer owned and operated.

Township moved to dismiss for lack of subject matter jurisdiction, for failure to respond to a request for income and expense information, and for failure to pay taxes.

The Tax Court held that:

- Judgment issued by Tax Court in prior docket dismissing direct appeal did not bar taxpayer's filing of a petition of appeal at County Board for the same tax year, or subsequent appeal of County Board's decision to Tax Court;
- Fact that taxpayer first filed direct appeal challenging property tax assessment in the Tax Court did not deprive Board of jurisdiction; and
- Taxpayer failed to provide a sufficient factual basis to support finding that tax payment requirement should be relaxed in the interests of justice.

Judgment issued by Tax Court in prior docket dismissing taxpayer's direct appeal relating to township's property tax assessment and dismissing township's counterclaim due to their voluntary withdrawals did not bar taxpayer's filing of a petition of appeal of the tax assessment at County Board of Taxation for the same tax year, or subsequent appeal of the County Board's decision to the Tax Court.

Fact that taxpayer first filed direct appeal challenging property tax assessment in the Tax Court did not deprive County Board of Taxation of jurisdiction to render judgment upholding township's assessment, such that Tax Court had subject matter jurisdiction to review Board's decision on appeal; no simultaneous filings were involved, there were serial appeals, taxpayer filed first in the Tax Court in the direct appeal and then withdrew that appeal prior to the filing before the County Board, township voluntarily withdrew its counterclaim in the prior docket before taxpayer filed before County Board, there was no appeal pending by taxpayer or township when taxpayer timely filed its appeal at the County Board.

Taxpayer failed to provide a sufficient factual basis to support finding that tax payment requirement should be relaxed in the interests of justice, thus warranting dismissal for failure to pay taxes of complaint concerning township's property tax assessment relating to taxpayer's hotel, notwithstanding taxpayer's reference to reduction in income over what was projected to have been generated due to COVID-19 pandemic, leading to ultimate closure of hotel, all of which was not self-imposed by taxpayer; taxpayer did not produce any indication of any actions taken to ameliorate the negative effects on its business, or demonstrating what, if any, steps taxpayer took to reduce costs, obtain grants and loans, or otherwise attempt to deal with the crisis, and taxpayer's profit and loss statement, without any explanatory attachment, provided little factual support for request.

TAX - CALIFORNIA

CIM Urban REIT 211 Main Street (SF) LP v. City and County of San Francisco

Court of Appeal, First District, Division 5, California - March 3, 2022 - Cal.Rptr.3d - 2022 WL 620979 - 22 Cal. Daily Op. Serv. 2361

Following an unsuccessful administrative claim for a tax refund from city and county, two limited partnerships that each held title to real property filed an action against city and county, seeking a refund of nearly $12 million in tax, penalties, and interest paid after a merger that changed the ownership of limited partnerships' parent partnership triggered a transfer tax as to the properties.

The Superior Court denied limited partnerships' motion for summary judgment, and granted defendant's motion for judgment on the pleadings and summary judgment. Limited partnerships appealed.

The Court of Appeal held that:

- City and county ordinance did not conflict with state law;
- County recorder's failure to record and serve tax delinquency notice did not entitle limited partnerships to a refund of transfer tax;
- City and county were not required to hold a hearing prior to collecting delinquent transfer tax;
- Ordinance imposing a transfer tax on any "realty sold" applied to properties owned by limited partnerships;
- Ordinance imposing a transfer tax on realty held by a partnership upon partnership's termination applied to properties owned by limited partnerships;
- Limited partnerships were precluded from seeking a refund based on the argument they were not the proper taxpayer; and
- Language in merger agreement did not entitle limited partnerships to a refund.

City and county ordinance did not conflict with state law by imposing a tax rate on the transfer of real estate that exceeded the maximum authorized by state law, or by including in the tax base certain assets that were not actually conveyed, in tax refund action brought by limited partnerships that paid real property transfer tax to county and city following a merger involving their parent partnership; state law explicitly exempted city and county and charter cities from its mandates, and recognized that city and county had authority under home rule doctrine to impose transfer tax that did not conform to state law.

County recorder's failure to record and serve notice on limited partnerships of their tax delinquencies did not prejudice limited partnerships, and did not entitle them to a refund of real estate transfer tax paid to city and county following a merger that changed the ownership of limited partnerships' parent partnership; partnerships were adequately notified of the tax deficiency through a notice and demand for payment of transfer tax mailed to them by county recorder, failure to record the deficiency notice to notify third parties did not harm partnerships, and county recorder's failure to record and serve the notice was not jurisdictional.

City and county were not required to hold a hearing before the board of supervisors prior to collecting disputed transfer tax from limited partnerships, and thus limited partnerships were not entitled to a refund of real estate transfer tax paid to city and county following a merger that changed the ownership of limited partnerships' parent partnership; city and county ordinance required a hearing prior to imposing a lien against the real property, but not prior to collection of delinquent transfer tax.

City and county ordinance imposing a transfer tax on any "realty sold" applied to properties owned by limited partnerships following a merger that changed the ownership of limited partnerships'

parent partnership; plain language of ordinance and propositions amending the ordinance and approved by voters imposed transfer tax on any real property reassessed pursuant to state law following an acquisition or transfer of ownership interest, whether the entity involved in the acquisition or transfer owned the real property directly or indirectly, and thus included limited partnerships' property following the merger.

City and county ordinance imposing a transfer tax on any realty held by a partnership upon the partnership's termination applied to properties owned by limited partnerships following a merger that changed ownership of limited partnerships' parent partnership, although limited partnerships did not terminate, where the merger caused the original owner partnership to terminate.

Limited partnerships that each held title to real property were precluded from seeking a refund of transfer tax paid to city and county following a merger that changed the ownership of their parent partnership, based on an argument that limited partnerships were not parties to the merger and thus not liable for transfer tax under city and county ordinance; limited partnerships paid the transfer tax as part of stipulated dismissal of city and county's collection action without disclosing that they would seek a refund based on this defense, limited partnerships failed to exhaust their administrative remedies by not raising the defense in their tax refund claim to the city and county, and limited partnerships failed to assert this cause of action in their pleadings.

Single clause in merger agreement involving parent partnership of limited partnerships that held title to real property, stating that the agreement did not confer benefits on any person other than the parties and their successors and assigns, did not entitle limited partnerships to a refund of realty transfer tax paid to city and county following the merger based on an argument that limited partnerships, as non-parties to the merger, were not liable for transfer tax under city and county ordinance; limited partnerships did not offer any independent evidence that they were not successors and assigns of the parties to the merger, and ordinance applied to any entity for whose use or benefit the merger agreement was made.

Hawkins Advisory: March 31, 2022 Sunset for Telephonic Tefra Relief

The relief allowing TEFRA hearings to be held remotely is set to expire March 31, 2022. This Special Edition Hawkins Advisory alerts issuers to the need to resume in-person hearings.

View the Hawkins Advisory.

TAX - WISCONSIN

Brown County v. Brown County Taxpayers Association

Supreme Court of Wisconsin - March 4, 2022 - N.W.2d - 2022 WL 627819 - 2022 WI 13

Taxpayer advocacy organization challenged county's temporary sales and use tax ordinance.

The Circuit Court entered summary judgment for county. Organization appealed, and the Court of Appeals certified the appeal to the Supreme Court.

The Supreme Court held that since the ordinance funded projects that would otherwise have been paid for through additional debt obligations, the ordinance directly reduced property tax levy as

required by statute on county sales and use taxes.

Statute on county sales and use taxes does not require dollar-for-dollar reduction in property tax levy; instead, it authorizes counties to impose sales and use tax for specific purpose of directly reducing property tax levy, while leaving means to accomplish that purpose up to county.

County's temporary sales and use tax ordinance directly reduced property tax levy as required by statute on county sales and use taxes, where ordinance funded projects that would otherwise have been paid for through additional debt obligations.

TAX - KANSAS

Alliance Well Service, Inc. v. Pratt County

Court of Appeals of Kansas - January 21, 2022 - P.3d - 2022 WL 186578

Taxpayers, which were oil and gas well servicers, filed petition for judicial review of determination by county board of tax appeals (BOTA) that mobile well service rigs constituted "oil and gas property" rather than as tax-exempt under "commercial and industrial machinery and equipment" (CIME) statute, contending that Kansas Department of Revenue Property Valuation Division's Kansas Oil and Gas Appraisal Guide violated state statutes, state constitutional requirement of "uniform and equal" taxation, and federal Equal Protection Clause.

The District Court affirmed. Taxpayers appealed.

The Court of Appeals held that:

- Mobile oil well service rigs constituted oil and gas property under constitutional tax-classification provision;
- Equipment that Guide classified as "oil and gas property" was not treated disparately from equipment used in oil and gas operations but not specifically listed in Guide;
- Mobile oil well service rigs were not similarly situated to wireline equipment;
- Property Valuation Division had reasonable basis for imposing higher tax on rigs used on profitable versus unprofitable wells.

Mobile oil well service rigs constituted "oil and gas property" under constitutional provision governing tax classifications, and, thus, were not tax-exempt as commercial and industrial machinery and equipment (CIME); statute generally requiring all oil and gas property to be treated as personal property applied to equipment used in production of oil and gas, indicating legislature intended equipment used to produce oil and gas to fall within constitutional classification for oil and gas property rather than more general CIME classification, and legislature knew how to exempt specific subclasses of property from taxation, as with railroad machinery and equipment, but was silent on oil and gas property, indicating it did not fall within CIME exemption.

Equipment that oil and gas property valuation guide issued by Kansas Department of Revenue's Property Valuation Division (PVD) classified as "oil and gas property" was not treated disparately from equipment that was used in oil and gas operations but that was not specifically listed in guide, and, thus, separate classification of mobile oil well service rigs from unlisted equipment did not violate equal protection principles applying to taxation, where equipment not specifically classified in guide was treated as "all other tangible personal property not otherwise specifically classified," pursuant to state constitutional provision governing property classifications for tax purposes, and both oil and gas property and otherwise-unclassified tangible personal property were taxed at same

rate.

Mobile oil well service rigs, or workover rigs, were not similarly situated to wireline equipment, and, thus, Kansas Department of Revenue's classification of rigs as taxable "oil and gas property," rather than as tax-exempt commercial and industrial machinery and equipment (CIME), which was category that included wireline equipment, did not constitute disparate treatment of similarly-situated property in violation of equal protection principles applying to taxation; rigs were used in operations, including in completing, maintaining, restoring, and stimulating production of wells, whereas wireline equipment, which consisted of data logging tools used to test qualities of subsurface rock, was purely diagnostic and not used in production of oil and gas.

In promulgating Kansas Oil and Gas Appraisal Guide, Kansas Department of Revenue's Property Valuation Division had reasonable basis for allegedly imposing higher tax on oil and gas well service rigs used on profitable wells than that imposed on wells that were temporarily unprofitable, and, thus, higher tax on taxpayers' rigs did not violate equal protection principles applicable to taxation; as reflected in statute requiring oil and gas property to be taxed based on fair market value, which legislature declared would be primarily based on actual value of oil and gas production, policy of taxing actual production of equipment on leasehold could better serve oil and gas industry, as compared to taxing mere existence of equipment.

The Kansas Department of Revenue's Property Valuation Division's Kansas Oil and Gas Appraisal Guide classification of mobile service rigs as oil and gas property, within the tax classification scheme set forth by the Kansas Constitution, does not violate the Equal Protection Clause under the Fourteenth Amendment to the United States Constitution.

Lawmakers Target Sports Stadium Tax Breaks.

Three House Democrats reintroduced a bill last week that would eliminate public subsidies for the construction of professional sports stadiums.

Why it matters: Since 2000, 43 professional stadiums have been at least partially funded using $16.7 billion worth of such tax-exempt bonds, costing the federal government $4.3 billion in lost tax revenue, per a 2020 study in the National Tax Journal.

The backdrop: Washington Commanders owner Dan Snyder is looking to build a new stadium soon, and Reps. Don Beyer (D-Va.), Jackie Speier (D-Calif.) and Earl Blumenauer (D-Ore.) hope the shared rancor over Snyder's misdeeds will help their bill succeed where similar legislation has failed.

> *"Taxpayers-subsidized municipal bonds should no longer be a reward for the Washington Commanders and other teams that continue to operate workplaces that are dens of sexual harassment and abuse."*
> *— Speier*

Between the lines: This bill aims to reverse the "10% loophole," which was born from the 1986 Tax Reform Act.

How it works: A team wants to build a new stadium, so it reaches a deal with the local government: issue a bond for residents to buy, and give us the money for construction.

The loophole: If the government agrees to take less than 10% of the stadium's annual revenue, the bond is exempt from taxes (i.e. bond-holders don't need to pay federal tax on income earned from the bond).

The fallout: The government still needs to pay out dividends, and if it can't use revenue earned through the stadium, it must find that money elsewhere — often through raising taxes, finding a surplus or diverting funds earmarked for other projects.

The big picture: The logic behind these subsidies is that new sports venues act as economic anchors, but "arguments that stadiums boost job creation have been repeatedly discredited," said Beyer, whose claims are backed up by numerous reports.

Axios

by Jeff Tracy

Mar 1, 2022

GFOA: Collecting Sales Tax on Remote Commerce - the Work Continues

In the past, tracking sales tax trends primarily consisted of knowing your tax laws, your local economy, and the retail business community. But the function has evolved over time, and now finance officers need to know more about how remote sales (as in goods purchased from businesses outside your jurisdiction that are delivered to businesses or households in your community) are subject to either a sales or use tax obligation.

Publication date: February 2022
Author: Mike Bailey

DOWNLOAD

Congress Should Do More Than Block Tax-Exempt Bonds For Pro Sports Stadiums.

Virginia's efforts to subsidize a stadium and mixed-use commercial development for Dan Snyder and his Washington Commanders NFL football team would be a foolish waste of taxpayer money. But an attempt by three Democratic Members of Congress to block the funding scheme is misguided and short-sighted.

The bill, introduced by Representatives Jackie Speier (D-CA), Earl Blumenauer (D-OR), and Don Beyer (D-VA) would end the tax-exempt status of bonds used to finance professional sports stadiums.

That's fine as far as it goes. But rather than aiming only at pro sports (and really at Snyder), Congress should completely rethink private activity bonds. Should they be reserved only for public infrastructure, such as roads, bridges, and public schools? What about non-profit hospitals? Should Congress impose meaningful caps on the annual issuance of these bonds? Why should state and local governments use taxpayer money to subsidize any well-connected businesses to the detriment of

competitors that don’t have the clout to get cut-rate bond financing?

Continue reading.

Tax Policy Center

by Howard Gleckman

March 4, 2022

GFOA: Exploring Boston's Pilot (Payment in Lieu of Taxes) Project.

In this paper, we use the Financial Foundations framework to describe how Boston addressed a common-pool resource problem and gained about $17 million in new cash payments in lieu of taxes (PILOTs) from tax-exempt properties annually and $50 million in new in-kind contributions annually. This compares to Boston’s operating budget of $3.76 billion in 2022. We should recognize that Boston has enjoyed an unusual degree of success with its PILOT program among local governments. Other cities have tried to mimic features of the Boston program but with less success. By using the lens of the Financial Foundations framework, we hope to reach deeper into why Boston’s program has worked. A deeper understanding should allow for more successful replications.

Download.

Munis for Pro-Sports Stadiums Would Lose Tax Exemption in House Bill.

- **Legislation introduced this month by three House Democrats**
- **‘Much-needed public funding’ not needed for pro venues**

Democratic Congress members Don Beyer, Earl Blumenauer and Jackie Speier have introduced a bill that would end the tax-exempt status for new sales of municipal bonds that finance professional sports stadiums.

The legislation, proposed this month and called the “No Tax Subsidies for Stadiums Act of 2022,” says that any bonds sold to finance or refinance capital expenditures for a facility that’s used for professional sports games or practices wouldn’t be eligible for tax-exemption, a key feature of most municipal bond sales.

Stadium bonds are a controversial corner of the $4 trillion municipal market, where states and cities raise money to finance infrastructure projects. For years, local governments have vied with each other to lure professional teams with both lucrative subsidies and low-cost borrowing. Because the income earned from investing in most municipal bonds is often exempt from federal and state taxes, they typically pay a lower yield than taxable securities, reducing issuers’ financing costs.

The sponsors of the legislation say that benefit shouldn’t extend to professional sports facilities.

“This issue comes down to communities being held hostage,” Blumenauer, a representative from Oregon, said in a press release. “The NFL and these other sports leagues are a money-making machine that are rich enough to build their own facilities, and we don’t need to divert much-needed

public funding to these projects. Let's instead focus on spending our tax dollars on creating communities where all of our families can thrive."

In the press release, Speier, a representative from California, put the proposal in the context of allegations of sexual harassment against Daniel Snyder, owner of the NFL's Washington Commanders. The team played the last two seasons as the Washington Football Team after dropping the racial-slur Redskins title in 2020. Beyer is a representative from Virginia, where there's bipartisan backing in the state legislature for an effort to build a stadium for the team.

"Taxpayers-subsidized municipal bonds should no longer be a reward for the Washington Commanders and other teams that continue to operate workplaces that are dens of sexual harassment and sexual abuse," Speier said.

The Washington Post reported on the three representatives' proposal earlier.

Bloomberg Markets

By Danielle Moran

February 22, 2022

— *With assistance by Amanda Albright*

Franchise Fees and Streaming TV - Municipalities Across the Country Seek to Subject Netflix, Hulu, Amazon and Others to Franchise Fees to Offset Declining Revenue From Cable TV Providers.

A billion-dollar battle continues to play out in lawsuits pitting municipalities against providers of over-the-top ("OTT") video streaming services, like Netflix or Hulu. For decades, municipalities have raised revenues by collecting "franchise fees" from cable TV providers that needed to construct, install, or operate their facilities in public rights-of-way. More recently, however, many consumers have "cut the cord" on traditional cable TV service in favor of streaming services. That reduces cable companies' revenues, thus reducing the franchise fees they pay based on a percentage of revenues. And that hits municipalities in the bottom line. In at least 14 states, municipalities have reacted by suing OTT streaming companies, asserting that they owe franchise fees under the statewide video franchising statutes passed in many states in the 2000s to reduce entry barriers and boost video competition with cable. The stakes are high, as municipalities seek both back payments and to impose the fees going forward.

Threshold Question – Jurisdiction and Comity Abstention. A threshold issue in many of these cases is whether they can be removed to federal court. The Seventh Circuit sent one case back to Indiana state court by relying on the doctrine of comity abstention under *Levin v. Commerce Energy, Inc.*, 560 U.S. 413 (2010), reasoning that state courts were better positioned to address claims regarding local revenue collection and taxation, even when federal-law defenses were raised. *City of Fishers, Indiana v. DirecTV*, 5 F.4th 750 (7th Cir. 2021). A district court judge in Missouri remanded another case to state court on the same basis. *City of Creve Coeur, Missouri v. DirecTV,* LLC, 2019 WL 3604631 (E.D. No. Aug. 6, 2019). And the same kind of jurisdictional issue is currently pending at the Eleventh Circuit, where OTT streaming providers are challenging a Georgia district court's remand order. No. 21-13111 (11th Cir.), appealing *Gwinnet County, Georgia v. Netflix, Inc.,* 2021

WL 3418083 (N.D. Ga. Aug. 5, 2021).

Key Substantive Issues. Among the most recent cases is one brought by the City of East St. Louis against all the major streaming providers under Illinois' Cable Video and Competition Law of 2007 ("CVCL"), 220 ILCS 5/21-100 et seq. *City of East St. Louis v. Netflix, Inc.*, Case No. 3:21-cv-561 (S.D. Ill.). The case provides a good overview of the key substantive issues common to almost all these lawsuits. The Illinois statute, like many others adopted around the country in the aughts, allows cable or video service providers to obtain statewide "franchises" to provide service, which reduces barriers for entry over the typical town-by-town franchise approach for cable systems. Entities must obtain a statewide authorization if they would use the public rights-of-way to install or construct facilities for their cable or video service, as defined by statute. 220 ILCS 5/21-401(a)(1). And holders of such an authorization have to pay a franchise fee for the operation of the system. 220 ILCS 5/21-801(b) & (c).

Although East St. Louis's amended complaint brings a variety of claims, the key question is whether OTT video streaming providers are subject to the authorization requirement – and hence, more to the economic point, subject to the franchise fee obligation. The OTT providers recently filed motions to dismiss the amended complaint, making the full range of arguments they have made in similar cases nationwide. The main positions are that:

- OTT providers do not construct, install, or operate physical facilities in the public right-of-way, and so need not obtain a statewide authorization (or pay a franchise fee);
- OTT providers do not provide "video programming" under the CVCL, in that they do not control programming in the same
- way as a typical TV broadcaster;
  OTT providers do not operate a "video system" under the CVCL because they do not operate any facility in the public right-of-way, but rather hand streaming traffic over to the internet service providers that have facilities there;
- OTT providers' service is provided via the "public internet," and therefore they fall within the statutory exemption that prevents them from being deemed video service providers under the CVCL;
- The CVCL does not authorize a private right of action by municipalities, but rather has an express enforcement mechanism through the Illinois Attorney General;
- The City's claims are preempted by the federal Cable Act, which bars local franchise fees for OTT providers; andThe City's claims are barred by the First Amendment because they would impose an authorization requirement and fee on OTT streaming video providers, which would be an unlawful prior restraint on their ability to distribute video content, a discriminatory tax (because OTT music, literature, or news providers would not face the same duties), and an excessive fee on their right to speak.

Decisions to Date. Aside from the jurisdictional decisions noted above, rulings in these cases to date fall into three categories:

Certified Question to State Court: In Ohio and Tennessee, district courts have certified questions to the state supreme courts, asking them to decide whether the OTT streaming providers are "video service providers" under the relevant state statutes (and, in Ohio, whether there is a private right of action to enforce the statutes). *City of Maple Heights, Ohio v. Netflix, Inc.*, 2021 WL 2784440 (N.D. Ohio July 2, 2021); *City of Knoxville, Tennessee v. Netflix, Inc.,* No. 3:21-cv-00544 (E.D. Tenn. Sept. 8, 2021).

Denial of Motions to Dismiss: Courts in Missouri and Indiana have denied motions to dismiss, but have yet to decide the merits of the cases. *City of Creve Coeur, Missouri v. Netflix Inc.*, No. 18SL-

CC02819 (Mo. Cir. Ct. Dec. 30, 2020); *City of Fishers, Indiana v. Netflix Inc.*, No. 49D01-2008--L-026436 (Marion Sup. Ct. Jan. 18, 2022).

Merits Decisions for OTT Streaming Companies: Otherwise, in cases decided on the merits the OTT streaming companies are thus far undefeated at the trial-court level, though two decisions are on appeal (to the Ninth and Eighth Circuits). See *City of Reno, Nevada v. Netflix, Inc.,* 2021 WL 4037491, at *4-5 (D. Nev. Sept. 3, 2021) (appeal pending, 9th Cir., No. 21-16560) (OTT steaming service fell within statutory exception for service provided via the public internet; also, statute did not authorize a private right of action for municipalities); *City of Ashdown, Arkansas v. Netflix, Inc.,* 2021 WL 4497855, at *4 (W.D. Ark. Sept. 30, 2021) (appeal pending, 8th Cir., No. 21-3435) (OTT steaming service fell within statutory exception for service provided via the public internet; also, statute did not authorize a private right of action for municipalities); *City of New Boston, Texas v. Netflix, Inc.*, 2021 WL 4771537, at *5 (E.D. Tex. Sept. 30, 2021) (OTT streaming companies did not hold state-issued franchises, and so could not be subject to municipal franchise fees under Texas statute); *City of Lancaster, California v. Netflix, Inc.,* 2021 WL 4470939, at *5-12 (Cal. Super. Ct. Sept. 20, 2021) (OTT video sent over third-party internet service provider networks did not constitute "use" of public right-of-way so as to be subject to franchise fees, and OTT companies' content did not constitute "video programming" comparable to that provided by a television broadcast stations); *Kentucky v. Netflix, Inc.,* No. 15-CI-01117, at 12-15 (Ky. Cir. Ct. Aug. 23, 2016) (OTT companies' content was not comparable to "programming" by a television broadcast station and so fell outside state statute). The Attorney General of Ohio also recently filed an amicus brief in *City of Maple Heights, Ohio v. Netflix, Inc.*, Case No. 2021-0864 (S. Ct. Ohio Nov. 1, 2021), urging the Ohio Supreme Court to hold that Netflix is not subject to franchise fees under Ohio's video service law on several of the grounds mentioned above from the East St. Louis case.

What's Next? Given the dollars at stake, it seems likely these cases will linger for some time as they work through appeals, that more will be filed in 2022, and that parallel lobbying efforts will seek to address the issue at a legislative level. TV-related franchise fees have long been a rich source of litigation as technology evolves, and this is the latest high-stakes chapter.

Duane Morris LLP – J. Tyson Covey

February 21 2022

Most Investors Don't Need to Worry About the Alternative Minimum Tax Hitting Their Muni Bond Holdings These Days. Here's Why.

KEY POINTS

- Muni bonds are appealing in part because the interest they pay is typically free from federal taxation.
- However, some of them — private-activity bonds — are generally taxed under the alternative minimum tax calculation.
- Some muni bond funds are explicitly "AMT-free" so investors know their holdings won't generate income that's subject to the AMT.
- While 5 million people were subject to that taxation pre-2018, the share is now minimal due to tax-law changes in effect through 2025.

Continue reading.

cnbc.com

by Sarah O'Brien

FEB 18 2022

TAX - RHODE ISLAND

Providence Place Group Limited, Partnership v. State by and through Division of Taxation

Supreme Court of Rhode Island - January 25, 2022 - A.3d - 2022 WL 211287

Taxpayers, which held ground lease to shopping mall that was Rhode Island Economic Development Corporation project, brought action for judicial review of decision of Department of Revenue, which denied taxpayers' request for refund with respect to conveyance tax paid by taxpayers in order to expediently transfer first taxpayer's interest in mall to second taxpayer.

Taxpayers moved for summary judgment. The Sixth Division District Court granted motion.

Department petitioned for writ of certiorari and petition was granted.

The Supreme Court held that:

- General Assembly's intent that mall would continue to exist as tax-exempt Corporation project post-construction was readily apparent from findings and declarations the General Assembly made within statute authorizing public investment in development of mall;
- Mall was Corporation project, and thus taxpayers were not subject to conveyance tax; and
- Statute broadly exempting from taxation any real or personal property that qualified as Corporation project did not violate nondelegation doctrine of Rhode Island Constitution.

General Assembly's intent that shopping mall would continue to exist as tax-exempt Rhode Island Economic Development Corporation project post-construction was readily apparent from findings and declarations the General Assembly made within statute authorizing public investment in development of mall and associated parking garage; based on clear and unambiguous language of statute, more than one phase of project was contemplated and, once mall became operational, it was still considered project of Corporation.

Shopping mall was Rhode Island Economic Development Corporation project, and thus holder of ground lease for mall was not subject to conveyance tax when it transferred its interest in ground lease; statute broadly exempted from taxation any real or personal property that qualified as Corporation project, statute clearly and unambiguously attached tax exemption to property, and not to Corporation or specific lessee, and thus tax exemption afforded to Corporation, including exemption from conveyance tax, was afforded to mall.

Statute broadly exempting from taxation any real or personal property that qualified as Rhode Island Economic Development Corporation project did not violate nondelegation doctrine of Rhode Island Constitution, where standards accompanying delegation were clear.

TAX - RHODE ISLAND

Verizon New England Inc. v. Savage

Supreme Court of Rhode Island - February 9, 2022 - A.3d - 2022 WL 385934

Taxpayer, a wireless network operator, sought judicial review of decision of Tax Administrator for the State of Rhode Island that upheld an assessment of taxpayer's tangible personal property (TPP) tax and denied taxpayer's request for a lower assessment and a partial refund for TPP taxes paid.

Municipality moved to intervene as of right, followed by motion to intervene by movants, two other cities. The Sixth Division District Court granted municipality's motion, but denied movants' motion. Movants petitioned for a writ of certiorari.

The Supreme Court held that:

- There was no tangible basis for intervention;
- Movants failed to overcome the presumption of adequate representation;
- Movants' proffer of a generalized grievance common to all municipalities was conclusory and insufficient to overcome underlying presumption of adequate representation; and
- Movants' concerns regarding taxpayer's depreciation calculation method that other parties might not raise were speculative and failed to overcome the presumption of adequate representation.

How to Value Tax-Exempt Liabilities.

Discounting is the most common calculation in municipal finance. A rather mundane use of discounting is to convert bond prices into yields.

Significantly more important is assessing today's worth of future cash flows. It makes sense to report the benefit of a refunding transaction by summing the present values of future savings, rather than adding up undiscounted savings – the latter would surely overstate the true benefit.

In spite of its importance, the actual choice of the discount rate receives little attention in municipal finance. This is evident from the terminology: for starters, instead of a single discount rate, we should be referring to the term structure of discount rates. Provided that long-term rates are higher than short-term rates, distant cash flows should be discounted at higher rates than those nearby. An unfortunate custom in municipal finance is to discount every cash flow with the same rate, namely by the yield of the refunding issue.

This underestimates the worth of nearby savings, and overestimates that of savings in the distant future.

But let's leave the discussion of the term structure of interest rates to another day, and assume the yield curve is flat. However, even under this simplification, we are confronted with another question: should we really discount tax-exempt cash flows with a tax-exempt rate? Using a tax-exempt discount rate certainly seems reasonable. But consider a municipal issuer which has both taxable and tax-exempt bonds outstanding.

With the issuance of taxable bonds for advance refunding, this situation is becoming fairly common. To keep matters simple, assume that the bonds are optionless, and identical in all other respect. The market values of these bonds would certainly differ, depending on the tax considerations of the respective investors. However, we are considering these bonds from the perspective of the municipal issuer.

The cash flows generated by identical taxable and the tax-exempt bonds are unquestionably identical. Therefore, the present values of the cash flows generated must also be the same. **So the discount rate applicable to the cash flows should also be the same.** The question is whether this discount rate should be based on the issuer's taxable or tax-exempt borrowing rate.

In a co-authored paper with Bruce Tuckman "Subsidized Borrowing and the Discount Rate" – in the Winter 1999 issue of the Municipal Finance Journal, we argue that **the discount rate should be based on the municipality's taxable borrowing rate**. The core of the rationale is that because the taxable rate is unconstrained, excess cashflow can be invested at that rate. In contrast, the subsidized tax-exempt rate is applicable only to tax-exempt borrowing.

The taxable discount rate correctly determines the market price of a taxable bond, and underestimates the market price of a tax-exempt bond. Consider a 2% 10-year tax-exempt bond selling at par, when the issuer's taxable rate is 3%. The PV of the 2% bond at a 3% discount rate is 91.42%. The 8.58% difference between the par market value and the municipal issuer's 91.42% liability is a **measure of the federal subsidy**. This approach can be applied to the municipality's entire portfolio of liabilities, to determine its present value. A caveat is to use the term structure of discount rates, rather than a single discount rate, as in the example above.

More generally, using the "taxable discounting" approach we can estimate the aggregate subsidy granted by the federal government to issuers of tax-exempt bonds. According to a back-of-t-e-envelope calculation currently the federal subsidy is roughly $500 billion.

As discussed above, issuers should use their taxable borrowing rate to discount the cash flows generated by their tax-exempt liabilities. But how should callable tax-exempt bonds be handled? In that case the value of the underlying cash flows depends on the taxable rates, while the value of the call option depends on the tax-exempt rates. This is a thorny problem that we plan to address in the future.

BY SOURCEMEDIA | MUNICIPAL | 02/10/22

By Andy Kalotay, Ph.D.

TAX - COLORADO

Aurora Urban Renewal Authority v. Kaiser

Colorado Court of Appeals, Division II - January 6, 2022 - P.3d - 2022 WL 67850 - 2022 COA 5

City urban renewal authority, metropolitan districts, and limited liability company (LLC) brought action against county assessor and state Property Tax Administrator, alleging that apportionment methodology of Administrator's manual to calculate base and increment values in tax value of property violated urban renewal law seeking both declaratory and injunctive relief.

The District Court determined metropolitan districts and LLC lacked constitutional standing, urban renewal authority and metropolitan districts lacked standing to sue Administrator, and granted county assessor's motion for summary judgment. Urban renewal authority, metropolitan districts, and LLC appealed.

The Court of Appeals held that:

- Metropolitan districts and LLC adequately alleged facts sufficient to demonstrate injury in fact;
- Metropolitan districts and LLC had legally protected interest;
- Metropolitan districts had standing to bring action against Administrator;
- Urban renewal authority had standing to bring action against Administrator and county assessor;
- Urban renewal authority, metropolitan districts, and LLC did not fail to exhaust administrative remedies by failure to seek judicial review of Stat Board of Equalization action within 35 days;
- Portion of Administrator's manual that allowed county assessor to proportionately adjust base and increment tax values of property any time there was general reassessment was not contrary to urban renewal law; and
- Distinction of manual between direct and indirect benefits was contrary to urban renewal law's express purpose of rehabilitating slum or blighted areas.

Distinction of state Property Tax Administrator's manual used to calculate base and increment tax values of property between direct and indirect benefits was contrary to urban renewal law's express purpose of rehabilitating slum or blighted areas; proportionate allocation resulted in very small percentage of increase in value caused by urban renewal plan being allocated to urban renewal authority, manual's methodology did not effectuate legislature's intent to credit base value with increases in value caused by urban renewal plan, resulting virtual defunding of tax increment financing and urban renewal authorities made objective of urban renewal law impossible to achieve, and urban renewal plan did not authorize distinction between direct and indirect benefits.

TAX - MARYLAND

Gateway Terry, LLC v. Prince George's County

Court of Special Appeals of Maryland - January 26, 2022 - A.3d - 2022 WL 220151

Taxpayer, a foreign limited liability company (LLC) whose sole owner was pension fund for employees of county in another state, petitioned for judicial review of decision by the Tax Court affirming denial by state and county of refund of state recordation taxes and state and county transfer taxes paid on recording of deed conveying to taxpayer real property located in Maryland.

The Circuit Court affirmed. Taxpayer appealed.

The Court of Special Appeals held that:

- Term "State," as used in statutory exemption from state recordation taxes for transfers to governmental entities, referred only to the State of Maryland, not to any other state;
- Statutory exemption from state transfer taxes applied only to State of Maryland; and
- Exemption from county transfer taxes applied only to the State of Maryland.

Term "State," as used in statutory exemption from state recordation taxes for instrument of writing that transferred property or granted security interest to the State, agency of the State, or political subdivision in or of the State, referred only to the State of Maryland, not to any other state, even though general provisions article's definition of "State" with capital "S" to mean State of Maryland applied only if another definition was not provided and tax property article defined "State" or "state" to include a state of the United States, since tax-exemption statute used definite article "the" as opposed to indefinite article "a" with term "State," and statutory history confirmed tax property article's broader definition of "State" or "state" did not apply to tax-exemption statute.

The statutory exemption from state recordation taxes for transfers of property or granting of

security interest to a governmental entity applies only to an instrument of writing that transfers property or grants a security interest to the State of Maryland, its agencies, or its political subdivisions.

The statutory exemption from state transfer taxes for transfers of property or granting of security interest to a governmental entity applies only to an instrument of writing that transfers property or grants a security interest to the State of Maryland, its agencies, or its political subdivisions.

County code provision stating that conveyances to the State, any agency of the State, or any political subdivision of the State shall not be subject to the county transfer tax creates an exemption only for conveyances to the State of Maryland, an agency of the State of Maryland, or a political subdivision of the State of Maryland; it does not create an exemption for conveyances to another state, to an agency of another state, or to a political subdivision of another state.

Constitutional exception to exhaustion-of-administrative-remedies requirement did not apply to argument by taxpayer, a foreign limited liability company (LLC) whose sole owner was pension fund for employees of county in another state, that state and county taxing authorities had violated its equal protection rights by discriminating against it when they denied refund of state recordation taxes and state and county transfer taxes paid on recording of deed conveying to taxpayer real property located in Maryland on basis that exemptions from such taxes applied only to State of Maryland, its agencies, and its political subdivisions; taxpayer did not challenge constitutionality of exemptions as a whole, but only as applied.

This Hidden Muni Bond Tax May Trigger Higher Medicare Premiums.

KEY POINTS

- Municipal bonds, known as muni bonds, have become a popular option for investors seeking security and tax-free portfolio income.
- However, muni bond interest may trigger a costly surprise for higher-income retirees with Medicare premium increases.

Municipal bonds, also known as muni bonds, have become a popular option for investors seeking security and tax-free portfolio income. However, these assets may also trigger a costly surprise for retirees.

Demand surged in 2021 amid President Joe Biden’s proposed tax increases, with a record $96.8 billion of net money flowing into U.S. muni mutual and exchange-traded funds, according to Refinitiv Lipper data.

While plans to hike taxes have mostly stalled, muni bonds are still attractive to higher earners looking for stability, according to financial experts.

Continue reading.

cnbc.com

by Kate Dore

FEB 9 2022

High Municipal Bond Earnings Could Lead to Higher Medicare Premiums.

The popularity of municipal bonds among retired Americans has led to an interesting dilemma: They can earn more income thanks to interest on the bonds — but they might also face higher Medicare premiums because of it.

Many retirees have gravitated toward so-called “munis” because of their safety and tax-free income. A record $96.8 billion of net money flowed into U.S. muni mutual and exchange-traded funds in 2021, CNBC reported, citing data from Refinitiv.

For high-income retirees, however, gains from muni bond interest could lead to Medicare premium hikes. The scheduled Medicare Part B premium increase for 2022 is 14.5%, though that might change as the Centers for Medicare and Medicaid Services looks at the impact of Biogen’s recent decision to slash the price of its Aduhelm Alzheimer’s drug.

For now, the 14.5% increase is still in place, meaning the base amount for Medicare Part B premiums this year is $170.10 per month. But that payment goes up for joint filers with a modified adjusted gross income above $182,000 and single filers with a MAGI above $91,000.

“You’re looking at [Medicare Part B] premiums going up by about $70 or more per month,” Tracy Sherwood, a certified financial planner at New York-based Sherwood Financial Management, told CNBC. “That’s pretty significant.”

This is where tax-exempt muni bond interest comes into play. The earnings you get from it could get washed out by premium hikes and surcharges for Medicare Part B and Part D, known as the Income Related Monthly Adjustment Amount.

For those who file joint returns, the top Medicare Part B surcharge is $578.30 if your MAGI is $750,000 or higher, CNBC noted. High-income retirees could also face a hike in their premiums for Medicare Part D, which covers prescription drugs. In 2022, the top surcharge for Part D is $77.90.

Both of those calculations use MAGI from two years earlier, making it important for retirees to consider the consequences of the extra income they earn from municipal bond interest.

“It’s something that taxpayers seem so aware of because if they get into this higher bracket, they have to pay higher premiums for a full year,” Mary Kay Foss, a certified public accountant and faculty member at the CalCPA Education Foundation, told CNBC.

gobankingrates.com

By Vance Cariaga

February 10, 2022

Even When it Comes to the Mundane Forms 8038, the One Constant is Change: Squire Patton Boggs

To all of our readers, Belated Happy New Year! We will ring in 2022 with some belated news. Back in November of 2021, the IRS once again issued a memorandum that extends the ability to use an

electronic or digital signature on Form 8038 (Tax-Exempt Private Activity Bond Issues), Form 8038-G (Tax-Exempt Governmental Obligations) and Form 8038-GC (Small Tax-Exempt Governmental Obligations). This current extension will remain in effect until October 31, 2023. (I have no idea why Halloween (of 2023) was selected as the deadline, but it should be easy to remember!). In additional good news, when announcing this most recent extension on its website, the IRS stated that it is considering further extensions, but needs to balance the convenience of electronic signatures against the possibility of identity theft and fraud. This enquiring mind is curious as to who is filing fraudulent Forms 8038, and what benefit are they getting by doing so?

Continue Reading

The Public Finance Tax Blog

By Cynthia Mog on January 28, 2022

Squire Patton Boggs

TAX - VIRGINIA

Emmanuel Worship Center v. City of Petersburg

Supreme Court of Virginia - January 6, 2022 - S.E.2d - 2022 WL 52390

Taxpayer filed bill of review challenging issuance of decree of sale.

The Circuit Court dismissed bill. Taxpayer appealed.

The Supreme Court held that:

- Action underlying taxpayer's bill of review sounded in equity, rather than being an action at law for which bill of review would be unavailable, and
- Fact that taxpayer would be barred by statute of limitations from bringing an action against city to challenge validity of assessments on property allegedly subject to the self-executing exemption for property owned by religious organizations did not preclude taxpayer's use of such exemption as defense to city's attempt to sell the property in a tax sale.

Action underlying taxpayer's bill of review, in which city sought to sell taxpayer's property to collect delinquent real estate taxes, sounded in equity, rather than being an action at law for which bill of review would be unavailable.

Fact that taxpayer would be barred by statute of limitations from bringing an action against city to challenge validity of assessments on property allegedly subject to the self-executing exemption for property owned by religious organizations did not preclude taxpayer's use of such exemption as defense to city's attempt to sell the property in a tax sale; it would be an absurd result if a locality could issue assessment against any tax-exempt property and then seek sale if taxpayer did not respond within limitations period.

TAX - NEW HAMPSHIRE

Appeal of City of Berlin

Supreme Court of New Hampshire - January 12, 2022 - A.3d - 2022 WL 108571

City sought judicial review of order of Board of Tax and Land Appeals (BTLA) determining that city over-assessed taxpayer, an electric utility company, and challenged BTLA's decision to apply Department of Revenue Administration (DRA) median equalization ratio for intended tax year instead of prior tax year to determine proportionality of city's assessment of taxpayer's hydroelectric facility.

The Supreme Court held that BTLA's decision was unjust and unreasonable.

Board of Tax and Land Appeals' (BTLA) decision to apply Department of Revenue Administration (DRA) median equalization ratio for intended tax year instead of prior tax year to determine whether tax placed on hydroelectric facility was disproportionately higher in relation to its true value than to other property in general in city was unjust and unreasonable; when agreeing to admit taxpayer's exhibit showing DRA median equalization ratio, BTLA expressly noted that, standing alone, it did not establish propriety of particular ratio for city, and taxpayer failed to introduce any evidence regarding general level of assessment in city or supporting its preferred equalization ratio.

Private Letter Ruling Provides Extension for LLC to Self-Certify as QOF.

The Internal Revenue Service (IRS) last week released a private letter ruling granting an extension to a limited liability company to make a timely election to be certified as a qualified opportunity fund (QOF). PLR 202202009 determined that the failure of the LLC's accounting firm to file IRS Form 8996–which allows the self-certification as a QOF for the opportunity zones (OZ) incentive–was unintentional and the LLC acted reasonably and in good faith. The IRS also ruled that the government's interests are not prejudiced by providing an additional 45 days to file a Form 8996 to self-certify as an QOF. PLRs are directed only to the taxpayer requesting them and may not be used or cited as precedents.

A range of topics concerning OZs will be discussed at the Novogradac 2022 Spring Opportunity Zones Conference, April 21-22 in Long Beach, California.

Novogradac | Jan. 17

TAX - COLORADO

Bellock v. United States

United States District Court, D. Colorado - December 8, 2021 - F.Supp.3d - 2021 WL 5893982

"This case presents an issue of first impression on a question of the interplay between two different tax provisions: Rev. Proc. 92-29 and 26 U.S.C. § 103."

To construct the infrastructure for proposed residential subdivision, the developers (Developers) formed metropolitan districts (Metro Districts). The Metro Districts sought to pay for the necessary infrastructure through advances from Developers. The Developers invested a total of approximately $39 million for infrastructure in the various Metro Districts. In exchange for these payments, the

Metro Districts issued the Developers bond anticipation notes (BANs). The Metro Districts intended to pay 8.5% interest on the BANs out of future property taxes levied on homeowners and businesses in the districts.

The Developers elected to treat their development costs pursuant to the Alternative Cost Method, set out in Rev. Proc. 92-29, 1992-1 C.B. 748. Under the Alternative Cost Method, upon the sale of a portion of property, a developer is entitled to take an allocable share of the estimated expenses for common improvements in computing the costs of goods sold with respect to the sold property. Costs of common improvement may include funds advanced to third parties, such as the advances made to the Metro Districts here. The Developers thus included the advances to the Metro Districts as costs of construction for purposes of determining the costs of goods sold. "There is no dispute that the Developers did not act improperly when using the Alternative Cost Method."

With regard to the interest from the Bond Anticipation Notes, the Developers used the "accrual basis," which required them to take income into account when earned, not necessarily when received. Each year, the Developers treated the repayment of principal on the BANs as ordinary income; the Developers separately took the interest accruals on the BANs in each year into income as tax exempt pursuant to 26 U.S.C. § 103. Pursuant to section 103, gross income does not include interest on any state or local bond.

The IRS audited the Developers' tax returns for 2010 to 2013. The IRS determined that it was permissible for the Developers to have treated their investments as development costs pursuant to the Alternative Cost Method. However, the IRS found that, having done so, the Developers were foreclosed from treating the interest accruals on the BANs as tax exempt. The IRS thus assessed increases in tax liability for the Developers.

Neither Party disputed that the interest paid on the bonds issued by the Metro Districts would ordinarily be tax-exempt and qualify for the section 103 exclusion. The United States instead argued that the Developers' application of the Alternative Cost Method transformed the underlying transaction, such that the section 103 exemption could no longer apply.

The Developers paid the assessed increases and sought a refund of their payments.

The United States District Court held that nothing in Rev. Proc. 92-29, or the Developers' application thereof, removed this transaction from the purview of section 103.

"The obligation at issue in this case is an obligation to repay the bonds issued by the Metro Districts — that is, to repay the principal on the bonds. The interest on that obligation reflects a promise to pay 8.5% for the right to defer payment on the bonds to allow the Metro Districts to pay out of future property taxes. Thus, regardless of whether the underlying obligation is characterized as a bond, a purchase of goods, etc., the interest on that obligation is distinct and remains tax-exempt under section 103."

"The exemption in section 103 applies to the transaction here. The interest at issue in this case is interest on an obligation of a political subdivision and, as such, is tax-exempt. Neither the case law nor the general tax principles cited by the United States supports its argument that the Alternative Cost Method, set forth in Rev. Proc. 92-29, forecloses tax-exempt treatment under section 103. The IRS's assessment in this matter was thus erroneous."

IRS Updates Procedures for Determination Letter Requests.

The new procedures are outlined in Revenue Procedure (Rev. Proc.) 2022-04.

Rev. Proc. 2022-04 is a general update of Rev. Proc. 2021-4, published in Internal Revenue Bulletin 2021-01, which sets forth:

- general information about the types of advice provided by the IRS Employee Plans Office of Rulings and Agreements;
- general procedures for letter ruling and determination letter requests;
- specific procedures for determination letter requests; and
- user fees associated with advice requested from Employee Plans Rulings and Agreements.

In addition to minor non-substantive changes, including changes to dates, cross references and citations to other revenue procedures, the following substantive changes have been made to Rev. Proc. 2021-4.

Sections 5.01(4) and 8.01 are revised to provide that the procedures for obtaining an opinion letter regarding a 403(b) pre-approved plan's second six-year remedial amendment cycle beginning July 1, 2020 (and subsequent cycles) are set forth in Rev. Proc. 2021-37.

Sections 6.02 and 30.07 are revised to provide that Form 5300, Application for Determination for Employee Benefit Plan, may be submitted electronically beginning June 1, 2022, and must be submitted electronically beginning July 1, 2022, and to update the procedures for submitting Form 5300 and Form 5310, Application for Determination for Terminating Plan, including payment of the user fee.

Section 6.02(2)(a) is modified to delete "Trust Document" from the list of required documents that must be included as part of a determination letter submission.

Section 8.02 is modified to specify that a Form 5307, Application for Determination for Adopters of Modified Volume Submitter Plans, should be used in the case of a determination letter request for a standardized plan that is not a multiple employer plan if the employer requests a determination solely on overriding plan language added to satisfy Section 415 or 416.

Section 10.03 is modified to delete "trust documents" from the description of materials that must be submitted with a determination letter application.

Section 11.04 is modified to clarify that a plan sponsor of a dual-qualified plan must submit a restatement showing compliance with the Internal Revenue Code and applicable lists when submitting a determination letter application.

Sections 12.02, 12.03, and 12.04 are amended to clarify that an adopting employer of a standardized plan does not file a Form 5300 to request a determination related to overriding language necessary to coordinate (1) the application of the limitations of Section 415, or (2) the requirements of Section 416 because the employer maintains multiple plans.

Section 14.02 is modified to clarify the scope of reliance for a determination letter issued for a multiple employer plan.

Appendix A, Sections .01 and .05 are revised to update the user fees relating to letter ruling requests and opinion letters on pre-approved plans.

AMERICAN SOCIETY OF PENSION PROFESSIONALS & ACTUARIES

BY JOHN IEKEL

JANUARY 5, 2022

TAX - PENNSYLVANIA

O'Donnell v. Allegheny County North Tax Collection Committee

Supreme Court of Pennsylvania - December 27, 2021 - A.3d - 2021 WL 6111680

Taxpayer, who had received qui tam payment under False Claims Act (FCA), filed a petition for administrative appeal after tax servicer for the school district and the borough mailed him a notice that his local earned income tax was delinquent.

The Appeals Board of the Allegheny County North Tax Collection Committee denied the petition for administrative appeal, and taxpayer appealed. The Court of Common Pleas affirmed, and taxpayer appealed. The Commonwealth Court reversed, and school district and borough appealed.

The Supreme Court held that:

- Taxpayer's qui tam payment constituted "compensation" pursuant to Tax Reform Code's definition of "compensation" as including incentive payments; qui tam payment was taxpayer's incentive, and
- Taxpayer's qui tam payment was taxable as compensation under Tax Reform Code and, therefore, as earned income under the Local Tax Enabling Act (LTEA).

By the terms of the False Claims Act (FCA), taxpayer's qui tam payment was intended to incentivize whistleblowers like taxpayer to identify employer fraud, initiate the qui tam action, and provide valuable information to the federal government, and thus, taxpayer's qui tam payment constituted "compensation" pursuant to Tax Reform Code's definition of "compensation" as including incentive payments; qui tam payment was taxpayer's incentive.

Because taxpayer's qui tam payment under False Claims Act (FCA) was an incentive payment, it was taxable as compensation under the plain language of the Tax Reform Code and, therefore, as earned income under the Local Tax Enabling Act (LTEA), which authorized certain political subdivisions, such as school district, to impose a tax on the earned income of their residents.

While taxpayer's qui tam payment under False Claims Act (FCA) was categorized most aptly as a taxable incentive payment, it also met Tax Reform Code's definition of "compensation" for "similar remuneration for services rendered"; qui tam payment was rendered as remuneration for taxpayer's services in providing useful information to the federal government about his employer's fraud and for initiating the qui tam action.

Revisions to Ohio Statute Governing Centralized Municipal Business Tax Collections to Take Effect for Tax Year 2022.

The Ohio General Assembly passed House Bill 228, which will change the way municipal net profits taxes are collected beginning January 1, 2022. The provisions also include removal of a 0.5%

administrative fee that the Ohio Department of Taxation had previously withheld from distributions to municipalities, which the Ohio Supreme Court found to be unconstitutional as a result of a lawsuit brought by nearly 200 Ohio cities and villages. See *City of Athens v. Ohio Tax Commissioner*, Ohio Supreme Court, Case No. 2019-0693, 2019-0696.

On November 5, 2020, the Court held 4 to 3 that it is constitutional to give taxpayers the option of centralized collection of municipal net profits tax, but it is unconstitutional for the state to skim off a fee of 0.5%. Justices Michael Donnelly, Maureen O'Connor, Patrick Fischer, Melody Stewart in the majority. Justice Sharon Kennedy would have held both issues unconstitutional. Justices Pat DeWine and French dissent.

The revised notification process gives the state tax commissioner, rather than taxpayers, the responsibility to notify municipalities of the taxpaying business' election to use the state's centralized collection system. Under prior law, the taxpayer had to notify each municipality in which it conducted business, creating additional work for taxpayers and municipalities. Under the new law, the taxpayer notifies the tax commissioner of its election and where it does business. The tax commissioner is also required to provide quarterly reports to municipalities, streamlining communications and reducing opportunities for error.

H.B. 228 also requires the state to develop a new web portal for the secure exchange of information between the state department of taxation and municipalities. This provision does not set a deadline for the development of this portal. Lastly, the clean-up provisions eliminate the 0.5% fee that the state could withhold from municipal tax distributions under previous law. The Ohio Supreme Court held that this fee was unconstitutional because it was not encompassed within the state's authority to limit the municipal power to levy taxes. Aside from the immediate effect of keeping those municipal tax dollars for municipalities, this holding also prevents the State from increasing the fee in the future.

Municipal tax professionals and other municipal leaders should continue to track legislative proposals for changes to Chapter 718 and the centralized collection system, which will now be reliant entirely on the General Assembly for funding.

Frost Brown Todd LLC – Frank J. Reed, Jr. and Thaddeus M. Boggs

January 7 2022

TAX - COLORADO

Kerr v. Polis

United States Court of Appeals, Tenth Circuit - December 13, 2021 - F.4th - 2021 WL 5873156

Political subdivisions, elected officials, educators, and citizens brought action against governor challenging constitutionality of Taxpayer's Bill of Rights (TABOR), which limited revenue-raising power of state and local governments by requiring voter approval in advance for any new tax.

The United States District Court denied governor's motion to dismiss for lack of standing and certified its order for interlocutory appeal. The Court of Appeals accepted jurisdiction and affirmed. The United States Supreme Court granted petition for writ of certiorari, vacated, and remanded. The Court of Appeals vacated and remanded. On remand, the District Court dismissed complaint, and plaintiffs appealed. Rehearing en banc was granted.

The Court of Appeals held that:

- Subdivisions had standing to bring action;
- Guarantee Clause did not confer right on political subdivisions that they could enforce against their parent state; and
- Colorado's Enabling Act did not create cause of action permitting political subdivisions to challenge TABOR.

Political subdivisions had standing to bring action challenging constitutionality of Colorado's Taxpayer's Bill of Rights (TABOR), which limited revenue-raising power of state and local governments by requiring voter approval in advance for any new tax; subdivisions incurred costs and expenses necessary to present matters to voters for their decision, those costs were fairly traceable to TABOR's requirements, and, if TABOR were struck down, their injury would be redressed.

Colorado's Enabling Act did not create cause of action permitting political subdivisions to challenge Colorado's Taxpayer's Bill of Rights (TABOR) on ground that it violated Act's guarantee of "constitution republican in form"; clause promising constitution republican in form had no clear beneficiary, and, aside from references to common schools, references to other subordinate political entities were nowhere to be found in Act.

TAX - WISCONSIN

State ex rel. City of Waukesha v. City of Waukesha Board of Review

Supreme Court of Wisconsin - December 21, 2021 - N.W.2d - 2021 WL 6014968 - 2021 WI 89

City sought certiorari review of city board of review's determination of taxable value of particular piece of private property.

The Circuit Court granted writ and denied board's subsequent motion to quash. Board appealed. The Court of Appeals reversed and remanded. City petitioned for review.

The Supreme Court held that statute allowing certiorari review of board of review decision does not allow municipality to seek certiorari review of municipality's board of review.

In Case You Missed It: Last Week in Allyn Tax News

Arkansas: Use Tax Refund Claim for Computer Hardware Denied

A taxpayer requested a refund claim on use tax paid on purchases of computer hardware maintenance on services rendered outside of Arkansas. The Arkansas Department of Finance & Administration did not dispute the taxability of the services instead, the Department denied the request because the taxpayer failed to provide substantial documentation demonstrating that these were out-of-state services. It is the taxpayer's responsibility in this case to establish clear evidence for entitlement to a refund.

A reverse (tax) audit, sometimes called an overpayment review, is an optional review of a company's

use tax accrued and/or sales tax paid on purchases for the purpose of identifying over-accruals or overpayments to states in the form of use tax or vendors in the form of sales tax. Ultimately, the goal is to obtain a tax refund from the state or locality of the sales or use tax it has overpaid. The review can be performed by a company itself or by a third-party tax professional skilled in the nuances of US state and local taxes.

Use Tax Due on Free Meal Provided to Employees in Illinois

Effective December 3, 2021, the Illinois Department of Revenue has increased the presumed average cost of free meals provided to employees for purposes of establishing employers' use tax liability from $.75 to $3.50. The amendments to Ill. Admin. Code §130.2050 requires that the use tax is to be paid at the rate that would have been imposed when the employer acquired the goods from the supplier.

Kentucky Sales and Use Tax Disaster Relief Refund Guidance

Kentucky Department of Revenue has released frequently asked questions about the sales and use tax disaster relief refund. Refunds on the sales and use tax paid on the purchase of building materials for restoration of an existing building or for construction to replace a destroyed building in a federally declared disaster area may be issued for legal building owners with damaged property from a disaster. For counties affected by severe storms, tornados, and flooding from December 10 to December 11, 2021, a disaster declaration has been issued. These counties have been determined as Caldwell, Fulton, Graves, Hopkins, Marshall, Muhlenberg, Taylor, and Warren. The refund consists of 100% of Kentucky sales and use tax paid for building materials, not including vendor's compensation, up to $6,000 for each building. The building materials must have been purchased on or after December 12, 2021, and the owner must file appropriate documentation within three years from the date the disaster area is declared. Separate refund applications must be submitted for each building. The appropriate documentation consists of an application for the Kentucky disaster relief sales and use tax refund (Form 51A600), all information providing agreements with contractors, vendors and other related parties (Form 51A601), an expenditure report with details of sales receipts and invoices (Form 51A602), any photographs or other documents evidencing the need for a refund, and either documentation that the legal building owner is eligible for assistance from the Federal Emergency Management Agency or a copy of the insurance claim filed for the damage or destruction of the building in the disaster area.

Sales of Security and Alarm Services in Arkansas: Taxable or Exempt?

In Arkansas, sales of security and alarm monitoring systems are included within taxable services. This resulted in a sales tax assessment against a taxpayer who provides security services to be sustained. While an exemption does exist for security services performed by permanent employees, temporary employees, or leased employees of the buyer, the taxpayer did not prove that he met the requirements for this exemption.

The taxpayer did not maintain adequate records to show sales of invoices. Therefore, the assessor used the taxpayer's income tax returns and 1099-misc. forms to approximate the sales of security services, which were deemed taxable.

Car Sharing in Florida Subject to a Rental Car Surcharge

Beginning January 1, 2022, when a motor vehicle is rented through a peer-to-peer car sharing program, the peer-to-peer car-sharing program must collect and remit the applicable tax and rental car surcharge due in connection with the rental. A peer-to-peer car-sharing program is a business

platform that enables peer-to-peer car sharing by connecting motor vehicle owners with drivers for financial consideration.

A peer-to-peer car sharing program is required to register to collect sales tax, discretionary sales surtax and the rental car surcharge applicable to motor vehicles rented through the peer-to-peer car sharing program. Peer-to-peer car-sharing programs are required to submit a registration application for each county in which business is located. A $1.00 per day rental car surcharge applies to the first 30 days of the agreement involving shared vehicles through peer-to-peer car-sharing programs. If the car-sharing period is less than 24 hours, the surcharge is $1.00 per use. The rental car surcharge should be separately stated on the sales invoice and is subject to sales tax and discretionary sales surtax. The surcharge applies to vehicles designed to carry fewer than nine passengers.

U.S. Supreme Court has ruled Ohio Billboard Tax is Unconstitutional

The U.S. Supreme Court was asked to review a case regarding the city of Cincinnati's excise tax on billboard signs on grounds of it being unconstitutional. The city requires an "advertising host," meaning the billboard company, to pay the greater of either 7% of gross receipts generated from a billboard, or an annual minimum amount. A selective tax like this is subject to analysis and will only continue to be enforced if the government defends the tax by demonstrating that it promotes a compelling government interest and is customized to achieve that interest. The issue of this tax is that it is imposed only on a small number of billboard companies, so it was thought of as violating the rights to freedom of speech and a free press which is protected by the First Amendment to the U.S. Constitution. Through definitions and exemptions with the City's municipal code, the burden falls mainly on only two billboard companies. These companies may not be singled out or targeted, since they are speakers and publishers of speech engaging in an act protected by the First Amendment. Even though the City has interest in raising money to support the local government, there are other sources of revenue it can pursue. Consequently, the tax was ruled unconstitutional.

Allyn International

December 28 2021

TAX - WISCONSIN

State ex rel. City of Waukesha v. City of Waukesha Board of Review

Supreme Court of Wisconsin - December 21, 2021 - N.W.2d - 2021 WL 6014968 - 2021 WI 89

City sought certiorari review of city board of review's determination of taxable value of particular piece of private property.

The Circuit Court granted writ and denied board's subsequent motion to quash. Board appealed. The Court of Appeals reversed and remanded. City petitioned for review.

The Supreme Court held that statute allowing certiorari review of board of review decision does not allow municipality to seek certiorari review of municipality's board of review.

[Local Assessors Seek Federal Help to Make Property Taxes Fairer.]

Municipal officials want information from Fannie and Freddie's appraisal database.

A group of municipal property-valuation officials from across the U.S. has asked President Joe Biden's administration for help in tapping national data about the condition and quality of millions of homes to address widespread unfairness in local property taxes.

The effort follows a series of Bloomberg News reports this year about how residential property taxes, which raise roughly $500 billion a year nationwide, are plagued by systemic flaws: Official assessments tend to overstate the taxable value of inexpensive homes while understating the value of expensive ones. As a result, working-class homeowners pay higher effective property tax rates than the wealthy do.

In Chicago, the problem is most acute "in the bottom third of prices," said Cook County Assessor Fritz Kaegi. "And we think this is due to things that we are not measuring" with available data, he said: "quality and condition of homes."

Kaegi has suggested that the Uniform Appraisal Database maintained by the federally chartered mortgage buyers Fannie Mae and Freddie Mac might help plug the gap. The UAD contains information on the condition and quality of millions of U.S. homes that were appraised for mortgages. Kaegi recruited 15 other tax officials from major urban areas — including Seattle, Miami, Philadelphia and Dallas — to join him in asking for access to that information.

Federal officials haven't committed to granting the request; one primary concern centers on the need to filter out private information, such as names of owners and lenders, while preserving useful data on homes' quality. But the local officials' group is scheduled to meet with representatives of the Federal Housing Financial Agency in January to discuss the proposal.

Residential property taxes are generally based on the fair market value of a home, as determined by local officials. Most assessments are based on recent sales. Generally, assessors use sales data to estimate values for all the homes in a jurisdiction. That process, known as mass appraisal, relies on computer models that calculate the average value of individual attributes, such as square footage of living space and number of bathrooms, and applies them to each residence.

But local assessors are barred from entering homes without permission, so they have no real data on each one's relative quality, including individual improvements or maintenance issues that might affect value. It's generally accepted that affluent homeowners are less likely to put off repairs, making high-priced housing stock more uniform and therefore easier to value. Experts say assessed values at the low end of the scale tend to vary more, contributing to inflated values.

Kaegi, who took office in 2018, says the UAD can provide the information assessors currently lack. He argues that because Fannie and Freddie are under federal conservatorship, administration officials can release the data to local assessors.

A former portfolio manager and neophyte politician, Kaegi won office by promising to bring fairness and accuracy to a deeply regressive system in Chicago. One study showed that inaccurate assessments in the area had shifted more than $2.2 billion in taxes from the highest-priced homes to the lowest over five years' time. Now three years into his four-year term and seeking re-election, Kaegi has upgraded the agency's valuation models — the new ones use machine learning — and expanded the data sources used to value properties. He boosted transparency by posting detailed statistical reports on assessments online, with explanations of the agency's methods. But while his

staff has narrowed disparities in the county's valuations, Kaegi says, gaps remain, especially among the least valuable properties.

Moreover, his efforts to correct valuations that were inaccurate and unfair for years have drawn opposition from business groups and some homeowners, illustrating the political difficulty of overhauling property tax systems.

Critics complain that Kaegi used sketchy data to justify a roughly 10% Covid reduction for residential assessments in early 2020, just as most office buildings and some small businesses saw dramatic increases as assessors addressed chronic inaccuracies. Then, during the pandemic, residential property values boomed while downtown office buildings and businesses reeled, and Cook County saw just the kind of unwarranted tax shift Kaegi had said he'd end. Opponents say he was currying favor with homeowners. Kaegi says he used the best data sources he had at the time, primarily unemployment figures and information about the impact of Covid on real estate investment trusts.

"It was the opposite of fair and accurate," said Farzin Parang, executive director of the Building Owners and Managers Association of Chicago, an office building trade group, and staunch critic of Kaegi. "From our perspective, the entire thing was completely political."

Now Kaegi's trying to foster nationwide improvements.

Last March, after Bloomberg published a story that highlighted a new, nationwide study about widespread regressivity in property taxes, the University of Chicago professor who led the research met with White House staff members. Christopher Berry, a professor of public policy, walked the officials through his data analysis, which found unfair valuations in roughly nine out of every 10 U.S. counties it examined. Kaegi joined a follow-up meeting in April, where he pitched his request to use the UAD to gain insights about the condition and quality of homes.

In an interview, Berry said he thinks tapping the UAD is a good idea that would involve few costs for the federal government — but said it may lead to only marginal improvements. "That's the only way this thing is going to get better, small continuous improvements," he said.

Kaegi's analysts have estimated that missing information about a home's condition and quality could swing a valuation estimate up or down by tens of thousands of dollars. For homes at the lower end of the price scale — $100,000 or less in Chicago — that could result in highly unfair valuations.

In August, Kaegi and his 15 counterparts from across the country wrote to the White House for help in accessing the relevant UAD data. A senior administration official said a presidential task force that's examining racial equity in home-loan appraisals is also committed to exploring property-tax fairness, though federal officials have little authority over local taxes.

Sharing appraisal data from the UAD would be a good start, said King County Assessor John Wilson in Seattle. "The information is well worthwhile," he said. "It would help us on some of the questions we've all had about whether there are some things inherently discriminatory in our assessments."

Bloomberg Business

By Jason Grotto

December 23, 2021

U.S. Supreme Court Has Ruled Ohio Billboard Tax is Unconstitutional.

The U.S. Supreme Court was asked to review a case regarding the city of Cincinnati's excise tax on billboard signs on grounds of it being unconstitutional. The city requires an "advertising host," meaning the billboard company, to pay the greater of either 7% of gross receipts generated from a billboard, or an annual minimum amount. A selective tax like this is subject to analysis and will only continue to be enforced if the government defends the tax by demonstrating that it promotes a compelling government interest and is customized to achieve that interest. The issue of this tax is that it is imposed only on a small number of billboard companies, so it was thought of as violating the rights to freedom of speech and a free press which is protected by the First Amendment to the U.S. Constitution. Through definitions and exemptions with the City's municipal code, the burden falls mainly on only two billboard companies. These companies may not be singled out or targeted, since they are speakers and publishers of speech engaging in an act protected by the First Amendment. Even though the City has interest in raising money to support the local government, there are other sources of revenue it can pursue. Consequently, the tax was ruled unconstitutional.

Allyn International

December 23 2021

TAX - CALIFORNIA

Lejins v. City of Long Beach

Court of Appeal, Second District, Division 1, California - December 1, 2021 - Cal.Rptr.3d - 2021 WL 5628744

Property owners petitioned for writ of mandate challenging surcharge municipality imposed on its water and sewer customers by embedding surcharge in rates water department charged its customers for service.

The Superior Court granted judgment for owners and awarded them attorney fees. Municipality appealed.

The Court of Appeal held that:

- Voter-approved surcharge had been imposed upon parcel or upon person as incident of property ownership within meaning of constitutional provision governing special taxes;
- Voters' approval of surcharge did not prevent it from violating constitutional provision governing special taxes; and
- Transfer or surcharge that was not in any way related to costs of providing water and sewer services was prohibited by Constitutional provision governing special taxes.

Ability of person to own real property without obtaining water or sewer service did not prevent voter-approved surcharge for water and sewer services that supported variety of municipal services, such as 9-1-1 emergency response, police-fire protection, street-pothole repairs, senior services, parks, and libraries from being imposed upon parcel or upon person as incident of property ownership within meaning of constitutional provision governing special taxes.

Surcharge for water and sewer services that supported variety of municipal services, such as 9-1-1

emergency response, police-fire protection, street-pothole repairs, senior services, parks, and libraries violated constitutional provision governing special taxes although it had been approved by voters.

Transfer or surcharge that was not in any way related to costs of providing water and sewer services was prohibited by Constitutional provision governing special taxes; although surcharge raised unrestricted revenue to support variety of municipal services, such as 9-1-1 emergency response, police-fire protection, street-pothole repairs, senior services, parks, and libraries, it did not reimburse municipality for costs associated with water department's use of its infrastructure.

TAX - WYOMING

Winney v. Hoback Ranches Property Owners Improvement and Service District

Supreme Court of Wyoming - November 24, 2021 - P.3d - 2021 WL 5504238 - 2021 WY 128

Landowners in rural residential subdivision brought action against neighbor and property owners improvement and service district, alleging violations of protective covenants and illegal imposition of property tax levies, and neighbor and district filed counterclaim alleging that landowners violated protective covenants.

The District Court granted summary judgment for district and, after a bench trial, entered judgment for neighbor on claim against him. Landowners appealed.

The Supreme Court held that:

- District's authority to levy taxes was not limited to eight mills as outlined in petition to form district;
- Protective covenant requiring buck and pole fencing applied to subdivision's perimeter fence on landowners' property;
- District's alternative argument as to inequities in enforcing covenant as to fencing was best left for a first determination on remand; and
- Neighbor's performance of road maintenance and snowplowing for subdivision did not violate covenant prohibiting commercial activity.

Authority of property owners improvement and service district, as a political subdivision of state, to levy taxes in rural residential subdivision in county was not limited to eight mills as outlined in petition to form district, where Improvement and Service District Act did not impose a mill levy or other cap on a district's authority to tax, Act specifically allowed a district to change amount or rate it charged for use of improvements and services it provided, and landowners were on notice that any district that was formed would have authority to collect revenue and to "change the amount or rate thereof.

TAX - LOUISIANA

Calcasieu Parish School Board Sales & Use Department v. Nelson Industrial Steam Company

Supreme Court of Louisiana - December 10, 2021 - So.3d - 2021 WL 5860861 - 2021-00552 (La. 10/10/21)

School board sales and use department and administrator of the department filed suit against steam company for failure to pay use tax on its purchase of limestone.

The District Court granted summary judgment in favor of plaintiffs. and denied company's exceptions, motion for summary judgment, and cross motion for summary judgment. Company appealed. The Court of Appeal reversed. The Supreme Court reversed and remanded. The Third Circuit Court of Appeal reversed. Application for review granted.

The Supreme Court held that amendment to use tax provision for materials further processed was new tax, within meaning of Tax Limitation Clause.

Amendment to use tax provision for materials further processed into a byproduct for sale, which included as taxable incidental byproducts that had previously been exempt from use tax as sales for further processing was "new tax," within meaning of Tax Limitation Clause, requiring that any levy of a new tax or tax increase be approved by two-thirds of the state legislature.

TAX - OHIO

State ex rel. Pike County Convention and Visitor's Bureau v. Pike County Board of Commissioners

Supreme Court of Ohio - November 16, 2021 - N.E.3d - 2021 WL 5313119 - 2021-Ohio-4031

County convention and visitor's bureau brought action against county board of commissioners and county auditor, seeking writ of mandamus compelling board and auditor to disburse to bureau the proceeds of a county-imposed sales tax on hotel lodging.

The Supreme Court held that:

- Bureau's claim was cognizable in mandamus;
- Board had discretion to redirect the tax proceeds to new entity;
- Board did not abuse its discretion in redirecting tax proceeds to new entity; and
- Bureau failed to establish clear legal right to retrospective monetary relief.

County convention and visitor's bureau's claim against county board of commissioners and county auditor, seeking disbursement to bureau of proceeds of county-imposed sales tax on hotel lodging based on statute authorizing the tax, was cognizable in mandamus; bureau's complaint sought to compel rather than prohibit official action, even though the requested relief would, in effect, prohibit the enforcement of certain resolutions of the board.

County board of commissioners, under statute authorizing tax on lodging, had discretion to redirect from county convention and visitor's bureau to another entity the proceeds of county-imposed sales tax on hotel lodging; other than prescribing a duty on board to earmark a residual percentage on tax proceeds for "the convention and visitors' bureau operating within the county," the statute said nothing more concerning the recipient of the funds, and the absence of statutory guidance concerning how an entity was designated to receive tax revenue was to be read as a grant of discretion on that point.

County board of commissioners did not abuse its discretion in redirecting from county convention and visitor's bureau to another entity the proceeds of county-imposed sales tax on hotel lodging, precluding bureau's claim for mandamus relief ordering board to disburse the proceeds to bureau prospectively; board explicitly enacted resolution redirecting the proceeds to new entity in response

to documented findings of financial negligence by bureau, resolution referred to the findings as basis for the action taken, and period of more than a year between publication of the findings and passage of the resolution did not establish an arbitrary or unconscionable attitude on the part of the commissioners.

County convention and visitor's bureau failed to establish a clear legal right to retrospective monetary relief with respect to proceeds of county-imposed sales tax on hotel lodging allegedly withheld unlawfully or redirected by county, in bureau's mandamus action; resolution of county board of commissioners redirecting the proceeds to another entity was not an abuse of discretion under statute authorizing tax on lodging, and even if an earlier resolution of the board improperly withheld proceeds from the bureau, the bureau no longer qualified as entity designated to receive the proceeds under the statute in light of subsequent actions of the board.

Pot Taxes May Yield $12 Billion for States by 2030 Says Barclays.

- **Legal weed will blunt budget pain after federal aid runs out**
- **California raised about $1 billion in pot revenue in 9 months**

When U.S. states and municipalities burn through their federal coronavirus relief money, taxes on legal weed will help blunt the budget pain.

Cannabis tax revenue generated more than $2 billion in the U.S. last year and that could grow to $10 billion to $12 billion for states by 2030, exceeding tax revenue from alcohol, according to municipal-bond strategists at Barclays Plc. This year, five states–New York, New Jersey, Connecticut, Virginia and New Mexico legalized recreational pot, bringing to 18 the number of states enacting law to regulate and tax cannabis for adult use.

"We'll have some long lasting consequences of the pandemic and you'll need to make money up somewhere," said Mikhail Foux, Barclays head of municipal strategy.

For now, U.S. municipalities are swimming in cash. States and cities collected $350 billion from the Covid-19 stimulus package to spend on everything from subsides for low income renters to pay increases for teachers. They also plan to fund hundreds of millions of dollars on projects like broadband and water and sewer upgrades — and that's before they get another massive infusion of cash from the $550 billion infrastructure package approved last month.

Municipalities must commit the stimulus money by 2024, and spend it by 2026. And when the federal money's gone, municipalities will need to find new revenue to pay for ongoing programs they funded with one-time aid.

Legal sales of cannabis totaled $17 billion in 2020 and should grow to as much as $27 billion this year, according to Barclays. By 2030 sales should reach about $80 billion, the London-based bank estimates.

California took in almost $1 billion in cannabis tax revenue in the first three quarters of 2021, a 21% increase over the same period the prior year. California may bring in $1.7 billion in cannabis revenue by 2026, while New York, New Jersey and Connecticut could generate as much as $2 billion, Barclays estimated.

There's more growth potential in populous states like Florida and Pennsylvania that haven't yet

legalized recreational weed.

Bloomberg Politics

By Martin Z Braun

December 3, 2021

What Happens if Muni Bonds Stop Being Tax-Free?

The 2017 Tax Cuts and Jobs Act was a wake-up call, one analyst says

For decades, everything from sewer systems to schools to stadiums have been built by debt issued by state and local governments. Municipal bonds are a mainstay of the American economy: They level the playing field between tiny towns and massive state economies, letting every issuer reach investors who want a steady stream of income that's also tax-free.

But what if tax-free bonds stopped being tax-free?

One analyst thinks the market should be more prepared for such a shift. "I don't see an immediate threat," said Tom Kozlik, head of municipal research at HilltopSecurities, in an interview with MarketWatch. But in an era where deficit reduction may start to resonate more for lawmakers even as low taxes reign supreme, Kozlik says the muni market needs to be vigilant.

Continue reading.

MarketWatch

By Andrea Riquier

Dec. 2, 2021

Fitch: Home Price Increases Have Varied Effect on Property Taxes

Fitch Ratings-New York-03 December 2021: Local governments in some states are better positioned to benefit in the near to medium term from strong home price growth, says Fitch Ratings. The potential revenue impact depends on a municipality's property tax regime, home price trends and the historical relationship between home price trends and property taxes, which reflects tax policy and government action. Fitch ranked states according to the possible tax revenue impact based on an index of these three factors.

Home price growth has surged in all states but has been uneven. Municipalities in states near the top of the ranking may see a boost to property taxes because of higher home price growth, the contribution of property taxes to total revenues and tax policies that capture this growth.

Property taxes are a smaller portion of overall tax revenues for municipalities in states ranked near the bottom. These states have had less exuberant home price growth, and there is little or no correlation between historic property taxes and house prices, partially due to atypical valuation

cycles, rate limits and policy choices.

Continue reading.

IRS Sets Releases New Rules For Private Activity Municipal Bonds.

On November 10, 2021, the IRS released Rev. Proc. 2021-45 setting forth calendar year 2022 methodologies for establishing private activity bonds volume cap (state ceiling) as well as brokerage commissions on guaranteed investment contracts or investments purchased for a yield restricted defeasance escrows, such as those often used in housing and other community-oriented private activity bonds.

For calendar year 2022, the amounts used under § 146(d) of the Internal Revenue Code to calculate the state ceiling for the volume cap for private activity bonds is the greater of (1) $110 multiplied by the State population, or (2) $335,115,000. In addition, Rev. Proc. 2021-45 places limits on the issuance of agricultural bonds. For calendar year 2022, the loan limit amount on agricultural bonds under § 147(c)(2)(A) for first-time farmers is $575,400.

Rev. Proc. 2021-45 also set forth safe harbor rules for brokerage commissions on guaranteed investment contracts or investments purchased for a yield restricted defeasance escrow. For calendar year 2022, under § 1.148-5(e)(2)(iii)(B)(1), a broker's commission or similar fee for the acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow is reasonable if (1) the amount of the fee that the issuer treats as a qualified administrative cost does not exceed the lesser of (A) $43,000, and (B) 0.2 percent of the computational base (as defined in § 1.148-5(e)(2)(iii)(B)(2)) or, if more, $4,000; and (2) for any issue, the issuer does not treat more than $122,000 in brokers' commissions or similar fees as qualified administrative costs for all guaranteed investment contracts and investments for yield restricted defeasance escrows purchased with gross proceeds of the issue.

Taft Stettinius & Hollister LLP – Raymond Headen

November 23 2021

House Build Back Better Act: Details & Analysis of Tax Provisions in the $1.75 Trillion Reconciliation Bill.

The House Build Back Better plan would result in an estimated net revenue increase of about $1 trillion, 107,000 fewer jobs, and on average less after-tax incomes for the top 80 percent of taxpayers over the long run.

Read more.

Tax Foundation

Links to State Tax-Exempt Bond Allocating Agencies: Novogradac

View the links.

2022 QAPs and Applications: Novogradac

View the 2022 QAPs and Applications.

TAX - RHODE ISLAND

Athena Providence Place v. Pare

Supreme Court of Rhode Island - November 10, 2021 - A.3d - 2021 WL 5226361

Taxpayers petitioned for relief from city's tax assessments of their dwelling units in residential condominium development following a revaluation of units upon expiration of tax stabilization agreement for development.

After a bench trial, the Superior Court entered judgments for taxpayers. Tax assessor appealed.

The Supreme Court held that revaluation was not a selective assessment.

City's revaluation of taxpayer's dwelling units in residential condominium development upon expiration of tax stabilization agreement for development was not a selective assessment, where city's normal practice was to revalue and reassess properties upon expiration of a tax stabilization agreement, and there was no evidence that similar properties in city were not subjected to revaluation.

Section 48D: A New Tax Credit for Electric Transmission Property - Foley & Lardner

The Biden Administration has proposed the creation of a new tax credit under the new Section 48D of the Code for qualifying electric power transmission property that is placed in service after December 31, 2021, but before January 1, 2032 (such credit, the "**Section 48D Credit**"). The proposal would also allow a direct-pay option to elect a cash payment. The proposed credit would be for an amount equal to 6% of a to-be-determined eligible basis (the "**Base Rate**"), with a possible increase to 30% (the "**Bonus Rate**") if certain criteria are met.

Qualifying property would include overhead, submarine and underground transmission facilities meeting certain criteria, including a minimum voltage of 275 kV and a minimum transmission capacity of 500 MW, and any ancillary facilities and equipment necessary to operate such project. A qualifying electric transmission line may be a replacement, or upgrade, to an existing electric transmission line if the transmission capacity of such electric transmission line, as upgraded, increases to an amount equal to the existing capacity of such transmission line plus 500 MW. However, the basis allocable to the existing transmission line would not be eligible for the Section 48D Credit.

Certain property and projects already in process are not eligible for the Section 48D Credit if (i) a state or political subdivision thereof, any agency or instrumentality of the US, a public service or public utility commission or other similar body of any state or political subdivision, or the governing or rate-making body of an electric cooperative has, before the date of the enactment of these rules, selected such property for cost recovery, (ii) construction begins before January 1, 2022, or (iii) construction of any portion of the qualifying electric transmission line to which such property relates begins before January 1, 2022.

In addition to the technical requirements, to claim the credit at the Bonus Rate, the project must satisfy the new prevailing wage and apprenticeship requirements. To satisfy the prevailing wage requirement,any laborers and mechanics employed by contractors and subcontractors must be paid prevailing wages during the construction of such project and, in some cases, a defined period after. To satisfy the apprenticeship requirement, no less than the applicable percentage of total labor hours (5% for projects for which construction begins in 2022, 10% for projects beginning construction in 2023, and 15% thereafter) must be performed by qualified apprentices. Additionally, each contractor and subcontractor who employs four or more individuals to perform construction on an applicable project must also employ at least one qualified apprentice or, in the case of a lack of availability, show a good faith effort to do so. If a non-exempt project fails to meet the wage and apprenticeship requirements, but otherwise meets the technical requirements for the Section 48D Credit, such property will qualify for the Base Rate.

Finally, qualifying electric power transmission property is eligible for an increase to either the Base Rate or the Bonus Rate if such project meets the domestic content requirement, which requires the steel, iron, or other manufactured products that comprise the project be produced in the United States (i.e., at least 55% of the total cost of the components of such product is attributable to components that are mined, produced, or manufactured in the United States). Projects satisfying this requirement could be eligible for a 2% increase to the Base Rate or a 10% increase to the Bonus Rate.

Friday, October 15, 2021

Foley & Lardner LLP

TAX - GEORGIA

Executive Limousine Transportation, Inc. v. Curry

Court of Appeals of Georgia - October 26, 2021 - S.E.2d - 2021 WL 4979102

Licensed limousine carrier filed action challenging the decision of the commissioner of the department of revenue denying carrier's application for a refund of previously remitted state and local-option sales taxes as well as a declaration that owner would owe no such taxes in the future.

The Tax Tribunal granted summary judgment in favor of commissioner. Carrier appealed. The Superior Court affirmed. Application for discretionary review was granted.

The Court of Appeals, as a matter of first impression, held that Georgia Limousine Carrier Act did not prohibit local governments from imposing state or local-option sales taxes on for-hire limousine carriers.

Georgia Limousine Carrier Act, which barred local governments from imposing excise, license, and occupation taxes on limousine carriers, did not prohibit local governments from imposing state or

local-option sales taxes on for-hire limousine carriers and their customers for the rental of limousines.

TAX - ILLINOIS

Guns Save Life, Inc. v. Ali

Supreme Court of Illinois - October 21, 2021 - N.E.3d - 2021 IL 126014 - 2021 WL 4898891

Gun rights organization, firearm supply retailer, and individual resident of county brought action against county and related defendants for declaratory judgment and injunctive relief challenging county ordinances imposing taxes on sale of firearms and certain types of ammunition.

Following order dismissing retailer and resident's challenges to firearms tax, the Circuit Court denied plaintiffs' motion for summary judgment and granted summary judgment in favor of defendants. Plaintiffs appealed, and Appellate Court affirmed. The Supreme Court allowed leave to appeal.

The Supreme Court held that tax ordinances were unconstitutional under the uniformity clause.

Relationship between tax classifications in county ordinances imposing taxes on sale of firearms and certain types of ammunition and use of tax proceeds was not sufficiently tied to the stated objective of ameliorating costs of gun violence, and thus tax ordinances were unconstitutional under the uniformity clause; revenue generated from the firearm taxes was not directed to any fund or program specifically related to curbing the cost of gun violence, and nothing in the ordinances indicated that the proceeds generated from the ammunition tax must be specifically directed to initiatives aimed at reducing gun violence.

TAX - GEORGIA

Executive Limousine Transportation, Inc. v. Curry

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It's Long Overdue for Public Finance Scholars to Study Racism in the Tax Code.

In reckoning and renewed attention to issues of racial equity and justice. This long-overdue awakening led me to read extensively about racism and to think about interactions between race and tax policy. In a new paper, "Public finance and racism," I explore some of these links.

While I've studied tax policy for over 30 years, I'd not yet spent much time focusing on connections between race and tax issues that clearly exist.

Three observations, however, are abundantly clear. First, widespread and long-standing racial discrimination in the United States has had enormous, lasting, and deleterious economic effects on Black households. Second, tax policies and other government policies have contributed materially to this problem. Third, changes to the tax code, spending programs, or regulations can help ameliorate the effects of racism, but it is crucial to take into account the persistent effects of racism and the impact of past policies on Black households. Policies that some may view as race-blind may still cement the status quo and reinforce the ills of past and continuing racism.

Continue reading.

The Brookings Institution

by William G. Gale

November 4, 2021

S&P: Online Sales Tax Collections Continue To Grow; Helped Offset Pandemic Declines Last Year

Key Takeaways

- Since the South Dakota v. Wayfair, Inc. decision in June 2018, online sales tax collections have surged across the U.S. with the enactment of economic nexus laws, which consider remote sellers to have an economic presence in a state if they meet certain sales or revenue thresholds.
- All states with a sales tax have enacted marketplace facilitator collection laws. This requires online marketplaces to collect taxes on behalf of their sellers, leading to more online sales being incorporated into governments' tax bases.
- Online sales tax collections helped mitigate pandemic-related declines in total sales tax collections for many U.S. cities in 2020 and we expect these collections will help support sales tax revenues as online sales proliferate the marketplace.

Continue reading.

28 Oct, 2021

TAX - NEW HAMPSHIRE

Shaw's Supermarkets, Inc. v. Town of Windham

Supreme Court of New Hampshire - October 20, 2021 - A.3d - 2021 WL 4888979

Commercial tenant appealed town's denial of its property tax abatement claim.

The Superior Court denied town's motion to dismiss for lack of standing, and the Court granted the tax abatement request. Town appealed.

The Supreme Court held that:

- Tenant had standing to maintain property tax abatement claim, and
- Tenant's appraisal was credible and thus supported determination of fair market value of the property.

Commercial tenant had standing to maintain property tax abatement claim, as it actually paid the allegedly disproportionate tax to the town on the landowner's behalf, and, under its lease, would have been required to reimburse the landowner for 100% of the tax paid if the landowner had made the payment itself.

Appraisal by commercial tenant's appraiser was credible and thus supported determination of fair market value of the property, even if it deviated from the uniform standards of professional appraisal practice; trial court addressed the deviations and determined that the appraiser's trial testimony sufficiently responded to the town's objections.

IRS Moves to Mandatory E-Filing of Forms for Direct Payment Bonds.

The Internal Revenue Service has moved to mandatory electronic filing of its Form 8038-CP, its form for returning credit payments to issuers of qualified bonds.

That and a number of other developments were announced during the IRS update as part of the Government Finance Officers Association's 3rd annual MiniMuni conference.

"The IRS is moving to e-filing of 8038-CP for those of you that want direct payments on your Build America Bonds," said Johanna Som de Cerff, senior technician reviewer, IRS Office of Chief Counsel Financial Institutions and Products Division Branch 5.

The IRS published its proposal for electronic filing in the federal register on July 23 requesting comments and on Oct. 22, announced that they will officially be moving to electronic filing of these forms. Soon, electronic filing will be mandatory, despite not rolling the program out quite yet.

"New forms have been designed and those, even the paper form, needs to be used for the 2022 filing year," Som de Cerff said.

She also urged panelists to subscribe to the IRS's newsletter, where all related developments of this sort will be announced. "You'll be getting detailed later as to when the electronic filing is actually going to be available," she said.

This is part of a larger effort by the IRS to respond to the COVID-19 pandemic, in addition to wider modernization and restructuring efforts happening across the agency, with further updates for bond issuers coming down the line.

“We are going to update the revenue procedure on the recovery of rebate overpayments,” Som de Cerff said. She didn’t mention updates to Form 8038-R, which deals with this issue, by name, but mentioned that updates to the procedure for how to ask for those rebates will be centralized in one document.

“We don’t know if it’s exactly going to be this year, but it’s certainly one of our priorities that we’re working on,” she said.

The agency is also working on developing regulations for the transition from LIBOR.

“You saw proposed regulations a couple years ago, we had a revenue procedure on fallback rates,” Som de Cerff said. “But the final regulations are being worked on being very conscious of the fact that LIBOR and other IBORs may be disappearing fairly soon,” she added. “So that is a very active project as well.

The Bond Buyer

By Connor Hussey

October 22 2021

Hawkins Advisory: Revisions to IRS Form 8038-CP and Instructions for Issuers of Tax Credit Bonds

The Internal Revenue Service has released, in draft form, a new Form 8038-CP, Return for Credit Payments to Issuers of Qualified Bonds (the “Form”), and new Schedule A, Specific Tax Credit Bonds Interest Limit Computation (“Schedule A”). While the new Form and Schedule A are not yet final, and should not yet be used by issuers in their current form, the IRS’s objective in revising these documents is to facilitate electronic filing of the Form in 2022.

Attached, please find the Hawkins Advisory regarding the new Form 8038-CP and Schedule A.

Ending the State and Local Taxes (SALT) Deduction: Brookings Podcast

Millions of American taxpayers itemize their deductions, one of which is for state and local taxes, or the SALT deduction. Most of these filers are at the upper end of the income distribution and live in high-income urban areas. On this episode, Senior Fellow Richard Reeves, director of the Future of the Middle Class Initiative at Brookings, says the SALT deduction mostly benefits the wealthiest taxpayers, gives little or no benefit to the middle class, and should be eliminated entirely. He also talks about the unusual politics of the debate in Washington, where Democratic leaders are calling for repeal of the SALT deduction CAP put in place in the 2017 tax law, championed by congressional Republicans.

Listen to Podcast.

The Brookings Institution

Richard V. Reeves and Fred Dews

Friday, October 22, 2021

Illinois Supreme Court Strikes Down Cook County Tax on Guns as Unconstitutional.

Majority leaves door open for narrower tax language

The Illinois Supreme Court ruled Thursday that a Cook County tax on gun purchases is unconstitutional, but it left the door open for a more tailored tax that specifically goes toward mitigating gun violence and its effects.

The Cook County gun tax, which took effect in April 2013, imposed a $25 fee for retail gun purchases in the county, as well as a 5 cent fee per cartridge of centerfire ammunition and 1 cent per cartridge fee for rimfire ammunition.

The taxes were challenged by the trade group Guns Save Life Inc. in a lawsuit against the county.

The Supreme Court's Thursday opinion, written by Justice Mary Jane Theis, stated that, "While the taxes do not directly burden a law-abiding citizen's right to use a firearm for self-defense, they do directly burden a law-abiding citizen's right to acquire a firearm and the necessary ammunition for self-defense."

In the 14-page, 6-0 opinion, the Supreme Court reversed an appellate court ruling that would have allowed the taxes to stay in place. Chief Justice Anne Burke did not take part in the decision.

While the court rejected the tax, it did specifically note that the county's failure to earmark the revenue from the tax for gun violence prevention programs played a major role in the decision.

It gave particular scrutiny to the question of whether the tax violated the uniformity clause of the Illinois Constitution, which states: "In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly."

Citing previous court precedent related to that clause, the court wrote it had to determine whether the tax on guns "bears some reasonable relationship to the object of the legislation or to public policy."

"Under the plain language of the ordinances, the revenue generated from the firearm tax is not directed to any fund or program specifically related to curbing the cost of gun violence," the court wrote. "Additionally, nothing in the ordinance indicates that the proceeds generated from the ammunition tax must be specifically directed to initiatives aimed at reducing gun violence. Thus, we hold the tax ordinances are unconstitutional under the uniformity clause."

Justice Michael Burke agreed with the opinion, but issued a four-page special concurrence disagreeing with the majority's analysis that the county's spending plans affected whether the tax was permissible.

"The majority's analysis is problematic because it leaves space for a municipality to enact a future tax — singling out guns and ammunition sales — that is more narrowly tailored to the purpose of ameliorating gun violence," Michael Burke wrote.

He argued the majority opinion is leading the county “down a road of futility,” citing Article 1, Section 22 of the state constitution, which reads: “Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.”

“The only problem with the majority’s approach — and the guidance it offers the county — is that such counsel, if followed, would still violate the provision of the Illinois Constitution noted above that plainly states that the right of the individual to keep and bear arms is subject only to the police power, not the power to tax,” he wrote.

“Thus, the majority is leading the county down a road of futility,” he added.

One major precedent cited by the court was from Boynton vs. Kusper, a 1986 Supreme Court ruling which struck down a $10 state tax on marriage licenses in certain counties that went to the Domestic Violence Shelter and Services fund.

The court said at the time the marriage license tax “directly impeded the exercise of the fundamental right to marry,” and should be subject to greater scrutiny.

The court ruled in the Boynton case that even though the $10 fee was “de minimis,” or small, if the court granted that authority, it would essentially mean “there is no limit on the amount of the tax that may be imposed,” according to previous case law.

The same argument can be applied to the gun tax, the court wrote, noting that a stricter level of scrutiny is needed because the tax applies to a fundamental right.

Given that necessary scrutiny, the court ruled the gun taxes unconstitutional.

“In applying that standard to the firearm and ammunition taxes, we recognize that the uniformity clause was ‘not designed as a straitjacket’ for the county … and acknowledge the costs that gun violence imposes on society,” the court wrote. “Nevertheless, the relationship between the tax classification and the use of the tax proceeds is not sufficiently tied to the stated objective of ameliorating those costs.”

In a statement, a Cook County spokesperson noted shootings in Chicago are up nearly 10% over the last year with almost 2,900 shooting incidents this year, and said guns “have had a significant impact on the County’s public safety, health and general expenditures.”

The county intends to meet with its legal counsel and “determine any next steps that may be warranted,” according to the statement.

“Addressing societal costs of gun violence in Cook County is substantial and an important governmental objective,” the spokesperson said. “We continue to maintain that the cost of a bullet should reflect, even if just a little bit, the cost of the violence that ultimately is not possible without the bullet. We are committed to protecting County residents from the plague of gun violence with or without this tax.”

Capitol News Illinois

by Jerry Nowicki

Oct 22, 2021

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distributed to more than 400 newspapers statewide. It is funded primarily by the Illinois Press Foundation and the Robert R. McCormick Foundation.

TAX - NEW HAMPSHIRE

Merrimack Premium Outlets, LLC v. Town of Merrimack

Supreme Court of New Hampshire - October 1, 2021 - A.3d - 2021 WL 4487259

Property owner and operator of retail outlet shopping mall, which leased property, brought action against town for declaratory judgment and injunctive relief challenging town's reassessment of taxable property.

The Superior Court granted town's motion to dismiss complaint for failure to state claim, to extent that it sought declaratory relief on basis that town lacked authority to change assessed value of property, and dismissed constitutional claim with prejudice as discovery sanction, and subsequently denied plaintiffs' motion for reconsideration. Parties cross-appealed.

Holdings: The Supreme Court, Hicks, J., held that:

- Some "change" is a prerequisite to a municipality's legal authority to adjust a property's tax assessment under provision of statute which directs assessors and selectmen to annually adjust assessments to reflect changes;
- Extreme underassessment of property was not "change" that would allow town to adjust assessment the following year; and
- Reassessment of value of property was not necessary to ensure proportionality required by statute or state Constitution.

Town's extreme underassessment of property on which retail outlet shopping mall was operated was not "change" that would allow town to adjust assessment under provision of statute which directed assessors and selectmen to annually adjust assessments to reflect changes; statute governing how property was appraised required assessors and selectmen to appraise all taxable property, other than certain types of property specifically excepted, "at its market value," meaning property's full and true value as the same would be appraised in payment of a just debt from a solvent debtor, and town's acquisition of information bearing on property's value, in connection with property's use as collateral for loan, was not change in value itself.

Reassessment of value of property on which retail outlet shopping mall was operated to correct extreme underassessment of property the previous year was not necessary to ensure proportionality required by statute governing adjustment of assessments and state Constitution; under statute's plain language, annual adjustment so that all assessments were reasonably proportional within municipality had to occur "to reflect changes," and underassessment did not qualify as "change," current statutory scheme sought to ensure proportionality through municipality-wide reappraisals at least every five years and annual adjustments to assessments of properties that had changed in value, and town did not raise developed claim that statutory scheme violated Constitution.

A Tax Loophole for Greenwich.

The House Ways and Means bill includes a carve-out for munis.

The House Ways and Means Committee section of the $3.5 trillion tax and spending bill includes myriad tax carve-outs and credits for liberal special interests. Drawing particular attention from the wealthy in Greenwich and Silicon Valley is an exemption for municipal bonds from a 3% income-tax surcharge.

The proposed 3% surcharge applies to modified adjusted gross income (MAGI) above $5 million a year. A taxpayer's MAGI includes some deductions that are excluded from AGI such as tax-exempt interest for municipal bonds. The IRS uses MAGI rather than AGI to determine a taxpayer's eligibility for several deductions, including IRA contributions.

Democrats are applying the 3% surcharge to MAGI to capture more of high earners' income and limit tax arbitrage. So a taxpayer with an AGI well below $5 million could get soaked. Yet the bill carves out interest from muni debt from MAGI so that states and cities don't get caught in the backwash.

Many high earners use muni bonds to avoid taxes. Muni bonds are especially valuable in states with high income-tax rates like California and New York because they are also exempt from state and local taxes. Investors have poured into muni bond funds this year as Democrats have threatened enormous tax increases. This has pushed down muni-bond yields to record lows and reduced borrowing costs for states and cities. The S&P muni-bond index was yielding a mere 1.07% on Friday.

State and local governments raised alarms that the 3% surcharge, if applied to interest on municipal bonds, could reduce their value to investors and raise borrowing costs. Suddenly, California and New York might have to pay more to fund their bloated governments.

"We were concerned that this proposal, if implemented, could impact tax-exempt interest as well, and would be bearish for municipals," Citigroup explained in a research note last week. "However, based on feedback from tax experts and Ways and Means Committee staff, we now believe that the 3% surcharge will not apply to tax-exempt interest." Sighs of relief all around in Albany, Springfield—and the Goldman Sachs executive floor.

The surcharge will raise the top marginal income-tax rate to 46.4%, including the 3.8% net investment tax. Add state and local taxes and the wealthy in Silicon Valley and New York could pay some 60% of their income in taxes. But they will pay nothing on munis. Some tax avoidance schemes are apparently more equal than others.

The Wall Street Journal

By The Editorial Board

Sept. 27, 2021 6:45 pm ET

TAX - OHIO

Lamar Advantage GP Company, L.L.C. v. Cincinnati

Supreme Court of Ohio - September 16, 2021 - N.E.3d - 2021 WL 4201656 - 2021-Ohi--3155

Billboard operators filed suit against city challenging the constitutionality of an excise tax on billboards and moved for a permanent injunction to preclude the city from enforcing the tax.

After granting a preliminary injunction the Court of Common Pleas found the tax unconstitutional and granted permanent injunction. City appealed. The First District Court of Appeals affirmed in part, reversed in part, and remanded. Billboard operators appealed.

The Supreme Court held that City excise tax that fell predominantly on two billboard operators violated the First Amendment.

City excise tax on outdoor advertising signs, which was imposed solely upon two billboard operators, was a discriminatory tax that violated the rights to freedom of speech and free press protected by the First Amendment; tax liability was based on means of communication, was not generally applicable and did not even apply to all advertisers or all advertising signs, but rather, applied to signs that were leased to third parties and included so many exceptions that it targeted and fell upon two billboard operators, and it burdened First Amendment activities, as it required the two operators to remove almost 10% of their billboards, thereby limiting dissemination of protected content.

TAX - GEORGIA

Stanford v. City of Atlanta

Court of Appeals of Georgia - September 27, 2021 - S.E.2d - 2021 WL 4397479

Commercial property owner brought putative class action against city, alleging that city's assessment of annual frontage fees constituted an illegal tax as opposed to a reasonable fee for solid waste services.

The Superior Court granted city's motion to dismiss. Owner appealed.

The Court of Appeals held that:

- Plaintiff sufficiently pled the terms and provisions of city ordinances, so as to withstand motion to dismiss based on her failure to attach certified copies to the complaint, and
- Right for any reason doctrine did not apply to affirm trial court's grant of the motion to dismiss.

Commercial property owner sufficiently pled the terms and provisions of city ordinances that modified the city code section on frontage fees by increasing annual solid waste fees assessed on commercial property owners and initiating a new mandatory multi-family unit fee to owners of multi-family units, even though she did not attach certified copies of city code or ordinances to her original or amended complaints, so as to withstand city's motion to dismiss in her putative class action alleging that the collection of the frontage fees constituted an illegal tax, where copies of the ordinances had been made part of the record after being introduced at a certification hearing by owner's predecessor-in-interest and owner demonstrated that a certified copy of the ordinances could be introduced at trial or during an evidentiary proceeding.

Right for any reason doctrine did not apply to affirm trial court's grant of city's motion to dismiss commercial property owner's putative class action alleging that city's assessment of solid waste and multi-family unit frontage fees constituted an illegal tax as opposed to a reasonable fee for solid waste services, where judicial economy would be maximized by returning the case to the trial court due to issues having been left undecided by the trial court, including owner's allegations that city had not engaged in collection of solid waste from owners of commercial properties despite collection of solid waste fees and that assessment of mandatory solid waste and multi-unit fees substantially exceeded the actual reasonable cost of the services.

TAX - DISTRICT OF COLUMBIA

Davis v. District of Columbia

District of Columbia Court of Appeals - September 16, 2021 - A.3d - 2021 WL 4203053

Former employee of District of Columbia Office of Tax and Revenue (OTR) brought action against District of Columbia, alleging that she was terminated for disclosing that method for appraising certain properties was wrong and perpetuating tax scam and seeking to hold District liable for her termination under the D.C. Whistleblower Protection Act.

The Superior Court granted summary judgment to District and denied former employee's motion to amend complaint. Former employee appealed.

The Court of Appeals held that:

- Disinterested observer could not have reasonably concluded that using cost method to assess commercial properties was gross mismanagement;
- Disinterested observer could not have reasonably concluded that using cost method was gross misuse or waste of public resources or funds; and
- Claim that former employee was wrongfully discharged in violation of public policy was futile.

Disinterested observer, with employee's knowledge of essential facts, could not have reasonably concluded that using cost method, rather than income method, to assess commercial properties in city was gross mismanagement, for purpose of determining whether disclosure by employee of District of Columbia Office of Tax and Revenue (OTR) that OTR's use of cost method to value property was wrong and costing District tax revenue was "protected disclosure" under D.C. Whistleblower Protection Act; employee did not identify authority that said cost approach could not appropriately be applied to properties that were fully depreciated but producing significant income, like those at issue, and evidence showed that valuations based on income approach were not much higher or more accurate predictors than cost-approach valuations.

Disinterested observer, with employee's knowledge of essential facts, could not have reasonably concluded that using cost method, rather than income method, to assess commercial properties in city was gross misuse or waste of public resources or funds, for purpose of determining whether disclosure by employee of District of Columbia Office of Tax and Revenue (OTR) that OTR's use of cost method to value property, was wrong and costing District tax revenue was "protected disclosure" under D.C. Whistleblower Protection Act, even though employee argued that OTR's use of cost method grossly wasted public funds by costing District millions in tax revenue; yet-to-be collected revenue, which was not in District's coffers, was not public resource or fund.

TAX - NEW HAMPSHIRE

Appeal of Town of Chester

Supreme Court of New Hampshire - September 16, 2021 - A.3d - 2021 WL 4202532

Towns sought judicial review of an order of the Board of Tax and Land Appeals granting taxpayer, an electric utility company, abatements of taxes assessed against its property located in the towns.

The Supreme Court held that:

- Board had jurisdiction to grant abatements, and
- Board properly applied stipulated equalization ratios to aggregate fair market values of taxpayer's property.

Board of Tax and Land Appeals had jurisdiction to grant abatements of taxes assessed against electric utility company's fee simple land interests, where company submitted abatement requests to towns' assessors listing all of its property in each municipality for each relevant tax year, and company submitted the same list of properties as the subject of its appeals to the Board and responded "n/a" to application sections requesting information about company's other properties, so that the record showed that company challenged the proportionality of the towns' assessments of all of company's land interests.

Board of Tax and Land Appeals properly applied stipulated equalization ratios to the aggregate fair market values of electric utility company's taxable property as set forth in an expert's appraisal report to determine whether towns' assessments were proportionate, on appeal from towns' denial of company's abatement requests; both experts whose reports were considered by the Board opined that the final valuations of company's land interests set forth in their reports reflected the fair market value of those interests, not equalized assessed values, and the fact that both experts concluded that the assessed value of company's fee simple land interests represented the fair market value of those interests did not necessarily mean that the towns assessed those interests proportionately.

TAX - CONNECTICUT

Rainbow Housing Corporation v. Town of Cromwell

Supreme Court of Connecticut - September 1, 2021 - A.3d - 2021 WL 3918895

Taxpayers, which were tax-exempt charitable organizations, sought review of town board of assessment appeals' denial of charitable exemption for real property used for residential mental health treatment program.

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

The Supreme Court held that:

- Parties' stipulation as to a "complete" tax exempt application was stipulation as to facts allowing finding of aggrievement for standing purposes, and
- Housing provided by treatment program was temporary housing under charitable exemption.

Taxpayers that were tax-exempt charitable organizations were aggrieved by town's denial of their application for charitable exemption for their real property used for a residential mental health treatment program, and thus taxpayers had standing for tax appeal, even if taxpayers did not provide assessor with information about average stay of residents at property, rents, amount of income received from rent, and existence of any rent subsidies by government, where parties stipulated that tax exemption application was complete.

Supreme Court would review town's unpreserved claim that taxpayers lacked aggrievement as a component of standing, since claim implicated trial court's subject matter jurisdiction, in tax appeal concerning denial of tax exemption for real property owned by a tax-exempt charitable organization and used exclusively for charitable purposes.

Housing provided by residential mental health treatment program of tax-exempt charitable organizations was "temporary housing" under charitable tax exemption pertaining to real property used for temporary housing, where housing was not permanent, furthered organizations' charitable purpose of providing treatment to men with severe mental health issues, and was designed to successfully transition residents into community.

Future Opportunity Zone Reform, With Mike Novogradac And John Sciarretti.

What tax policy changes may unfold soon, and how might Opportunity Zones be reformed later this year or in 2022? Mike Novogradac is the managing partner of Novogradac, a top 50 accounting firm founded in…

CONTINUE READING »

OpportunityDb

September 29, 2021

TAX - ARIZONA

Fann v. Arizona

Supreme Court of Arizona - August 19, 2021 - 51 Arizona Cases Digest 26 - 493 P.3d 246

Taxpayers brought action against State challenging constitutionality of a citizens' initiative imposing income tax surcharge on high-income taxpayers to provide direct funding to schools as violative of education expenditure and tax enactment clauses of State Constitution.

The Superior Court denied taxpayers' motion for preliminary injunction. Taxpayers appealed, and transfer was granted.

The Supreme Court held that:

- Case was ripe for decision;
- Initiative's provision stating that monies were not local revenues was facially unconstitutional under education expenditure clause;
- Initiative's allocation provision was unconstitutional to extent that the allocated revenues exceeded expenditure limits;
- Allocation provision could not be severed;
- Initiative's provision on revenue control limitations was unconstitutional to extent expenditures exceeded expenditure limits; and
- Initiative was not an "act" subject to requirements of tax enactment clause.

Direct funding to schools under a citizens' initiative imposing income tax surcharge on high-income taxpayers was not a "grant" under grant exception of education expenditure clause of State Constitution, which exempted grants from definition of local revenues, and therefore the initiative's local revenues provision, stating that monies from the initiative were not considered local revenues under the expenditure clause, was facially unconstitutional.

Allocation provision of citizens' initiative that imposed income tax surcharge on high-income taxpayers to provide direct funding to schools was unconstitutional to the extent that the allocated revenues exceeded expenditure limits set by education expenditure clause of State Constitution, under which the initiative's local revenues provision was facially unconstitutional in stating that monies from initiative were not local revenues for purposes of the education expenditure clause.

TAX - MARYLAND

Mayor and City Council of Ocean City v. Commissioners of Worcester County, Maryland

Court of Appeals of Maryland - August 5, 2021 - A.3d - 2021 WL 3417685

Municipality brought action seeking declaratory judgment that tax setoff laws were unconstitutional because they treated different municipalities differently.

The Circuit Court dismissed the action. Municipality appealed. The Court of Special Appeals affirmed. Municipality's petition for writ of certiorari was granted.

The Court of Appeals held that statutes providing for mandatory real property tax setoffs did not violate uniformity requirement in Constitution.

Statutes providing for mandatory real property tax setoffs did not regulate matters of purely local concern, and therefore they did not violate Constitutional provision requiring General Assembly to act in relation to government or affairs of any municipal corporation only by general laws that in their terms and in their effect applied uniformly, since tax setoff statutes strongly affected county residents who resided outside of municipality.

The requirement of the Constitutional provision requiring General Assembly to act in relation to government or affairs of any municipal corporation only by general laws that in their terms and in their effect apply uniformly does not apply to statutes providing for mandatory real property tax setoffs because those statutes do not relate to purely local affairs.

Sun Belt OZs vs. Midwest OZs, With Lawrence Jatsek.

What are some of the key similarities and differences between Sun Belt Opportunity Zone deals and Midwest Opportunity Zone deals?

CONTINUE READING »

September 22, 2021

TAX - PENNSYLVANIA

City of Erie v. Erie County Board of Assessment Appeals

Commonwealth Court of Pennsylvania - July 14, 2021 - Slip Copy - 2021 WL 2944364

City of Erie and Erie City School District (collectively, Taxing Authorities) appealed the order of the

Erie County Court of Common Pleas granting the summary judgment motion of the Erie County Board of Assessment Appeals (Board) and Erie County Convention Center Authority (Convention Authority) and finding that the Sheraton (Sheraton) and Courtyard by Marriott (Courtyard) hotels (collectively, Hotels) and appurtenant parking garages owned by the Convention Authority are not subject to real estate taxation by the Taxing Authorities.

The Commonwealth Court affirmed.

The Convention Authority built the Bayfront Convention Center (BCC) located on the shoreline of Presque Isle Bay, which opened on August 2, 2007. At the same time, the Convention Authority constructed the 200-room Sheraton, which opened in 2008. The Convention Authority also constructed the 192-room Courtyard, which opened in 2015.

On September 28, 2016, the Board sent a "Notice of Change of Assessment" to the Convention Authority regarding the tax-exempt status of the hotel properties. The Board's action was premised on the fact that at least 63% of hotel occupancy was attributable to the general public, rather than to convention-related business.

The Commonwealth Court found that, "the commingling of the general public's use of the Sheraton and Courtyard hotel rooms with those used for BCC-related functions in no way affects the immunity of the Convention Authority's hotel properties herein. All such uses are a necessary and essential component of, and directly tied to, the Convention Authority's statutory purpose as set forth in the Act and the Alternative Act 'for the public purpose of promoting, attracting, stimulating, developing and expanding business, industry, commerce and tourism[,]' and 'of acquiring, holding, developing, designing, constructing, improving, maintaining, managing, operating, financing, furnishing, fixturing, equipping, repairing, … and owning convention center facilities, or parts thereof,' because the statutory definition of 'convention center facilities' specifically includes 'any land, improvement, structure, building, or part thereof, or property interest therein, … owned by … an authority, … and all facilities, furniture, fixtures and equipment necessary and incident thereto, including hotels ….'"

[Environmentally Sustainable Workforce Housing in OZs.]

Environmentally Sustainable Workforce Housing in OZs, With Majesty Gayle

How can Opportunity Zones be leveraged to create more affordable housing that has a commitment to sustainability? Majesty Gayle is…

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opportunitydb.com

September 8, 2021

Coalition Building In Opportunity Zones.

Coalition Building In Opportunity Zones, With Bob Richardson

What are some of the biggest lessons learned from the first three years of the Opportunity Zones program? Bob Richardson…

CONTINUE READING »

opportunitydb.com

September 15, 2021

Cincinnati's Billboard Tax Declared Unconstitutional by Ohio Supreme Court Ruling.

The Ohio Supreme Court on Thursday blocked the city of Cincinnati's tax on billboard advertising, saying it violates the billboard operator's First Amendment rights.

The city enacted the tax on billboard advertising in 2018 to help close a $2.5 million budget gap.

Ohio Supreme Court Justice Sharon Kennedy wrote in the majority opinion that "a selective tax creates the intolerable potential of self-censorship by the press and abuse by governmental actors aimed to suppress, compel, or punish speech."

The high court's decision reverses a ruling by the First District Court of Appeals.

Cincinnati City Council imposed the billboard tax, which called for 7% on gross receipts generated by the billboard or an annual minimum fee based on the sign location and size. It was projected to raise $709,000 a year.

Lamar Advantage GP Co. and Norton Outdoor Advertising, which control 90% of Cincinnati's billboard signs, sued to block the tax. The companies said it'd make it unsustainable to operate their least-profitable billboards and 70 to 80 of the 865 signs the companies operate in Cincinnati would be removed.

So where does the First Amendment issue come in? Roughly 25% to 30% of the sign space is donated for public service announcements and the companies' own speech, such as tributes to notable public figures.

Kennedy said that the "press" includes not only newspapers, books, and magazines, but has been extended to many other media, including cable television.

by Laura A. Bischoff

September 16, 2021

Cincinnati Enquirer

Telephonic TEFRA Hearings are Now Available Through March 31, 2022: Squire Patton Boggs

On November 4, 2020, we all thought that the COVID-19 pandemic was going to be long over by now. We certainly did not think we were going to get so far down the Greek alphabet of variants of this virus. And, this author certainly did not think that she was going to have to keep looking up what the next letter of the Greek alphabet is. Now we are at mu, and there does not seem to be an end in sight.

It seems like when the IRS issued Revenue Procedure 2020-49, it thought that the COVID-19 pandemic was going to be over by now too. As a reminder, on November 4, 2020, the IRS issued Revenue Procedure 2020-49, which allowed telephonic TEFRA hearings to continue through September 30, 2021. Specifically, during this period, a governmental unit can meet the TEFRA requirement that the public hearing be held in a convenient location for affected residents by affording the general public access to the hearing by toll-free telephone call.[1]

With September 30th right around the corner, public finance tax attorneys were starting to get nervous[2] about whether these hearings were going to have to be in-person as cases are back on the rise. We can all breathe a sigh of relief because yesterday the IRS has further extended the period during which telephonic TEFRA hearings can be held in lieu of in-person TEFRA hearings until **March 31, 2022** through issued Revenue Procedure 2021-39.

Hopefully this will be the last extension that we need and we won't have variants that start sounding like sororities.

[1] The authors of this blog are still explaining to people what constitutes a toll-free number.

[2] More nervous than we usually are.

By Taylor Klavan on September 1, 2021

Squire Patton Boggs

Hawkins Advisory: Rev. Proc. 2021-39 - Extension of Ability to Hold Telephonic TEFRA Hearings

In response to the ongoing COVID-19 public health concerns and the continuation of local restrictions on public gatherings, the Internal Revenue Service has issued Revenue Procedure 2021-39, extending the period during which issuers may hold telephonic hearings to March 31, 2022.

Read the Hawkins Advisory.

TAX - CONNECTICUT

Boardwalk Realty Associates, LLC v. M & S Gateway Associates, LLC

Supreme Court of Connecticut - August 13, 2021 - A.3d - 2021 WL 3610351

Court-appointed receiver of rents brought action car dealership operators seeking to collect unpaid rent as well as use and occupancy payments as part of town's effort to collect unpaid property taxes on parcel of commercial property that was abandoned by its owner.

The Superior Court entered summary judgment for operators. Receiver appealed.

The Supreme Court held that as a matter of first impression, receiver did not have statutory authority to impose or collect rent or use and occupancy payments where the property had been abandoned prior to his appointment.

Receiver who was appointed under statute that permitted appointment of a receiver of rents when real property taxes due to a municipality were delinquent was not statutorily authorized to impose or collect rent or use and occupancy payments where the property had been abandoned by the owner prior to the appointment of the receiver and there was no existing obligation for the receiver to enforce

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Act Before Year End to Maximize Opportunity Zone Benefits.

If you are planning to acquire or build a senior living facility that is located in an opportunity zone, there are many tax benefits that are available to you. One of these benefits is that 10% of the capital gains that you defer when you make your investment in an opportunity zone will be forgiven, provided your investment is made by December 31, 2021, and held for at least 5 years.

Time is running out on when you can make your investment. However, while the investment must be made before year end, your acquisition can occur after this date if you properly structure your transaction to take advantage of the working capital safe harbor.

For a discussion of the tax benefits associated with opportunity zone investments and the requirements to qualify for them, download our brief primer.

If you cannot make your investment until after December 31, do not fret. You can still qualify for the other tax benefits available to opportunity zone investments. It is only the forgiveness of 10% of deferred gain that ceases to be available after year end.

Lowndes

August 27, 2021

Turbocharging OZ Returns with Historic Tax Credits, with John Blatchford.

Can opportunity zones be leveraged for historic renovation projects? How does the combination of historic tax credits and the opportunity…

CONTINUE READING »

OpportunityDb

September 1, 2021

Tax-Loss Selling and the January Effect Revisited: Evidence from Municipal Bond Closed-End Funds and Exchange-Traded Funds.

Abstract

We revisit the tax-loss selling hypothesis as a potential explanation of the well-known January effect in securities markets. We expand the empirical evidence from municipal bond closed-end funds (CEFs) by extending the sample period by almost 20 years and adding exchange-traded funds (ETFs) to the sample. Our updated sample covers the recent growth of municipal bond ETFs and a significant increase in municipal bond trading volume and liquidity. Both developments reduce arbitrage costs and thus are expected to increase tax loss selling in the funds and increase the transmission of price effects to the underlying bonds. We find that the January effect of municipal bond CEFs becomes stronger in more recent years, and show evidence that largely supports the tax-loss hypothesis. We also find some evidence indicating a smaller discrepancy between the abnormal returns of the funds and underlying bonds. For the municipal bond ETFs, we find a smaller January effect that cannot be explained by the tax-loss selling hypothesis.

Read the paper.

August 18, 2021

Senator Wyden Proposes Sweeping Housing Tax Credit Reforms.

Senate Finance Committee Chairman Ron Wyden (D-OR) proposes sweeping changes to affordable housing in the US, including expansions and improvements to the Low Income Housing Tax Credit (LIHTC) program.

On August 18, Senator Wyden released the Decent Affordable, Safe Housing for All (DASH) Act, which implements sweeping reforms to affordable housing financing in an effort to combat homelessness and expand affordable housing access.

The legislation proposes to expand and improve the Low-Income Housing Tax Credit (LIHTC) program and make other fixes to the Housing Credit program. The bill also proposes reforms to local zoning and housing development practices, expands vouchers to combat homelessness, and includes a first-time homebuyer tax credit, a rental tax credit, and a Middle Income Housing Tax Credit.

As the chairman of the Senate Finance Committee, the bill represents a major show of support for affordable housing from a key Senate office. Specifically, Senator Wyden proposes a range of spending and tax policy reforms, including:

- Extending Housing Choice Vouchers to all families or individuals experiencing or at risk of homelessness
- Instituting reforms to local zoning and housing development practices
- Expanding and improving the Low-Income Housing Tax Credit;
- Repealing the qualified contract loophole;
- Modifying and clarifying the Section 42 nonprofit Right of First Refusal;

- Creating a tax credit for affordable housing supportive services;
- Establishing a Renter's Tax Credit;
- Creating a Middle Income Tax Credit; authorizing the Neighborhood Homes Investment Act; and
- Establishing a First-time Homebuyer Refundable Credit.

Combatting homelessness, expanding the supply of affordable housing (including through the Low-Income Housing Tax Credit program), expanding supportive services in affordable housing, and fixing the Right of First Refusal issue are key priorities for LeadingAge.

LOW-INCOME HOUSING TAX CREDIT PROGRAM: EXPANSION AND IMPROVEMENTS

The legislation also includes the Emergency Affordable Housing Act, which would strengthen the Low-Income Housing Tax Credit by preserving and protecting existing LIHTC properties, expanding production of affordable housing, and extending housing to people who earn extremely low incomes. Some of the main provisions of the EAHA would expand the 9% housing tax credit by 50% to house more families; provide a 50% basis boost to projects that prioritize extremely low-income renters; expand the 4% credit for rural areas; reduce the tax-exempt bond financing threshold for 4% credit projects from 50% to 25% for three years; and preserve tens of thousands of affordable housing units by closing a loophole. The EAHA is projected to produce nearly 1 million new affordable housing units over the next 10 years.

Some portions of the bill are expected to move through the Reconciliation process currently underway in Congress. LeadingAge supports key provisions of the bill and will work with the Senate office to advance the legislation.

AUGUST 18, 2021 | BY JULIANA BILOWICH

Capital Analysis of the Proposed Middle-Income Housing Tax Credit.

Novogradac conducted capital analysis at the request of Senate Finance Committee Chairman Ron Wyden that looks at the effect of enacting the proposed middle-income housing tax credit (MIHTC) on financing affordable rental housing for households earning just above the low-income housing tax credit (LIHTC) income limits. In addition to a pool of tax credit authority allocated to states, this analysis also examines the potential of a separate pool of tax credits that would be generated by the allocation of tax-exempt private activity bonds (PABs) and could be used in conjunction with the 4% LIHTC.

Reducing the Need for Soft Financing
"Soft" subsidies are funds and grants that are available from government sources or other lenders used to fill the financing gap between what is needed to develop the property and what the property can receive in equity and supportable debt. This free report examines how enacting a MIHTC, to be used with LIHTC and PABs, would enable developers to finance properties in a variety of markets with less additional soft financing to fill the financing gaps, making it easier to address the severe affordable rental housing shortage in the United States.

Increasing the Amount of Affordable Housing
The proposed tax credit is intended to significantly jump-start affordable rental housing financing and reduce the tremendous deficit in the supply of affordable rental housing for more renters earning a little more than the traditional LIHTC income-targeting threshold nationwide.

Download the report.

Important Ohio Supreme Court Decision Clarifies Proper Method to Value "Big Box Stores."

The Ohio Supreme Court issued an important decision today clarifying the proper method under Ohio law to value big box stores—in this case, a Lowe's store.

The Ohio Supreme Court rejected the property owner's argument that an appraiser should presume that the property is vacant when appraising the property. Instead, the Court agreed with the school board and county that a property should be valued using market rent rather than the actual rent from an existing lease encumbering the property at the time of the sale and transfer.

The Court was called upon to interpret somewhat recent changes to R.C. 5713.03, which requires county auditors to value property based upon the value of the "fee simple estate, as if unencumbered." Rejecting the property owner's argument, the Court clarified that this statute invokes a market-lease rule, rather than a vacant-at-transfer rule. This decision, commonly referred to as *Rancho Cincinnati*, is the latest in a series of decisions in Ohio that affect the valuation of big box stores. The Court's decision will be perceived as more favorable to political subdivisions and taxing authorities; in contrast, the Court's decision will diminish the salience of appraisals that use a "go-dark" value of big box stores.

The *Rancho Cincinnati* decision was issued by the Ohio Supreme Court on August 18, 2021 and may be cited as *Rancho Cincinnati Rivers, LLC v. Warren County Board of Revision, et al.*, slip opinion no. 2021-Ohio-2798.

If you have questions about how this case impacts the valuation of properties located in your school district, please contact your legal counsel.

Bricker & Eckler LLP

August 19, 2021

Solving The Housing Crisis With OZs, With Riaz Capital.

In this webinar, Garrick Monaghan discusses the need for affordable housing in the Bay Area and the Riaz Capital Ozone Fund III.

Watch the webinar.

OPPORTUNITYDB

by JIMMY ATKINSON

AUGUST 13, 2021

Real Estate Technology And Opportunity Zones, with Steve Nson.

How does real estate innovation intersect with Opportunity Zones? How can Opportunity Zones catalyze business development and business investment in low income communities?

Steve Nson is founder of AnySizeDeals, a conference organizer with a focus on real estate innovation. Their upcoming AnySizeDeals Festival of Real Estate Innovation event will focus on the innovation that is transforming the real estate industry.

Listen to audio.

OPPORTUNITYDB

by JIMMY ATKINSON

AUGUST 18, 2021

Barring California Taxpayers from the Courts.

Big government interests – and by "big government interests" we mean elected officials, bureaucrats, public sector unions and private corporations that live off taxpayer dollars – do everything they can to erect barriers to taxpayers seeking to vindicate their rights.

As this column has previously addressed, those barriers include making it difficult to vindicate rights at the ballot box by consistently changing election laws – often in the middle of an election cycle – in a manner designed to protect the existing political power structure.

But there is an equally virulent set of hurdles placed before taxpayers consisting of procedural barriers to obtaining relief in the courts. Just a few examples are short statutes of limitations, requirements that taxpayers must "exhaust administrative remedies" before filing a legal action, requirements that taxpayers must first pay the disputed tax in full before filing suit, and severe restrictions on the use of class actions that preclude meaningful tax relief when entire communities are hurt by an illegal tax.

Another example is the requirement that challenges to certain tax increases be brought exclusively as "validation actions." Such actions may be brought by government entities to "bulletproof" their tax or fee increases from any future legal attack. Typically, the lawsuit will be filed against "All Persons Interested" in the legality of a bond issuance or other public finance matter and, once filed, taxpayers have only a very limited time to respond.

The short time to respond to a validation action, however, isn't the biggest headache for taxpayers. Specifically, if the government entity doesn't file its own action, then the validation action must be filed by citizens (any "interested party") within 60 days of the resolution authorizing a bond or tax. The citizens' failure to do so results in the bond or tax becoming automatically "validated" through inaction, and forever insulated from judicial review. This puts the costs of litigation on the shoulders of those having to pay the tax. And those costs include the very expensive price tag of having to "publish" a summons in the local newspaper over several days.

Ordinary taxpayers rarely have the expertise or financial wherewithal to initiate a "validation" action

in court and must rely on advocacy groups such as the Howard Jarvis Taxpayers Association, which has been involved in numerous such lawsuits. But even with that expertise, there remains much wrong with expanding the circumstances where the law requires that challenges must be brought as a validation action as opposed to more traditional legal actions such as taxpayer injunctions, declaratory relief or money damages.

Validation actions may make sense in the limited area of protecting municipal bonds from legal attack well after the bonds have been issued. There is arguably a public interest in protecting the "marketability" of public bonds so that government entities have access to capital markets in order to construct public projects such as schools.

However, a bill currently pending in the California Legislature, Senate Bill 323, would hijack the validation statutes and apply them to preclude ratepayers from challenging unlawfully high rates for water or sewer – essential public services that no one can live without.

Simply stated, this expansion of the validation statutes is an unfair denial of due process that can have the effect of cementing into law illegal government acts that are then insulated from judicial review. Even the state Supreme Court has taken notice, writing in City of Ontario v. Superior Court that some applications of the validation statutes are "of doubtful constitutionality." Not surprisingly, the Howard Jarvis Taxpayer Association opposes all attempts to enlarge the universe of government actions that are subject to the validation statutes. And we are not alone.

Even a couple of water agencies in Orange County see a problem with this expansion. While generally supportive of the bill's aims, they also recognize the importance of providing adequate notice to ratepayers "in recognition of public water and sewer agencies' Constitutional responsibility to guarantee that ratepayers – particularly economically disadvantaged residents and marginalized communities – know their rights."
What ratepayers should really know about their rights is how Senate Bill 323 takes them away. The validation statutes were never meant to insulate water, sewer, or other agency rates and fees from legal challenge. If such rates are imposed in a manner contrary to the constitutional protections guaranteed to taxpayers by Proposition 13 and other laws, ratepayers must not have the courthouse door slammed in their faces by a burdensome process that makes such challenges difficult, if not impossible.

PE.COM

By JON COUPAL

August 16, 2021

Jon Coupal is president of the Howard Jarvis Taxpayers Association.

TAX - MARYLAND

Mayor and City Council of Ocean City v. Commissioners of Worcester County, Maryland

Court of Appeals of Maryland - August 5, 2021 - A.3d - 2021 WL 3417685

Municipality brought action seeking declaratory judgment that tax setoff laws were unconstitutional because they treated different municipalities differently.

The Circuit Court dismissed the action. Municipality appealed. The Court of Special Appeals affirmed. Municipality's petition for writ of certiorari was granted.

The Court of Appeals held that statutes providing for mandatory real property tax setoffs did not violate uniformity requirement in Constitution.

Statutes providing for mandatory real property tax setoffs did not regulate matters of purely local concern, and therefore they did not violate Constitutional provision requiring General Assembly to act in relation to government or affairs of any municipal corporation only by general laws that in their terms and in their effect applied uniformly, since tax setoff statutes strongly affected county residents who resided outside of municipality.

The SALT Deduction Cap Makes it Harder for Communities to Recover.

To help our communities recover from the COVID-19 pandemic and its economic fallout, Congress has a historic opportunity to rebuild our economy and create a sustainable future for all Americans by enacting President Joe Biden's full Build Back Better agenda — an agenda that will improve the lives of everyday people by investing in well-paying jobs, health care, infrastructure, public schools, higher education, child care, elder care and more.

Congress should go one step further to incentivize communities to invest in themselves by reversing former President Donald Trump's cap on deductions for state income tax and local property taxes, the so-called SALT cap, which limits these governments' ability to invest tax revenue in public schools, higher education, public health, police, firefighting and emergency medical services.

Reviving the SALT deduction is especially important for our frontline workers — firefighters, teachers, and public health workers who have helped our country survive the pandemic, keeping our schools open, our hospitals running and our communities safe — and those they serve. SALT is not just another tax break for the wealthy, as some claim; it's an opportunity for many everyday people to offset the taxes they pay for the services our communities rely on.

Here's the math: An average two-income family with a firefighter and a teacher makes between $100,000 and $200,000 annually. If they claim the SALT deduction — which more than 85 percent of families in that tax bracket do — they receive an average tax break of $15,859. When the SALT deduction is capped, those same middle-class families see a tax increase of $5,000.

That means, even as they are paying more in taxes, the budgets for their schools, hospitals and firehouses are being cut.

The SALT deduction is a tax break you receive for supporting your community: providing schools the resources necessary to meet our children's needs; ensuring that our public health system can confront a deadly pandemic; keeping us from shutting down firehouses; preparing the next generation of adults for their careers without saddling them with debt, and supporting a safety net for when people experience job loss or homelessness. The deduction helps ensure the collective funding of these programs, making it easier for state and local governments to provide these services that benefit all of us. It effectively puts money in everyday taxpayers' pockets to help keep up with the rising costs of basics like gas and groceries.

Allowing taxpayers to deduct the full amount of their state and local taxes on their federal tax returns is one of the federal government's most powerful tools for incentivizing states and local

governments to invest in critical public services. Lawmakers have long recognized this: The Revenue Act of 1913 introduced the federal income tax and provided a deduction for state, county, schools and municipal taxes. Years later, the Revenue Act of 1964 specified that real and personal property, income and general sales taxes could be deducted from federal taxes. As the Government Finance Officers Association pointed out in 2017:

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

As cities, towns and families continue to recover from the pandemic, Congress should be making things easier on state and local governments and the people who pay taxes to fund them. The American Rescue Plan, the American Jobs Plan and the American Families Plan are major steps in the right direction but reforming the SALT cap would go a long way toward helping working families access a more robust recovery.

THE HILL

BY RANDI WEINGARTEN AND EDWARD A. KELLY, OPINION CONTRIBUTORS — 08/09/21

Randi Weingarten is president of the American Federation of Teachers. Edward A. Kelly is general president of the International Association of Firefighters.

MSRB Research Paper on the Taxable Municipal Bond Market.

New MSRB research paper studies the evolution of the taxable municipal bond market over the last decade and reviews the market dynamics of two years when taxable municipal bond issuance was particularly high—2010 and 2020.

Read the MSRB research paper.

Opportunity Zone Redevelopment Areas Still Reaping Benefits Of National Home-Price Boom In Second Quarter 2021.

Median Values Again Rise Annually By At Least 15 Percent in Half of Zones; Opportunity Zone Price Spikes Remain on Par with Those Outside of Zones

IRVINE, Calif., Aug. 12, 2021 /PRNewswire/ — ATTOM, curator of the nation’s premier property database, today released its second-quarter 2021 Opportunity Zones report analyzing qualified low-income zones established by Congress in the Tax Cuts and Jobs Act of 2017 (see full methodology below). In this report, ATTOM looked at 5,236 zones across the United States with sufficient sales data to analyze, meaning they had at least five home sales in the second quarter of 2021.

The report found that median single-family home prices increased from the second quarter of 2020

to the second quarter of 2021 in 75 percent of Opportunity Zones and rose by at least 15 percent in about half of them. Price patterns in Opportunity Zones continued to roughly track trends in other areas of the U.S., even surpassing them in some ways, much as they did in the first quarter of this year.

Home values in Opportunity Zones did continue to lag well behind the national median of $305,000 in the second quarter of 2021. About three-quarters of the zones with enough data to analyze had typical second-quarter prices below the national figure. Some 39 percent also still had median prices of less than $150,000 in the second quarter of this year. But that was down from 47 percent a year earlier as values inside some of the nation's poorest communities kept surging ahead with the broader national housing market, despite the Coronavirus pandemic remaining a threat to the U.S. economy.

Even as the national economy was gradually recovering during the Spring of 2021 from the economic damage that came after the pandemic hit early last year, the impact continued to hit hardest in lower-income communities that comprise most of the zones targeted for tax breaks designed to spur economic redevelopment. Nevertheless, Opportunity Zones largely kept pace with national home-price trends as increases roughly paralleled the nationwide boom now in its 10th year.

Opportunity Zones are defined in the Tax Act legislation as census tracts in or along side low-income neighborhoods that meet various criteria for redevelopment in all 50 states, the District of Columbia and U.S. territories. Census tracts, as defined by the U.S. Census Bureau, cover areas that have 1,200 to 8,000 residents, with an average of about 4,000 people.

"Housing markets kept chugging along in some of the nation's poorest neighborhoods during the second quarter of this year in another sign that the decade long home-price boom across the nation knows pretty much no boundaries. Values kept rising inside specially designated Opportunity Zones at around the same rate as they did in other areas even as the Coronavirus pandemic continued causing economic hardship," said Todd Teta, chief product officer with ATTOM. "For sure, property values in Opportunity Zones remain depressed. But the price spikes there not only suggest that those communities are a very viable option for households priced out of more-upscale neighborhoods. They also indicate the ongoing potential for the economic revival that underpins the Opportunity Zone tax breaks."

High-level findings from the report include:

- Median prices of single-family houses and condominiums rose from the second quarter of 2020 to the second quarter of 2021 in 2,901 (75 percent) of the Opportunity Zones with sufficient data to analyze and increased in 2,916 (64 percent) of the zones from the first quarter to the second quarter of this year. By comparison, median prices rose annually in 81 percent of census tracts outside of Opportunity Zones and quarterly in 70 percent of them. (Of the 5,236 Opportunity Zones included in the report, 3,850 had enough data to generate usable median prices in the second quarters of both 2020 and 2021; 4,577 had enough data to make comparisons between the first quarter of 2021 and the second quarter of 2021).
- Measured year over year, median home prices rose at least 15 percent in the second quarter of 2021 in 2,011 (52 percent) of Opportunity Zones with sufficient data. Prices rose that much during that time period in 51 percent of other census tracts throughout the country.
- Opportunity Zones did even better when comparing areas where prices rose at least 25 percent from the second quarter of 2020 to the second quarter of 2021. Measured year over year, median home prices rose by that level in 1,366 (35 percent) of Opportunity Zones but in only 30 percent of census tracts elsewhere in the country.

- Typical home values in four of every 10 Opportunity Zones increased annually in the second quarter of 2021 by more than the 22-percent increase in the overall national single-family median home price during that time period.
- Among states with at least 20 Opportunity Zones, those with the largest percentage of zones where median prices rose, year over year, during the second quarter of 2021 included New Hampshire (median prices up, year over year, in 95 percent of zones), Massachusetts (94 percent), Idaho (91 percent), Utah (90 percent) and Arizona (89 percent).
- Of all 5,236 zones in the report, 2,021 (39 percent) still had median prices in the second quarter of 2021 that were less than $150,000 and 914 (17 percent) had medians ranging from $150,000 to $199,999. The total percentage of zones with typical values below $200,000 was down from 65 percent in the second quarter of 2020 to 56 percent in the second quarter of 2021.
- Median values in the second quarter of 2021 ranged from $200,000 to $299,999 in 1,081 Opportunity Zones (21 percent) while they topped the national median of $305,000 in 1,183 (23 percent).
- The Midwest continued in the second quarter of 2021 to have the highest portion of Opportunity Zone tracts with a median home price of less than $150,000 (63 percent), followed by the South (45 percent), the Northeast (41 percent) and the West (6 percent).
- Median household incomes in 88 percent of Opportunity Zones were less than the medians in the counties where they were located. Median incomes were less than three-quarters of county-level figures in 56 percent of zones and less than half in 16 percent.

Report methodology
The ATTOM Opportunity Zones analysis is based on home sales price data derived from recorded sales deeds. Statistics for previous quarters are revised when each new report is issued as more deed data becomes available. ATTOM compared median home prices in census tracts designated as Opportunity Zones by the Internal Revenue Service. Except where noted, tracts were used for the analysis if they had at least five sales in the second quarter of 2021. Median household income data for tracts and counties comes from surveys taken the U.S. Census Bureau (www.census.gov) from 2015 through 2019. The list of designated Qualified Opportunity Zones is located at U.S. Department of the Treasury. Regions are based on designations by the Census Bureau. Hawaii and Alaska, which the bureau designates as part of the Pacific region, were included in the West region for this report.

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

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U.S. 'Opportunity Zones' Use Tax Breaks for Developers to Help Poor Neighborhoods - But Are They Really Helping?

By most accounts, Beaverton, part of Oregon's Sunset Corridor, is a desirable American suburb. It's 15 minutes from downtown Portland, home to Nike headquarters and has a median household income of around US$50,000 range.

Why, then, are American taxpayers subsidizing developers to build in Beaverton, along with dozens of other economically robust communities just like it?

The answer lies in an ambitious public-private partnership initiative known as opportunity zones. Embedded in the U.S. Tax Cuts and Jobs Act of 2017, aimed at incentivizing private investors to develop real estate in low-income communities and spur local business growth, the program has attracted billions of dollars in projects from Beaverton to Boston.

Continue reading.

theconversation.com

August 12, 2021

QOFs Tracked by Novogradac Surpass $17.5 Billion in Equity Raised.

Qualified opportunity funds (QOFs) tracked by Novogradac raised $17.52 billion in equity as of midyear, according to the Novogradac Opportunity Zones Investment Report: Data Through June 30, 2021, which was released today. The semiannual report includes information on the geographic and investment-type focus of more than 1,000 QOFs and includes the top 20 states and top 40 cities for planned investment, as well as the number of QOFs in each of several ranges of equity raised. The report also features a historical section, where trends are examined over time. Michael Novogradac published a blog post on the data and the report is the subject of today's Tax Credit Tuesday podcast.

The report will part of the discussion at the Novogradac 2021 Fall Opportunity Zones Conference, Oct. 21-22 in Cleveland.

August 10, 2021

Webinar: Driving Investment into Texas' Rural Opportunity Zones.

September 7, 2021 – 1:00 PM – 2:30 PM

Attracting investors to rural Opportunity Zones is a well-known challenge. Federal reserve data

show that at least 60% of opportunity zones in Texas are at least partially in a rural census tract. In order to attract investment in these rural Opportunity Zones, local leaders must be able to identify priority projects and businesses and build a local investment strategy. During this webinar, expert panelists will provide best practices and tips for economic development practitioners on driving investments into rural Opportunity Zones in Texas.

Click here to learn more and to register.

The Infrastructure Plan Could Boost N.J.'s Opportunity Zones.

The U.S. Senate this week moved closer to passing President Biden's $1 trillion infrastructure bill — the biggest investment in America's rails, roads, broadband and electrical grid in decades. New Jersey political leaders hope the landmark legislation will help fund critical state projects like the Gateway Tunnel.

One of the hallmarks of the Infrastructure Investment and Jobs Act is channeling investments to under-served communities, including those in New Jersey, positioning them as hubs for next-generation jobs and innovation. The White House aims to "revitalize manufacturing, secure U.S. supply chains, invest in R&D, and train Americans for the jobs of the future." This goal has eluded presidential administrations for much of the 21st century. Yet a convergence of factors makes the next few days a particularly favorable window to make progress — though perhaps not in the way policymakers expected.

One way the Biden administration plans to pay for the infrastructure bill is by nearly doubling the tax rate wealthy Americans pay on profits from their sale of stock. This capital gains hike would have major financial impacts, and observers are debating what it would mean for economic fairness and federal revenue. The increase could also have a surprisingly powerful effect on jobs and business growth in low-income areas by pivoting investors toward Opportunity Zones.

Continue reading.

nj.com

By Charles Meyer

Aug 10, 2021

TAX - CALIFORNIA

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

Court of Appeal, First District, Division 4, California - July 26, 2021 - Cal.Rptr.3d - 2021 WL 3140071 - 21 Cal. Daily Op. Serv. 7511

Following amendment to California Constitution, which required that any special tax adopted by a local government entity take effect only if approved by a two-thirds vote of the electorate, city and county brought action to establish that initiative measure entitled "Parcel Tax for San Francisco Unified School District," was validly enacted.

The Superior Court granted summary judgment in favor of city.

The Court of Appeal held that:

- Constitutional provision does not repeal or abridge by implication the people's power to raise taxes by initiative;
- Constitutional provision did not constrain initiative power;
- Constitutional provision cannot prevent the people, exercising their initiative power, from adopting an identical tax; and
- State initiative qualified for ballot measure through method in which voters could propose measure by initiative petition.

Although the constitutional provision requiring two-thirds vote of qualified electors to approve special taxes, requires governmental entities to gain approval of supermajority of voters before imposing a special tax, it does not repeal or otherwise abridge by implication the people's power to raise taxes by initiative, and to do so by majority vote; any such partial repeal by implication is not favored by law, which imposes a duty on courts to jealously guard, liberally construe and resolve all doubts in favor of exercise of the initiative power.

Constitutional provision requiring two-thirds vote of qualified electors to approve special taxes adopted by a "local government" did not constrain initiative power for the same reasons that supermajority vote requirements did not apply to citizens' initiatives; the text of the constitutional provision did not reach the electorate, as the electorate was not an "agency."

Just as the State Constitution does not prohibit local government from adopting a special parcel tax with voter approval, so it cannot prevent people, exercising their initiative power, from adopting an identical tax.

State initiative measure entitled "Parcel Tax for San Francisco Unified School District," qualified for ballot measure based on city charter recognizing two ways to put measures on the ballot, and specifically method in which voters could propose measure by initiative petition; city's evidence showed that initiative qualified for the ballot showing that initiative qualified for ballot, including evidence of a declaration from director of elections and copies of the material submitted to director by three citizen proponents of initiative.

A "Good" Tax-Advantaged Bond Bill Tells Issuers Whether They Can Refund – A Case Study: Squire Patton Boggs

This is the second in a series of posts about neutral principles that make for "good" tax-advantaged bond legislation.

We pick up our series as the Senate prepares for a final vote on a bipartisan infrastructure bill in the coming days. In the last post, we stated the general rule that a good piece of tax-advantaged bond legislation tells issuers how and when they can refund bonds issued under any new bond program. Here's an example in current law to illustrate the point.

In 2005, Congress created a new category of tax-exempt "exempt facility" private activity bonds for highway facilities and surface freight transfer facilities.[1] These bonds are exempt from the typical private activity bond volume cap[2] but are subject to a special volume cap administered by USDOT. Unlike the typical PAB volume cap (which is apportioned among the states annually based on

population), the special volume cap for these bonds is a national $15 billion cap that is available indefinitely, although all of it has now been spoken for.[3]

Continue reading.

The Public Finance Tax Blog

By Johnny Hutchinson on August 6, 2021

Squire Patton Boggs

IRS Notice Provides Population Figures for Disaster-Zone LIHTC Allocation.

Internal Revenue Bulletin 2021-31 provides state and territory low-income housing tax credit (LIHTC) allocating agencies with population figures to calculate disaster LIHTCs they can allocate under the Taxpayer Certainty and Disaster Tax Relief Act of 2020. Notice 2021-45 identifies the counties and parishes eligible for the disaster LIHTCs along with their combined populations. The disaster LIHTCs are equal to the lesser of $3.50 multiplied by the population in the disaster zones or 65% of the state LIHTC ceiling for calendar year 2020. California's 23.1 million residents in disaster zones was the largest of the 11 states plus Puerto Rico eligible for the credits.

The 2021 edition of the Novogradac Low-Income Housing Tax Credit Handbook is an essential resource for affordable rental housing owners, developers, managers and investors.

Novogradac

Monday, August 2, 2021

OZ Exit Plans and Structural Risks: Podcast

What are the advantages of a Qualified Opportunity Fund that is structured as a REIT instead of a partnership? How does the level of diversification in a fund impact its risk/return profile?

Peter Ciganik is Managing Director at GTIS Partners, a global real estate investment firm based in New York.

Episode Highlights

- How the REIT structure may be advantageous for real estate investments with extended holding periods.
- Why exit strategy planning is important in determining the bottom line returns that OZ investors realize.
- How opportunity zone funds are attracting investors to real estate as an asset class for the first time.
- The potential benefits of diversification when investing in real estate, and the risks associated with single-asset strategies.
- The structural regulatory benefits that come with multi-asset strategies.
- Why rising costs pose challenges for real estate development in the current environment.

- How the opportunity zone program is achieving its objective of catalyzing community investment.

Listent to audio.

OPPORTUNITYDB

by JIMMY ATKINSON

JULY 28, 2021

Tax Policy Changes & Opportunity Zones, an OZ Pitch Day Panel: Podcast

What changes to tax policy are likely coming under the Biden administration? If enacted, how will these changes impact the appeal of Opportunity Zone funds and the returns available to investors? Several Opportunity Zone experts provided their insights on a live panel recorded on July 27, 2021 during OZ Pitch Day, titled "Tax Policy Changes & Opportunity Zones."

Today's podcast episode is the audio version of that panel. Moderated by OpportunityDb founder Jimmy Atkinson, the panel featured Shay Hawkins of the Opportunity Funds Association, Kunal Merchant of CalOZ, and John Sciarretti of Novogradac.

Episode Highlights

- A crash course in Opportunity Zone basics.
- The tax policy changes that are likely coming down the pipeline, on both the regulatory and legislative sides.
- How the Opportunity Zone program is winning support in Congress, even among some of its one-time critics.
- The likelihood of changes to the Opportunity Zone program, including transparency and reporting requirements via the IMPACT Act.
- Why an increase in capital gains tax rates may do little to diminish the appeal of Opportunity Zone incentives.
- The potential to give preferential treatment to Opportunity Zone investments in any new tax legislation.
- The role that Opportunity Zones can play in the economic recovery from COVID-19.
- How the trend towards increased state and local incentives may be a boon to projects located in Opportunity Zones.
- Why the rumored changes to 1031 exchanges may never materialize.
- What is likely to be included in a comprehensive Opportunity Zone expansion bill.
- The possible permutations of a reconciliation bill in the current Congress.
- Technical discussions of the tax advantages of different QOF structures.

Listen to audio.

OPPORTUNITYDB

by JIMMY ATKINSON

AUGUST 4, 2021

Buckle Your Seatbelts: Tax Ramifications of the LIBOR Transition - Arent Fox

Although this article is focused on tax-exempt debt, the tax ramifications of the LIBOR transition are not limited to the municipal finance world, and the elimination of LIBOR may also have a significant impact on taxable debt, interest swap transactions and other transactions utilizing LIBOR.

For Our Complete Archive of LIBOR Analysis Click Here

General

In connection with LIBOR's impending demise, it became clear to many tax lawyers that numerous tax-exempt bond transactions face the risk of adverse tax consequences because the documents under which they were issued do not contemplate this transition and, therefore, must be amended to provide for a replacement ("fallback") index. This risk arises as a result of a basic tax principle – when a debt instrument is modified in a significant manner after it is issued, the debt is deemed exchanged for a new debt instrument. This exchange, or 'reissuance,' can trigger a tax recognition event to the borrower or bondholder (sometimes a bank or other institutional lender) and, if certain facts are present, may cause tax-exempt debt to lose its tax-exempt treatment under the Internal Revenue Code.

IRS Rev. Proc. 2020-44

General

Following the announcement that LIBOR would be phased out, the Internal Revenue Service (IRS) issued Revenue Procedure 2020-44 aiming to: (1) facilitate the use of alternative reference rates recommended by (a) the Alternative Reference Rates Committee (ARRC) and (b) the International Swaps and Dealers Association (ISDA); and (2) provide that if adequate fallback language is used in loan agreements, the result will prevent a reissuance. The Rev. Proc. attempted to achieve this beneficial outcome by providing that the change in yield that results from the effectiveness of an appropriate alternative rate index would not itself be material, thus treating the effectiveness of such a fallback index as not a taxable exchange of property for other property differing materially in kind or extent for purposes of Treasury Regulation §1.1001-1(a).

Substantially Equivalent Value Test

Tax-Exempt Bond Rule

For municipal bonds, under existing regulations, changes to the terms of a tax-exempt bond transaction are not in themselves considered significant enough to trigger a reissuance if they result in a change in the yield on the bonds of less than 25 basis points. Rev. Proc. 2020-44 increases the circumstances in which this safe harbor applies to certain changes made to accommodate the end of LIBOR.

General Debt Instruments

The general rule under Rev. Proc. 2020-44 is that implementation of certain provisions in documents to replace LIBOR with a new benchmark index will not, by itself, result in reissuance because of the resultant changes in yield without regard to the 25 basis point rule if the fair market value of the altered instrument is substantially equivalent to the fair market value of the unaltered instrument.

Given that LIBOR will cease to exist and, thus, there will be no way to measure a replacement index against LIBOR, and given that SOFR and many other replacement indices have not been in existence for long enough to predict their relationship to LIBOR in all interest rate environments, it is unclear how this equivalence requirement can practically be satisfied.

Accordingly, in many transactions we have asked, on behalf of our borrower clients, that a substantially equivalent test be used in amendments to debt instruments contemplating the LIBOR transition. However, banks have been very resistant to this suggestion because of (i) market uncertainty, (ii) lack of history with SOFR and many other replacement indices, and (iii) bank desire to control the rate setting process in connection with the LIBOR transition.

Rev. Proc. 2020-44 attempts to address this problem since it provides that the fair market value may be determined by any reasonable valuation method so long as that method is applied consistently. The question will then be whether a bank's sole discretion in setting of the new interest rate is a reasonable valuation method even if it is done consistently by each bank and consistently within the financial industry.

Integrated Hedges

While Rev. Proc. 2020-44 gives some relief in municipal bond transactions, it is also important to consider how the end of LIBOR will impact transactions that utilize hedges and, specifically, 'integrated hedges.'A debt instrument may be 'integrated' with a hedge for purposes of determining the yield on an instrument for tax purposes, and the amount and timing of taxpayer income, deduction, gain or loss if certain procedures are followed. When amending debt instruments to address the elimination of LIBOR, if an integrated hedge is not simultaneously amended in the same manner, the change to the debt instrument could itself qualify for exclusion from the reissuance rule but the transaction could still lose the benefit of the integrated hedge, and thus be treated as reissued nonetheless. This could lead to potentially unfavorable tax consequences.

The key to avoiding this tax risk will be amending the debt instrument and the hedge in the same manner and at the same time to deal with the LIBOR transition. However, interest rate hedge transactions are generally governed by ISDA documentation, whereas the changes to a debt instrument are dictated by agreements of the parties to the debt instrument – typically the issuer/borrower and the bank/lender. Matching the provisions adopted in contemplation of the phase-out of LIBOR in integrated transactions may be difficult, but may also be critical to avoid adverse tax consequences.

Dichotomy of Fallback Provisions

ARRC

No Recommended Benchmark

ARRC initially announced that the Secured Overnight Financing Rate (SOFR) would be its recommended new interest rate benchmark index for formerly LIBOR-based debt. However, ARRC subsequently announced that banks could utilize any interest rate benchmark they so choose. In the face of this revised ARRC announcement, most banks that we have dealt with that have confronted the LIBOR transition issue have, so far, proposed as a fallback solution that the bank would use a replacement index chosen in the bank's sole and absolute discretion, without any input from the borrower/issuer.

In most cases, under existing regulations and notwithstanding the Rev. Proc. 2020-44 safe harbor,

when banks unilaterally choose the new benchmark in a variable rate financing prepayable at any time, a reissuance event could result. Thus, these unilateral pronouncements may fail to allow the lenders to take advantage of the favorable tax treatment (avoidance of reissuance) intended to be available under Rev. Proc. 2020-44 because, absent the safe harbor treatment offered by the Rev. Proc., it is impossible to predict whether the 25 basis point safe harbor will be met now for these benchmark replacement substitutions.

No Recommended Spread Adjustment

Even when SOFR (or an alternative benchmark) is utilized as a replacement index for LIBOR (thus securing Rev. Proc. 2020-44 safe harbor treatment), it is clear that a spread must be added to SOFR for it to yield effective interest rates similar to LIBOR prior to the transition. Although it has tried several times, ARRC has not developed a recommended spread adjustment. In light of this, and absent negotiations, bank transition documentation often state that the new recommended benchmark spread adjustment to equate LIBOR with the new benchmark is to be chosen in the bank's sole and absolute discretion, without any input from the borrower/issuer. This also will likely result in reissuance.

Fair Recommended Fallback Language

ARRC has published recommended fallback language to be used in loan agreements as well as in many other commercial agreements. However, our experience has shown that very few financial institutions are using the ARRC recommended fallback language.

ISDA

Required Fallback

For swaps and derivatives, ISDA has developed what some consider to be a more robust fallback language to specify the rate to be used upon a LIBOR cessation. Although the use of the ISDA fallback may be the scenario expected by the swap counterparties, it is not automatically effective in pre-existing swaps. Therefore, issuers and borrowers must either agree to adopt the ISDA fallback in existing swaps, or amend or replace existing swaps or other derivatives with other new bilateral agreements.

Required Response

In our view, entering into a new agreement or new amendment in the case of swaps facing the end of LIBOR without built-in fallbacks (currently, silence is the most common fact pattern), rather than just agreeing to the ISDA Protocol, is highly recommended, as the ISDA Protocol leaves, at the sole and absolute discretion of the bank: (i) the determination of the new benchmark index, and (ii) the timing of the LIBOR transition. In addition, the ISDA Protocol locks in the benchmark spread adjustment as of March 5, 2021, which may (or may not) be a fair spread adjustment today, much less a year from now. Further, the ISDA Protocol strips away certain existing legal rights of borrowers. Moreover, as noted above, harmonizing these changes with changes to the underlying debt instrument (and vice versa) may also be crucial.

Further Analyses

General

As noted, reissuance, with its potential adverse tax consequences, can be triggered by: (i) changes in the benchmark index referenced from LIBOR to SOFR (or another benchmark as the banks have not

eagerly adopted SOFR) together with a benchmark spread adjustment that do not satisfy the requirements of Rev. Proc. 2020-44, and (ii) changes in the other fallback provisions (e.g., interest payment and calculation periods) which are innocuously referenced to as 'conforming changes.'

These changes could constitute an alteration of the terms of a debt instrument, be treated as a significant modification, trigger a tax realization event and, in some cases, result in a loss of tax exemption. Therefore, if borrowers and their lenders are to develop truly helpful LIBOR replacement fallback provisions, a main objective must be to avoid reissuance, which neither the ISDA nor the ARRC language achieves.

Associated Alterations

Rev. Proc. 2020-44 gives relatively broad protection from reissuance treatment for what are termed "associated alterations" done in connection with the change of the reference rate. It further permits, without causing reissuance, a one-time payment to correlate the old fair market value with the new fair market value, in the event an adjustment to the spread or to the rate is not enough to make the debt instruments economically substantially equivalent immediately prior to, and subsequent to, the LIBOR transition. Again, how this will be satisfied is not enumerated in the Rev. Proc. and remains unclear.

Conclusion

Accordingly, borrowers should take particular note of the tax risks summarized here and not merely accept bank proposed changes, particularly because in most bank documents, a change in taxes or regulatory requirements for a particular loan that have negative consequences to the bank are passed on to the borrower.

In a similar vein, in many transactions on behalf of our borrower clients, we have requested that negative implications to the end of LIBOR be retained by the bank, in no small part because (i) this LIBOR transition is taking place as a result of bank manipulations of LIBOR and not from any actions of borrowers and (ii) of the banks' insistence on unilateral decision-making on alternative index and spread selection causing tax risk not created by the borrower. As with other suggested changes to the 'industry-standard' documentation, this position has not been generally accepted by the banks, though it would keep the issuers/borrowers in a similar economic position pre- and post-LIBOR transition.

Consequently, all LIBOR transition documentation should be carefully analyzed prior to execution, even if represented as 'industry-standard,' so as to avoid, among other things, adverse tax consequences borne by the borrower.

Arent Fox, LLP

by Alyssa Gould, Les Jacobowitz & Richard Newman

July 28, 2021

TAX - MAINE

Madison Paper Industries v. Town of Madison

Supreme Judicial Court of Maine - July 6, 2021 - A.3d - 2021 WL 2793717 - 2021 ME 35

Taxpayer, which owned paper mill and hydro-electric power plants, petitioned for review after State Board of Property Tax Review upheld denial by town board of assessors of taxpayer's request for property tax abatement.

The Superior Court affirmed decision. Taxpayer appealed.

The Supreme Judicial Court held that:

- Two of taxpayer's arguments were subject to review for clear error;
- Board's decision to uphold town's valuation of paper mill assets based on current use was warranted;
- Board did not improperly assess mill in determining highest and best use;
- Board's finding that assessment had not involved double-counting of value of energy produced by plants was consistent with evidence; and
- Board properly applied statute in determining that town's assessment and taxpayer's appraisal were within 10% of each other.

Arguments of taxpayer, operator of paper mill and hydro-electric power plants that sought property tax abatement, that State Board of Property Tax Review committed legal error by deciding that power plant assets should have been valued based on highest and best use, but that mill assets should have been valued based on current use, and that Board committed legal error in deciding that difference between assessed property value and taxpayer's asserted value was within range designated as accurate within reasonable limits of practicality raised primarily factual, not legal, challenges to Board's decisions, and thus such arguments were subject to review for clear error, even though operator proposed de novo standard of review.

Decision of State Board of Property Tax Review to uphold town's valuation of taxpayer's paper mill assets, which were located partially in town, based on assets' current use as operating mill, rather than based on assets' liquidation or salvage value, was warranted, even though taxpayer asserted that liquidation or salvage value was assets' highest and best use; Board pointed out that, at time of property tax assessment, mill was state-of-the-art facility that operated in the black, that its owners were not in financial difficulty, and that owners had announced mill's closure without communicating cooperatively with town, and Board found that mill had been closed and its equipment and machinery sold as scrap under restrictions because owners no longer wanted to operate mill, but that owners' decisions should not have dictated mill's highest and best use.

State Board of Property Tax Review, in determining highest and best use of taxpayer's paper mill, for purpose of determining mill's just value, and thus proper property tax assessment, did not improperly assess mill; Board simply rejected taxpayer's appraisal of mill as incredible, starting with taxpayer's view of mill assets' highest and best use as being liquidation value, which was within Board's prerogative as fact-finder, and determined that taxpayer failed to prove that judgment of assessors was so irrational or unreasonable that property was substantially overvalued.

Finding of State Board of Property Tax Review that assessment of taxpayer's paper mill and hydro-electric power plants had not involved double-counting of value of energy produced by plants was consistent with evidence, even though taxpayer asserted that value had been counted once by including value of energy in valuation of plants as "merchant power plants" and again by attributing value of energy supplied to mill as "avoided cost"; while Board found that 40% of mill's energy requirement that plants provided constituted avoided cost to mill, such finding did not necessarily mean that town, in assessing property tax, factored avoided cost into assessment of mill assets, and individual who provided assessment calculations as guidance relied on cost approach, which did not count value of energy as avoided cost equivalent to income.

State Board of Property Tax Assessment properly applied statute indicating that, in proceedings related to protested assessment, it is sufficient defense of assessment that it is accurate within reasonable limits of practicality, except when proven deviation of at least 10% from relevant assessment ratio exists, in determining that town's assessment of value of portion of taxpayer's hydro-electric power plants that was within town and value offered in taxpayer's appraisal were within 10% of one another; while Board used town's valuation that excluded equipment that was exempt from taxation pursuant to Business Equipment Tax Exemption (BETE) program, such equipment was not included in protested assessment, and BETE statute required town to value and assess BETE-eligible assets only for purposes of reimbursement.

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OZ Exit Plans and Structural Risks.

What are the advantages of a Qualified Opportunity Fund that is structured as a REIT instead of a partnership? How does the level of diversification in a fund impact its risk/return profile?

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by JIMMY ATKINSON

JULY 28, 2021

Evolution of Tax Increment Financing: Indiana, Kentucky, Ohio, and West Virginia - Frost Brown Todd

Tax increment finance (TIF) legislation continues to evolve in many states within the Frost Brown Todd footprint. Below are summaries of recent legislative changes in Indiana, Kentucky, Ohio and West Virginia. These changes may provide additional opportunities for local governments or developers looking to utilize TIF to complete their capital stacks. In addition, the changes may provide additional financing opportunities for existing districts and projects.

Indiana

The General Assembly of the State of Indiana passed limited modifications to the TIF statutes and related provisions during this session. Some of the more relevant amendments to TIF and redevelopment commissions were included in House Bill 1271. The bill was the omnibus legislation for the Department of Local Government Finance (DLGF). It was signed into law by Governor Eric Holcomb on April 8, 2021, and included, among many other things, the following:

Negotiated Bond Sales – The bill extended the sunset provision permitting sales of general obligation, revenue (including tax increment revenue), or special tax bonds at negotiated sales until July 1, 2023.

Allocation Areas – There were several amendments providing that one parcel may not be included in multiple allocation areas. This provision, however, does not apply retroactively to parcels currently located in multiple allocation areas.

Annual Notification to DLGF – The bill shifted responsibility for annual notification to DLGF of the amount of excess tax increment revenue from the redevelopment commission of the local governmental unit to the county auditor.

The above is a short summation of some of the legislation passed by the General Assembly that affects TIF and redevelopment commissions. The 2022 General Assembly session will likely yield more changes to Indiana's TIF statutes and related provisions.

Kentucky

During the 2021 legislative session, the Kentucky legislature passed an amendment to Section 65.7047 of the Kentucky Tax Increment Financing Act. The amendment, effective June 29, 2021, places certain preliminary requirements on cities and counties that are establishing or modifying local development areas over previously undeveloped land. The amendment requires the city or county to engage a "qualified independent outside consultant or financial adviser" to prepare a report that analyzes data related to the project and the proposed development area.

The component parts of the required report include:

1. the estimated approved public infrastructure costs;
2. an assessment of the feasibility of the project;
3. the estimated amount of local tax revenues that will be generated by the project over the term of the local development area;
4. the estimated amount of local tax revenues that will be displaced as a result of the project;
5. the estimated amount of old revenues that would have been generated in the local development area in the absence of the project; and

6. a determination that the project will not occur “but for” the existence of the local development area.

The amendment also addresses improvements to local development areas that will be financed through the issuance and sale of increment revenue bonds or “TIF bonds.” Where such bonds will be issued and sold, the required report must also include projected financing costs as well as the relationship of the estimated revenues to the financing needs of the project.

Finally, with respect to the legislative approval of a local development area, the amendment provides that the ordinance approving the development area must include the estimated net positive fiscal impact as set forth in the required report.

Ohio

The Ohio General Assembly recently passed several bills that will impact the implementation and administration of TIF districts in Ohio. Below is a summary of key updates that will be of interest to local governments, developers, and other community stakeholders.

Amendments to Sections 5709.40 and 5709.41 of the Ohio Revised Code – The biennium budget bill, signed into law by Governor Mike DeWine on July 1, 2021, includes amendments to Sections 5709.40 and 5709.41 of the Ohio Revised Code, which are the tax increment provisions that govern the establishment of TIF districts in municipal corporations. The amendments incorporate the following updates:

- ***Off-Street Parking Facilities:*** A Section 5709.40(A)(8) amendment updates the definition of “public infrastructure improvement” to expressly include “off-street parking facilities” as a qualifying expenditure of TIF service payments. This update will give municipalities more certainty with respect to their participation in the financing of projects that incorporate structured parking.
- ***Exemption Period Commencement Flexibility Allowing Designated Tax Year or Value:*** A Section 5709.41(D) amendment gives municipalities greater latitude when designating the commencement date for a TIF exemption under an authorizing ordinance. Under the updated provision, municipalities may elect to have a TIF exemption commence with any tax year specified in the TIF ordinance other than a tax year that precedes the effective date of the ordinance. Alternatively, the amendment permits municipalities to refrain from designating a tax year for the commencement of a TIF exemption and to instead utilize an improvement value as the basis for commencing a TIF exemption. For projects that incorporate multiple parcels, the amendment permits a municipality to establish different commencement dates for each parcel identified in the authorizing ordinance. These updates bring Section 5709.41 in alignment with the parallel provisions under Section 5709.40.

Minimum Service Payment Obligations Under Section 5709.91 – Substitute Senate Bill 57 was signed by Governor DeWine on April 27, 2021 and will be effective on August 3, 2021. This legislation approves several updates to Section 5709.91 of the Ohio Revised Code with respect to the status of “minimum service payment obligations” as they pertain to real property located in TIF districts. “Minimum service payment obligations” are payment obligations that supplement a property owner’s obligation to make statutory service payments under Section 5709.42 and related provisions of the Ohio Revised Code. The updates to Section 5790.91, include the following changes pertaining to minimum service payment obligations:

- ***Covenant Running with the Land:*** Recorded agreements or instruments memorializing a property owner’s consent to a minimum service payment obligation shall constitute a covenant running with the land and be binding against subsequent owners of the property;

- ***Insurable Interest****:* Minimum service payment obligations constitute an insurable interest for purposes of issuing title insurance in Ohio;
- ***Collected Like Property Taxes:*** Minimum service payment obligations may be certified to the county auditor and shall be collected in the same manner as real property taxes; and
- ***Security Mechanism for Financing:*** Minimum service payment obligations may be established to ensure sufficient funds to "finance expenditures" authorized under Chapters 725, 1728, and 5709. This update provides for broad authority to utilize "minimum service payment obligations" as compared to the prior provision which limited the use of "minimum service payment obligations" to ensuring sufficient funds to finance expenditures attributable to "public infrastructure improvements" and "housing renovations."

These changes provide greater flexibility and increased opportunity for local governments to incorporate the "minimum service payment obligations" into the financing of projects.

Payment Limitation on TIF District Extensions – Certain TIF districts in Ohio may be eligible for an extension of the exemption period. As a reminder, the ability to extend TIF districts in 2020 is gone, but TIF districts may still be extended in 2021 and beyond. For extensions after January 1, 2021, service payments may not exceed $1,500,000 for all calendar years prior to the calendar year immediately preceding the adoption of the extension amendment.

West Virginia

The West Virginia legislature continued passing amendments to the West Virginia Tax Increment Financing Act during the 2021 legislative session. The Act was previously amended during the 2004, 2014, 2016 and 2018 legislative sessions. The 2021 amendments primarily address:

1. extending the termination date of certain districts;
2. procedures to combine two districts;
3. the maturity date of certain refunding bonds; and
4. agreement for payments in lieu of taxes for properties within districts.

The amendments discussed below were effective on July 9, 2021.

Extension of Termination Date of Certain Districts – County commissions or municipalities may extend the termination date of certain districts for up to five years or to December 31, 2050, whichever is earlier. Only districts for which tax increment financing obligations were issued prior to December 31, 2020 may be extended. The extension of the term of a district may not occur simultaneously with the modification of the boundaries of the district. The local government proposing the extension is required to hold a public hearing, obtain the approval of the director of the West Virginia Department of Economic Development, and, if applicable, obtain the approval of any municipality in which a portion of a district is located.

Combining Districts – The amendments to the Act clarified: (i) the base assessed value of the property of a district resulting from the combination of two prior districts and (ii) the termination date of a combined district. The base assessed value of property in a combined district is the base assessed value of such property in each of the prior separate districts. The termination date of a combined district is the termination date of the district that had the latest termination date prior to the combination of the districts. This provides the opportunity to create a new district adjacent to an existing district, and following the combination of the two districts, the termination date would be nearly 30 years.

Payments in Lieu of Taxes – Prior to the most recent amendments to the Act, agreements for

payments in lieu of taxes with respect to property in a district were required to have any such payments be equal to the property taxes that otherwise would have been due. The amendments permit agreements for payments in lieu of taxes to be negotiated among the public entity owning the property, the lessee of the property, and the applicable local levying bodies. These changes provide flexibility to provide property tax incentives for projects within a district. In addition, these changes provide for a written agreement to address the amount of property taxes to be deposited in the tax increment financing fund for the term of the agreement which eliminates assessment risk for any property covered by such an agreement.

Frost Brown Todd LLC – Carrie J. Cecil , Emmett M. Kelly, Emma H. Mulvaney, Donald L. Warner III and Beau F. Zoeller

July 28 2021

OZ Investing in the New Economy.

Do record stock market levels, the high inflation environment, and the new economy pose an opportunity for Opportunity Zone investors?

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July 21, 2021

IRS Extends Continuity Safe Harbor For ITC And PTC Projects.

Renewable energy developers breathed a sigh of relief Tuesday when the Internal Revenue Service and Department of the Treasury issued guidance extending the safe harbor for wind and solar projects to qualify for the investment tax credit (ITC) and production tax credit (PTC).

Citing delays related to the COVID-19 pandemic, the extension provides relief to developers struggling with the interconnection delays, supplier backlogs, and contractor constraints that have been plaguing the industry. Notice 2021-41 extends the Continuity Safe Harbor for projects that began construction in 2016 through 2020 and clarifies the methods that taxpayers can use to satisfy the Continuity Requirement.

Under prior IRS guidance, taxpayers have two options to demonstrate that a project has begun construction under Section 45 or Section 48(a)(5) of the Internal Revenue Code – the Physical Work Test or the Five Percent Safe Harbor. Both methods require continuous progress toward completion of the facility once construction has begun (Continuity Requirement). The Continuity Requirement can be satisfied in two ways, either by (1) satisfying the test applicable to the method used to establish start of construction, or (2) satisfying the Continuity Safe Harbor.

Continuity Safe Harbor Extension

The Continuity Safe Harbor allows a facility to be deemed to have satisfied the Continuity Requirement if the facility is placed in service within a certain amount of time after start of

construction is established.

Notice 2021-41 provides that for any qualified energy project that began construction under either the Physical Work Test or the Five Percent Safe Harbor, the timeline to achieve placed in service and still satisfy the Continuity Safe Harbor is extended, as follows:

- Projects that began construction in 2016, 2017, 2018, or 2019, the Continuity Safe Harbor is satisfied if the project is placed in service by the end of the calendar year that is six years after the year construction began.
- Projects that began construction in 2020, the Continuity Safe Harbor is satisfied if the project is placed in service by December 31, 2025.

Satisfaction of Continuity Requirement

Projects that fail to be placed in service within the timeline allowed to satisfy the Continuity Safe Harbor can nevertheless still satisfy the Continuity Requirement.

Prior IRS guidance allowed a taxpayer to satisfy the Continuity Requirement by establishing facts sufficient to demonstrate compliance with the test associated with the method that was used to establish start of construction. The Continuous Construction Test had to be satisfied if start of construction was established under the Physical Work Test, or, if start of construction was established under the Five Percent Safe Harbor, the taxpayer had to satisfy the Continuous Efforts Test. Notice 2021-41 revises prior guidance by clarifying that regardless of the method used to establish start of construction, if the taxpayer satisfies either the Continuous Construction Test or the Continuous Efforts Test, the Continuity Requirement has been satisfied.

Husch Blackwell LLP

July 1, 2021

S&P: U.S. Highway User Tax Bonds Prove Resilient

Key Takeaways

- Credit trends have been stable, despite variations in the price of fuel, temporarily lowered driving activity during the pandemic, increasingly restrictive federal gasoline mileage standards, and potential future loss of revenue due to electric vehicles (EVs), plug-in hybrid electric vehicles (PHEVs), hybrid electric vehicles (HEVs) and other technologies.
- Stable credit quality stems from strong debt service coverage and additional bonds tests, stable fuel consumption trends despite price swings, active management by states in raising tax rates when necessary, and a mix of pledged stable revenue sources beyond fuel taxes, such as license and registration fees.
- We believe states will find alternative sources of pledged revenue to the extent gas tax revenue flowing into state highway funds declines, such as by imposing vehicle mileage or other taxes, or by direct transfers of general tax revenue.
- Recent changes to highway user tax bond outlooks have been the result of the linkage to state general obligation credit quality under our priority lien criteria.

Continue reading.

14 Jul, 2021
