
TAX - TEXAS

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

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

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

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

The Supreme Court held that:

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

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

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

Record contained no ruling from the trial court on county appraisal review board's (ARB) plea to the

jurisdiction or the extent to which the Tax Code waived its governmental immunity, thereby precluding an interlocutory appeal of issue.

TAX - NEW HAMPSHIRE

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

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

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

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

The Supreme Court held that:

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

How IRA Elective Pay is Helping Cities Meet Climate Action Plans

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

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

Each project must preregister and receive a number before filing. Due to wait times for registration numbers from the IRS lasting upwards of several months, local leaders should act now to be ready

by the filing deadline. It is also worth noting that coordination across multiple city departments is likely needed, including legal, financial and sustainability teams and others.

Continue reading.

National League of Cities

by Kelly Aves

JULY 2, 2024

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

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

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

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

Continue reading.

Kutak Rock LLP

by Cyrus Torabi

26 JUNE 2024

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

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

State reserves remain robust due to large surpluses accumulated in 2021 and 2022, with state rainy day funds averaging 13.8% of prior-year revenues in fiscal 2023 compared with 7.9% in fiscal 2019.

However, states that have made large tax cuts and/or may implement additional cuts are more vulnerable to credit pressure if lower revenue growth or revenue declines weaken financial resilience. Recent tax cuts have not yet been tested by a cyclical downturn, which could have a more pronounced effect on collections.

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

Continue reading.

The Great Salt Lake City Tax Tradeoff.

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

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

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

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

Continue reading.

Route Fifty

By Katherine Barrett & Richard Greene

JUNE 17, 2024

Municipal Bonds: Planning for the TCJA Sunset

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

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

municipal bond investing increasingly relevant for a broader segment of the investor community.

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

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

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

Continue reading.

Journal of Accountancy

By Seth Hammer, CPA, Ph.D.

June 1, 2024

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

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

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

NLC resources

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

Continue reading.

National League of Cities

by Carolyn Berndt

MAY 27, 2024

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

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

Continue reading.

[Free Registration Required.]

3 Jun, 2024

TAX - ARKANSAS

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

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

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

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

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

The Supreme Court held that:

- Statutes governing state and local gross receipts tax and state tourism tax were ambiguous;
- Ejusdem generis doctrine supported finding that statutes governing state and local gross receipts tax and state tourism tax did not apply to companies;
- Legislative amendment demonstrated that accommodations intermediaries were newly subject to the taxes;

- Department of Finance and Administration's (DF&A) established position was that prior to amendments accommodations intermediaries were not entities subject to state and local gross receipts tax; and
- Companies were not subject to local tourism tax.

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

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

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

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

Online technology companies that facilitated reservations between travelers and lodging establishments that supplied rooms were not subject to local tourism tax, which, prior to amendments, imposed tax on gross receipts from renting, leasing, or otherwise furnishing hotel rooms, motel rooms, or similar accommodations; companies' services did not fit within the plain language of "renting, leasing, or otherwise furnishing" rooms given that contracts between companies and hotels included language that companies did not acquire inventories of rooms and that nothing in contracts constituted a sale or rental of rooms from hotel to companies, and

dictionary definition of “furnish” meant “to provide with what is needed,” or to “supply” or “give,” but companies’ services were intermediary, not as actually “providing,” “supplying,” or “giving” rooms to guests.

TAX - ILLINOIS

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

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

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

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

The Supreme Court held that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

By Caitlin Devitt

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

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

Key Takeaways

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

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

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

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

The small issuer exception on bank-qualified debt currently allows counties issuing less than $10 million in bonds per calendar year to designate this debt as bank-qualified, allowing them to bypass

the traditional underwriting process. However, the current cap of $10 million has not been adjusted since its creation in 1986. Increasing the cap to $30 million would allow more counties that issue small, less-frequent bonds to access the lower costs municipal debt needed to provide essential services and projects for residents.

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

by Maxx Silvan & Paige Mellerio

May 15, 2024

National Association of Counties

New Legislation Would Expand the Use of Municipal Bonds: Mintz

Local Infrastructure Financing Tools (LIFT) Act

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

Expanding the Use of Bonds

The LIFT Act was first introduced by Rep. Sewell, a senior member of the US House Committee on Ways and Means and a former bond lawyer, in the previous Congress. The reintroduced legislation would:

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

Continue reading.

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

May 15, 2024

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

TAX - RHODE ISLAND

City of Pawtucket v. Rhode Island Department of Revenue

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

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

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

The Supreme Court held that:

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

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

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

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

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

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

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

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

Continue reading.

COMMERCIAL OBSERVER

BY PATRICK SISSON

MAY 9, 2024

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

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

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

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

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

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

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

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

April 30, 2024

TAX - NEW YORK

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

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

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

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

The Court of Appeals held that:

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

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

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

TAX - MINNESOTA

Huizenga v. Independent School District No. 11

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

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

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

The District Court held that:

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

TAX - HAWAII

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

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

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

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

The Supreme Court held that:

- Taxpayer's appeal from Tax Appeal Court was required to be filed within 30 days of orders denying taxpayer's summary judgment motion and granting county's summary judgment motion;
- Application of the equitable doctrine of "unique circumstances" was in the interests of justice and appropriate in connection with taxpayer's untimely appeal;
- County's time share tax classification and its rate acted as a real property tax based on the assessed property value, rather than as a tax assessed on individual time share unit users and value of their stay;
- Time share units were not required to be assigned to a real property tax classification according to their use;
- State's comprehensive transient accommodation tax (TAT) scheme did not cover the same subject matter as county's time share tax classification;
- County's time share tax classification and rate did not duplicate, contradict, or enter an area fully occupied by state's general law; and
- County's creation of a separate real property tax classification for time share units was reasonably related to legitimate policy purposes.

Supreme Court Rules on Important Impact Fee Case.

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

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

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

Continue reading.

National League of Cities

by McKaia Dykema

APRIL 25, 2024

Tax Code Constraints Limit Tribal Tax-Exempt Bonding.

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

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

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

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

Continue reading.

The Federal Reserve Bank of Minneapolis

by Matthew Gregg & John Morseau

April 25, 2024

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

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

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

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

Continue reading.

National League of Cities

by Michael Gleeson & Carolyn Berndt

APRIL 24, 2024

TAX - ILLINOIS

Village of Shiloh v. County of St. Clair

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

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

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

The Appellate Court held that:

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

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

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

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

TAX - ALASKA

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

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

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

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

The Supreme Court held that:

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

TAX - MASSACHUSETTS

Outfront Media LLC v. Board of Assessors of Boston

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

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

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

The Supreme Judicial Court held that:

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

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

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

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

conducted for profit."

TAX - NEW JERSEY

Freda by Acme v. City of Sea Isle City

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

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

City moved to dismiss.

The Tax Court held that:

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

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

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

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

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

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

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

On April 12, 2024, the Supreme Court of the United States issued a unanimous opinion in *Sheetz v. County of El Dorado, California*, 601 U.S. ____ (2024) (*Sheetz*), clarifying that the Takings Clause does apply to legislatively established land-use permit conditions, like development impact fees. The Supreme Court's decision resolves a split in how state courts viewed this question but stops short of

providing a definitive answer on "whether a permit condition imposed on a class of properties must be tailored with the same degree of specificity as a permit condition that targets a particular development."

Continue reading.

Brownstein Hyatt Farber Schreck

April 18, 2024

TAX. - RHODE ISLAND

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

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

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

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

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

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

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

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

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

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

I'm an economist who specializes in forecasting how various tax regimes affect markets. My

expertise spans industries such as legal recreational marijuana, alcohol and tobacco. I've examined various taxes on marijuana in states such as Colorado and Washington to understand how much revenue has been brought in and the role state tax policies have played in that outcome.

Continue reading.

Route Fifty

By Boyoung Seo,
The Conversation

April 15, 2024

TAX - VIRGINIA

City of Richmond v. Property Ventures, Inc.

Court of Appeals of Virginia, Richmond - April 2, 2024 - 80 Va.App. 538 - 899 S.E.2d 82

City filed motion for judicial sale of real property to enforce delinquent taxes after landowner failed to pay special assessments and civil penalties charged for grass cutting and other yard maintenance on the property.

The Richmond Circuit Court dismissed the action, and city appealed.

The Court of Appeals held that:

- Statutes granting localities power to require property owners to cut back weeds "on such property or any part thereof" and authorizing city to cut weeds and charge abatement fees did not grant city power to charge for weeds beyond landowner's property;
- City code and statutes authorized city to abate nuisances, including by removing weeds, on both private property and adjacent public property and to enforce those charges exceeding $200 as a lien against the property, including by judicial sale; and
- Evidence was sufficient to support finding that city failed to prove that vegetation on landowner's property and any adjacent property violated city code provision prohibiting grass and other vegetation 12 inches high or over "other than trees, shrubbery, agricultural plants, garden vegetables, flowers or ornamental plants."

TAX - MARYLAND

901, LLC v. Supervisor of Assessments of Baltimore City

Appellate Court of Maryland - April 3, 2024 - A.3d - 2024 WL 1425420

Taxpayer, a limited liability company (LLC), sought judicial review of decision of Maryland Tax Court affirming city assessment supervisor's denial of its applications for partial exemptions from property tax on real property that taxpayer had leased from Maryland Transit Administration (MTA).

The Circuit Court affirmed, and taxpayer appealed.

The Appellate Court held that taxpayer leased property from government with privilege to use property in connection with for-profit business, precluding tax exemption.

Taxpayer leased real property from Maryland Transit Administration (MTA) with "privilege to use" property in connection with for-profit business, and thus, taxpayer was required to pay property taxes on such property pursuant to statute requiring "the lessee or user of government-owned property" to pay property tax as if such lessee or user were property's owner if property was "leased or otherwise made available to that person" by qualifying government entity and "with the privilege to use the property in connection with a business that is conducted for profit"; no statute, ordinance, or lease-related agreement restricted taxpayer's ability to use property in connection with for-profit business of subleasing property to others or operating its own for-profit business on premises.

Economist at Top Muni Bank Pitches End of Local Bond Tax Break.

In March, a conservative think tank floated repealing the tax break that state and local governments use to induce investment in their debt, a move that would wreak havoc on the $4 trillion municipal-bond market.

The report by the American Enterprise Institute had a surprising co-author: Donald Schneider, deputy head of US policy at Piper Sandler Cos., one of the top investment banks for municipalities in the US.

"The current exemption for municipal bonds provides an inefficient subsidy for state and local government infrastructure projects," according to the report by Schneider and Kyle Pomerleau, who is a senior fellow at the American Enterprise Institute.

Repealing the tax-exemption was cited as a way to help make former President Donald Trump's 2017 tax cuts permanent. Any call to eliminate the tax break is seen as a major threat within the muni market, where governments finance key infrastructure projects like airports and transit.

Continue reading.

Bloomberg Markets

By Amanda Albright and Skylar Woodhouse

April 4, 2024

TAX - NEW YORK

Tax Equity Now N.Y. LLC v. City of New York

Court of Appeals of New York - March 19, 2024 - N.E.3d - 2024 WL 1160498 - 2024 N.Y. Slip Op. 01498

Association of owners and renters of real property brought action for declaratory and injunctive relief against State, State Office of Real Property Tax Services, New York City, and New York City's department of finance, alleging that city's property tax system violated the federal Fair Housing Act (FHA) and federal and state constitutional and statutory mandates requiring property taxes to be imposed uniformly within each property class and reflect fair and realistic value of property involved.

The Supreme Court, New York County, denied motion of city and department to dismiss for failure to state a claim, but granted in part, and denied in part, motion of State and Office to dismiss for failure to state a claim. Defendants separately appealed, and association cross-appealed. The Supreme Court, Appellate Division, affirmed as modified. Association successfully moved for leave to appeal.

The Court of Appeals held that:

- Under the Real Property Tax Law (RPTL), city was required to account for increases in market values within the same class by adjusting the fractional assessment rate based on how the statutory caps suppressed the fair market estimate later in the tax process;
- Association stated a claim that, as to city's assessments of condominiums and cooperatives as if they were rentals, city violated RPTL's provision requiring all real property in each assessing unit to be assessed at a uniform percentage of value, i.e., a fractional assessment, and also violated provision that mandated that condominiums and cooperatives be assessed as if they were rental properties;
- Association stated a claim that city's property tax system violated the FHA by disproportionately burdening racial minorities;
- Association stated a claim that city's property tax system perpetuated existing segregation throughout the city in violation of the FHA;
- Article 18 of the RPTL did not violate equal protection;
- Association failed to state a claim that the city's property tax system violated due process;
- Association failed to state a claim that city's property tax system violated New York Constitution's provision that the legislature was to provide for the supervision, review, and equalization of assessments for purposes of taxation; and
- Association failed to state any claims against the State or the State Office of Real Property Tax Services.

New Jersey Senator Proposes Doubling Casinos' Online Wager Tax Rates.

Change would more than double revenue streams that brought in $414M last year.

A state senator has proposed more than doubling New Jersey's tax rates on casino wins for online wages and online sports betting, a proposal that would add hundreds of millions of dollars a year to the state's ledger as it faces a revenue crunch.

Sen. John McKeon's (D-Essex) bill would raise both tax rates to 30%, from 15% for online wagering and 13% for online sports betting. The revenue streams brought the state more than $414 million in 2023.

The senator said New Jersey's current tax rates in this area are "just not commensurate with where everybody else is, and we can use the revenues."

Continue reading.

Route Fifty

By Nikita Biryukov,
New Jersey Monitor

APRIL 1, 2024

Boston Mulls Commercial Tax Hike to Counter Office Market Slump.

- **Proposal could potentially deepen commercial real estate pain**
- **A quarter of Boston's Class A, Class B office space is vacant**

Boston Mayor Michelle Wu is seeking to raise commercial property tax rates to help protect homeowners from the brunt of the historic slump in office property values.

Wu has submitted a petition for a temporary increase of the city's tax-rate ceiling for commercial properties relative to residential levies. The proposal aims to redistribute the tax burden while continuing to fully fund all city services, according to Ashley Groffenberger, Boston's chief financial officer. The tax adjustment won't raise additional revenue for the city.

"The proposal we put forward is really focused on creating stability and not having an outsize impact on residents," Groffenberger said in an interview.

Continue reading.

Bloomberg Markets

By Brooke Sutherland and Sri Taylor

April 8, 2024

Voters Reject Stadium Tax for Royals and Chiefs, Leaving Future in KC in Question.

KANSAS CITY, Mo. (AP) — The future of the Royals and Chiefs in Kansas City was thrown into question Tuesday night when residents of Jackson County, Missouri, resoundingly voted down a sales tax measure that would have helped to fund a new downtown ballpark along with major renovations to Arrowhead Stadium.

Royals owner John Sherman and Chiefs president Mark Donovan acknowledged long before the final tally that the initiative would fail. More than 58% of voters ultimately rejected the plan, which would have replaced an existing three-eighths of a cent sales tax that has been paying for the upkeep of Truman Sports Complex — the home for more than 50 years to Kauffman and Arrowhead Stadiums — with a similar tax that would have been in place for the next 40 years.

The Royals, who had pledged at least $1 billion from ownership for their project, wanted to use their share of the tax revenue to help fund a $2 billion-plus ballpark district. The Super Bowl champion Chiefs, who had committed $300 million in private money, would have used their share as part of an $800 million overhaul of Arrowhead Stadium.

Continue reading.

By Associated Press

April 2, 2024

NYT: How a Pandemic Boom Led to a 'Property Tax Mess' in Colorado

A surge of new residents into Rocky Mountain states drove up home prices. The result was property tax hikes of 40 percent or more for some of those already there.

Marleen Gamble had already taken out a reverse mortgage on her townhouse in 2018 to keep up with the steady increase in expenses eating into the Social Security checks that are her only source of income.

Then this year, Ms. Gamble, a retired X-ray technician, faced a 20 percent spike in her property tax bill. With no other way to pay it, she began to empty her home of 34 years in the Denver suburb of Littleton, one memento at a time. Her dining room set, sold. Her jewelry, now someone else's.

"Every knickknack I have, everything I don't use, I'm selling," said Ms. Gamble, 84, who has asked officials in neighboring Douglas County about applying for subsidized housing. "What I owe now is $962.62. I think I need to use two credit cards to do it. And I'm going to have to pay interest on those."

Continue reading.

The New York Times

By David W. Chen

April 3, 2024

TAX - OREGON

D.E. Shaw Renewable Investments, LLC v. Department of Revenue

Supreme Court of Oregon - October 5, 2023 - 371 Or. 384 - 537 P.3d 529

Taxpayers, which operated wind farms that were centrally assessed by the Department of Revenue and which had persuaded the Department that the valuation methodology that the Department had used to assess that property for a particular tax year had been flawed, appealed from the Department's refusal of their request that the Department use the corrected methodology to also reduce the assessed value of their property for two previous tax years.

The Tax Court entered summary judgment for the Department. Taxpayers appealed.

The Supreme Court held that the statute governing the correction of errors in the certified assessment roll precluded the Department from exercising its general statutory authority to reduce the assessed value of taxpayers' property for the two previous tax years at issue.

Statute governing the correction of errors in the certified assessment roll precluded the Department of Revenue from exercising its general statutory authority to reduce the assessed value of taxpayers' property—which consisted of wind farms that were centrally assessed by the Department—for two prior tax years, even though taxpayers had persuaded the Department that valuation methodology

that it had used to assess their property for different, but more recent, prior tax year had been flawed; taxpayers did not request a conference with the Department's director to challenge the Department's valuation opinion before the tentative assessments for those two prior years became final, and statute governing correction of errors prohibited the director from correcting an error in the valuation judgment that was an error in the Department's opinion of the value of property.

TAX - NEW YORK

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

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

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

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

The Court of Appeals held that:

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

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

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

Rethinking Property Taxes: GFOA Report

Property taxes are the most important local source of revenue for local governments. It is stable, transparent, and highly visible. Plus, the tax base is immobile. Yet it is also an unpopular tax.

Rehabilitating the property tax can be done with two broad strategies that center the interest of taxpayers:

- Provide accurate and fair valuation of tax liability.
- Provide stable, predictable costs to taxpayers.
- This report shows how local governments can accomplish these two strategies.

DOWNLOAD FULL REPORT

Upcoming Webinar: *From Burden to Benefit: Transforming Property Tax Challenges into Opportunities*, March 28 | Register

Publication date: March 2024

Authors: Chris Berry and Shayne Kavanagh

How To Protect Against Harmful SLGS This Spring: Squire Patton Boggs

On March 4, 2024, the Treasury Department published a final rule that amends the regulations concerning State and Local Government Series securities (SLGS). Among other changes, the updated regulations notably: (1) require that the maturity lengths of Time Deposit SLGS be no longer than reasonably necessary for the underlying governmental purpose of the investment and that the Issuer certify to such in a new "duration certification"; (2) add to the non-exhaustive list of impermissible transactions; (3) increase to 14 days the minimum holding period for requesting early redemption; (4) require that the Issuer provide a maturity date at the start of a subscription rather than by completion of the subscription; (5) require a new "eligibility certification" by the Issuer as to its eligibility to purchase SLGS; and (6) require notice of five business days for redemptions of Demand Deposit SLGS of $500 million or more. The updated regulations take effect August 26, 2024.

By Robert Radigan on March 19, 2024

The Public Finance Tax Blog

Squire Patton Boggs

HB 24-1172: Unlocking Tax Increment Finance for CO Counties via County Revitalization Authorities - Brownstein

Counties in Colorado may soon have a new way to take advantage of tax increment financing ("TIF"). Currently, there are only two ways to leverage TIF in Colorado: establishment of an urban renewal authority ("URA") or establishment of a downtown development authority ("DDA"). Both URAs and DDAs are governmental entities that can only be created by municipalities, and they are authorized to implement primarily municipal tools. House Bill 24-1172, sponsored by Reps. Rick Taggart (R) and Shannon Bird (D) and Sens. Barbara Kirkmeyer (R) and Kyle Mullica (D), proposes to bring the power of TIF to counties by creating a process for counties to establish a County Revitalization Authority ("CRA") that can, among other things, leverage TIF and private financing to address

underutilized or deteriorating areas within counties that could benefit from strategic economic investment. On March 11, 2024, the House passed the bill on its third reading.

REVITALIZATION PROCESS AND TIF

If HB 24-1172 becomes law in its current form, a CRA could be created after a petition is filed by 25 registered electors of a county, or a resolution is adopted by the board of county commissioners stating that there is a need for the CRA in the county, followed by a public hearing before the board of county commissioners. The CRA could then implement a county revitalization plan adopted by the board of county commissioners at a public hearing, which could authorize the CRA to collect TIF or exercise other powers such as eminent domain within the area established by the county revitalization plan.

Continue reading.

BROWNSTEIN CLIENT ALERT, MARCH 21, 2024

Wealth Boom Among Ultra-Rich Drives Demand for Municipal Bonds' Tax Shield: Bloomberg

- **Adjusted gross income increased $2.2 trillion in 2021**
- **Munis historically serve as a tax-haven for the wealthy**

Americans are getting richer, setting up the municipal bond market for a bounty of opportunity.

New data from the Internal Revenue Service, analyzed by Western Asset Management Company, show adjusted-gross-income in the US increased $2.2 trillion in the 2021 tax year — a 17.5% surge — making it the highest year-over-year jump in the past two decades. The increase comes as many US households bounce back from a pandemic-induced slump where millions faced job cuts.

"Individuals have gotten wealthier and are falling into higher tax brackets and these individuals can benefit more from muni incomes than they could in the past," Western Asset's Samuel Weitzman said.

Continue reading.

Bloomberg Markets

By Skylar Woodhouse

March 20, 2024

Muni Bond Games and the IRS' Lurking Arbitrage Vampires.

Today's interest rates may tempt public financiers to try to play the spread between tax-exempt and taxable bond yields. That invites heightened federal scrutiny, but there are some strategies likely to avoid the bite of the IRS.

America's public finance system is unique in its federalist heritage of allowing states and their localities to issue bonds whose interest is exempt from taxation by the IRS. The result is that interest rates on municipal bond debt are significantly lower than any other yields in the credit markets, which materially reduces the cost of financing essential public works.

Sometimes, though, unusual interest rate spreads invite a bond issuer to try to game the system, particularly by using low-cost proceeds from tax-exempt debt to find higher yields elsewhere in the markets. It's a potentially risky play given longstanding federal rules, but that's not to say there aren't some opportunities for savvy — and cautious — public financiers.

First, though, some relevant historical context: The issuance of tax-exempt bonds was long thought to be a constitutional right under the 10th Amendment and the associated concept of reciprocal immunity — that under the separation of powers, the two levels of government, state and federal, cannot tax each other. In 1988, however, the Supreme Court ruled that the federal tax exemption was not a constitutional right but rather a legislative grant to the states from Congress and thus subject to tinkering on Capitol Hill.

Continue reading.

governing.com

OPINION | March 13, 2024 • Girard Miller

IRS Expands Favorable Tax Treatment to Utility Securitizations That Use a State or Political Subdivision as Issuer: Hunton Andrews Kurth

The Internal Revenue Service ("IRS") issued a new revenue procedure 2024-15 (the "2024 Rev. Proc.") on February 29, 2024, allowing more types of utility securitization transactions to qualify for certain favorable tax treatment. The 2024 Rev. Proc. allows for a utility/sponsor to defer recognition of gross income until the related securitization charges are recognized in accordance with the utility usual method of accounting. The 2024 Rev. Proc. will allow utility securitization transactions using a state entity issuer to qualify for the same tax treatment as has been available to utility securitizations using a wholly owned special purpose entity of the utility. In addition, the 2024 Rev. Proc. modified the existing 2005 Rev. Proc. (as defined below) to provide that debt service payments in a qualifying securitization may be made annually. It also amended the definition of "Public Utility" under the 2005 Rev. Proc. to include any utility company that is subject to regulatory authority of a state public utility commission or other appropriate agency, thereby expanding the definition to include utilities that are not investor owned utilities.

Utility securitization is a form of debt financing secured by the right to bill and collect a dedicated, nonbypassable charge (the "Securitization Charge") payable by the utility's customers within the utility's historic service territory. The Securitization Charge is created as a present property right pursuant to a state statute and financing order (referred to herein as "Securitization Property") from the state public utilities commission (the "Regulatory Authority"). In the vast majority of transactions completed to date, the utility sells/transfers the Securitization Property to a wholly owned, bankruptcy remote special purpose vehicle (an "SPE") created for the purpose of issuing securitization bonds secured by the Securitization Property. The utility uses the proceeds from the sale/transfer to recover discrete costs authorized to be recovered pursuant to the state statute and financing order.

In 2005, the IRS adopted revenue procedure 2005-62 (the "2005 Rev. Proc.") which established that so long as the securitization is structured to meet the requirements outlined in the 2005 Rev. Proc., the utility will not recognize gross income upon (1) the receipt of a financing order from the Regulatory Authority, (2) the receipt of consideration in exchange for the sale/transfer of the Securitization Property to the SPE or (3) the receipt of consideration in exchange for the issuance of the securitization bonds by the SPE. Instead, the securitization bonds are treated as obligations of the utility and the Securitization Charges are treated as gross income to the utility recognized under the utility's usual method of accounting.

A requirement of the 2005 Rev. Proc., however, is the securitization bonds are issued by an SPE wholly-owned by the utility. By adopting the 2024 Rev. Proc., securitization bonds issued by a state, political subdivision thereof or other organization authorized to issue debt on behalf of the state or political subdivision that is so designated pursuant to a qualifying securitization financing legislation as a financing entity (referred to therein as a "qualifying state financing entity") will also be eligible for similar tax treatment, meaning the utility will not recognize gross income upon (i) the receipt of the financing order, (ii) the sale/transfer of the Securitization Property to a qualifying state financing entity, (iii) the issuance of the securitization bonds by the qualifying state financing entity or (iv) the utility's receipt of ultimate proceeds from the securitization bonds issued. Furthermore, payments from the utility to the qualifying state financing entity pursuant to the securitization bonds will be treated as payments on obligations of the utility. Finally, the Securitization Charges will be treated as gross income of the utility recognized under the utility's usual method of accounting.

The expansion of the revenue procedure to cover bonds issued by a qualifying state financing entity will allow a transaction to be structured and sold by a municipal issuer similar to recent transactions sponsored by public utilities in Oklahoma and Texas that were used to recover costs associated with Winter Storm Uri without potentially adverse tax consequences to the sponsoring utility. In this structure, the sponsor utility will apply for a financing order from its Regulatory Authority pursuant to qualifying state legislation. The financing order will, among other things, authorize the bond issuance and create the Securitization Property which will be sold by the utility to the qualifying state financing entity in an absolute transfer and true sale and pledged for the benefit of bondholders.

Pursuant to many qualifying securitization statutes, there is a statutory test imposed upon any issuance of securitization bonds that structuring, marketing and pricing of the securitization bonds results in the lowest Securitization Charges consistent with market conditions at the time of pricing and the terms of the financing order. Prior to the 2024 Rev. Proc., sponsoring utilities analyzed and compared the costs of issuing securitization bonds through a registered public offering or a private offering in reliance on Rule 144A. Now with the 2024 Rev. Proc., utilities and underwriters in states where the qualifying securitization financing legislation permits the use of a state financing structure will now also need to analyze the benefits to customers from this new option. When analyzing the benefits of a state financing structure, it is important to note, however, that the 2024 Rev. Proc. does not address whether securitization bonds issued by a qualifying state financing entity would be exempt from federal income tax. Therefore, further analysis will be required, on a case by case basis, to determine if interest on the bonds could be exempt from federal income taxes.

Hunton Andrews Kurth LLP – Michael F. Fitzpatrick, Jr., Adam O'Brian and George C. Howell III

March 11 2024

[The Good, the Bad and the Extraordinary - Issuers May Be Able to Call Their Direct Pay Build America Bonds: Greenberg Traurig]

Go-To Guide:

- Build America Bonds (BABs) provided vital funding during the Great Recession
- Direct Pay BABs subsidies paid to issuers have been reduced since 2013
- A recent court decision sheds light on the legal mechanics of sequestration and opens the door for possible refunding opportunities

The Good

Build America Bonds (BABs) were introduced in 2009 as part of the American Recovery and Reinvestment Act (the ARRA) to stimulate the economy in the aftermath of the 2008 financial crisis. Section 54AA of the Internal Revenue Code of 1986, as amended (the Code) provided for the issuance of BABs, along with a 35% credit for bondholders. Section 6431 of the Code added a direct pay option for BABs (Direct Pay BABs), allowing issuers of Direct Pay BABs to receive a subsidy payment equal to 35% of the interest they owed to bondholders. To receive either benefit, BABs had to be issued between April 2009 and December 2010.

BABs were a popular option with many issuers. The total amount of BABs issued from April 2009 to December 2010 was reportedly over $181 billion, representing over one-fifth of the total amount of municipal debt issued over the same period. BABs were used for all kinds of public purpose projects including about 30% towards educational facilities. Direct Pay BABs gave issuers access to the taxable market, allowing issuers to finance much-needed public infrastructure projects during a particularly vulnerable time for state and local government budgets. Both issuers and investors praised the program, and it ended up being one of the major success stories that came out of the ARRA.

The Bad

While BABs in many ways remain a success, a wrench was thrown into the program beginning with the Budget Control Act that Congress passed in 2011 (the Budget Control Act). The Budget Control Act contained a sequester provision that reduced the amount of the subsidy issuers received on Direct Pay BABs in the event certain budgetary parameters were not met. That sequester was triggered in 2012 when Congress failed to accomplish certain deficit control targets. Since 2013, the subsidies paid to issuers for their Direct Pay BABs have been reduced by anywhere from 8.7% to the current rate of 5.7%.

This material reduction in the subsidy has hurt state and local governments. They must continue to pay bondholders the full taxable rate without receiving the full amount of the expected reimbursement from the federal government. According to some estimates, the cost to state and local governments has already exceeded $2 billion. Exacerbating the issue has been the fact that almost all Direct Pay BABs were issued with “make-whole” optional call provisions requiring issuers to pay bondholders the total interest that would be paid on the bonds until final maturity to permit issuers to refund their Direct Pay BABs early. This requirement makes the refunding of Direct Pay BABs financially untenable.

Most Direct Pay BABs also contain an extraordinary optional call provision that allow issuers to call their Direct Pay BABs at par (or a reduced make-whole amount) if a “material adverse change” occurs to section 54AA or section 6431 pursuant to which the issuer’s 35% subsidy is reduced or eliminated (or similar language). The intent is to allow issuers to refund their Direct Pay BABs

should the subsidy that underpins the BABs model be materially reduced due to a change in law. While everyone anticipated the possibility that the subsidy might be reduced, the roundabout way it ended up occurring caused much consternation for issuers and counsel alike. The language in section 54AA and section 6431 was not directly amended, and this resulted in uncertainty about how to interpret the legal mechanics of the sequestration; did Congress in effect change the law under section 54AA and section 6431 or was it simply an appropriation tactic where the law surrounding the subsidy remained the same, but a budget technicality meant there were less funds to pay issuers. As a result, despite the clear materiality of the subsidy reduction experienced by issuers, the majority of issuers and their counsel had doubts as to whether that was due to a "material change" to section 54AA or section 6431 and held on using the extraordinary call provisions.

The Extraordinary

Indiana Municipal Power Agency v. U.S. is a case recently decided in Federal Claims Court, affirmed and adopted by the Federal Circuit and, on Nov. 20, 2023, denied certiorari by the U.S. Supreme Court. This makes the decision the proverbial "law of the land." The *Indiana Municipal Power Agency* case involved a group of municipal power entities with outstanding BABs that were suing the federal government to both restore the BABs subsidy to 35% and pay the full amount that should have been paid to them, assuming at the 35% subsidy rate, since 2013. The power providers had two primary arguments: (1) that the federal government violated section 1531 of the ARRA (section 1531 added section 54AA and section 6431 to the Code); and (2) that the federal government breached its contractual obligations created by section 1531. The court has a lengthy discussion of law that is beyond the scope of this update including (i) whether section 1324 of the Code (section 1324 provides the appropriation for the BABs subsidies and the section that was targeted by the sequestration) authorizes "direct spending" or is an "appropriation Act"; (ii) whether the subsidy payments can be treated as an overpayment of taxes; and (iii) whether the full subsidy payments are owed due to any contractual obligations.

The court dismissed the claims of the power providers, concluding that the 35% subsidy was not owed until the related Form 8038-CP was filed and that the subsidy was properly sequestered, and that such sequestration has the effect of reducing the federal government's payment obligation. Therefore, the court concluded, the federal government did not owe the power providers the full subsidy. While the plaintiffs failed to restore the subsidy to 35%, the court's decision did represent a victory for issuers at large. In arriving at its conclusion, the court stated that, "The spending cuts implemented by the Taxpayer Relief Act and the Budget Control Act are irreconcilable with section 1531's 35-percent payment rate. *As a result, the Taxpayer Relief Act altered the Direct Payment BABs program, reducing the government's payment obligation. When sequestration was implemented in 2013, the defendant was required by law to pay issuers of BABs a reduced rate.* This change was consistent with the basic principle that Congress is free to amend pre-existing laws" (emphasis added). Essentially, the court ruled that the sequestration legislation changed section 1531, and thereby sections 54AA and 6431, materially reducing the amount the federal government is required to pay by law to issuers of Direct Pay BABs.

As noted above, issuers and their counsel have had concerns about using the extraordinary call provision in the context of sequestration due to uncertainty surrounding the legal mechanics involved in sequestration and the resulting reduction of the 35% subsidy. The court's opinion in *Indiana Municipal Power Agency* provides clarification on this question and allows issuers and their counsel to conclude that sequestration caused a "material change" to occur to sections 54AA and 6431. This may provide comfort to both issuers and their counsel that an extraordinary optional redemption event has been triggered based on the language used in many such provisions, thereby allowing issuers to refund or redeem their Direct Pay BABs using the more favorable terms

applicable to the extraordinary call provisions.

The above is only a summary on the background of BABs, sequestration, and recent developments that may positively impact issuers' ability to refund or redeem their Direct Pay BABs under the extraordinary optional call provisions with their bond documents. Those with questions about their entity's particular situation and options should consult with experienced public finance counsel.

Greenberg Traurig LLP – Solomon Cadle, Vanessa Albert Lowry, Andrew P. Rubin and Martye Kendrick

March 11 2024

Cities Face Cutbacks as Commercial Real Estate Prices Tumble.

Lost tax revenue fuels concerns over an urban 'doom loop.'

In San Francisco, a 20-story office tower that sold for $146 million a decade ago was listed in December for just $80 million.

In Chicago, a 200,000-square-foot-office building in the city's Clybourn Corridor that sold in 2004 for nearly $90 million was purchased last month for $20 million, a 78 percent markdown.

And in Washington, a 12-story building that mixes office and retail space three blocks from the White House that sold for $100 million in 2018 recently went for just $36 million.

Such steep discounts have become normal for office space across the United States as the pandemic trends of hybrid and remote work have persisted, hollowing out urban centers that were once bustling with workers. But the losses are hitting more than just commercial real estate investors. Cities are also starting to bear the brunt, as municipal budgets that rely on taxes associated with valuable commercial property are now facing shortfalls and contemplating cutbacks as lower assessments of property values reduce tax bills.

Continue reading.

The New York Times

By Alan Rappeport

March 14, 2024

TAX - NEW JERSEY

Freda by Acme v. City of Sea Isle City

Tax Court of New Jersey - March 5, 2024 - N.J.Tax - 2024 WL 948964

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

City moved to dismiss.

The Tax Court held that:

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

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

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

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

The law strictly construes a city's attempt to block a taxpayer's appeal to the Tax Court of a property tax assessment via the city's recalibration of the dynamic established by the Legislature regarding unpaid municipal charges as a bar to a tax appeal.

TAX - NEW JERSEY

Borough of Longport v. Netflix, Inc.

United States Court of Appeals, Third Circuit - February 29, 2024 - F.4th - 2024 WL 854877

Two New Jersey municipalities brought putative class action, on behalf of all New Jersey municipalities, under the New Jersey Cable Television Act (CTA) against entertainment companies that provided streaming-video services, alleging that companies owed municipalities franchise fees under the CTA.

The United States District Court for the District of New Jersey granted companies' motion to dismiss for failure to state a claim, holding that municipalities had no right of action to enforce the CTA. Municipalities appealed.

The Court of Appeals held that:

- The CTA did not create an implied right of action that would allow municipalities to enforce its franchise-payment requirement, and
- The New Jersey Constitution's provision recognizing the powers of municipalities did not warrant reading such an implied private right of action into the CTA.

The New Jersey Cable Television Act (CTA) did not create an implied private right of action that would allow municipalities to enforce, in action against streaming-video companies, the CTA's provision requiring cable-television companies to make annual franchise payments to municipalities; the statute expressly vested "all" enforcement authority in the Board of Public Utilities (BPU), making it clear that the legislature did not intend for municipalities to share enforcement power with the BPU, and there were no strong indicia that the legislature intended to include a private right of action for municipalities.

The New Jersey Constitution's provision recognizing the powers of municipalities did not warrant reading into the New Jersey Cable Television Act (CTA) an implied private right of action that would allow municipalities to enforce, in action against streaming-video companies, the CTA's provision requiring cable-television companies to make annual franchise payments to municipalities; the constitutional provision at issue did not change the plain meaning of the CTA and could not be interpreted to provide municipalities with statutory enforcement authority that would directly conflict with the CTA, which granted all enforcement power to the Board of Public Utilities (BPU).

TAX - DISTRICT OF COLUMBIA

Booz Allen Hamilton Inc. v. Office of Tax and Revenue

District of Columbia Court of Appeals - February 8, 2024 - A.3d - 2024 WL 481050

Taxpayer petitioned for review of an order of the District of Columbia Office of Administrative Hearings (OAH) upholding Office of Tax and Revenue's (OTR) denial of refund requests claiming qualified high-technology company (QHTC) franchise-tax benefits.

The Court of Appeals held that:

- Statute's plain language unambiguously applied to remove QHTC franchise-tax benefits from business entities located in ballpark area;
- Taxpayer was "located" in ballpark area for purposes of ballpark-area exclusion;
- Taxpayer was not entitled to equitable apportionment so as to be required to pay only the portion of franchise tax attributable to activities within ballpark area; and
- Taxpayer failed to administratively exhaust claims that position was taken in good faith and that therefore no penalties were warranted.

Plain language of ballpark-area exclusion in Ballpark Omnibus Financing and Revenue Act, providing that a business entity located in area of new stadium is not a qualified high-technology company (QHTC), unambiguously applied to remove QHTC franchise-tax benefits from business entities located in ballpark area; unambiguous text of ballpark-area exclusion was strong evidence that District of Columbia Council intended to do precisely what that language said, and there was no basis for drawing any inference from Council's failure to specifically discuss scope of exclusion, absent any specific information, beyond the text of provision itself, as to why Council enacted ballpark-area exclusion.

Office of Tax and Revenue (OTR) correctly determined that because taxpayer leased an office in ballpark area at which a substantial number of employees for taxpayer worked taxpayer was "located" in ballpark area for purposes of ballpark-area exclusion in Ballpark Omnibus Financing and Revenue Act, providing that a business entity located in area of new stadium is not a qualified high-technology company (QHTC) entitled to franchise-tax benefits; taxpayer had repeatedly referred to its office in ballpark area as one of its "locations," OTR's position was consistent with a natural and common meaning of "located," taxpayer's inability to settle on a clear and consistent alternative interpretation weighed significantly against taxpayer's position, legislative history did not shed any significant light on proper interpretation of term "located" for purposes of exclusion, and it was unclear to Court of Appeals whether a narrower or broader reading of term "located" would have been better as a matter of tax policy.

Taxpayer was not unfairly surprised by an unforeseeable interpretation of ballpark-area exclusion in Ballpark Omnibus Financing and Revenue Act, providing that a business entity located in area of

new stadium is not a qualified high-technology company (QHTC) entitled to franchise-tax benefits, and thus taxpayer was not entitled to equitable apportionment so as to be required to pay only the portion of franchise tax attributable to its activities within ballpark area, assuming that Court of Appeals had authority in exceptional and extraordinary circumstances to provide equitable apportionment; arguments in support of equitable apportionment were at bottom policy arguments, rather than the kind of extraordinary and exceptional circumstances that might provide a basis for disregarding statute's text.

Taxpayer was required to administratively exhaust claim that no penalties were warranted because taxpayer took position in good faith that taxpayer was not "located" within ballpark area thereby rendering inapplicable ballpark area exclusion in Ballpark Omnibus Financing and Revenue Act, providing that a business entity located in area of new stadium is not a qualified high-technology company (QHTC) entitled to franchise-tax benefits; order on review by Court of Appeals had denied taxpayer's requests for refunds but did not address any issue of penalties.

Monetizing Renewable Energy Credits - Final Regulations on Direct Pay: BakerHostetler

Key Takeaways

- On March 5, 2024, Treasury and the IRS issued final regulations addressing direct pay elections for certain renewable energy credits.
- Eligible taxpayers and taxable entities seeking to make a direct pay election should pay close attention to the specific rules regarding the process for making the election and the timing for receiving proceeds from the government. The final regulations maintain that a direct pay election must be made on an original return filed no later than the due date (including extensions) for the taxable year for which the applicable credit is determined. Thus, a direct pay election may not be made on an amended return or through an administrative adjustment request. The final regulations do allow taxpayers to correct "numerical errors" in an election on an amended return if the original return and election contained all the required information. A taxpayer may not correct an item that was left blank on the original election.
- For entities that file federal returns, the deemed payment is treated as having been made on the later of the due date (determined without regard to extensions) of the return of tax for the taxable year or the date on which such return is filed with the IRS. For entities that do not file returns (e.g., governmental or political subdivisions), the elective payment is treated as having been made on the later of the date that a return would be due or the submission of a claim for credit or a refund. Taxpayers requested that payments be made earlier than these dates, such as quarterly, but the IRS and Treasury declined to adopt those suggestions. The final rules may weigh significantly in certain taxpayer decisions regarding whether to elect direct pay or instead accelerate receiving payments by transferring eligible credits under § 6418 of the Internal Revenue Code.
- The final regulations held firm that partnerships and corporations are eligible only to receive credits under §§ 45Q (carbon capture), 45V (clean hydrogen) and 45X (clean energy manufacturing) via direct pay. Thus, applicable entities (as defined below) are not eligible to receive credits through a partnership or corporation, even if all the partners or shareholders are applicable entities.
- The final regulations adopt the proposed regulations' rules regarding "chaining," which refers to a transferee taxpayer that acquires a credit via transfer under § 6418 and then seeks to make a direct pay election for any specified credit portions received via such transfer. As such, transferee

taxpayers are not eligible to make direct pay elections on credits they acquire under § 6418.

Continue reading.

BakerHostetler – Jeffrey H. Paravano and Nicholas C. Mowbray

March 13 2024

When does 10% PBU really mean 5% PBU? - Squire Patton Boggs

When the Internal Revenue Code ("IRC") says it does. (For those of you that want to remind yourselves of how a bill becomes a law, such as the IRC, see this video from Schoolhouse Rock).

As you may know, issuers of governmental-use bonds are generally permitted to use up to 10% of the tax-exempt bond proceeds of an issue for private business use ("PBU") before the tax-exempt bonds run the risk of being characterized as taxable private-activity bonds ("PABs"). If the PBU exceeds 10%, then the issuer will also need to determine whether the private security or payment ("Private Payment") test is met in order to determine if the bonds are PABs. (Remember, meeting the 10% PBU and Private Payment tests is generally a bad thing). However, because nothing is simple in the tax world, there is a second PBU/Private Payment threshold that you may not be as familiar with – the 5% unrelated or disproportionate test.[1]

The first step in applying the 5% unrelated/disproportionate test is to determine if the identified PBU is related to a governmental use.

Continue reading.

By Cynthia Mog on February 20, 2024

The Public Finance Tax Blog

Squire Patton Boggs

TAX - CALIFORNIA

San Bernardino County Fire Protection District v. Page

Court of Appeal, Fourth District, Division 2, California - February 14, 2024 - Cal.Rptr.3d - 2024 WL 619193

County fire protection district petitioned for writ of mandate challenging validity of initiative petition seeking to repeal a special tax on annexed property in district pursuant to state constitutional amendment restricting local government's ability to impose taxes without voter approval.

The Superior Court granted petition. Initiative proponents appealed, and district cross-appealed.

The Court of Appeal held that:

- Elections Code section criminalizing knowing false statements about initiative petitions did not apply;

- Initiative contained false and misleading statements implying that the special tax was unconstitutional; and
- District's cross-appeal was moot.

Initiative petition seeking to repeal a special tax on annexed property in county fire protection district contained false and misleading statements implying that the special tax violated state constitutional amendment restricting local government's ability to impose taxes without voter approval, and therefore the initiative was invalid; initiative petition's notice and text made implied false and misleading statements that the constitutional amendment applied and that the special tax violated the amendment because annexed property owners did not have the opportunity to vote on the special tax and approve it by a two-thirds vote, but the initiative's implied irrefutable facts were objectively verifiable as incorrect based on well-founded legal authority.

TAX - FLORIDA

State Farm Mutual Automobile Insurance Company v. Florida Department of Revenue

District Court of Appeal of Florida, First District - January 17, 2024 - So.3d - 2024 WL 176973 - 49 Fla. L. Weekly D205

After taxpayers, who were property and casualty insurance company and its subsidiaries, paid, under protest, assessed back taxes and interest they allegedly owed, taxpayers brought action against the Florida Department of Revenue to contest the legality of the assessment in full.

The Circuit Court granted Department's motion for summary judgment and denied taxpayers' summary judgment motion. Taxpayers appealed.

The District Court of Appeal held that calculation of adjusted federal income required addition of all interest earned from state and local bonds.

Calculation of property and casualty insurance companies' adjusted federal income, for purposes of determining companies' state corporate income tax, required addition of all interest earned from state and local bonds that was "excluded from taxable income" through subtraction from gross income for federal income tax purposes, even if a portion of that interest was also subtracted from companies' "losses incurred", which losses were then deducted from gross income to calculate federal taxable income; "excluded from" referred to specified items not included in, or subtracted from, sum to determine taxable income, interest and losses incurred were each specified items, and all bond interest was excluded from federal taxable income, even if interest was used in losses incurred calculation.

TAX - NEW YORK

Sisters of the Presentation of the Blessed Virgin Mary v. Van Wagenen

Supreme Court, Appellate Division, Third Department, New York - January 11, 2024 - 223 A.D.3d 987 - 202 N.Y.S.3d 814 - 2024 N.Y. Slip Op. 00100

Not-for-profit corporation sought judicial review of town's board of assessment affirming assessor's determination denying real estate tax exemptions for two parcels of land that had previously qualified as exempt as being used for religious and educational purposes.

Following a bench trial, the Supreme Court determined that corporation was entitled to a partial tax exemption for the portions of the subject property it actually used. Corporation appealed.

The Supreme Court, Appellate Division, held that corporation was entitled to continued real property tax exemption only for the portion of its property that was still being used for an exempt purposes and not for areas that were vacant and unused.

Not-for-profit corporation that owned property that had previously qualified as exempt from real property taxes as being used for religious and educational purposes was entitled to continued exemption only for the portion of the property that was still being used for those purposes as a playground for students and areas that were incidental to such use; remaining portion of property containing a vacant and unused school and mansion that were not safe to use and had no running water, and thus no longer served to further the exempted purpose.

Municipalities Taxing Stay-at-Home Workers During Pandemic was OK, Court Says.

The Ohio Supreme Court upheld a temporary state law that allowed employers to withhold municipal income tax irrespective of where their employees performed their work. The ruling sets a precedent in the state.

Welcome back to Route Fifty's Public Finance Update! Last week, the Ohio Supreme Court issued a long-awaited ruling upholding a state law that allowed cities during the COVID-19 pandemic to temporarily collect income tax from individuals working from home. The decision comes as a relief to municipalities in the state, as an opposite ruling could have cost city governments millions of dollars.

The case is notable because it sets an important precedent in Ohio and is likely the first post-pandemic remote work ruling by a state supreme court.

The Ohio case revolves around a law passed by the General Assembly shortly after the start of the pandemic and Ohio's stay-at-home order in March 2020. The measure temporarily allowed employers to withhold municipal income tax irrespective of where their employees performed their work. It stated that each day an employee spent working from home or an offsite location "shall be deemed to be a day performing personal services at the employee's principal place of work." The idea was to allow local governments to maintain their municipal budgets during the public health emergency.

Continue reading.

Route Fifty

By Elizabeth Daigneau,
Executive Editor, Route Fifty

FEBRUARY 22, 2024

Illinois Eyes Sports-Betting Tax Hike for Fiscal 2025 Budget.

- **Pritzker wants to raise over $800 million in revenue**
- **Plan includes cap extension on corporate tax deductions**

Illinois Governor J.B. Pritzker is proposing a $52.7 billion budget for the year starting in July that raises levies on sports betting and extends caps on corporate tax deductions.

The measures, announced on Wednesday, would leave the state with a budget surplus rather than a previously estimated deficit of about $721 million. The state expects a $128 million surplus once it contributes to its rainy day fund. The spending plan includes raising more than $800 million in revenue for fiscal 2025 in part by hiking a sports-betting tax.

Pritzker, a billionaire Democrat serving his second term, is proposing to increase Illinois' sports-wagering tax from 15% to 35%. He also wants to extend a cap on corporate net operating losses that was set to sunset this year to keep about $526 million coming into state coffers that would have been lost if it ended. The budget also proposes to cap a sales tax rebate for retailers.

Continue reading.

Bloomberg Politics

By Shruti Singh

February 21, 2024

TAX - OHIO

Schaad v. Alder

Supreme Court of Ohio - February 14, 2024 - N.E.3d - 2024 WL 589335 - 2024-Ohio-525

Worker filed action against city finance director alleging that state law that provided that, for limited time during COVID-19 pandemic, Ohio workers would be taxed by municipality that was their principal place of work rather than by municipality where they actually performed their work violated United States and Ohio Constitutions, and requesting injunction prohibiting enforcement of law and refund of his withheld municipal income taxes.

The Court of Common Pleas dismissed the suit. The First District Court of Appeals affirmed. The Supreme Court accepted worker's appeal.

The Supreme Court held that:

- Rational basis existed for statute, for purposes of whether statute violated due process under United States Constitution;
- Statute did not violate due-process limits on taxation power of the State; and
- Statute did not violate Home Rule Amendment of Ohio Constitution.

Rational basis existed for income tax statute providing that, for limited time during COVID-19 pandemic, Ohio workers would be taxed by municipality that was their principal place of work rather than by municipality where they actually performed their work, for purposes of whether statute violated due process under United States Constitution; Ohio had legitimate interest in ensuring that

municipal revenues remained stable amidst rapid switch to remote work that occurred during COVID-19 pandemic.

Income tax statute providing that, for limited time during COVID-19 pandemic, Ohio workers would be taxed by municipality that was their principal place of work rather than by municipality where they actually performed their work did not violate federal due-process limits on taxation power of the State; due-process jurisprudence did not apply limitation on State's authority to tax out-of-state residents to intrastate taxation.

Income tax statute providing that, for limited time during COVID-19 pandemic, Ohio workers would be taxed by municipality that was their principal place of work rather than by municipality where they actually performed their work did not violate Home Rule Amendment of Ohio Constitution; statute empowered municipality that was not one where employee performed his work to collect tax from that employee while preventing municipality where employee was actually located to collect tax, and General Assembly had power to grant municipalities additional authority and to limit municipality's authority to collect taxes.

TAX - VIRGINIA

Emmanuel Worship Center v. City of Petersburg

Court of Appeals of Virginia, Richmond - February 13, 2024 - S.E.2d - 2024 WL 559285

Following payment by taxpayer, a church, of city real estate taxes for taxpayer's property located adjacent to taxpayer's main worship center to avoid tax sale, taxpayer filed bill of review challenging city's issuance of decree of sale of property.

The Circuit Court dismissed bill. Taxpayer appealed. The Supreme Court reversed and remanded for trial court to determine whether property was used for religious worship, and consequently whether taxpayer owed any delinquent taxes for the property.

On remand, and pursuant to a bench trial, the Circuit Court granted city's motion to strike taxpayer's evidence at the close of taxpayer's case-in-chief, determined that the property was not exempt from property taxes, but denied city's request for attorney fees. Parties cross-appealed.

The Court of Appeals held that:

- Property was not entitled to exemption from real estate taxation, and
- City was not entitled to attorney fees for having to defend against taxpayer's bill of review.

Taxpayer, a church, failed to prove that it used property adjacent to main worship center "exclusively" for religious worship purposes or for the residence of its minister, and thus property was not entitled to exemption from real estate taxation by city, even if various aspects of taxpayer's activities at property qualified as worship, such as conducting Sunday school and youth outreach; no minister had ever resided on property, taxpayer had leased much if not most of property to operator of commercial business unrelated to taxpayer, and taxpayer had never claimed that property served as "adjacent land" or otherwise supported worship center, but rather claimed that property was entitled to tax exemption as a standalone property.

Taxpayer, a church, failed to preserve for appellate review claim that property supported taxpayer's adjacent main worship center under statute providing exemption from real estate taxation by classification for adjacent land reasonably necessary for the convenient use of any such exclusive-

use property, or for ancillary and accessory property the dominant purpose of which is to support or augment the principal religious worship use, because that argument had not been raised to date, let alone stated with reasonable certainty at the time of the ruling below.

City was not entitled to attorney fees for having to defend against taxpayer's bill of review challenging city's issuance of decree of sale of property for delinquent taxes after taxpayer had exercised right of redemption on property by paying all taxes, costs, and attorney fees then accumulated; all statutory provisions addressing attorney fees contemplated fees for work that ended upon sale of the property to pay delinquency, or upon taxpayer's redemption of the property by paying all arrearages then outstanding.

TAX - HAWAII

Cole v. City and County of Honolulu

Supreme Court of Hawai'i - February 12, 2024 - P.3d - 2024 WL 544315

Taxpayers filed notice of appeal to the Tax Appeal Court, seeking to contest city's classification of several investment properties they owned.

After consolidation of the appeal with 40 similar appeals, the Tax Appeal Court granted summary judgment for city. Taxpayers filed motion for reconsideration, and, after five years, sought ruling on the motion. After court entered an order denying the motion, taxpayers appealed, and the city applied for transfer, which was granted.

The Supreme Court held that failure to file an order disposing of taxpayers' motion for reconsideration, or a clerk's notice that the motion had been automatically denied, tolled time for taxpayers to appeal.

Tax appeal court's failure to file an order disposing of taxpayers' motion for reconsideration on their classification challenges, or a clerk's notice that the motion had been automatically denied, tolled time for taxpayers to appeal, and thus taxpayers' appeal, which was within 30 days of the court's ultimate entry or order denying the motion for reconsideration in response to letter from taxpayers requesting a ruling on their motion, was timely, even though five years had passed since the taxpayers filed their motion, and Intermediate Court of Appeals had jurisdiction over taxpayers' appeal.

Remote Work Tax Debate Settled By Ohio Supreme Court Decision.

The Ohio Supreme Court rules cities could tax remote workers who live outside city limits during the COVID-19 pandemic, upholding state law and potentially influencing future remote work tax policies.

The Ohio Supreme Court has recently made a significant ruling that could impact the future of remote work and municipal finance.

The court's decision affirms the legality of cities collecting income tax from individuals who worked remotely from home outside city limits during the COVID-19 pandemic.

According to a report published by Axios, this 5-2 court decision supports the notion that maintaining stable municipal revenues during such unprecedented times was a legitimate state interest — despite challenges to the contrary.

The state's supreme court ruling came in response to a case where a Blue Ash resident sought a refund from the city of Cincinnati for taxes paid while working from home, arguing the collection was unconstitutional. However, the majority, led by Justice R. Patrick DeWine, upheld the state law, distinguishing between interstate and intrastate taxation and emphasizing the unique relationship between state governments and municipalities.

Continue reading.

allwork.com

by Dominic Catacoraby

February 16, 2024

Maximizing Tax Efficiency in Investment Strategies: The Role of Municipal Bonds and Tax-Aware Asset Location.

Explore tax-efficient investment strategies that minimize the tax impact on returns. Learn about municipal bonds, tax-aware asset location, tax loss harvesting, and more. Maximize your portfolio's efficiency while promoting public good and understanding the implications on wealth distribution and inequality.

In today's financial landscape, the savvy investor is not just focused on the returns their portfolio brings but also on the strategies that minimize the tax impact on those returns. As we navigate through an array of investment options, certain strategies stand out for their efficiency in tax management. From tax-aware asset location strategies to strategic gifts that reduce estate taxes, the world of investment is ripe with opportunities to enhance your financial health while staying within the boundaries of tax regulations.

Unlocking Tax Efficiency through Municipal Bonds

At the heart of tax-efficient investing are municipal bonds. These bonds, issued by state and local governments, are anything but mundane. They fund essential projects like schools, infrastructure, and social services, contributing to the public good while offering a tax-exempt status to investors. This dual benefit makes municipal bonds particularly attractive to individuals in higher tax brackets. However, it's essential to recognize that the advantages they offer contribute to a broader conversation about wealth inequality. The tax exemptions provided by municipal bonds disproportionately benefit wealthier Americans, leading some experts to argue that they inadvertently widen the wealth gap. Despite this critique, the allure of municipal bonds remains strong, thanks to their low-risk profile and tax advantages.

Continue reading.

bnnbreaking.com

BNN Correspondents

17 Feb 2024

A 19th-Century Property Tax Idea Is Back. Can It Revive a Blighted City?

The Georgists advocated shifting the tax burden from buildings to land. Today that would face major political hurdles, but there might be variations on the concept that could spur housing development and discourage land speculators.

With housing shortages in some metro areas and urban blight in others, an old idea has resurfaced as a palliative to spur development and discourage land speculators. The proponents are called "Georgists," harkening back to the American social reformer Henry George of the late 1800s. Their central concept is a "land value" tax — a variation of property taxation that shifts the fiscal burden from improvements on property to the raw land itself.

The concept originally was predicated on the correlation of landholdings with personal wealth, so was thought to be progressive as a tax policy. Over time it morphed into a thesis that taxes on land would also discourage speculative holding of vacant property, driving owners toward the highest and best uses of their real estate by making physical improvements effectively tax free. It's an idea that has most prominently resurfaced in Detroit, home of vast swaths of derelict property, much of it owned by speculators hoping to profit from a Motor City economic revival.

The problem for today's Georgists is that property tax laws and modern urban land-use patterns have long ago outgrown the original idea. Shifting the tax burden in most urbanized areas from the value of improvements to the value of land would essentially grant a windfall to high-rise developers, big-box retail operators, builders, real estate partnerships and landlords — at the expense of middle-class homeowners.

Continue reading.

governing.com

by Girard Miller

Feb. 13, 2024

Build America Bond Update: U.S. Supreme Court Declines to Review Federal Circuit Sequestration Ruling - Kutak Rock

On July 13, 2023, the plaintiffs in *Indiana Mun. Power Agency v. United States* filed a petition for a writ of certiorari with the U.S. Supreme Court for review of a ruling by the United States Court of Appeals for the Federal Circuit in which the Court of Appeals ruled that Build America Bond interest refund payments are subject to sequestration by federal agencies.

On November 20, 2023, the U.S. Supreme Court denied certiorari, effectively ending the possibility of judicial remediation of the reduced interest refund payments.

Background on Build America Bonds

In 2009, in response to the financial crisis, Congress passed the American Recovery and Reinvestment Act (the "ARRA"), which included a new program meant to incentivize infrastructure investments by state and local governments and increase federal tax revenues – the Build America Bonds program (the "Program"). Under the Program, state and local governments would issue taxable bonds instead of their normal tax exempt bonds through an irrevocable election that the bonds be taxable, and in exchange for paying the higher interest rates on taxable bonds, the issuers would receive federal refunds of 35% of the interest payments on said bonds. In reliance on the federal government's commitment to provide refunds, state and local governments issued over $181 billion in taxable Build America Bonds.

Continue reading.

by Frederic H. Marienthal III and Anna E. Wilbourn

Client Alert | February 7, 2024

Kutak Rock

TAX - ILLINOIS

Village of Arlington Heights v. City of Rolling Meadows

Appellate Court of Illinois, First District, Sixth Division - January 12, 2024 - N.E.3d - 2024 IL App (1st) 221729 - 2024 WL 133018

Village filed action against neighboring city, seeking recovery of eight years of sales tax revenue for a business located in village that had been erroneously paid to city by the Illinois Department of Revenue (IDOR).

The Circuit Court granted city's motion to dismiss. Village appealed.

The Appellate Court held that:

- Circuit court had jurisdiction over sales tax dispute between village and city;
- Village was not limited to recovery of a six-month offset; and
- The doctrine of nonliability did not apply to bar village's declaratory action to recover sales tax revenue retained by city.

Circuit court had jurisdiction over village's action against city for recovery of sales tax revenue erroneously paid to city by the Illinois Department of Revenue (IDOR); IDOR did not have exclusive jurisdiction over sales tax issues, and the court could readily calculate the amount owed without IDOR's expertise if village could prove that city improperly retained sales tax generated by restaurant located in the village.

Village that sought eight years of sales tax revenue generated by restaurant in the village that had been erroneously paid to neighboring city by Illinois Department of Revenue (IDOR) was not limited under the Municipal Code to recovery of a six-month offset; city had a statutory obligation to timely report the sales tax error to IDOR, allowing city to keep sales tax generated in village would provide it with a windfall, and six-month limit on the recovery IDOR could provide did not preclude village from bringing a claim in circuit court to recover the remainder.

The fact that the amount allegedly owed under a contract is already fixed does not preclude a

declaratory judgment action, because a party is not amenable to suit until a breach occurs; therefore, declaratory judgment could guide future conduct in such a situation because a court could determine whether or not a valid contract exists and, thereby, inform the party that potentially owes the money whether or not it would be in breach of a contract should it refuse to pay.

The doctrine of nonliability did not apply to bar village's declaratory action to recover sales tax revenue erroneously paid to neighboring city by the Illinois Department of Revenue (IDOR), although IDOR had corrected the error for prospective payments; the conduct for which the village sought relief was city's continuing conduct of retaining nearly eight years of sales tax allegedly belonging to village.

TAX - CALIFORNIA

County of Alameda v. Alameda County Taxpayers' Association, Inc.

Court of Appeal, First District, Division 5, California - January 29, 2024 - Cal.Rptr.3d - 2024 WL 323213

Advocacy organization and related parties brought action seeking to invalidate citizen's tax initiative to fund early childhood education and pediatric health care in county, which measure had been approved by a majority of voters during election.

The Superior Court concluded that measure was valid and entered judgments in county's favor. Organization and related parties appealed, and appeals were consolidated.

The Court of Appeal held that:

- If a local special tax is imposed via citizens' initiative, only a simple majority vote is required to adopt it, and
- Measure did not clearly, positively, and unmistakably violate Constitution section forbidding initiative statutes from identifying private corporation to perform any function.

A local tax enacted by voter initiative is not a tax imposed by local government within the meaning of Constitutional amendment providing that no local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two–thirds vote.

Voter initiative measure to fund early childhood education and pediatric health care in county, which named county's only "Level 1" pediatric trauma center and described center as a critical provider of pediatric care in the community without assigning center any function, power, or obligation, did not clearly, positively, and unmistakably violate Constitution section forbidding initiative statutes from identifying private corporation to perform any function, even though measure imposed duty on County Board of Supervisors to consult with multiple experts, including the local pediatric hospital, before spending revenue from Pediatric Health Care Account; experts themselves had only a passive role as consultees with no duties, no authority to make decisions, and no obligation to answer the phone when Board called, measure was carefully drafted to avoid naming specific private corporation in any exclusive role, and measure provided voters important information about where some of their tax money would be spent.

An Overlooked Hospital Performance Metric: Bond Ratings

In October 2021, a Pennsylvania judge denied the property tax exemption for three hospitals owned by a Pennsylvania hospital system, claiming that operations at the hospitals in question had become too similar to for-profit facilities to warrant tax-exempt status. The judge's ruling found that the hospitals in question met only the first prong of the five-prong test that qualifies organizations as tax exempt: They must advance a charitable purpose; donate a substantial portion of their service; benefit a substantial or indefinite class of persons; relieve the government of some of its burden; and operate entirely free from profit motive. This was one of several cases in recent years in which courts denied nonprofit hospitals their local property tax exemption on the grounds that they behaved too similarly to taxable organizations to warrant public subsidies.

Whether nonprofit hospitals deserve their tax-exempt status has been the subject of debate in recent years in both the academic and lay press. As an August 2022 Wall Street Journal article proclaimed: "Nonprofit medical institutions get federal benefits in exchange for providing support to their communities but often lag behind their for-profit peers." Part of this debate centers on the fact that it is difficult to distinguish between nonprofit and for-profit hospitals in terms of financial performance and quality. They report similar profit margins, patient mix, and burden of bad debt, while offering services that are seemingly quite similar in quality and only modestly different in scope. In addition, mounting evidence shows minimal differences in charity care spending between nonprofit and for-profit hospitals. These findings have led some to label nonprofit hospitals as "for-profits in disguise."

Continue reading.

healthaffairs.org

by Lauren A. Taylor Samuel Doernberg Sean Pomory Evan Casalino Thad Calabrese

FEBRUARY 12, 2024

TAX - INDIANA

Indiana Municipal Power Agency v. United States.

United States Court of Appeals, Federal Circuit - February 17, 2023 - 59 F.4th 1382 - 131 A.F.T.R.2d 2023-782

Issuers of Direct Payment Build America Bonds under authority of American Recovery and Reinvestment Act (ARRA) brought action against the United States, claiming violation of statutory duty under ARRA and breach of contract based on IRS failing to refund 35% of interest payable under bonds.

The Court of Federal Claims granted government's motion to dismiss for failure to state a claim, and denied issuers' motion for reconsideration. Issuers appealed.

The Court of Appeals held that:

- Sequestration applied to tax refunds, and
- ARRA section authorizing bonds did not create contract requiring government to pay tax refund equal to 35% of interest paid by issuers.

Sequestration pursuant to Budget Control Act and American Taxpayer Relief Act applied to tax refunds of 35% of interest payable on Direct Payment Build America Bonds issued under authority of American Recovery and Reinvestment Act (ARRA), since refunds were issued from permanent, indefinite appropriation of necessary amounts for refunding internal revenue collections provided by statute, which constituted direct spending.

Section of American Recovery and Reinvestment Act (ARRA) authorizing Direct Payment Build America Bonds did not create contract requiring government to pay tax refund equal to 35% of interest paid by bond issuers; ARRA did not provide for execution of written contract on behalf of United States or reflect any language establishing a contract, but instead, it merely set forth payment program for bond issuers.

As Concerns Over Gambling Addiction Mount, States are Set to Rake in Millions from Super Bowl Bets.

Sports betting has spread to 38 states and Washington, D.C., over the past five years. In that time, states have also seen massive increases in calls to gambling addiction hotlines. Plus, more news to use from around the country in this week's State and Local Roundup.

This weekend is the Super Bowl, a spectacle that reveals a lot about choices state governments have made in recent years about sports betting.

Experts expect Americans to bet a record $23 billion on Sunday's game. States have fueled the massive uptick in online and in-person wagering on sporting contests, even though they have received relatively modest revenue increases and have seen dramatic increases in reports of people struggling with gambling addiction.

The showdown between the Kansas City Chiefs and the San Francisco 49ers on Sunday takes place in Las Vegas, a city that the National Football League and other professional sports leagues shunned for decades because of its famous ties to gambling, and sports betting in particular

Continue reading.

Route Fifty

By Daniel C. Vock | FEBRUARY 9, 2024

House Passes $78 Billion Tax Bill that Includes Affordable Housing Help: Squire Patton Boggs

On Wednesday, January 31, 2024, the U.S. House of Representatives passed the bill called the Tax Relief for American Families and Workers Act. Contained in this bill is a significant reduction to the required amount of Section 142(d) Qualified Residential Project Bonds that must be issued to obtain the 4% Low Income Housing Tax Credit. The author of this blog post co-authored a blog post[1] with Robert Labes on this very topic!

Click here to access the blog post and other insights regarding Global Projects and Infrastructure!

And stay tuned for more on this and other developments in affordable and workforce housing tax issues in the coming weeks!

By Taylor Klavan on February 6, 2024

The Public Finance Tax Blog

Squire Patton Boggs

TAX - ILLINOIS

Village of Shiloh v. County of St. Clair

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

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

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

The Appellate Court held that:

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

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

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

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

TAX INCREMENT FINANCING - COLORADO

Kaiser v. Aurora Urban Renewal Authority

Supreme Court of Colorado - January 22, 2024 - P.3d - 2024 WL 220401 - 2024 CO 4

City urban renewal authority, metropolitan districts, and limited liability company (LLC) brought action for declaratory and injunctive relief against county assessor and state Property Tax Administrator, alleging that Administrator's methodology for implementing tax increment financing (TIF) violated the Urban Renewal Law (URL).

The District Court, Arapahoe County, entered summary judgment for county assessor. Urban renewal authority, metropolitan districts, and LLC appealed. The Court of Appeals affirmed in part, reversed in part, and remanded. Administrator and county assessor sought certiorari review.

The Supreme Court held that:

- Under the URL, Administrator could require county assessors, when proportionately adjusting the base and increment values of properties located in an urban renewal area, to use methodology that credited base value with all property valuation increases that could not be directly attributed to redevelopment activities, and
- Colorado's TIF scheme requires a direct relationship between an urban renewal authority's redevelopment efforts and the tax revenues it receives; overruling *E. Grand Cnty. Sch. Dist. No. 2 v. Town of Winter Park*, 739 P.2d 862, and *Northglenn Urb. Renewal Auth. v. Reyes,* 300 P.3d 984.

Under the Urban Renewal Law (URL), state Property Tax Administrator could require county assessors, when proportionately adjusting the base and increment values of properties located in an urban renewal area, to use methodology that credited base value with all property valuation increases that could not be directly attributed to redevelopment activities, which meant that local government entities other than the urban renewal authorities would receive the property tax revenue derived from those increases in value; the URL explicitly and unambiguously adopted the "direct relationship" approach, i.e., the requirement of a direct relationship between an urban renewal authority's redevelopment efforts and the tax revenues it received, by virtue of requiring proportionate adjustments whenever there was a general reassessment, and it entrusted the Administrator with crafting the methodology to determine how to make those adjustments.

Colorado's tax increment financing (TIF) scheme requires a direct relationship between an urban renewal authority's redevelopment efforts and the tax revenues it receives; overruling *E. Grand Cnty. Sch. Dist. No. 2 v. Town of Winter Park,* 739 P.2d 862, and *Northglenn Urb. Renewal Auth. v. Reyes*, 300 P.3d 984.

TAX - GEORGIA

Rice v. Fulton County

Court of Appeals of Georgia - January 18, 2024 - S.E.2d - 2024 WL 190489

Group of taxpayers brought putative class action against county and many of its municipalities, alleging that county and municipalities had utilized illegal method for assessing property taxes on homes sold during certain year.

The Superior Court denied taxpayers' motion for class certification. Taxpayers appealed.

The Court of Appeals held that:

- Taxpayers met commonality requirement for class certification, and
- Taxpayers met predominance requirement for class certification.

Group of taxpayers met commonality requirement for class certification, in their putative class action against county and many of its municipalities challenging property taxes assessed on homes sold during certain year; taxpayers alleged that class members all suffered same injury of having their property taxes calculated by illegal method of valuation, based upon same instance of county's and municipalities' injurious conduct of overriding computer assisted mass appraisal (CAMA) system's fair market value assessment with purchase price of properties.

Group of taxpayers met predominance requirement for class certification, in their putative class action against county and many of its municipalities challenging property taxes assessed on homes sold during certain year; taxpayers' claim that assessment violated Uniformity Clause of state constitution centered around their allegation that county and municipalities used illegal method to assess property taxes of putative class and that such method automatically impacted equalization and uniformity of their subsequent taxes, and answer to that common claim would determine city's and municipalities' liability for all putative class members.

TAX - MISSISSIPPI

Clarke County v. Quitman School District

Supreme Court of Mississippi - January 18, 2024 - So.3d - 2024 WL 189542

County's tax collector filed a complaint for interpleader, naming school district and county as parties, and seeking judicial determination as to which entity was entitled to funds recovered by county in delinquent taxpayer's bankruptcy proceeding.

After granting the interpleader motion, the Chancery Court denied county's motion for summary judgment, granted school district's motion for summary judgment in part, and ordered county to disburse $365,334 to school district. County and school district cross-appealed.

The Supreme Court held that school district was not entitled under statutory funding process to receive a portion of funds recovered by county in delinquent taxpayer's bankruptcy proceeding.

School district was not entitled to receive a portion of funds recovered by county in delinquent taxpayer's bankruptcy proceeding, although delinquency had resulted in $365,334 shortfall in school district's tax revenues for a school year, where the statutory scheme required the school district's requested budget to be funded through ad valorem taxes distributed by the county at the time requested, provided the school district with the opportunity to issue promissory notes in the amount of any shortfall, and did not take into account the delivery of delinquent tax funds recovered years later.

County had standing to challenge school district's entitlement to delinquent ad valorem taxes recovered by county from taxpayer's bankruptcy proceeding, although some of the recovered funds would have gone to school district if collected timely; tax scheme for funding school district mandated that county as levying authority raise an amount to equal the budget requested by the school district on an annual basis, adjusted up in the event of a delinquency or down in the event of an excess, and did not mandate that delinquent taxes recovered by the county outside of the statutory scheme be delivered to the school district.

Tax or Fee? - The Fate of PA Stormwater Charges to be Decided in 2024

Last year, the Pennsylvania Commonwealth Court held that a stormwater charge from the Borough of West Chester was not a fee for service, but rather an unauthorized local tax in *Borough of West Chester v. Pa. State System of Higher Education and West Chester University of Pa. of the State System of Higher Education*, 291 A.3d 455 (Pa. Cmwlth. 2023). We reported on this decision in MGKF's 2023 Environmental Forecast, and noted that the case would likely be winding its way through the appellate process in 2023.

In early 2023, the Borough promptly appealed the decision to the Pennsylvania Supreme Court, and was joined by several amici curiae, which included municipalities, municipal advocacy organizations, and non-profit environmental groups. Briefs from the Borough and their aligned amici filed in mid-July 2023 argue that the Commonwealth Court's decision was incorrect and should be overturned, because the stormwater fee charged to the University reflected a fee for service rather than a tax, and that the charge was properly established based on impervious surface coverage. The Borough and other proponents of the stormwater charge argue that all properties within a locality benefit from municipal stormwater services and infrastructure, even if the property is not connected to or serviced by that infrastructure. They point to generalized improvements to overall water quality and an alleged "comprehensive" method of managing stormwater and reducing flooding within a locality as among the bases to support a universal stormwater charge. The Borough and several amici argue that if the Commonwealth Court's decision finding stormwater charges to be a tax, rather than a fee, were allowed to stand, local municipalities and authorities will be deprived of a designated funding source for the costs necessary to comply with state and federal laws and regulations involving stormwater.

On the other side of the argument are the Pennsylvania State System of Higher Education and West Chester University, represented by the Pennsylvania Attorney General, and aligned amici, who filed their briefs in mid-October 2023. They argue that the stormwater fee is a classic tax or assessment because the Borough could not show that the university received a concrete, direct, or discrete benefit that can be traced to the stormwater charges. In fact, the only evidence the Borough presented was that monies collected were used to promote generalized benefits of improved stormwater and reduced flooding, benefits that are shared equally by every property owner and resident within a locality. The university and aligned amici also argued that even if the stormwater charge was not declared a tax and considered a fee, the charges imposed were nevertheless inappropriate and illegal because the high value of the charges was not "reasonably proportional" to any benefits provided by the Borough from their stormwater infrastructure systems. They argue that the Borough failed to analyze or consider the actual expected costs of maintaining or operating any portion of the stormwater infrastructure system that is associated with any particular property, including any of the university's properties in the Borough. The university and aligned amici also pointed to the fact that before the Borough's enactment of the stormwater charge, funds for stormwater projects were paid from the Borough's general fund, supplied by local tax dollars.

The fate of stormwater charges in the Commonwealth of Pennsylvania will be decided in 2024, as oral argument and a decision from the Pennsylvania Supreme Court is expected this year. The resolution of the *Borough of West Chester* case will have far-reaching implications on how local municipalities and authorities will fund stormwater projects, maintenance, and operations in the future.

Manko Gold Katcher & Fox – Diana A. Silva, Danielle N. Bagwell and Michael Nines, P.E., LEED AP

January 18 2024

IRS: Register for Elective Payment or Transfer of Credits

Qualifying businesses, tax-exempt organizations or entities such as state, local and tribal governments can take advantage of certain tax credits even if they don't have taxable income through new elective payment and transfer options. These options can be applied to certain clean energy and manufacturing credits under the Inflation Reduction Act of 2022 and CHIPS Act.

To monetize applicable credits, an authorized representative of the entity must:

- Use this online tool to register the intention to make an elective payment or transfer election
- Include registration numbers received through this online tool on the entity's tax return

The registration tool is part of the IRS business tax account application. For detailed guidance on how to use the tool, refer to Publication 5884, Inflation Reduction Act (IRA) and CHIPS Act of 2022 (CHIPS) Pre-Filing Registration Tool — User Guide and Instructions.

Continue reading.

TAX - CONNECTICUT

Alico, LLC v. Town of Somers

Supreme Court of Connecticut - December 19, 2023 - A.3d - 348 Conn. 350 - 2023 WL 8631975

Taxpayer sought review of decision by town board of assessment appeals to uphold personal property tax assessments on vehicles that were owned by out-of-state limited liability company (LLC), of which taxpayer was sole member.

The Superior Court denied taxpayer's request for judgment declaring that tax was unconstitutional under the dormant Commerce Clause. Taxpayer appealed, and the appeal was transferred to the Supreme Court.

The Supreme Court held that tax scheme for the personal property tax was not unconstitutional under the dormant Commerce Clause.

Tax scheme for personal property tax that was assessed on motor vehicles owned by nonresident limited liability company (LLC) and registered in Massachusetts but garaged overnight at home of taxpayer, the LLC's owner, was fairly apportioned, rather than internally inconsistent in violation of the dormant Commerce Clause, even though taxpayer paid taxes on the vehicles in Connecticut and Massachusetts; if every state had adopted same scheme, it would not result in double taxation, and to extent that taxpayer paid multiple taxes on the vehicles, it was because of the combined effect of Connecticut's and Massachusetts' different and nondiscriminatory tax schemes, as the former taxed vehicles on basis of physical location and amount of time they were in the state, and the latter taxed

on basis of their registration.

How Governments and Nonprofits Can Take Advantage of Tax Credits for Clean Energy: Opening of the Pre-Filing Window Publications - Kutak Rock

On December 22, 2023 the Internal Revenue Service (IRS) announced the availability of the anticipated *"IRA/CHIPS Pre-filing Registration Tool" (the "Tool") relating to elective payment of certain tax credits. State and local governments and political subdivisions thereof, Indian tribal governments, tax-exempt organizations and other applicable entities will now be able to use the Tool to register tax credits expected to be claimed as direct payments for eligible energy projects.* The IRS announcement and additional information regarding the Tool may be found here.

There are 12 tax credits currently eligible for direct payments (also referred to as "elective payment") including, for example, the following credits: renewable electricity production (I.R.C. § 45 – pre-2025); carbon oxide sequestration (I.R.C. § 45Q); clean electricity production (I.R.C. § 45Y – 2025 onwards); energy credit (I.R.C. § 48 – pre-2025); and clean electricity investment credit (I.R.C. § 48E – 2025 onwards). Elective payment of these tax credits was made available through the Inflation Reduction Act of 2022, Pub. L. No. 117-169 (IRA). These tax credits are general business credits under I.R.C. § 38. Elective payment under I.R.C. § 6417 creates an alternative way for applicable entities that have earned tax credits to receive the benefit of the credits even if these entities cannot use the credit to offset tax liability. Please see our publication of June 16, 2023 describing elective pay tax credits generally. Please contact any member of the firm's Energy Group to discuss general eligibility for elective pay tax credits.

Continue reading.

Client Alert | December 28, 2023

Kutak Rock LLP

Municipal Bond Funds Are Hemorrhaging Cash Due to This Tax-Cutting Trade.

- **Muni mutual funds see outflows despite strong November gains**
- **Investors can reduce tax bills by selling holdings at a loss**

It's vexing for managers of municipal bond funds: The market just had its biggest monthly rally in 41 years, yet investors keep pulling out their cash.

Blame the taxman.

Even after the November rebound, the deep losses that piled up since 2022 have left the prices of some bonds still deeply in the red. That's creating an opportunity for investors to reduce tax bills by cashing out of mutual funds at a loss — providing a tax write down — and then reinvesting the proceeds.

Continue reading.

Bloomberg Wealth

By Amanda Albright

December 11, 2023

TAX - VIRGINIA

Martin v. Lafountain

Court of Appeals of Virginia, Richmond - December 12, 2023 - S.E.2d - 2023 WL 8587795

Taxpayer who owned residential property near a for-profit halfway house, which was operated in residential neighborhood, filed petition for declaratory relief against city's commissioner of revenue, seeking declaration that the business run by owner and lessee of the property at issue was subject to business tax and that the business tax should be applied retroactively.

The Roanoke Circuit Court sustained commissioner's demurrer and dismissed taxpayer's petition with prejudice. Taxpayer appealed.

The Court of Appeals held that taxpayer did not have local taxpayer standing to challenge commissioner's failure to impose business taxes on owner and lessee of the property at issue.

Taxpayer did not have local taxpayer standing to bring petition for declaratory relief to challenge failure of city's commissioner of revenue to impose business taxes on owner and lessee of neighboring residential property on which a for-profit halfway house was operated; local taxpayer standing was limited to challenging expenditures, and even if commissioner's inaction could be treated as an expenditure, taxpayer made only speculative assertions that city expenditures would have to decrease or city taxes would need to increase in order to meet city's expenses if commissioner failed to collect business taxes from the owner and lessee of the property at issue.

Pennsylvania Supreme Court Holds City Wage Tax Not Required to Credit Delaware State Income Tax.

The Pennsylvania Supreme Court held that the City of Philadelphia is not required provide a city wage tax credit for income tax payments that a resident made to another state. For the purposes of a dormant Commerce Clause analysis, the court found that state and local taxes do not need to be considered in the aggregate. Therefore, Philadelphia did not violate the dormant Commerce Clause by imposing its wage tax on a resident who worked exclusively in Wilmington, Delaware, and crediting her for Wilmington Earned Income Tax payments while not providing an additional credit for the resident's payments of Delaware Income Tax. In reaching its decision, the court first concluded that the wage tax was a "purely local tax … promulgated by Philadelphia's City Council and … collected … for the sole benefit of the City and its residents," and not a "state tax masquerading as a local tax" that would require the two taxes to be considered in tandem. The court then held that Philadelphia's tax scheme did not discriminate against interstate commerce because it was internally consistent as any excess tax paid was a result of Delaware's higher income tax rate rather than any inherent discrimination in Philadelphia's tax scheme itself and externally consistent as the imposition was justified by the City's provision of municipal benefits and services to its residents and of a full credit for the local Wilmington tax.

Diane Zilka v. Tax Review Board City of Philadelphia, No. 20 EAP 2022 and 21 EAP 2022 (Pa. Nov. 22, 2022).

Eversheds Sutherland (US) LLP – Timothy A. Gustafson and Dennis Jansen

December 13 2023

TAX - PENNSYLVANIA

Zilka v. Tax Review Board City of Philadelphia

Supreme Court of Pennsylvania - November 22, 2023 - A.3d - 2023 WL 8102749

Taxpayer, who was a resident of a Pennsylvania city with an income tax but who worked exclusively in another state, appealed decision of city's tax review board to deny her request for refund that represented a credit against the city's income tax for that portion of her out-of-state income-tax liability that was not offset by her credit against Pennsylvania income tax, even though the city allowed taxpayer a credit for what she paid in analogous local tax to a city in the other state.

The Court of Common Pleas affirmed without taking additional evidence. Taxpayer appealed. The Commonwealth Court affirmed. Taxpayer petitioned for allowance to appeal.

The Supreme Court held that:

- As a matter of first impression, Pennsylvania income tax and the city income tax would be considered discrete, rather than aggregate, taxes, and
- The Dormant Commerce Clause did not entitle taxpayer to the requested refund.

Pennsylvania income tax and the income tax levied by Pennsylvania city would be considered discrete, rather than aggregate, taxes when deciding whether Dormant Commerce Clause entitled taxpayer, who was a resident of the Pennsylvania city but who worked exclusively in another state, to a credit against the city's income tax for that portion of her out-of-state income-tax liability that was not offset by her credit against Pennsylvania income tax; city income tax was promulgated by the city council and collected for the sole benefit of the city and its residents.

Dormant Commerce Clause did not entitle taxpayer, who was a resident of a Pennsylvania city with an income tax but who worked exclusively in another state, to a credit against the city's income tax for that portion of her out-of-state income-tax liability that was not offset by her credit against Pennsylvania income tax, even though the city did allow taxpayer a credit based on the analogous local tax that she paid to a city in the other state; the Pennsylvania and city income tax were discrete taxes, given that the city income tax was promulgated by the city council and collected for the sole benefit of the city and its residents, and city income tax was internally and externally consistent, since any excess income tax paid by taxpayer was simply the result of the other state's higher income-tax rate, city allowed taxpayer a credit against analogous local tax that she paid to the other state, and domicile in itself established a basis for taxation.

What a Major Income Tax Case Before the Supreme Court Means for States.

During oral arguments this week, the court signaled it was wary of issuing an opinion that

could upend the tax code.

Welcome back to Route Fifty's Public Finance Update! I'm Liz Farmer and this week the U.S. Supreme Court heard oral arguments on a highly anticipated case that many say could upend the tax code if the plaintiffs win a broad ruling and could cost state and local governments trillions of dollars.

During oral arguments on Tuesday, the justices seemed keenly aware and at times downright wary of the potential impact of their ruling.

At the center of *Moore v. United States* are foreign earnings and a provision in the 2017 tax reform called the Mandatory Repatriation Tax. The reform was intended to minimize the incentive for U.S. corporations to hoard money overseas by reducing certain taxes on foreign earnings. In exchange for those reductions, investors and corporations had to pay a one-time, retroactive tax on all foreign income dating back to 1986. The provision helped pay for some of the corporate income tax cuts included in the 2017 Tax Cuts and Jobs Act.

Continue reading.

ROUTE FIFTY

by LIZ FARMER

DECEMBER 6, 2023

TAX - NEW YORK

Andrews v. Incorporated Village of Freeport

Supreme Court, Appellate Division, Second Department, New York - November 15, 2023 - N.Y.S.3d - 2023 WL 7561283 - 2023 N.Y. Slip Op. 05727

In article 78 proceeding, real property owner petitioned to vacate tax lien, which arose from owner's failure to pay tax bill, to which amount due on unpaid water bill had been transferred.

The Supreme Court, Nassau County, denied petition as untimely and dismissed proceeding. Property owner appealed.

The Supreme Court, Appellate Division, held that statute of limitations for commencing article 78 proceeding began to run upon owner's receipt of tax bill.

In article 78 proceeding brought by real property owner, who sought to vacate tax lien that arose from failure to pay tax bill, to which amount of unpaid water bill had been transferred, against village, statute of limitations that required that proceeding be commenced within four months after determination to be reviewed became final and binding began to run upon owner's receipt of tax bill, rather than his receipt of water bill, and thus village failed to meet burden of establishing owner received notice of final and binding determination more than four months before he commenced proceeding; owner sought order vacating lien, and there was no evidence in record as to when owner received tax bill, only that arrears from water bills were transferred to tax bill sometime after last day of year village issued water bill.

TAX - MISSISSIPPI

Stokes v. Jackson Sales & Storage Company

Supreme Court of Mississippi - November 30, 2023 - So.3d - 2023 WL 8291181

Taxpayer petitioned for appeal from county board of supervisors' determination that taxpayer lacked requisite free-port-warehouse license to qualify for exemption from ad valorem property taxes.

The Circuit Court granted taxpayer's motion for declaratory judgment that taxpayer's license was not subject to renewal and was valid and in effect at all times since its original granting, and denied motion by county and county tax assessor to alter judgment. County and county tax assessor appealed.

The Supreme Court held that:

- License was valid and in effect at all times since it was issued;
- Letters from county tax assessor to taxpayer did not revoke license;
- Board had discretion over taxpayer's exemption;
- Board forfeited its right to assess ad valorem property taxes for 2012-2018; but
- Taxpayer was not exempt from ad valorem property taxes for 2019.

Taxpayer's free-port-warehouse license, which qualified it for exemption from ad valorem property taxes, was valid and in effect at all times since it was issued, even though county board of supervisors had authority to require renewal of license and license had not been renewed; license was originally issued by Department of Revenue's predecessor, annual renewal requirement was statutorily removed, but predecessor retained renewal authority, subsequent transfer of authority to issue licenses from predecessor to board did not invalidate licenses previously granted, and after renewal authority was transferred to board from predecessor, board's actions with respect to taxpayer's license did not amount to demand for taxpayer to renew its license.

Letters from county tax assessor to taxpayer did not revoke taxpayer's free-port-warehouse license that qualified it for exemption from ad valorem property taxes, even though taxpayer had failed to meet its reporting requirement since receiving its license; letters merely notified taxpayer that county had no record of taxpayer's license, and county did not have authority to revoke taxpayer's license simply because county kept inaccurate records.

Statute granting county board of supervisors discretion over exempting in-transit personal property from ad valorem taxes extended to exemption granted to taxpayer, as holder of free-port-warehouse license, by Department of Revenue's predecessor when predecessor, not board, had discretion over exemptions; statute's mandate that previously granted exemptions "shall continue in full force and effect" did not amount to grant of exemption in perpetuity, but instead, was intended to make it clear that current licensees did not need to reacquire exemption for same year in which transfer occurred, and statute ratifying any exemption granted before January 1, 2012 did not mandate that such exemptions continue in perpetuity, but instead, prohibited counties from collecting back taxes.

County board of supervisors forfeited its right to assess ad valorem property taxes for 2012-2018 against taxpayer with free-port-warehouse license, although board had discretion over granting taxpayer an exemption, since board affirmatively chose to grant taxpayer an exemption in such years by entering exemption for taxpayer into its meeting minutes, and statute allowing collection of back taxes when any person or property had escaped taxation in any former year or years did not apply, given that taxpayer did not escape taxation, rather, county granted an exemption for which taxpayer

was qualified to receive.

Taxpayer was not exempt from ad valorem property taxes for 2019, even though taxpayer had valid free-port-warehouse license and had received exemption for nearly 40 years, since letter from tax assessor put taxpayer on notice that county intended to tax its in-transit personal property, tax assessor rejected taxpayer's argument that its exemption was not an annual exemption subject to county board of supervisors' discretion, and acceptance of taxpayer's argument in prior years did not prohibit rejection of same argument in 2019, given that board had statutory discretion over exemption.

TAX - PENNSYLVANIA

Zilka v. Tax Review Board City of Philadelphia

Supreme Court of Pennsylvania - November 22, 2023 - A.3d - 2023 WL 8102749

Taxpayer, who was a resident of a Pennsylvania city with an income tax but who worked exclusively in another state, appealed decision of city's tax review board to deny her request for refund that represented a credit against the city's income tax for that portion of her out-of-state income-tax liability that was not offset by her credit against Pennsylvania income tax, even though the city allowed taxpayer a credit for what she paid in analogous local tax to a city in the other state.

The Court of Common Pleas affirmed without taking additional evidence. Taxpayer appealed. The Commonwealth Court affirmed. Taxpayer petitioned for allowance to appeal.

The Supreme Court held that:

- As a matter of first impression, Pennsylvania income tax and the city income tax would be considered discrete, rather than aggregate, taxes, and
- The Dormant Commerce Clause did not entitle taxpayer to the requested refund.

Pennsylvania income tax and the income tax levied by Pennsylvania city would be considered discrete, rather than aggregate, taxes when deciding whether Dormant Commerce Clause entitled taxpayer, who was a resident of the Pennsylvania city but who worked exclusively in another state, to a credit against the city's income tax for that portion of her out-of-state income-tax liability that was not offset by her credit against Pennsylvania income tax; city income tax was promulgated by the city council and collected for the sole benefit of the city and its residents.

Dormant Commerce Clause did not entitle taxpayer, who was a resident of a Pennsylvania city with an income tax but who worked exclusively in another state, to a credit against the city's income tax for that portion of her out-of-state income-tax liability that was not offset by her credit against Pennsylvania income tax, even though the city did allow taxpayer a credit based on the analogous local tax that she paid to a city in the other state; the Pennsylvania and city income tax were discrete taxes, given that the city income tax was promulgated by the city council and collected for the sole benefit of the city and its residents, and city income tax was internally and externally consistent, since any excess income tax paid by taxpayer was simply the result of the other state's higher income-tax rate, city allowed taxpayer a credit against analogous local tax that she paid to the other state, and domicile in itself established a basis for taxation.

City Leaders Fund Child Care Center with Tax District Typically Used for Roads, Sewer.

By creating a tax increment financing district, Madison, South Dakota, looks to build a child care center to improve local economic development and access to child care services.

Brooke Rollag cannot work without child care.

The mother of four is the economic development director for the Lake Area Improvement Corporation in Madison.

Her job is to understand what businesses need to locate and expand in the area. And in Madison, those businesses need child care.

“Child care is infrastructure,” Rollag said. “When you view it as a necessary means for people to go to work, that’s infrastructure.”

Continue reading.

Route Fifty

By Makenzie Huber,
South Dakota Searchlight

NOVEMBER 28, 2023

Tax Loss Harvesting Comes to Muniland: Bloomberg Masters of the Muniverse

There’s been heightened volatility in rates and tax-loss harvesting may or may not be the best course of action. On this episode of Masters of the Muniverse, part of the FICC Focus podcast series, Andy Kalotay, a leading authority on quantitative analysis of municipal bonds, joins Bloomberg Intelligence’s Eric Kazatsky and Karen Altamirano for an in-depth discussion about the muni market this year, tax-loss harvesting and what’s on the horizon for 2024.

Listen to audio.

Nov 28, 2023

Smarter, Targeted Tax Breaks That Could Help Resuscitate Central Cities.

Office workers’ exodus should be countered with wiser state and federal tax incentives, and there’s a novel municipal bond angle to promote. But cities themselves must step up to stem the urban maladies that feed public fears.

Almost every day we read news reports of the demise of center-city downtowns. San Francisco has

become the go-to target for critics who assail its street crime, homelessness, office vacancies, office workers' outmigration and retail business closures. But it's not just there: Commercial property loan defaults are rising rapidly in many cities. The COVID-19 pandemic and technology's enabling of work-from-home set the stage of decline for dozens of downtowns, and this year's viral videos of brazen retail theft gangs just confirmed public perceptions of growing urban dystopia. As with Humpy Dumpty, the question now is whether state and local politicians are capable of putting the pieces back together again.

We've all watched the fatuous federal efforts to support urban revitalization with "opportunity zones" that offer tax incentives for new businesses and real estate development in targeted census tracts. Critics have shown that those tax breaks have enriched the wealthy far more than they have helped local residents, and clearly they have not saved the cities where the problem now is an oversupply of vacant urban buildings. Various states have tried their own ways to promote redevelopment with special taxing districts and similar provisions, but too often those incentives rob Peter to pay Paul by depriving schools and counties of tax revenues that fund local infrastructure. None of these programs are sufficiently targeted to counter the magnitude of today's deteriorating downtown office and retail centers.

Continue reading.

governing.com

OPINION | Nov. 28, 2023 • Girard Miller

TAX - OREGON

D.E. Shaw Renewable Investments, LLC v. Department of Revenue

Supreme Court of Oregon - October 5, 2023 - 371 Or. 384 - 537 P.3d 529

Taxpayers, which operated wind farms that were centrally assessed by the Department of Revenue and which had persuaded the Department that the valuation methodology that the Department had used to assess that property for a particular tax year had been flawed, appealed from the Department's refusal of their request that the Department use the corrected methodology to also reduce the assessed value of their property for two previous tax years.

The Tax Court entered summary judgment for the Department. Taxpayers appealed.

The Supreme Court held that the statute governing the correction of errors in the certified assessment roll precluded the Department from exercising its general statutory authority to reduce the assessed value of taxpayers' property for the two previous tax years at issue.

Statute governing the correction of errors in the certified assessment roll precluded the Department of Revenue from exercising its general statutory authority to reduce the assessed value of taxpayers' property—which consisted of wind farms that were centrally assessed by the Department—for two prior tax years, even though taxpayers had persuaded the Department that valuation methodology that it had used to assess their property for different, but more recent, prior tax year had been flawed; taxpayers did not request a conference with the Department's director to challenge the Department's valuation opinion before the tentative assessments for those two prior years became final, and statute governing correction of errors prohibited the director from correcting an error in the valuation judgment that was an error in the Department's opinion of the value of property.

TAX - MAINE

Cassidy Holdings, LLC v. Aroostook County Commissioners et al.

Supreme Judicial Court of Maine - November 9, 2023 - A.3d - 2023 WL 7393512 - 2023 ME 69

Taxpayer, the owner of a nonresidential property with equalized municipal valuation of $1 million or greater, appealed city board of assessor's decision denying its property tax abatement application to county commissioners.

The commissioners declined the appeal based on their conclusion they lacked subject matter jurisdiction.

Taxpayer appealed that decision to the Superior Court. The Superior Court granted the appeal and remanded the matter to county commissioners. County commissioners appealed.

The Supreme Judicial Court held that taxpayer was not required to pursue appeal before the State Board of Property Tax Review because the county commissioners and State Board had concurrent jurisdiction over appeals of a municipality's denial of an abatement application.

TAX - TEXAS

Harward v. City of Austin

United States Court of Appeals, Fifth Circuit - October 11, 2023 - 84 F.4th 319

Shoreline property owners brought action against city, seeking various declarations, injunctions, and writs of mandamus regarding claim that city's ordinance declaring that their properties were within city's full-purpose jurisdiction and subject to taxation constituted an illegal annexation attempt under federal and Texas law.

The United States District Court for the Western District of Texas adopted the report and recommendation of the United States Magistrate Judge and dismissed all claims. Property owners appealed.

The Court of Appeals held that:

- The Tax Injunction Act (TIA) did not preclude property owners' claims for a declaration that their properties were within city's extraterritorial or limited-purpose jurisdiction and for invalidation of city ordinance;
- TIA did not bar property owners' alternative claims for equal municipal services from city or just compensation for the taking of their properties' jurisdictional status;
- TIA barred property owners' request for a declaration that city's notices to appraisal district that the properties were within taxing-unit boundaries were invalid; and
- TIA barred property owners' request or a writ of mandamus directing city to instruct appraisal district and county assessor-collector that the properties were in city's extraterritorial or limited-purpose jurisdiction.

Whether the Tax Injunction Act (TIA) prevented the district court from exercising jurisdiction over shoreline property owners' action against city claiming that city's ordinance declaring that their properties were within city's full-purpose jurisdiction and subject to taxation constituted an illegal

annexation attempt under federal and Texas law was a question of subject-matter jurisdiction, which the Court of Appeals would review de novo.

For the Tax Injunction Act (TIA) to apply, the requested relief must to some degree stop the assessment, levy, or collection of state taxes; however, such a finding is insufficient where the relief would do so only indirectly, and in such a scenario, a court must make a more exacting examination to determine from the face of the taxpayer's complaint whether the target of a requested injunction is a tax obligation, with considerations including whether the targeted law inflicts costs separate and apart from the tax, whether the targeted law bears a close relationship to the tax, and whether the relief attempts to circumvent a state's "pay-now-sue-later" tax scheme.

Tax Injunction Act (TIA) did not preclude shoreline property owners' claims for a declaration that their properties were within Texas city's extraterritorial or limited-purpose jurisdiction and for invalidation of city ordinance declaring that their properties were within city's full-purpose jurisdiction and subject to taxation; property owners were challenging a separate legal mandate as opposed to a tax, and the challenged ordinance imposed costs separate and apart from the property taxes in that it subjected the properties to the city's broad home-rule authority.

Tax Injunction Act (TIA) did not bar shoreline property owners' alternative claims for equal municipal services from Texas city or just compensation for the taking of their properties' jurisdictional status, which claims stemmed from challenge to city's ordinance declaring that the properties were within city's full-purpose jurisdiction and subject to taxation; the requests would not stop the assessment, levy, or collection of city taxes.

Tax Injunction Act (TIA) barred shoreline property owners' request for a declaration that Texas city's notices to appraisal district that the properties were within taxing-unit boundaries were invalid, which was a request made in action challenging city's ordinance declaring that their properties were within city's full-purpose jurisdiction and subject to taxation; the request went beyond the ordinance and directly challenged the state's taxing power by affirmatively precluding the appraisal district from assessment, levy, and collection of future taxes on the properties.

Tax Injunction Act (TIA) barred shoreline property owners' request for a writ of mandamus directing Texas city to instruct appraisal district and county assessor-collector that the properties were in city's extraterritorial or limited-purpose jurisdiction, which was a request made in action challenging city's ordinance declaring that their properties were within city's full-purpose jurisdiction and subject to taxation; the request went beyond the ordinance and directly challenged the state's taxing power by affirmatively precluding the appraisal district from assessment, levy, and collection of future taxes on the properties.

US State Tax Revenue Drops in Sign of Tough Budget Decisions Ahead.

- **Revenue fell 14th straight month in September: Urban Institute**
- **Fixes include spending cuts, tax hikes, using rainy-day funds**

US states' tax revenue is sliding broadly, raising the prospect of difficult budget decisions in coming years for officials as they spend through cash amassed during the pandemic.

Total state tax revenue sank in September for the 14th straight month on an inflation-adjusted basis, falling by 5.6% from a year earlier, according to a fresh analysis from the Washington-based Urban Institute. Of those that provided information, 34 of 46 states reported year-over-year declines.

Continue reading.

Bloomberg CityLab

By Tanaz Meghjani

November 10, 2023

TAX - PENNSYLVANIA

School District of Philadelphia v. Board of Revision of Taxes

Commonwealth Court of Pennsylvania - October 6, 2023 - A.3d - 2023 WL 6527784

Public school district appealed certain commercial property assessments to the local board of revision of taxes as part of district's policy to appeal assessments that, if successful, would yield at least $7,500 in revenue.

The board upheld the assessments "on the papers." District appealed. The Court of Common Pleas granted property owners' motions to quash the assessment appeals. District appealed. The Commonwealth Court vacated the trial court's decision and remanded the matter. On remand, the Court of Common Pleas again granted property owners' motions to quash. District appealed.

The Commonwealth Court held that the district's implementation of its appeal policy violated the tax-uniformity clause of the Pennsylvania Constitution.

Implementation of public school district's policy to target its tax appeals to assessments that, if successful, would yield at least $7,500 in revenue, violated the tax-uniformity clause of the Pennsylvania Constitution; although the appeal policy might have been facially neutral, its implementation tilted toward a selection of a sub-classification of properties, i.e., commercial and industrial, given that, among other things, real estate advisor retained by district randomly rejected 520,000 properties by "eyeballing" and also that at least 33 assessments of single-family residential properties met the monetary threshold but were not appealed.

Love Me Tender [Bonds] – An Overview: Squire Patton Boggs

The famous song, *Love Me Tender*, by Elvis Presley, includes lyrics such as "We'll never part" and about being together " 'Til the end of time." In contrast to Elvis' wish, the issuer of tax-exempt bonds that makes a tender offer is hoping the exact opposite happens to the relationship between the bondholder and tax-exempt bond. In other words, the issuer hopes that economics drive a wedge between the two.

A tender offer is an offer by an issuer of bonds made to its bondholders to repurchase its outstanding bonds at a specified price on a specific date. There are several common reasons why an issuer may want to make a tender offer to its bondholders. First, the outstanding bonds may be paying interest at a rate that is higher than the current market rate, but the outstanding bonds are not yet callable (and taxable advance refundings no longer produce savings). Second, the issuer's outstanding bonds may be trading on the open market for less than face value. Thus, the issuer can offer to repurchase its bonds by paying above fair market value, but below the face amount, possibly saving itself some

money (depending upon the time-value-of-money factors). Third, an issuer may have cash on hand and would like to pay down some of its liabilities, but its bonds may not be currently callable (and taxable advance refundings no longer produce savings). An issuer may offer cash or new bonds in exchange for the outstanding bonds being tendered. In the alternative, the issuer may offer to adjust the terms of the outstanding bonds.

Continue reading.

By Cynthia Mog on October 31, 2023

The Public Finance Tax Blog

Squire Patton Boggs

TAX - PENNSYLVANIA

Downingtown Area School District v. Chester County Board of Assessment Appeals

Commonwealth Court of Pennsylvania - October 6, 2023 - A.3d - 2023 WL 6526193

School district appealed from county board of assessment appeals' denial of district's appeal of taxpayer's real property assessment.

The Court of Common Pleas granted district's tax assessment appeal, ordered that assessment of taxpayer's property be increased to comport with its new fair market value, and rejected taxpayer's constitutional challenges to district's tax assessment appeal policy. Taxpayer appealed.

The Commonwealth Court held that school district's tax assessment appeal policy, although facially neutral, created an unconstitutional lack of uniformity as applied randomly.

School district's tax assessment appeal policy, although facially neutral, created a lack of uniformity as applied, in violation of the Uniformity Clause of the Pennsylvania Constitution; district used a monetary threshold for identifying properties for tax assessment appeal, but did not even attempt to capture each and every assessment that would meet monetary threshold, and instead implemented its policy in an arbitrary fashion, creating a systematic and disparate treatment of taxpayers, both those overassessed and underassessed.

TAX - PENNSYLVANIA

School District of Philadelphia v. Board of Revision of Taxes

Commonwealth Court of Pennsylvania - October 6, 2023 - A.3d - 2023 WL 6527784

Public school district appealed certain commercial property assessments to the local board of revision of taxes as part of district's policy to appeal assessments that, if successful, would yield at least $7,500 in revenue.

The board upheld the assessments "on the papers." District appealed. The Court of Common Pleas granted property owners' motions to quash the assessment appeals. District appealed. The Commonwealth Court vacated the trial court's decision and remanded the matter. On remand, the

Court of Common Pleas again granted property owners' motions to quash. District appealed.

The Commonwealth Court held that the district's implementation of its appeal policy violated the tax-uniformity clause of the Pennsylvania Constitution.

Implementation of public school district's policy to target its tax appeals to assessments that, if successful, would yield at least $7,500 in revenue, violated the tax-uniformity clause of the Pennsylvania Constitution; although the appeal policy might have been facially neutral, its implementation tilted toward a selection of a sub-classification of properties, i.e., commercial and industrial, given that, among other things, real estate advisor retained by district randomly rejected 520,000 properties by "eyeballing" and also that at least 33 assessments of single-family residential properties met the monetary threshold but were not appealed.

TAX - CALIFORNIA

One Technologies, LLC v. Franchise Tax Board

Court of Appeal, Second District, Division 1, California - October 23, 2023 - Cal.Rptr.3d - 2023 WL 6969230

Taxpayer, which was a Delaware limited-liability company (LLC) that did business nationwide, filed a complaint for refund against the Franchise Tax Board, which complaint alleged that voter-approved initiative measure that, in order to create a funding method for clean energy job creation, generally required multistate businesses to apportion their California taxable income based on the single factor of in-state sales was invalid.

The Superior Court sustained Board's demurrer. Taxpayer appealed.

The Court of Appeal held that the measure did not violate the California Constitution's single-subject requirement.

An initiative measure does not violate the California Constitution's single-subject requirement if, despite its varied collateral effects, all of its parts are reasonably germane to each other, and to the general purpose or object of the initiative; that "reasonably germane" standard is an accommodating and lenient manner so as not to unduly restrict the people's right to package provisions in a single bill or initiative.

Voter-approved initiative measure that, in order to create a funding method for clean energy job creation, generally required multistate businesses to apportion their California taxable income based on the single factor of in-state sales did not violate the California Constitution's single-subject requirement; measure's provisions were reasonably germane to its purpose since they provided the mechanisms to raise tax revenues and direct them to clean energy job creation, and despite arguments that the measure also allowed cable companies expending $250,000,000 or more in California to reduce their in-state sales figure by half for taxation purposes and that such a "cable company tax break" was not mentioned in the measure's findings and declarations, the official or proposed titles, or the Attorney General's summary, the whole of the measure was laid out in a 4 ½-page voter information guide.

TAX - GEORGIA

DeKalb County v. City of Chamblee

Court of Appeals of Georgia - October 18, 2023 - S.E.2d - 2023 WL 6859224

City brought declaratory judgment action against county and various county officials, alleging that county failed to properly assess and pay city occupational tax on leasehold interests at county-owned airport located within city and county.

The Trial court denied county's motion to dismiss. After obtaining certificate of immediate review from the trial court, county filed application for interlocutory appeal, which was granted.

The Court of Appeals held that:

- City failed to state a claim for declaratory relief under Declaratory Judgment Act;
- City failed to state a claim for collection of past taxes and appointment of an auditor;
- County was not liable for occupancy taxes because it was not a "business" under city code; and
- There was no final ruling to review on issue of city's derivative claim for attorney fees.

City did not face any uncertainty as to any of its own future conduct but instead only sought an adjudication of issues that would impact the future conduct of county when it requested the court to determine that statute authorizing municipal airport owners to lease property required that county's leasehold interests at county-owned airport located within city and county be treated as taxable estates, which would provide city with taxable revenue, and thus, it failed to state a claim for declaratory relief under the Declaratory Judgment Act against county; city sought to determine propriety of county's actions, not its own, and so any judgment could not guide and protect city with regard to some future act.

City failed to point to any statutory provision authorizing its lawsuit against county for damages resulting from county's alleged failure to assess ad valorem taxes for leasehold interests at county-owned airport located within city and county, and thus, city failed to state a claim for collection of past taxes and for appointment of an auditor; separation of powers doctrine required specific legislative empowerment for the judiciary to act regarding executive function in collection of a tax.

County was not liable for occupancy taxes for its leasehold interests at county-owned airport, located within city and county, under city code which provided in pertinent part that each person engaged in a business, trade, or profession or occupation with location within city shall pay an occupational tax for said business, trade, or profession or occupation, because county's operation of the airport qualified as a governmental function, not a "business" under city's code; county did not operate airport for purpose of raising revenue or producing income, but instead, it controlled the airport for public, government, and municipal purposes, as provided by statute authorizing political subdivisions to acquire airports for such purposes.

There was no final ruling by the trial court upon city's derivative claim for attorney fees in city's action against county seeking declaratory relief for county's failure to pay occupancy taxes it allegedly owed city, and as such, there was nothing for Court of Appeals to review on appeal of trial court's denial of county's motion to dismiss the suit, where trial court expressly "reserved ruling" on city's attorney fees claim.

TAX - VIRGINIA

McKeithen Trustee of Craig E. Caldwell Trust U/A Dated December 28, 2006 v. City of Richmond

Supreme Court of Virginia - October 19, 2023 - S.E.2d - 2023 WL 6884689

Judgment creditor, a junior lienholder, moved for payment of remaining, unclaimed portion of surplus proceeds from judicial sale of judgment debtor's property to satisfy city's tax lien.

The Richmond Circuit Court denied motion and denied reconsideration. Judgment creditor appealed.

The Supreme Court held that:

- Unclaimed surplus proceeds escheated to city pursuant to statute governing judicial tax sales, but
- Escheat provision of statute violated takings clause of the State Constitution as applied.

Under statute governing distribution of surplus proceeds after judicial sale of property to collect delinquent local real estate taxes, the unclaimed portion of surplus proceeds held in the court's registry escheated to city after expiration of the two-year deadline for unknown lien beneficiaries to make a claim, even though city's tax lien had been fully satisfied.

Escheat provision of statute governing distribution of surplus proceeds after a judicial sale of property to collect delinquent local real estate taxes violated the takings clause of the State Constitution as applied to judgment creditor that unsuccessfully sought the remaining, unclaimed portion of surplus proceeds to satisfy its junior lien after city's tax lien had been fully satisfied and unknown senior lien beneficiaries did not make claim within two years of judicial confirmation of sale, where city laid claim to the unclaimed proceeds solely by operation of the mandatory statutory escheat, and city did not assert any specific public-use justification.

Blue and Red States Slash Taxes Despite Warnings of Hard Times Ahead.

Since 2021, half the states have cut personal income tax rates.

With a $750 million budget surplus on hand, there was little doubt whether North Dakota lawmakers would cut taxes earlier this year—the question was how much.

"The surplus was strong, and we believe it's going to be sustained into the future," said state Rep. Craig Headland. "So, it just made sense to cut taxes."

Headland was among the Republicans who negotiated terms of the legislature's $515 million tax cut this year—70% of which came from lowering personal income tax rates. The cuts leave North Dakota with the lowest tax rate among the states that collect income taxes.

In a special session this week, the legislature is considering more tax cuts that would exempt about 50,000 North Dakotans who earn $60,000 or less from income taxes. And Republicans, who control both chambers and the governor's office in North Dakota, plan to continue their march toward eliminating the state income tax; Headland said he plans to introduce such a bill when the legislature reconvenes in 2025.

Continue reading.

Route Fifty

By Kevin Hardy,
Stateline

OCTOBER 25, 2023

States Pitch Mileage Tax to Bridge Gap in Federal Highway Funding.

The main source of federal funding for highways and transit could run out of money by 2028, unless Congress finds a way to fix long-standing problems with the gas tax.

The primary federal account that provides funding to states for highways and transit could run out of money by 2028 unless Congress fixes long-standing problems, an expert told U.S. House members Wednesday.

Chad Shirley, an analyst for the Congressional Budget Office, said that the short-term influx of money from the 2021 infrastructure law would run out in five years, once again forcing Congress to decide whether to raise new transportation taxes, cut spending or use other federal money to make up for the transportation funding shortfall.

“If balances in the highway account or in the transit account go to zero, the federal government can’t make its payments to state and local governments on a timely basis,” Shirley testified during a hearing of the highways and transit subcommittee of the House Transportation and Infrastructure Committee.

Continue reading.

Route Fifty

By Daniel C. Vock

OCT 18, 2023

TAX - OREGON

D.E. Shaw Renewable Investments, LLC v. Department of Revenue

Supreme Court of Oregon - October 5, 2023 - P.3d - 371 Or. 384 - 2023 WL 6474466

Taxpayers, which operated wind farms that were centrally assessed by the Department of Revenue and which had persuaded the Department that the valuation methodology that the Department had used to assess that property for a particular tax year had been flawed, appealed from the Department’s refusal of their request that the Department use the corrected methodology to also reduce the assessed value of their property for two previous tax years.

The Tax Court entered summary judgment for the Department. Taxpayers appealed.

The Supreme Court held that the statute governing the correction of errors in the certified assessment roll precluded the Department from exercising its general statutory authority to reduce the assessed value of taxpayers’ property for the two previous tax years at issue.

Statute governing the correction of errors in the certified assessment roll precluded the Department of Revenue from exercising its general statutory authority to reduce the assessed value of taxpayers' property—which consisted of wind farms that were centrally assessed by the Department—for two prior tax years, even though taxpayers had persuaded the Department that valuation methodology that it had used to assess their property for different, but more recent, prior tax year had been flawed; taxpayers did not request a conference with the Department's director to challenge the Department's valuation opinion before the tentative assessments for those two prior years became final, and statute governing correction of errors prohibited the director from correcting an error in the valuation judgment that was an error in the Department's opinion of the value of property.

TAX - MAINE

Oakes v. Town of Richmond

Supreme Judicial Court of Maine - October 3, 2023 - A.3d - 2023 WL 6430640 - 2023 ME 65

Taxpayer filed two-count complaint for declaratory judgment and damages, alleging she did not have a taxable interest in property and seeking reimbursement for past paid taxes, interest, and a refund of purchase price.

The Superior Court granted town's motion to dismiss for failure to state a claim, and taxpayer appealed.

The Supreme Judicial Court held that:

- Abatement process is the exclusive process for pursuing a claim that a tax is discriminatorily excessive, a challenge to an assessment practice or methodology, and a true overvaluation claim, but exemption claims may be pursued through either the abatement process or a declaratory judgment action, and other challenges to a tax assessment may be pursued through either the abatement process or a declaratory judgment action; overruling *Talbot v. Town of Wesley*, 100 A. 937, and *Berry v. Daigle*, 322 A.2d 320;
- Taxpayer could use declaratory judgment method to challenge property tax on the ground that the town lacked the authority to impose the tax upon her because she did not own the land at issue; and
- Taxpayer could pursue compensation under statute allowing compensation based on a clerical error.

TAX - NEVADA

Orbitz Worldwide, LLC v. Eighth Judicial District Court in and for County of Clark

Supreme Court of Nevada - September 28, 2023 - P.3d - 2023 WL 6350110 - 139 Nev. Adv. Op. 40

Relators commenced private action on behalf of the state against online travel companies, asserting causes of action under the Nevada False Claims Act (NFCA), alleging that companies knowingly

avoided obligations to pay transient-lodging taxes mandated by county and state law.

Following commencement of county's NFCA lawsuit against same companies, the companies moved for summary judgment in relators' suit on grounds of the government-action bar, triggered by county's NFCA case. The District Court denied the motion and then later denied companies' motion for reconsideration of that decision. Companies filed petition for writ of mandamus.

The Supreme Court held that:

- As a matter of first impression, government-action bar in NFCA contained no sequencing requirement, and so, when applicable, statute requires dismissal of a private NFCA action even if civil action on behalf of state or political subdivision was filed after the private action;
- As a matter of first impression, when a civil action under NFCA has been brought by or on behalf of a state governmental entity, the government-action bar presents no bar to a separate action on behalf of a different governmental authority, even if the two suits involve same allegations or transactions;
- Government-action bar did not require dismissal of relators' private action against online travel companies; and
  Failure to apply government-action bar did not interfere with Attorney General's control over private NFCA suits.

Supreme Court's exercise of discretion to entertain petition for writ of mandamus filed by online travel companies challenging district court's denial of its motion for summary judgment in relators' qui tam Nevada False Claims Act (NFCA) suit alleging that companies knowingly avoided paying transient-lodging taxes was warranted, where petition raised purely legal questions of first impression regarding effect of NFCA's government-action bar when a government entity files suit after the private qui tam action and the two suits involve two distinct governmental entities, the issues were of statewide importance, and moreover, the interpretation of the government-action bar at early stages of litigation furthered judicial economy.

Government-action bar in the Nevada False Claims Act (NFCA), stating that an NFCA action may not be maintained by a private plaintiff if the action is based upon allegations or transactions that are the subject of civil action or proceeding to which state or political subdivision is already a party, contains no sequencing requirement, and thus, when applicable, the statute requires dismissal of private qui tam NFCA action brought on behalf of the state even if civil action brought by state or political subdivision was filed after the private action.

When a civil action under the Nevada False Claims Act (NFCA) has been brought by or on behalf of a state governmental entity, the government-action bar presents no bar to a separate private action on behalf of a different governmental entity, even if the two suits involve same allegations or transactions.

Government-action bar in the Nevada False Claims Act (NFCA) did not require dismissal of relators' private action against online travel companies asserting that companies knowingly avoided obligations to pay transient-lodging taxes mandated by county code and state law by engaging in scheme to collect tax based on higher, retail room rate, but remitting tax based on lower, discounted room rate negotiated with hotels, even though county later filed own NFCA against same companies based on same allegations or transactions, where relators sought recovery of portion of transient-lodging tax to which the state, not county authorities, was entitled, and thus brought case only on their and that of the state, and state was not party to action brought by county.

Failure to apply government-action bar under the Nevada False Claims Act (NFCA) when private qui

tam action was brought on behalf of the state against online travel companies for alleged scheme to avoid remitting full amount owed for transient-lodging taxes and county filed subsequent civil action on its own account against same companies did not interfere with Attorney General's control over private NFCA suits, as the Attorney General still had the right to intervene and use other procedural mechanisms to exercise a certain amount of control.

TAX - TEXAS

Harward v. City of Austin

United States Court of Appeals, Fifth Circuit - October 11, 2023 - F.4th - 2023 WL 6617932

Shoreline property owners brought action against city, seeking various declarations, injunctions, and writs of mandamus regarding claim that city's ordinance declaring that their properties were within city's full-purpose jurisdiction and subject to taxation constituted an illegal annexation attempt under federal and Texas law.

The United States District Court adopted the report and recommendation of United States Magistrate Judge and dismissed all claims. Property owners appealed.

The Court of Appeals held that:

- The Tax Injunction Act (TIA) did not preclude property owners' claims for a declaration that their properties were within city's extraterritorial or limited-purpose jurisdiction and for invalidation of city ordinance;
- TIA did not bar property owners' alternative claims for equal municipal services from city or just compensation for the taking of their properties' jurisdictional status;
- TIA barred property owners' request for a declaration that city's notices to appraisal district that the properties were within taxing-unit boundaries were invalid; and
- TIA barred property owners' request or a writ of mandamus directing city to instruct appraisal district and county assessor-collector that the properties were in city's extraterritorial or limited-purpose jurisdiction.

Tax Injunction Act (TIA) did not preclude shoreline property owners' claims for a declaration that their properties were within Texas city's extraterritorial or limited-purpose jurisdiction and for invalidation of city ordinance declaring that their properties were within city's full-purpose jurisdiction and subject to taxation; property owners were challenging a separate legal mandate as opposed to a tax, and the challenged ordinance imposed costs separate and apart from the property taxes in that it subjected the properties to the city's broad home-rule authority.

Tax Injunction Act (TIA) did not bar shoreline property owners' alternative claims for equal municipal services from Texas city or just compensation for the taking of their properties' jurisdictional status, which claims stemmed from challenge to city's ordinance declaring that the properties were within city's full-purpose jurisdiction and subject to taxation; the requests would not stop the assessment, levy, or collection of city taxes.

Tax Injunction Act (TIA) barred shoreline property owners' request for a declaration that Texas city's notices to appraisal district that the properties were within taxing-unit boundaries were invalid,

which was a request made in action challenging city's ordinance declaring that their properties were within city's full-purpose jurisdiction and subject to taxation; the request went beyond the ordinance and directly challenged the state's taxing power by affirmatively precluding the appraisal district from assessment, levy, and collection of future taxes on the properties.

Tax Injunction Act (TIA) barred shoreline property owners' request for a writ of mandamus directing Texas city to instruct appraisal district and county assessor-collector that the properties were in city's extraterritorial or limited-purpose jurisdiction, which was a request made in action challenging city's ordinance declaring that their properties were within city's full-purpose jurisdiction and subject to taxation; the request went beyond the ordinance and directly challenged the state's taxing power by affirmatively precluding the appraisal district from assessment, levy, and collection of future taxes on the properties.

TAX - MAINE

Oakes v. Town of Richmond

Supreme Judicial Court of Maine - October 3, 2023 - A.3d - 2023 WL 6430640 - 2023 ME 65

Taxpayer filed two-count complaint for declaratory judgment and damages, alleging she did not have a taxable interest in property and seeking reimbursement for past paid taxes, interest, and a refund of purchase price.

The Superior Court granted town's motion to dismiss for failure to state a claim, and taxpayer appealed.

The Supreme Judicial Court held that:

- Abatement process is the exclusive process for pursuing a claim that a tax is discriminatorily excessive, a challenge to an assessment practice or methodology, and a true overvaluation claim, but exemption claims may be pursued through either the abatement process or a declaratory judgment action, and other challenges to a tax assessment may be pursued through either the abatement process or a declaratory judgment action; overruling *Talbot v. Town of Wesley, 100 A. 937, and Berry v. Daigle*, 322 A.2d 320;
- Taxpayer could use declaratory judgment method to challenge property tax on the ground that the town lacked the authority to impose the tax upon her because she did not own the land at issue; and
- Taxpayer could pursue compensation under statute allowing compensation based on a clerical error.

TAX - ILLINOIS

MB Financial Bank, N.A. v. Brophy

Supreme Court of Illinois - September 21, 2023 - N.E.3d - 2023 IL 128252 - 2023 WL 6153041

Taxpayers whose apartment-complex property had been taken by city in condemnation action brought declaratory judgment action against county treasurer seeking refund of property taxes paid between the date the city filed its condemnation complaint and the date it acquired taxpayers' property.

The Circuit Court dismissed action. Taxpayers appealed. The Appellate Court affirmed in part and reversed in part. Treasurer petitioned for leave to appeal, which was granted, and taxpayers sought cross-relief.

The Supreme Court held that city's title to property did not vest retroactively to date of filing of condemnation petition and thus did not relieve taxpayers from property tax liability for period between date of filing on condemnation complaint and date of payment of compensation; overruling *City of Chicago v. McCausland*, 379 Ill. 602, 41 N.E.2d 745.

Statute providing that property acquired for a use that is exempt from taxation shall be exempt on the date of the right of possession "except that property acquired by condemnation is exempt as of the date the condemnation petition is filed" does not render a condemning authority liable for property taxes from date a condemnation action is filed; rather, statute applies only if the relation-back rule is in effect to make the tax-exempt status of the property relate back to date condemnation action was filed.

Municipal Market Rolls Out Exemption Worry Tour Again.

The municipal market, may be the most sensitive areas of fixed income, knowing that our existence is a function of the tax-code. While the market has seen various attempts to remove or limit the exemption, the staying power of the asset class speaks volumes about the benefits which outweigh the costs to many.

Watch video.

Bloomberg

September 22nd, 2023

TAX - OHIO

State ex rel. Board of Education of Ottawa Hills Local School District v. Lucas County Board of Elections

Supreme Court of Ohio - September 15, 2023 - N.E.3d - 2023 WL 5992985 - 2023-Ohi--3286

School district's board of education sought writ of mandamus ordering county board of elections to place tax levy on ballot for general election.

The Supreme Court held that:

- Board of education lacked adequate remedy in ordinary course of law;
- Board of education did not strictly comply with its statutory obligations to place tax levy on ballot; and
- Board's errors were not technical errors, and, thus, board was not entitled to writ of mandamus.

Mandamus is an appropriate remedy to compel a board of elections to place a tax levy on the ballot.

As a general matter, if a taxing authority such as a board of education does not timely certify a resolution to proceed with a levy to the board of elections, the board of elections may not place the levy on the ballot.

Neither statute setting process for taxing authority to have tax levy placed on ballot and nor statute setting deadline for certification of issue to board of elections permit substantial compliance, and, thus, strict compliance with those statutes is generally required for a board of education to have a tax levy placed on the ballot.

School district's board of education did not strictly comply with its statutory obligations to place tax levy on ballot for general election, and, thus, board of education was not entitled to writ of mandamus to compel board of elections to place tax levy on ballot for general election, although board argued that incorrect estimate rate for levy for each $100,000 of property value was scrivener's error; board's resolution to proceed included rate for levy of 10.9 mills, not for approved levy of 12.9 mills, there was no evidence that error was scrivener's error, and board passed new resolution with correct levy rate seven days after certification deadline.

Errors by school district's board of education in including incorrect tax levy rate and by approving correct rate seven days after certification deadline were not technical errors that did not affect requirements of election statutes, and, thus, board was not entitled to writ of mandamus to compel board of elections to place levy on ballot for general election; by not passing correct levy rate until seven days after statutory certification deadline, board denied public its full statutory time to review levy, allowing certification of levy seven days after statutory deadline would create uncertainty in election administration, and inaccuracy in levy rate of $382 for each $100,000 of property value, instead of correct rate of $452 for each $100,000 of property value, was not de minimis.

TAX - MICHIGAN

Bate v. City of St. Clair Shores

Court of Appeals of Michigan - August 17, 2023 - N.W.2d - 2023 WL 5311528

Taxpayers brought putative class actions against cities for violation of Headlee Amendment, which prohibited levying any new tax or increasing any existing tax above authorized rates without approval of local governmental unit's electorate, alleging that Fire Fighters and Police Officers Retirement Act did not allow cities to impose tax to fund healthcare benefits.

The Circuit Court granted summary disposition in favor of cities. Taxpayers appealed, and appeals were consolidated.

The Court of Appeals held that:

- Under Act, municipalities are permitted to appropriate tax dollars to help pay for healthcare benefits to retired firefighters and police officers who are members of the retirement system and entitled to those benefits;
- Tax that cities imposed to fund healthcare benefits did not violate Headlee Amendment; and
- Consideration of extrinsic evidence, including legislative history and proposed amendments to Act, was unwarranted.

Headlee Amendment's exemption of taxes authorized by law when the section governing the exemption was ratified permits the levying of previously authorized taxes even where they were not being levied at the time Headlee Amendment was ratified and even though the circumstances

making the tax or rate applicable did not exist before that date.

Fire Fighters and Police Officers Retirement Act's section providing that amount required by taxation to meet the appropriations to be made by municipalities under the Act shall be in addition to any tax limitation imposed upon tax rates in those municipalities by charter provisions or by state law requires municipalities to set aside tax dollars so they can fully pay benefits owed under the retirement system.

For purposes of Fire Fighters and Police Officers Retirement Act's section requiring municipalities to set aside tax dollars so it can fully pay pensions and other benefits payable under the retirement system, "other benefits payable" includes healthcare benefits, in the event the benefits must be paid, and thus municipalities are permitted to appropriate tax dollars to help pay for healthcare benefits to retired fire fighters and police officers who are members of the retirement system and entitled to those benefits.

Tax that cities imposed to fund healthcare benefits for retired fire fighters and police officers did not violate Headlee Amendment, which prohibited levying any new tax or increasing any existing tax above authorized rates without approval of local governmental unit's electorate, since tax was authorized under Fire Fighters and Police Officers Retirement Act before Headlee Amendment was ratified.

Consideration of extrinsic evidence, including legislative history and proposed amendments to Fire Fighters and Police Officers Retirement Act, was unwarranted when deciding taxpayers' claims that cities violated Headlee Amendment, which prohibited levying any new tax or increasing any existing tax above authorized rates without approval of local governmental unit's electorate, by imposing taxes to fund healthcare benefits for retired fire fighters and police officers; plain language of Amendment and Act was unambiguous, and no further judicial construction was permitted.

TAX - NEW MEXICO

Process Equipment & Service Company, Inc. v. New Mexico Taxation Revenue Department

Court of Appeals of New Mexico - July 25, 2023 - P.3d - 2023 WL 4874874

Taxation and Revenue Department (TRD) appealed decision from the Administrative Hearing Office (AHO), which, as part of taxpayer's administrative tax protest after Department denied taxpayer's applications for tax credit, concluded that taxpayer met requirements for a tax credit under the Technology Jobs and Research and Development Tax Credit Act.

The Court of Appeals held that:

- As a matter of first impression, "cost accounting method" for tax credit purposes is a method for capturing a company's total cost of production by assessing the variable costs at each step in production;
- Finding that taxpayer used a "cost accounting method" to allocate wages was grounded in a rational basis based on the record; and
- Substantial evidence supported finding that taxpayer's "cost accounting method" was informally used in its other business activities.

A "cost accounting method" within meaning of the Technology Jobs and Research and Development

Tax Credit Act's definition of "qualified expense" is a method for capturing a company's total cost of production by assessing the variable costs at each step in production.

Finding by hearing officer of the Administrative Hearing Office (AHO) that taxpayer used "cost accounting method" to allocate wages, as required under the Technology Jobs and Research and Development Tax Credit Act's definition of "qualified expense," was grounded in a rational basis based on the record; officer found that taxpayer's accounting firm sent staff to inspect records, interview witnesses, and develop method to quantify and assess time and wage costs associated with taxpayer's research and development activities, found that firm determined which projects qualified for tax credit by reviewing drafting logs created contemporaneously during time work was performed, and found that taxpayer used same method to apply for state and federal tax credits and that method only accounted for finished projects.

Substantial evidence supported finding by hearing officer of the Administrative Hearing Office (AHO) that taxpayer's "cost accounting method" used to allocate wages, as required under the Technology Jobs and Research and Development Tax Credit Act's definition of "qualified expense," was also informally used in taxpayer's other business activities; officer found that taxpayer informally used same methodology to determine continuing viability of research and development project by comparing drafting time shown on drafting logs against potential results/outcome/viability of project, and when asked at hearing if taxpayer used cost accounting methodology designed by its accounting firm, vice president of engineering and chairman of taxpayer's board stated that taxpayer did use this method.

TAX - GEORGIA

Flat Creek Falls, LLC v. Labat

Court of Appeals of Georgia - August 25, 2023 - S.E.2d - 2023 WL 5496667

County sheriff filed two interpleader petitions for excess funds generated in tax sales of real property.

In the first case, the Superior Court entered order that city's demolition lien took priority over claim to the funds asserted by entity that ended up with fee simple title after the sale. In the second case, the Superior Court ordered release of the excess funds to city in partial payment for its demolition lien. Pre-tax sale owners of the properties appealed, and the appeals were consolidated.

The Court of Appeals held that the demolition liens, which applied only to real property, did not give city a right to the excess funds, which were personal property.

City's demolition liens against pieces of real property that ended up being sold at separate tax sales did not give city a right to excess funds produced by the sales; the excess funds were "personal property," and city's liens applied only to real property.

How De Minimis Fears Drive Illiquidity.

Kevin Bain, debt manager for Detroit, who got his start in the corporate taxable bond market, recalls being baffled by the obscure "de minimis" tax rule when he arrived at the city nearly three years ago.

The rule was one reason why, during a bond sale in 2021, the coupons needed to be set at 5% and 4% at the outset, to protect investors worried that the bonds would later tip into discount territory, Bain recalled. The rule also means the city has to parse issuance size versus par value when it asks voters for borrowing authorization.

"It's been around so long it's considered market practice to everyone who works with municipal bonds," said Bain. But the 5% standard seemed strange – especially in the low rate world of 2021 – compared to the corporate world, where par value tends to roughly equal issuance size and coupons roughly match yields.

That's "pretty straightforward," Bain said. "It's odd that municipal governments have the more complicated issue."

Investors in Detroit's 2021 deal proved correct about their concerns as a chunk of the 4% bonds are now trading at a discount, Bain said. When the city came back to market in July, amid a higher interest rate environment, it set coupons as high as 6% on some bonds.

The "market discount" de minimis rule carries a primary market impact for issuers like Detroit, but it is the rule's significant impact on the secondary market that's the focus of a paper from a quartet of muni market experts that was presented in July at the 2023 Brookings Municipal Finance Conference.

"Pushing Bonds Over the Edge: Investor Demand and Municipal Bond Liquidity" takes a deep dive into the de minimis rule's impact on a secondary market dominated by mutual funds that tend to buy bonds at a premium to avoid de minimis risk. Funds will dump entire positions as they approach discount territory, activity that leads to "substantial illiquidity" and drives up trading costs and prompts other institutional investors to head for the exit, the paper found.

The study takes on more relevance in the rising interest rate environment, where even 5% coupons are now trading near the threshold. More than 30% of bonds in the secondary are currently circling discount territory, said one of the paper's authors, Stefan Gissler, principal economist at the Board of Governors of the Federal Reserve System, who presented at the conference.

The so-called de minimis rule took effect in 1993 as part of the Omnibus Budget Reconciliation Act, which repealed the exemption of realized price appreciation – as opposed to interest payments – on municipal bonds from ordinary income taxes.

Under the rule, investors who buy municipal bonds at a discount from its face value at issuance will have to pay taxes on any realized price appreciation if the discount passes below the de minimis threshold, which is defined as one quarter of 1% of the stated bond price multiplied by the number of full years to maturity.

The rule has carried an outsized impact in the secondary market since mutual funds have started to dominate the buyer base, because mutual funds have strong incentives to avoid "discontinuous jumps in ordinary income taxes," according to the paper, authored by Gissler as well as John Bagley, chief market structure officer at the Municipal Securities Rulemaking Board; Kent Hiteshew, a strategic advisor at Ernst & Young LLC who was formerly deputy associate director at the Federal Reserve Board's Office of Financial Stability; and Ivan Ivanov, senior economist in the Research Division of the Federal Reserve Bank of Chicago.

Examining bond trading data from 2010 to 2022, the authors concluded that mutual funds are large net sellers of muni bonds above the de minimis threshold, with their selling peaking at four to five

percentage points above the threshold, reaching nearly $500 billion quarterly.

Once below the level, the bonds become illiquid and trading becomes more costly, prompting other institutional investors like banks and property and casualty insurers to avoid them. Only life insurance companies, which tend to be buy-and-hold investors, showed more restraint around the threshold.

“These findings suggest that liquidity is not only the main driver of the trading dynamics around the de minimis threshold, but also has significant impact on trading costs,” the paper said.

The “exit of institutional investors such as mutual funds, insurance companies, and closed-end funds from the secondary market leads to significantly lower market quality and higher transactions costs?an important feature of this market even in ‘normal’ economic times,” the authors said.

The paper also notes that decisions by the Federal Reserve to hike interest rates “speeds up the path to illiquidity and higher transactions costs.”

During a period of monetary tightening, the bonds “underlying as much as a quarter of all secondary market transactions face significant probability of falling below the threshold,” the paper said.

The conclusions are not surprising given the shrinking municipal buyer base over the years, said municipal strategist Vikram Rai.

Mutual funds are exposed to flows and need to sell during an outflow period, Rai said.

“When a mutual fund buys a higher-coupon bond, they’re paying more for it but they need the liquidity; they don’t want to be stuck where they want to raise money and don’t have liquid paper to sell,” Rai said.

Because mutual funds have such a large footprint, their actions reverberate across the market, he said.

“It’s exacerbating illiquidity and it’s exacerbating the discontinuity and volatility in prices,” he said.

For Bain, who presented a response to the academic paper at the Brookings conference, the study helps explain a rule that he said remains unclear even to many of his issuer peers.

“It’s a very confusing rule that most people in the industry don’t know a lot about,” Bain said. “It’s really interesting to see the research on how big an impact it has on the market even though so few people are speaking about it and people have just come to accept it as the market standard.”

By Caitlin Devitt

BY SOURCEMEDIA | MUNICIPAL | 09/07/23 02:24 PM EDT

TAX - CONNECTICUT

Cazenovia Creek Funding I, LLC v. White Eagle Society of Brotherly Help, Inc.

Appellate Court of Connecticut - August 1, 2023 - A.3d - 220 Conn.App. 770 - 2023 WL 4852104

Holder of municipal tax liens, which were originally assigned to holder’s predecessor in interest by

city collector of revenue, brought foreclosure action against owner of real property.

The Superior Court granted holder's motion for summary judgment as to liability. Another holder was substituted as plaintiff, and subsequent holder was later substituted as plaintiff. The Superior Court rendered a judgment of foreclosure by sale. Owner appealed.

The Appellate Court held that:

- Holder met prima facie burden of establishing ability to foreclose;
- Owner had burden of proof to establish assignment of liens was defective;
- Property owner's evidence did not create genuine issue of material fact as to whether assignment of liens was defective; and
- Holder met burden of proof that tax was properly assessed.

Owner of real property had burden of proof regarding its special defense that city's assignment of municipal tax liens to holder's predecessor in interest was defective, and thus holder did not have burden in lien foreclosure proceeding to prove that liens recorded by city were properly authorized by its legislative body prior to being assigned.

Property owner's submission of city council minutes that were from three different meetings and that failed to reflect approval of a resolution to assign real-property taxes for grand lists for years for which tax license were imposed did not create genuine issue of material fact as to whether city's assignment of tax liens to holder's predecessor in interest was defective and thus did not preclude summary judgment in favor of holder of tax liens in action to foreclose liens; there was no evidence that the three city council meetings were only city council meetings held between relevant dates, and property owner did not present any evidence to show liens assigned were not encompassed in city council's resolution to approve assignment of liens for subsequent year.

Holder of municipal tax liens met its burden of proof under rule governing foreclosures of municipal tax liens that tax or assessment was properly assessed, due, and payable on property and no part had been paid, and thus burden of proof shifted to property owner to allege and prove, as affirmative defense, claimed informality, irregularity, or invalidity in assessment or attempted collection of tax, or in lien filed; holder submitted copies of certificates of continuing lien showing unpaid taxes were assessed to property and due, holder submitted affidavit from its predecessor in interest that demand had been made but no payments made, and property owner did not rebut holder's evidence with any proof of payments made to either holder or predecessor in interest.

Fitch: Insurance Pullback Could Pressure CA and FL Tax Base Longer Term

Fitch Ratings-New York/San Francisco-05 September 2023: Rising premiums and reduced availability of homeowners' property insurance could drag on housing markets, development activity, overall economic growth and ultimately tax bases for certain California and Florida local governments over time, Fitch Ratings says. Insurers are re-evaluating their exposures to geographic areas with elevated catastrophe risk as they face greater losses and higher building and reinsurance costs. Insurance plays a key role in securing mortgages and enabling rebuilding following natural disasters.

There were 119 natural catastrophes in 2022 resulting in $98.8 billion in insured property losses, up from 103 catastrophes costing $93.3 billion in 2021, according to the Insurance Information Institute (Triple-I) and Aon. This compares with annual losses averaging $62.1 billion (adjusted for

inflation) over the prior eight years. Average homeowners' insurance premiums in Florida were up 11% in 2020 from the year before, to $2165, the highest in the country, and were up 16% from 2018 in California, according to Triple-I.

State Farm, Allstate, and Farmers have announced they will cease issuing new home insurance policies in California, with AIG and Chubb also adjusting insurance coverage in the state. In Florida, some insurance companies have announced reduction or cessation of home and condo coverage, including Farmers and Allstate's Castle Key subsidiary, and seven entered liquidation in the last 18 months. The Florida Insurance Guaranty Association recently approved a 1% emergency assessment on all covered lines of business (other than auto) to cover claims owed by United Property & Casualty Insurance Company, one of the liquidated insurers.

Consumers who face insurance non-renewals may turn to the state insurers of last resort, California's Fair Access to Insurance Requirement (FAIR) Plan Association or Florida's state-owned Citizens Property Insurance Corporation (AA/Stable). The FAIR Plan is a syndicated insurance pool requiring the participation of all California-licensed property and casualty insurers, and its rates are notably more expensive on average than standard property insurance policies.

Citizens is the largest insurer in Florida with over 1.3 million policies in force, with policy count and exposure growing significantly over the last three years. Florida regulators recently asked Citizens to submit a new rate proposal following Citizens' proposed average rate increase of 12.6% for homeowners' multiperil policies.

Both Citizens and the Florida Hurricane Catastrophe Fund (AA/Stable), the state-sponsored reinsurer, can levy assessments, subject to a cap, on nearly every property and casualty insurance policy in the state in order to pay claims. Increased storm frequency and severity raises the likelihood of levies from both, placing an additional burden on the assessed base.

Recovery following natural disasters may be delayed or incomplete if there are greater numbers of those who are under-insured or uninsured due to affordability or non-renewal issues. High-risk areas could be left with a smaller tax base if hurricane or wildfire damage leads to permanent relocations, or if these areas find it difficult to attract new residents.

Fitch has not observed these effects playing out to date, as insurance is one of many factors in home purchase decisions. However, pressures on housing demand could be amplified with increasing natural disasters and insurance markets in which the insurers of last resort are costly or impose higher assessments to cover increased claims.

Policymakers have several tools to support property insurance market sustainability. Florida's legislature has passed a series of bills with the aim of reducing insurance litigation, improving claims and payout timing, and containing Florida Citizens' insured base. California's Department of Insurance is hosting discussions regarding insurance companies' potential use of catastrophe models to estimate potential losses and inform rate setting. The effectiveness of policy actions is increasingly important to support housing market and long-term economic growth prospects.

Texas Port's $55 Million Municipal Bonds Ruled Taxable by IRS.

- **Port didn't spend enough proceeds within 3 years, IRS Says**
- **Port says it complied with tax rules and will defend position**

The U.S. Internal Revenue Service has concluded that interest on $55 million of municipal bonds issued by a Texas port in 2017 is taxable because the issuer was too slow to spend money it raised, according to a securities filing.

The Port of Port Arthur Navigation District didn't comply with a section of the tax code that requires municipalities to spend 85% of tax-exempt bond proceeds within three years of the bonds being issued, according to the IRS, the filing said.

The port, which operates a shipping terminal on the Sabine Neches Waterway along the Gulf of Mexico, said it did comply with the federal tax code and intends to defend its position. After receiving a "proposed notice of adverse determination" an issuer has 30 days to request an administrative appeal of its case, according to the port's filing.

The section of the tax code in question is aimed at preventing state and local governments from issuing bonds when interest rates are low without any immediate need to use the the funds, resulting in excess debt that isn't subject to income tax.

Judy Bettis, Port of Port Arthur's chief financial officer, didn't immediately respond to a call and email seeking comment.

Bloomberg Markets

By Martin Z Braun

August 24, 2023

IRS Targets Port Arthur, Texas, Bond Issuance for Hedge Bond Violation – Is Your Bond Issue at Risk? - McNeese

The Internal Revenue Service recently issued a notice of proposed adverse tax determination in what might be a harbinger of additional enforcement actions targeting alleged hedge bonds. The Port of Port Arthur Navigation District of Jefferson County, Texas, issued tax-exempt bonds — according to a continuing disclosure filing made by the Port on Aug. 23, the IRS is alleging that those bonds are taxable "hedge bonds" due to noncompliance with the requirements of the Internal Revenue Code. The Port is contesting the taxability determination.

A taxability determination under Section 149(g) of the code comes down to one thing: you issued your bonds too early. This section is intended to prevent the issuance of tax-exempt bonds earlier than is reasonably necessary to accomplish the governmental purpose of the issue. Bonds issued too early means foregone tax revenue for the federal government, a result frowned upon by the IRS.

Avoiding taxable hedge bond status is fairly straightforward — the issuer must have a reasonable anticipation at the time of issuance that it will expend at least 85% of the proceeds of the issue within three years. The 85% test is based on "reasonable expectations," not actual results — an issuer could, in fact, fail to spend 85% of the proceeds in three years and avoid a taxability determination under the hedge bond rules.

Over the last year, the municipal bond market has seen a rapid rise in interest rates, coinciding with rapid increases in the Federal Funds Rate by the Federal Reserve to combat inflation. As rates began to rise, a municipality may have been tempted to borrow earlier than was needed to lock in a

lower interest rate on its debt. Therefore, bonds issued over the last 12 to 18 months for new capital projects may be at risk of examination by the IRS.

If you issued bonds to finance new projects during this period, now is the time to check your files to ensure compliance with the hedge bond rules. Make sure your records from the time of issuance are in order to show support for having a "reasonable expectation" of spending the proceeds within three years. Meeting minutes, engineering studies and other documentation showing an imminent need to borrow for a project will be helpful evidence. If circumstances have changed since then, preserve documentation of what happened and, ideally, why it was not in the realm of possibility at the time the bonds were issued.

If your bond issue is targeted by the IRS for examination, consult with tax counsel before making any response. I have advised many clients over the years in connection with IRS examinations of tax-exempt bonds, including examinations involving application of the hedge bond rules.

by Timothy Horstmann

September 1, 2023

McNees Wallace & Nurick LLC

Top (Bottom?) Ten of Tax Headaches (Challenges) for Municipal Bond Issuers: Cozen O'Conner

Sometimes the first step to solving (or mitigating or avoiding) problems is to identify what the problem may be to, among other things, put time on one's side.

For issuers of tax-exempt municipal bonds, there tend to be certain types of situations that are more prone to creating tax-issues. The purpose of this article is to identify certain types of situations that are more likely to create tax headaches (or at least are better navigated with some advance planning) for purposes of the tax-exempt bond rules.

Please see full Article below for more information.

Continue reading.

by Mark Vacha

September 1, 2023

Cozen O'Conner

Municipal-Bond Investors Pay a Hefty Price for Not Being Taxed.

A new study suggests that 'investors overvalue the pleasure' of tax-exemption

Municipal-bond investors are paying a greater premium than should be expected for the "pleasure of not being taxed," a new study finds, often negating the bonds' benefit.

In a perfectly priced world, a muni bond would pay interest equivalent to a Treasury bond minus the investors' tax burden on the Treasury and adjusted for liquidity and credit quality of the issuing state or municipality.

But munis pay investors even less than that, according to the study, which appeared in a National Bureau of Economic Research working paper in June. On average, the study found, the yield of the muni bonds was nearly 15 basis points, or 0.15 percentage point, lower than what would be explained by their favorable tax status.

Continue reading.

The Wall Street Journal

By Daisy Maxey

Sept. 3, 2023

Taxing Remote Workers: "Convenience," Conflict, And The Courts.

When your commute to work takes place within the confines of your home, where should you pay income taxes? The answer is complicated. For remote workers, it could mean more work when filing their taxes. State and local budgets can pay a price, too.

Not all jobs can be done remotely. But for people who have the option, an estimated 35 percent are working from home all of the time. A McKinsey & Company survey estimates that there are 92 million people in the US who can, at times, skip their commute to other cities—or even states. When they do, they don't need the same tax-funded public services provided to people on the ground in those jurisdictions.

But communities need people, and their tax dollars, to thrive. States and cities with income taxes can simplify the way remote work is taxed, maintain fiscal balance, and better support their communities, but state-by-state responses could lead to conflicting guidance. Absent a coordinated response from state lawmakers–or intervention by Congress–these conflicts will be settled in the courts.

Continue reading.

Tax Policy Center

by Renu Zaretsky

August 2, 2023

Texas Port's $55 Million Municipal Bonds Ruled Taxable by IRS.

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The U.S. Internal Revenue Service has concluded that interest on $55 million of municipal bonds issued by a Texas port in 2017 is taxable because the issuer was too slow to spend money it raised, according to a securities filing.

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Judy Bettis, Port of Port Arthur's chief financial officer, didn't immediately respond to a call and email seeking comment.

Bloomberg Markets

By Martin Z Braun

August 24, 2023

IRS Targets High-Income Individuals Illegally Claiming Puerto Rico's Tax Benefits.

The Internal Revenue Service ("IRS") Commissioner Danny Werfel stated that the Agency is taking "swift and aggressive action" to strengthen enforcement efforts against high-income individuals. As part of these enforcement efforts, the IRS identified approximately 100 individuals, including crypto traders and fund managers suspected of illegally claiming Puerto Rico's tax benefits. According to the IRS, the enforcement efforts will include both civil audits and criminal investigations.

For taxpayers not in compliance with Puerto Rico Act 60 (formerly Acts 20 and 22) requirements, they must act swiftly to take corrective action. In July of this year, Puerto Rico's Secretary of Economic Development and Commerce stated he is actively cooperating with the IRS in their efforts to identify individuals that are abusing Puerto Rico's tax benefits.

On January 27, 2021, the IRS announced its compliance campaign that focused on Puerto Rico Act 60 ("Act 60"). Act 60 consolidated various tax decrees, incentives, subsidies, and benefits, including Acts 20 and 22. Acts 20 and 22 were intended to incentivize investment in Puerto Rico, promote the exportation of services from companies and individuals providing such services and attract high net-worth individuals to Puerto Rico.

Taxpayers that meet the requirements of Act 60 are eligible to receive significant tax savings. For example, Act 60 offers a corporate tax rate of 4% to Puerto Rico domiciled companies that export services performed in Puerto Rico to people or companies outside of the territory. Similarly, high net-worth individuals may qualify for a total exemption from Puerto Rico income taxes on all interest

and dividends realized after the individual becomes a bona fide resident of Puerto Rico.

Puerto Rico is a United States territory (and generally subject to all US federal laws); however, for federal tax purposes, Puerto Rico is treated as a "foreign country." The Internal Revenue Code ("Code") states that US citizens and resident aliens are taxed on worldwide income; however, section 933 provides an exception to this general rule. Residents of Puerto Rico receive special tax treatment for Puerto Rico sourced income.

The IRS's new campaign targets taxpayers who have claimed benefits through Puerto Rico Act 60 without meeting the requirements of section 933, Residence and Source Rules Involving Possessions. Consequently, the IRS has identified certain individuals who may be excluding income subject to US tax on a filed US income tax return or failing to file and report income subject to US tax. As such, the IRS campaign will also address those individuals who have met the requirements of section 933 but may be erroneously reporting US source income as Puerto Rico source income in order to avoid US taxation.

To enhance voluntary compliance with the tax laws, the IRS partners with foreign jurisdictions, federal, state and municipal governmental agencies. These partnerships often involve some type of formal agreement such as a Memorandum of Understanding ("MOU") or Tax Coordination Agreement ("TCA") that allows for the exchange of taxpayer data. Article 4 of the TCA between the US and the Commonwealth of Puerto Rico allows for the exchange of information to administer and enforce the tax laws of the respective jurisdiction.

In this IRS campaign the IRS will utilize various methods to detect noncompliance, including examinations and outreach via soft letters. Consequently, it is reasonable to assume the IRS has started identifying those individuals who may fall under the scope of this audit campaign.

Taxpayers should review their reporting positions and, if appropriate, consider correcting past non-compliance before the IRS comes to their door. We have experience advising clients through a variety of IRS controversy matters including voluntary disclosures, civil audits and criminal investigations. Similarly, we are well versed in evaluating Puerto Rico-specific tax issues.

Meadows Collier Reed Cousins Crouch & Ungerman LLP – Michael A. Villa, Jr. and R. Damon Rowe

August 30 2023

Fitch: State Tax Cut Wave Has Peaked with Modest Revenue Effects for Most States

Fitch Ratings-New York-17 August 2023: Tax cuts enacted by US states in 2023 are not likely to have a meaningful effect on most states' revenues or affect credit ratings in the short term, says Fitch Ratings. We expect that states implementing the largest structural tax changes will adjust spending accordingly, though states that have underestimated the potential revenue impact of cuts made near the peak of the economic cycle may face fiscal deterioration and credit challenges.

The wave of tax cuts passed by U.S. states beginning in 2021 appears to have crested. Although 24 states adopted tax reduction measures of some kind in their fiscal 2024-25 budgets, the scope of changes narrowed versus prior years, with fewer states opting for major restructurings of tax brackets or deep cuts to tax rates.

For the most part, tax cuts enacted in 2023 will have more modest effects on revenues than cuts made in prior years, as most 2023 changes took the form of temporary rate reductions, tax holidays, or expanded tax credits. Tennessee's four-month sales tax holiday will reduce fiscal 2024 collections by $400 million, equal to 1.3% of state-source revenues. Wisconsin's permanent cuts to its two lower personal income tax (PIT) rates will reduce biennial general fund revenues by only 0.8% ($175 million). However, when combined with larger PIT cuts enacted in the last biennium, this will reduce collections by $2.2 billion, or about 2.5% of state revenues.

Continue reading.

Save the Tax-Exemption, A Call to Action for U.S. Public Finance.

- A convergence of risk has the potential to result in the elimination of new tax-exempt municipal bond issuance.
- For the public finance community this analysis is meant to be a call-to-action.
- This is a potential policy threat for investors to monitor, for now.
- The rising U.S. debt-to-GDP ratio along with climbing interest costs are among the leading reasons why there is an even greater threat to the municipal bond tax-exemption today compared to recent decades.
- Reinforcement of this increased threat was recently delivered in the form of Fitch Ratings' U.S. downgrade (August 1) and the CBO's July Monthly Budget Review (August 8).
- The public finance community should escalate support for tax-exempt bonds by educating and informing D.C. lawmakers now, even though we may experience a federal budget cycle or two and a Presidential election before the true threat is imminent. If an educational process does not begin soon, it could be too late to save the tax-exemption by the time potential deficit reduction measures are proposed.

Continue reading.

AdvisorHub

by Tom Kozlik, Hilltop Securities

August 18, 2023

TAX - WISCONSIN

Wisconsin Property Taxpayers, Inc. v. Town of Buchanan

Supreme Court of Wisconsin - June 29, 2023 - 408 Wis.2d 287 - 2023 WI 58 - 992 N.W.2d 100

Plaintiff brought action for declaratory and injunctive relief from "transportation utility fee" that town imposed to fund its transportation utility district.

The Circuit Court entered summary judgment for plaintiff, finding that the fee was a property tax subject to the town's levy limit, and permanently enjoining the town from levying, enforcing, or collecting the fee in any amount above its levy limit. Town appealed, and the parties filed a joint petition for bypass of the Court of Appeals, which the Supreme Court granted.

The Supreme Court held that:

- Pursuant to statute allowing the creation of utility districts, town could not base the fee on class of property and its commercial characteristics;
- State law precluded town from imposing the fee on tax-exempt properties; and
- The fee counted against town's levy limit as set by state law.

When imposing "transportation utility fee" to fund its transportation utility district, which was fee that constituted property tax, town could not base fee on class of property and its commercial characteristics; statute allowing certain municipalities to set up utility districts and to fund them through "taxation of property" did not authorize such taxation to be based on anything other than property value.

"Transportation utility fee" that town imposed to fund its transportation utility district, which fee constituted property tax, counted against town's levy limit as set by state law; despite argument that utility district had assumed responsibility for public improvement, town itself levied taxes to fund district.

Taxation of property funding utility district under statute allowing certain municipalities to set up utility districts is subject to municipal levy limits.

TAX - GEORGIA

Columbus, Georgia Board of Tax Assessors v. Medical Center Hospital Authority

Court of Appeals of Georgia - June 28, 2023 - S.E.2d - 2023 WL 4228280

Taxpayer, a hospital authority, brought action against board of tax assessors, seeking declaration that its leasehold interest in certain property, on which residential retirement community was operated, was exempt from ad valorem taxation.

The Superior Court granted summary judgment in favor of taxpayer, and the Court of Appeals affirmed. The Supreme Court granted certiorari, reversed decision, and remanded, and the trial court again entered summary judgment in favor of taxpayer. Board appealed.

The Court of Appeals held that leasehold interest was public property exempt from ad valorem taxation.

Leasehold interest of hospital authority taxpayer in continuing care residential retirement community, which taxpayer operated on land leased from property owner, was "public property," and thus was exempt from ad valorem taxation; community, which provided elderly individuals with room and board and nursing care, addressed public need of identifiable class of citizens, bond validation proceedings established that taxpayer financed and paid for construction of community through revenue bonds issued in furtherance of public purpose for which taxpayer was established, community's audited financial statements treated operating profits as those of taxpayer, and income derived from operating community was used to repay bonds.

Ohio Budget Bill Adopts Municipal Net Profits Tax Safe Harbor Statute.

Companies that have individuals (whether an employee or an owner) that work out of their home now have the choice of filing a net profits tax return with that individual's city of residence. In brief, if the company chooses to not file a net profits tax return with that individual's city of residence, then the company's property, payroll and sales associated with that individual are assigned to the company's office location. The statute is not a model of clarity, so companies are well advised to study the associated procedural rules very carefully. The statute is effective for tax years ending on or after December 31, 2023.

Vorys understands the General Assembly may amend this statute's effective date to make it effective for tax years ending on or after January 1, 2022. Companies should monitor further legislative developments accordingly.

Vorys Sater Seymour and Pease LLP – David A. Froling

August 10 2023

Lawmakers Probe Nonprofit Hospitals, Challenge Tax-Exempt Status.

- **Grassley, Warren ask IRS, Treasury to investigate charity care**
- **Senators say they're concerned about abuse of tax exemption**

A bipartisan group of four US senators wants the Internal Revenue Service and Treasury Department to investigate whether nonprofit hospitals are abusing their tax-exempt status.

The lawmakers pointed to cases of nonprofit hospitals charging full price for services that should have been free or discounted. They also said some of these institutions pursued indigent patients for medical debt, including placing liens on their homes.

More than half of approximately 5,200 community hospitals in the US are nonprofit, and are supposed to provide charity care in return for their tax-exempt status.

"We are alarmed by reports that despite their tax-exempt status, certain nonprofit hospitals may be taking advantage of this overly broad definition of 'community benefit' and engaging in practices that are not in the best interest of the patient," senators including Elizabeth Warren of Massachusetts and Chuck Grassley of Iowa wrote in a letter this week. Bill Cassidy, a Republican from Louisiana, and Democrat Raphael Warnock of Georgia were also signatories.

There aren't explicit rules for what constitutes meeting charity-care guidelines. Lawmakers have previously said that disclosure requirements are vague, allowing institutions to duck their responsibilities. The hospital industry has disputed these findings.

In the Monday letter, the senators called for the government to update the forms hospitals file to disclose charity care. They also want to identify hospitals whose tax-exempt status was revoked, as well as those that were audited or deemed at risk for non-compliance.

Lawmakers had addressed this issue at a House Ways and Means hearing in April, calling for more clarity and consistency in how hospitals disclose and meet their charity contributions.

States and municipalities have also pushed back on nonprofit hospitals. Colorado has a new law requiring more extensive reporting on the community care these institutions provide. Pittsburgh has questioned the tax-exempt status of some of the property owned by the University of Pittsburgh's medical center, which has outlined its disagreement. And the New York City Council in June voted unanimously to establish an Office of Healthcare Accountability that would scrutinize the prices hospitals charge and the charity-care provisions they have in place.

More than three quarters of the 1,773 nonprofit hospitals examined by health-care think tank Lown Institute spent less on charity care and community investment than the estimated value of their tax break, according to the most recent Fair-Share Spending report. This created what Lown called a "fair-share deficit" of $14.2 billion in 2020.

Bloomberg Politics

By Lauren Coleman-Lochner

August 9, 2023

TAX - OHIO

Stingray Pressure Pumping, L.L.C. v. Harris

Supreme Court of Ohio - August 2, 2023 - N.E.3d - 2023 WL 4913160 - 2023-Ohio-2598

Taxpayer challenged decision of Ohio Board of Tax Appeals (BTA) concluding that some of taxpayer's equipment used in its fracking operations did not qualify for exemption from Ohio's sales and use tax for equipment used directly in the production of crude oil and natural gas.

The Supreme Court held that:

- Blender was exempt from sales and use tax;
- Hydration unit was exempt from sales and use tax;
- Chemical-additive unit was exempt from sales and use tax;
- Sand king was exempt from sales and use tax;
- T-belt was exempt from sales and use tax;
- Data van was not exempt from sales and use tax; and
- Equipment, aside from data van, was used directly in production of oil and gas.

Primary use of taxpayer's blender equipment was to mix together water, chemicals, and sand, notwithstanding blender's holding function, and thus blender was directly used in performing taxpayer's hydraulic fracking services for the production of crude oil and natural gas, and therefore blender qualified as a "thing transferred" directly in production of crude oil and natural gas for sale, such that blender was exempt from Ohio's sales and use tax; blender mixed critical ingredients in fracking recipe seconds before mixture was inserted into well.

Primary use of hydration unit was in mixing water and various chemicals, not storage, and thus hydration unit was directly used in performing hydraulic fracking services for the production of crude oil and natural gas, and therefore hydration unit qualified as a "thing transferred" directly in production of crude oil and natural gas for sale, and thus taxpayer's hydration unit equipment was exempt from Ohio's sales and use tax.

Taxpayer's chemical-additive unit was not primarily used for holding, but rather, primary function of

unit was to provide chemicals to hydration unit and blender by way of hoses, and therefore chemical-additive unit was tangible personal property directly used in hydraulic fracking services, such that chemical-additive unit qualified as a "thing transferred" directly in production of crude oil and natural gas for sale, and thus chemical-additive unit was exempt from Ohio's sales and use tax.

Primary use of taxpayer's sand king equipment, which holds sand for a brief period before it is injected into pressurized mixture that is immediately injected into well, was to feed sand into blender, and thus sand king was tangible personal property directly used in hydraulic fracking services, such that sand king qualified as a "thing transferred" directly in production of crude oil and natural gas for sale, and therefore sand king was exempt from Ohio's sales and use tax.

Taxpayer's data van equipment, a motor vehicle containing various screens and monitoring devices did not act directly on fluid and material and did not control production equipment, and thus data van did not qualify as a "thing transferred" directly in production of crude oil and natural gas for sale, and therefore data van was not exempt from Ohio's sales and use tax.

Taxpayer's equipment used in taxpayer's fracking operations, including blenders, hydration units, chemical-additive units, sand kings, and t-belts, which was used in unison with manifold and pumps to create injection of mixture that was sent downhole to free oil and gas was used directly in production of oil and gas, and thus equipment qualified for exemption from Ohio's sales and use tax, even if equipment's use was preliminary and preparatory to production.

TAX - RHODE ISLAND

Apex Oil Company, Inc. v. State by and through Division of Taxation

Supreme Court of Rhode Island - July 14, 2023 - 297 A.3d 96

Oil trader brought two tax aggrievement actions challenging Division of Taxation's denial of trader's claim for a refund of $4,280,039.44 paid for Motor Fuel Tax assessed on the purchase and sale of 300,000 barrels of oil, as part of chain transaction in which oil trader was contractually responsible to its seller for the tax.

The Sixth Division District Court dismissed. Oil trader petitioned for writ of certiorari, which was granted.

The Supreme Court held that:

- Oil trader demonstrated it suffered injury in fact in order to establish standing to bring tax aggrievement action challenging
- Division's denial of trader's claim for a refund of Motor Fuel Tax;
- There was causal connection between Division's imposition of Motor Fuel Tax on trader's purchase of oil and trader's injury in fact, as required to establish standing to bring tax aggrievement actions challenging Division's denial of trader's claim for a refund of Motor Fuel Tax;
- Seller of oil's assignment of its rights to oil trader did not establish that they were in privity at time settlement was reached between seller and Division, and thus, claim preclusion did not apply to trader's challenge to Division's denial of claim for refund of Motor Fuel Tax; and
- Doctrine of administrative finality did not apply to bar trader's challenge to Division's denial of its claim for refund for Motor Fuel Tax.

Doctrine of administrative finality did not apply to bar oil trader's challenge to Division of Taxation's denial of trader's claim for a refund of $4,280,039.44 paid for Motor Fuel Tax assessed on purchase

and sale of 300,000 barrels of oil as part of chain transaction in which oil trader was contractually responsible to its seller for the tax; seller's request for relief in the initial agency proceedings sought only penalty and interest abatement, while oil trader's request for relief requested a refund of the tax itself based upon its assertion that the tax was improperly imposed, thus, the two requests were not the same or substantially similar.

Fitch: U.S. Home Price Declines Concentrated in the West; Tax Effects Limited

Fitch Ratings-New York-10 August 2023: Significant home price declines from peak levels following the pandemic are concentrated in a dozen counties in western states, Fitch Rating says. The price drops have varied, but there are limited downside implications for property tax revenues in the impacted municipalities due to property tax formulas that smooth home price swings.

National home prices have begun to level off after declining from peaks during the pandemic, showing resilience amid constrained supply and relatively stable demand. Fitch expects U.S. nominal home prices to fall between 0% and 5% in 2023 relative to 2022, per our Global Housing and Mortgage Outlook.

We expect broad property tax collections to remain healthy, as roughly half of U.S. counties have not seen home price declines in the post-pandemic period. Property valuations take roughly 18 months to two years to feed through to property tax assessments, and local governments have time to adjust tax rates and budgets in response to changes in property valuations. Aggregate U.S. property taxes are likely to grow to varying degrees in 2023 and 2024, reflecting high 2021 and 2022 home values.

Continue reading.

California Lawyers Association 2023 State and Local Tax Annual Meeting Roundup: Greenberg Traurig

Go-To Guide:

- California Lawyers Association's SALT Committee held its first fully in-person annual meeting since the start of the pandemic.
- California taxing agencies provided legislative, regulatory, and litigation updates of interest.

The Taxation Section of the California Lawyers Association held its annual State and Local Tax Meeting on July 27, 2023, at the Franchise Tax Board (FTB)'s Central Office in Rancho Cordova, California. This meeting provided practitioners and industry members an opportunity to hear from several leaders at the FTB, California Department of Tax and Fee Administration (CDTFA), California Board of Equalization (BOE), and the Office of Tax Appeals (OTA).

For those who missed the event or who want a double serving of tax, keep reading for the latest developments in California state and local tax.

Continue reading.

Greenberg Traurig LLP – Bradley R. Marsh, Shail P. Shah, James T. Smith and Jennifer A. Vincent

August 8 2023

TAX - NEW MEXICO

Process Equipment & Service Company, Inc. v. New Mexico Taxation Revenue Department

Court of Appeals of New Mexico - July 25, 2023 - P.3d - 2023 WL 4874874

Taxation and Revenue Department (TRD) appealed decision from the Administrative Hearing Office (AHO), Brian Van Denzen, Hearing Officer, which, as part of taxpayer's administrative tax protest after Department denied taxpayer's applications for tax credit, concluded that taxpayer met requirements for a tax credit under the Technology Jobs and Research and Development Tax Credit Act.

The Court of Appeals held that:

- As a matter of first impression, "cost accounting method" for tax credit purposes is a method for capturing a company's total cost of production by assessing the variable costs at each step in production;
- Finding that taxpayer used a "cost accounting method" to allocate wages was grounded in a rational basis based on the record; and
- Substantial evidence supported finding that taxpayer's "cost accounting method" was informally used in its other business activities.

A "cost accounting method" within meaning of the Technology Jobs and Research and Development Tax Credit Act's definition of "qualified expense" is a method for capturing a company's total cost of production by assessing the variable costs at each step in production.

Finding by hearing officer of the Administrative Hearing Office (AHO) that taxpayer used "cost accounting method" to allocate wages, as required under the Technology Jobs and Research and Development Tax Credit Act's definition of "qualified expense," was grounded in a rational basis based on the record; officer found that taxpayer's accounting firm sent staff to inspect records, interview witnesses, and develop method to quantify and assess time and wage costs associated with taxpayer's research and development activities, found that firm determined which projects qualified for tax credit by reviewing drafting logs created contemporaneously during time work was performed, and found that taxpayer used same method to apply for state and federal tax credits and that method only accounted for finished projects.

Substantial evidence supported finding by hearing officer of the Administrative Hearing Office (AHO) that taxpayer's "cost accounting method" used to allocate wages, as required under the Technology Jobs and Research and Development Tax Credit Act's definition of "qualified expense," was also informally used in taxpayer's other business activities; officer found that taxpayer informally used same methodology to determine continuing viability of research and development project by comparing drafting time shown on drafting logs against potential results/outcome/viability of project, and when asked at hearing if taxpayer used cost accounting methodology designed by its accounting firm, vice president of engineering and chairman of taxpayer's board stated that taxpayer did use this method.

IRS Seeks States' Input On Its Direct File Pilot.

States have until Sept. 4 to tell the IRS if they're interested in participating.

States will have the chance to collaborate with the IRS on how they may integrate with the agency's forthcoming direct file pilot.

In a July 16 letter to the Federation of Tax Administrators, which serves state tax collection agencies, IRS Commissioner Danny Werfel wrote that the tax agency is "interested in continuing to learn from states directly, and from [Federation of Tax Administrators], about the challenges they may face when integrating with a Direct File pilot, be they technological, policy-driven or other concerns."

States that want to be involved in the pilot have until Sept. 4 to tell the IRS, the letter states.

Continue reading.

Route Fifty

By Natalie Alms,
Staff Reporter, Nextgov/FCW

JULY 31, 2023

TAX - RHODE ISLAND

Gunvor USA, LLC v. State by and through Division of Taxation

Supreme Court of Rhode Island - July 14, 2023 - A.3d - 2023 WL 4536385

Oil trader brought a tax aggrievement case challenging Division of Taxation's imposition of motor fuel tax on sale 300,000 barrels of gasoline, by an alleged unregistered distributor, as part of a chain transaction involving six entities including oil trader as a later buyer that was contractually responsible to its seller for the tax.

The Sixth Division District Court dismissed. Oil trader petitioned for writ of certiorari, which was granted.

The Supreme Court held that futility exception to administrative exhaustion requirement applied.

Futility exception to administrative exhaustion requirement applied to oil trader's tax aggrievement case challenging Division of Taxation's imposition of motor fuel tax on sale of 300,000 barrels of gasoline, by an alleged unregistered distributor, as part of a chain transaction involving six entities including oil trader as a later buyer that was contractually responsible to its seller for the tax, where it was certain, or nearly so, that tax administrator would have denied oil trader's request for a refund of motor fuel tax, had one been made, based on Division's inflexible position in a similar case that only the entity that paid the tax had standing to challenge it.

Orrick: IRS Issues Direct Pay and Transferability Proposed Regulations

On June 14, 2023, the IRS and Treasury issued proposed regulations (the "Proposed Regulations") under two novel provisions of the Inflation Reduction Act of 2022 (the "IRA") designed to promote capital investment in renewable energy: (1) "direct pay," allowing certain tax-exempt, taxable and government entities to elect to receive cash payments from the federal government in lieu of energy tax credits and (2) "transferability," allowing the transfer of energy tax credits to unrelated parties in exchange for cash payments.[1] Important details in the Proposed Regulations are summarized below. The Proposed Regulations are of interest to anyone thinking about developing or financing a renewable project or anyone interested in acquiring tax credits from another renewable energy project. The IRS and Treasury also issued temporary regulations ("Temporary Regulations") with an immediate effective date.

The Direct Pay Rules

Overview

The direct pay rules permit certain entities to receive a direct payment of certain tax credits. Eligible entities include tax-exempt organizations, states, and political subdivisions such as local governments, Indian tribal governments, Alaska Native Corporations, the Tennessee Valley Authority, rural electric co-operatives, U.S. territories and their political subdivisions. The Proposed Regulations clarify that agencies and instrumentalities are also eligible for direct pay.[2] These entities will find direct pay to be a particularly attractive financing mechanism.

The following twelve credits are eligible for direct pay:

1. The credit for alternative fuel vehicle refueling / recharging property (Section 30C);
2. The renewable electricity production credit (Section 45);
3. The carbon oxide sequestration credit (Section 45Q);
4. The zero-emission nuclear power production credit (Section 45U);
5. The clean hydrogen production credit (Section 45V);
6. The commercial clean vehicle credit (Section 45W);
7. The advanced manufacturing production credit (Section 45X);
8. The clean electricity production credit (Section 45Y);
9. The clean fuel production credit (Section 45Z);
10. The energy credit (Section 48);
11. The qualifying advanced energy project credit (Section 48C); and
12. The clean electricity investment credit (Section 48E).

Continue reading.

Orrick, Herrington & Sutcliffe LLP – Peter Connors, Christopher Moore, John Narducci, John Stanley, Eric Wall and Wolfram Pohl

July 21, 2023

TAX - CALIFORNIA

CSHV 1999 Harrison, LLC v. County of Alameda

Court of Appeal, First District, Division 1, California - May 31, 2023 - 92 Cal.App.5th 117 - 309 Cal.Rptr.3d 322 - 2023 Daily Journal D.A.R. 5222

Limited-liability companies (LLCs) that the California State Teachers' Retirement System (CalSTRS) had created for the purpose of purchasing and holding title to two investment properties filed a petition for writ of mandate to obtain refunds of documentary-transfer taxes that they had paid to county and city, which was based on argument that they, like their sole member, CalSTRS, were "political subdivisions" of the state and therefore exempt from the taxes.

Following a bench trial, the Superior Court denied petition. LLCs appealed.

The Court of Appeal held that the LLCs were not exempt from having to pay the documentary-transfer taxes.

Limited-liability companies (LLCs) that the California State Teachers' Retirement System (CalSTRS) had created for the purpose of purchasing and holding title to two investment properties were not exempt from having to pay documentary-transfer taxes to city and county.

TAX - MARYLAND

Comptroller of Maryland v. Comcast of California

Supreme Court of Maryland - July 12, 2023 - A.3d - 2023 WL 4482556

Communications companies, as taxpayers, sought declaratory judgment that digital advertising tax violated Commerce Clause and First Amendment, as well as Internet Tax Freedom Act.

The Circuit Court granted declaratory judgment for companies. Comptroller appealed. Certiorari was granted before decision in Appellate Court.

The Supreme Court held that:

- Special statutory administrative remedies were exclusive with respect to challenge to digital advertising gross revenues tax;
- Declaratory judgment declaring digital advertising gross revenues tax unlawful violated Tax-General Article generally prohibiting judicial remedies that would prevent assessment or collection of taxes;
- Constitutional exception to administrative exhaustion requirement was not applicable to dispute; and
- Taxpayers disputing digital advertising gross revenues tax were required to exhaust their administrative remedies.

Special statutory administrative remedies were exclusive with respect to challenge to digital advertising gross revenues tax, since Tax-General Article generally prohibited judicial remedies that would prevent assessment or collection of taxes and Courts and Judicial Proceedings Article specifically prohibited use of declaratory judgment action as end-run around special statutory administrative remedies.

Tax-General Article broadly prohibiting judicial action that would interfere with the assessment or collection of taxes and the Courts and Judicial Proceedings Article prohibiting the use of declaratory judgment actions as an end-run around special statutory administrative remedies establish a legislative intent that the special statutory administrative remedies provided for the resolution of tax disputes are exclusive.

Declaratory judgment declaring digital advertising gross revenues tax unlawful violated Tax-General

Article generally prohibiting judicial remedies that would prevent assessment or collection of taxes, since only reason for declaratory judgment was expectation that it would prevent Comptroller from assessing or collecting that tax.

Constitutional exception to administrative exhaustion requirement was not applicable to dispute over digital advertising gross revenues tax, since applicable special statutory administrative remedies were exclusive with respect to challenge to that tax.

Constitutional exception to administrative exhaustion requirement was not applicable to dispute over digital advertising gross revenues tax, since applicable special statutory administrative remedies were exclusive with respect to challenge to that tax.

Taxpayers disputing digital advertising gross revenues tax were required to exhaust their administrative remedies, and therefore trial court did not have jurisdiction to entertain their declaratory judgment action, since Tax-General Article provided special statutory administrative remedies for taxpayers to pursue their challenge.

Keep Your Paws Off My Positive Arbitrage – "With the Same Power Comes More Responsibility" - Squire Patton Boggs

The time has come, friends. The Rebate Series ends with this post. At least for a little while. So far we've covered the basics of arbitrage and rebate and two key timing-based spending exceptions: the 6-Month Exception and the 18-Month Exception. This party bus now comes to a halt with the Two-Year Spending Exception, the last and longest of the timing-based exceptions to the rebate requirement. If you've made it this far, thank you. If this is your first rebate-related post, please read the previous posts setting the stage.

Episode 3: Rebate & Arbitrage 101 – Two-Year Spending Exception

Like its name suggests, the Two-Year Spending Exception provides an exception to the rebate requirement for certain *non-refunding* issues when net proceeds of such bonds are spent within two years of the issue date of the bonds. This exception is *only* available for: (1) governmental bonds, (2) qualified 501(c)(3) bonds, and (3) private activity bonds that finance property owned by a governmental unit or a 501(c)(3) organization.

Additionally, and unlike the 6- and 18-Month Exceptions, to qualify for the Two-Year Exception, an issuer must reasonably expect at least 75% of the "Available Construction Proceeds" of the issue will be used for construction expenditures. Construction expenditures are those capital expenditures allocable to the cost of real property or constructed personal property, which may include rehabilitation costs. Available Construction Proceeds are defined as…

Continue reading.

By Natalie Vicchio on July 3, 2023

The Public finance Tax Blog

Squire Patton Boggs

TAX - WISCONSIN

Wisconsin Property Taxpayers, Inc. v. Town of Buchanan

Supreme Court of Wisconsin - June 29, 2023 - N.W.2d - 2023 WI 58 - 2023 WL 4278324

Plaintiff brought action for declaratory and injunctive relief from "transportation utility fee" that town imposed to fund its transportation utility district.

The Circuit Court entered summary judgment for plaintiff, finding that the fee was a property tax subject to the town's levy limit, and permanently enjoining the town from levying, enforcing, or collecting the fee in any amount above its levy limit.

Town appealed, and the parties filed a joint petition for bypass of the Court of Appeals, which the Supreme Court granted.

The Supreme Court held that:

- Pursuant to statute allowing the creation of utility districts, town could not base the fee on class of property and its commercial characteristics;
- State law precluded town from imposing the fee on tax-exempt properties; and
- The fee counted against town's levy limit as set by state law.

When imposing "transportation utility fee" to fund its transportation utility district, which was fee that constituted property tax, town could not base fee on class of property and its commercial characteristics; statute allowing certain municipalities to set up utility districts and to fund them through "taxation of property" did not authorize such taxation to be based on anything other than property value.

State property-tax law precluded town from imposing on tax-exempt properties its "transportation utility fee," which was fee that town used fund its transportation utility district and that constituted property tax.

"Transportation utility fee" that town imposed to fund its transportation utility district, which fee constituted property tax, counted against town's levy limit as set by state law; despite argument that utility district had assumed responsibility for public improvement, town itself levied taxes to fund district.

TAX - GEORGIA

Columbus, Georgia Board of Tax Assessors v. Medical Center Hospital Authority

Court of Appeals of Georgia - June 28, 2023 - S.E.2d - 2023 WL 4228280

Taxpayer, a hospital authority, brought action against board of tax assessors, seeking declaration that its leasehold interest in certain property, on which residential retirement community was operated, was exempt from ad valorem taxation.

The Superior Court granted summary judgment in favor of taxpayer, and the Court of Appeals affirmed. The Supreme Court granted certiorari, reversed decision, and remanded, and the trial court again entered summary judgment in favor of taxpayer. Board appealed.

The Court of Appeals held that leasehold interest was public property exempt from ad valorem taxation.

Leasehold interest of hospital authority taxpayer in continuing care residential retirement community, which taxpayer operated on land leased from property owner, was "public property," and thus was exempt from ad valorem taxation; community, which provided elderly individuals with room and board and nursing care, addressed public need of identifiable class of citizens, bond validation proceedings established that taxpayer financed and paid for construction of community through revenue bonds issued in furtherance of public purpose for which taxpayer was established, community's audited financial statements treated operating profits as those of taxpayer, and income derived from operating community was used to repay bonds.

Texas Legislative Update, 88th Legislature, Regular Session | Qualified Projects Under Texas Tax Code Chapter 351, Subchapter C.

Summary: The Texas Legislature enacted four bills that 1) expand the list of cities that can build qualified projects (i.e., hotel and convention center projects subject to certain specifications) under Texas Tax Code Chapter 351, Subchapter C; 2) establish a claw back mechanism if state tax revenue generated by a qualified project does not meet certain metrics, 3) require a biennial report from the Texas Comptroller of Public Accounts regarding qualified projects, and 4) clarify that the provisions in Subchapter C do not provide any additional mechanism for taking property for public purposes or economic development.

Continue reading.

by TL Fahring

29 June 2023

Freeman Law

Getting Started: New Elective Pay Option for Local Clean Energy Projects

On June 14, the Internal Revenue Service (IRS) released proposed regulations for elective pay, previously referred to as "direct pay," a provision of the Inflation Reduction Act (IRA). These proposed regulations provide tax-exempt entities such as municipalities the ability to monetize clean energy tax credits they would not otherwise be able to use because of their status as a tax-exempt entities. If a tax-exempt entity places a project in service that utilizes a clean energy credit from IRA, they will get refunded for the full amount of the credit by filing a tax form with the IRS.

Municipalities looking to take advantage of the elective pay provision have been waiting for these proposed regulations from the IRS to begin planning their clean energy projects. It is important to note that the regulations are not final – the IRS is accepting public comments through August 14, 2023. It is possible the final regulations could be out by the end of the year.

Below, we detail the four most important things local leaders need to know about these proposed regulations.

What are the steps to make a successful elective payment election?

There are several steps to making a successful elective payment election. Not all steps need to occur in the order displayed below.

- **Identify and pursue the qualifying project or activity.** You will need to know what applicable credit you intend to earn and use elective pay for. This NLC blog provides an overview of the clean energy investment and production tax credits eligible under elective pay and some project examples.
- **Determine your tax year, if not already known**. Your tax year will determine the due date for your tax return.
- **Complete pre-filing registration with the IRS.** This includes providing information about your municipality, which applicable credits your municipality intends to earn and each eligible project/property that will contribute to the applicable credit, among other information . Upon completing this process, the IRS will provide you with a registration number for each applicable credit property. Your municipality will need to provide that registration number on its tax return as part of making the elective pay election. Please note, you must complete pre-filing registration in sufficient time to have a valid registration number at the time you file your tax return.
- **Satisfy all eligibility requirements for the tax credit and any applicable bonus credits, if applicable, for a given tax year.** For example, to claim an energy credit on a solar energy generating project, you would need to place the project in service before making an elective payment election. You will need the documentation necessary to properly substantiate any underlying tax credit, including if bonus amounts increased the credit. See additional links below for further guidance related to bonus credits.
- **File a timely return.**

How do I make an election to receive an elective payment from the federal government?

A municipality will make an election on its annual tax return. Municipalities do not typically file tax returns because they are tax-exempt entities but will need to in order to receive payment. The IRS will prescribe how the return is to be filed, along with what relevant forms will be needed and other additional information, including supporting calculations. This is a multi-step process as outlined above and requires completing the pre-filing registration process. Additional information and forms will be available from the IRS at a later date.

When is the tax form due and is there a deadline for claiming elective pay?

An elective pay election may only be made on the original tax return (including extensions). Elections are not allowed on amended returns and there is no relief under the Procedure of Administrative Regulations for an elective payment not filed timely. This means the deadline is the due date (including extensions of time) for the tax return for the taxable year for which the election is made. For most tax exempt and government entities, this is generally 4.5 months after the end of the entity’s tax year.

What is the effect of choosing to make an elective payment election?

A municipality that makes an election is treated as having made a payment against federal income taxes for the taxable year with respect to which an applicable credit was determined, in the amount of such credit. Since a municipality has no tax liability, the municipality will receive a refund equal to the full amount of the applicable credit.

Additional Resources

The IRS has a number of resources available to local leaders, including FAQs and fact sheets that outline key information contained in the proposed guidance. The White House has more details available at cleanenergy.gov/directpay.

The IRS Inflation Reduction Act website includes links to the guidance documents for the bonus credit considerations under elective pay, including prevailing wage and apprenticeship, domestic content, low-income communities and energy communities.

The IRS will hold a stakeholder briefing on the proposed guidance for elective pay on **Thursday, June 29 at 3 pm ET/12 pm PT**. Register here.

NLC continues to review the proposed guidance. Local leaders should be on the lookout for additional resources.

National League of Cities

by Carolyn Berndt & Michael Gleeson

TAX - MISSISSIPPI

Board of Supervisors for Lowndes County v. Lowndes County School District By and Through Lowndes County School Board

Supreme Court of Mississippi - June 1, 2023 - So.3d - 2023 WL 3748109

School district brought action against county board of supervisors for declaratory relief on claim that board's decision to reject $3,350,000 of district's requested tax effort, which was an amount that the board calculated to represented ad valorem taxes on properties previously subject to an expired fee-in-lieu of ad valorem tax agreement (FILOT), was based on an improper determination that the requested effort violated state's statutory limit on increases in school property taxes.

The Chancery Court entered summary judgment for district, finding that the statutory limit did not apply to the properties for the fiscal year at issue. Board appealed.

The Supreme Court held that:

- Pursuant to statute governing appeals from a judgment or decision by municipal authorities, which required the filing of a timely notice of appeal in the circuit court, the chancery court lacked subject-matter jurisdiction;
- Board's representation in its meeting minutes that it would file its own declaratory-judgment action did not preclude the statute governing appeals from a judgment or decision by municipal authorities from being district's exclusive remedy; and
- The defense of lack of subject-matter jurisdiction cannot be waived.

Chancery court lacked subject-matter jurisdiction to enter declaratory judgment in school district's action against county board of supervisors for declaratory relief on claim that board's decision to reject $3,350,000 of district's requested tax effort, which was an amount that the board calculated to represented ad valorem taxes on properties previously subject to an expired fee-in-lieu of ad valorem tax agreement (FILOT), was based on an improper determination that the requested effort violated state's statutory limit on increases in school property taxes; district did not file a notice of appeal in the circuit court as required by statute governing appeals from a judgment or decision by municipal authorities, which provided for district's exclusive remedy.

Representation by county board of supervisors, as stated in meeting minutes, that it would file a declaratory action to determine whether it was lawful for it to reject $3,350,000 of school district's requested tax effort, which was an amount that represented ad valorem taxes on properties previously subject to an expired fee-in-lieu of ad valorem tax agreement (FILOT) and which was an amount that allegedly violated statutory limit on increases in school property taxes, did not preclude statute governing appeals from a judgment or decision by municipal authorities from being school district's exclusive remedy for board's rejection of the tax effort, and thus school district, in order to challenge the board's decision, had to follow the statutory requirement of timely filing a notice of appeal in the circuit court.

TAX - WISCONSIN

Greenwald Family Limited Partnership v. Village of Mukwonago

Supreme Court of Wisconsin - June 21, 2023 - N.W.2d - 2023 WI 53 - 2023 WL 4140327

Taxpayer brought challenge to village's special assessment against taxpayer's property in a newly created special-assessment district.

The Circuit Court granted village's motion to dismiss. Taxpayer appealed. The Court of Appeals affirmed in a summary disposition order. Taxpayer petitioned for review.

The Supreme Court held that:

- Taxpayer's service on village attorney did not constitute serving village clerk with required written notice of appeal of the special assessment, and
- Village attorney's admission of service of summons and complaint did not preclude taxpayer from having to comply with statutory requirement to serve village clerk with written notice of appeal.

Taxpayer's service on village attorney did not constitute serving village clerk with required written notice of appeal of village's special assessment against taxpayer's property in newly created special-assessment district; clerk was not "party" to appeal, and statute governing appeals from special assessments unambiguously required service of notice of appeal upon clerk, which meant that something had to be presented or delivered to clerk.

Village attorney's admission of service of summons and complaint did not preclude taxpayer from having to comply with statutory requirement to serve village clerk with written notice of appeal from special assessment; taxpayer's attorney had asked village attorney if he would accept service for village, village attorney accepted service of summons and complaint on behalf of village only, and village attorney never told taxpayer's attorney that he was accepting such service on behalf of village clerk as well.

TAX - CALIFORNIA

CSHV 1999 Harrison, LLC v. County of Alameda

Court of Appeal, First District, Division 1, California. - May 31, 2023 - Cal.Rptr.3d - 2023 WL 3735488

Limited-liability companies (LLCs) that the California State Teachers' Retirement System (CalSTRS) had created for the purpose of purchasing and holding title to two investment properties filed a

petition for writ of mandate to obtain refunds of documentary-transfer taxes that they had paid to county and city, which was based on argument that they, like their sole member, CalSTRS, were "political subdivisions" of the state and therefore exempt from the taxes.

Following a bench trial, the Superior Court denied petition. LLCs appealed.

The Court of Appeal held that the LLCs were not exempt from having to pay the documentary-transfer taxes.

Limited-liability companies (LLCs) that the California State Teachers' Retirement System (CalSTRS) had created for the purpose of purchasing and holding title to two investment properties were not exempt from having to pay documentary-transfer taxes to city and county.

NABL Seeks Clarification From IRS.

Bond lawyer requests for clarifications on Internal Revenue Service rules affecting municipal finance are so far eliciting no answers from the IRS, leading the National Association of Bond Lawyers to send a letter to the agency requesting a response to some issues that date back to 2018.

The letter comes from NABL president Jodie Smith of Maynard Nexsen, who's halfway through his term leading the group. The bones of contention include defining two new categories of exempt facility bonds used for financing qualified broadband projects and qualified carbon dioxide capture facilities. There are also unanswered questions about when a qualified tender bond is treated as reissued, which is a question that dates back to 2019.

Concerns about Revenue Procedure 2018-26, which deals with remedial actions for improper uses of tax-exempt bond proceeds, trace back to a 2018 IRS regulation. Clarifications dating from 2015 Treasury rulings are still being sought on final regulations for private activity bonds. NABL is also requesting additional guidance on discrepancies between IRS Form 8038 and Form 8038-G, an e-filing form that the agency has been wrestling since the pandemic.

Although some of the issues have been waiting on decisions for five years, the letter represents business as usual.

"We submit comments to the IRS priority guidance plan every year," said Brian Egan, NABL's director of government affairs. "As practitioners, our members have valuable input that helps set the course for what guidance the market needs prioritized."

The reasons for the lack of response from the agency remain conjecture.

"It can mean many things," said Rich Moore, tax partner at Orrick, Herrington & Sutcliffe. "Sometimes, the IRS is actively working through a guidance project and trying to determine the details. Other times, the IRS has the intent to get to a project but doesn't have the bandwidth. Occasionally, NABL and the IRS won't see eye to eye as to whether guidance on a subject is needed."

The ongoing back and forth between the lawyers and the agents also comes with its own rules of engagement regarding what goes into the letters.

"This is not the time or place for new comments," said Moore. "It is viewed by many as inappropriate

to put something on the list for which NABL has not already provided detailed suggestions. This is just an exercise in reinforcing that previously submitted comments are still a priority."

Streamlining dealings with the IRS was promised by an $80 billion funding infusion that was turned into a political football and then a bargaining chip used to partially pay for the Fiscal Responsibility Act of 2023. Repercussions from the defunding also remain unknown.

"We support the IRS getting whatever resources it needs to effectively carry out its mission," said Egan. "I cannot say with certainty what the claw back of funds provided under the Inflation Reduction Act will mean for tax-exempt municipal market participants, but it's worth noting the Service made investment and upgrades in relevant areas even before the passage of IRA."

By Scott Sowers

BY SOURCEMEDIA | MUNICIPAL | 06/08/23 01:28 PM EDT

TAX - COLORADO

MJB Motels LLC v. County of Jefferson Board of Equalization

Supreme Court of Colorado - May 30, 2023 - P.3d - 2023 WL 3706206 - 2023 CO 26

Taxpayers, which owned commercial real property in county, brought action against county board of equalization and county assessor, alleging that pandemic and related government orders amounted to "unusual conditions" that required board to lower assessor's property valuations and assessor to revalue properties.

The District Court dismissed complaint, and after the Court of Appeals moved for determination of jurisdiction, the Supreme Court granted motion and accepted jurisdiction.

The Supreme Court held that:

- COVID-19 pandemic was not "detrimental act of nature," and
- Public health orders issued in response to pandemic did not constitute "regulations restricting the use of the land."

COVID-19 pandemic was not "detrimental act of nature," for purposes of statute that instructed tax assessors to revalue property before assessment date when unusual conditions in or related to real property, including detrimental acts of nature, would result in increase or decrease in actual value; COVID-19 was respiratory disease caused by novel coronavirus, such that it did not resemble natural events, including earthquakes, floods, and tornadoes, that were considered "acts of nature," COVID-19 was not "in or related to real property," given that while it might have infected people on property, it did not infect property itself, and COVID-19 did not directly affect use or availability of real property, had worldwide impact, and had duration that spanned years.

Public health orders issued in response to COVID-19 pandemic did not constitute "regulations restricting the use of the land," and thus did not trigger revaluation of property pursuant to statute that instructed tax assessors to revalue property before assessment date where unusual conditions in or related to real property would result in increase or decrease in actual value; orders regulated operation of commercial activity on land, and not use of land itself, and examples provided in Assessors' Reference Library (ARL) of regulations that increased or decreased use of land all involved changes to categorization of land that were intended to be permanent until and unless land

was subsequently recategorized, while health orders at issue were intended to be temporary.

Fitch: Most U.S. State Gas Tax Bonds To Remain Stable Amid Changing Fuel Landscape

Fitch Ratings-New York-08 June 2023: Ratings and Outlooks for most U.S. state transportation bonds backed by gas tax revenues will remain intact even as vehicle fuel efficiency improves and electric and hybrid vehicles' share of the market expands, according to Fitch Ratings in a new report.

"Improvements in fuel efficiency and the transition to electric vehicles threatens to accelerate weakening revenue growth prospects for state gas taxes over the long term," said Director Tammy Gamerman. "However, many state transportation bonds contain features that mitigate these concerns and enable the bonds to be highly rated."

Fitch currently rates 29 unique securities in 17 states that are fully or partially supported by state motor fuel taxes. Among these, 14 are rated 'AA+' while three Missouri securities have Fitch's highest rating of 'AAA'.
Amid flattening gas tax growth in many states and the prospects for outright declines as hybrid and electric vehicles (EVs) grab more of a foothold, most state gas tax bonds are likely to maintain credit rating stability. That said, securities with more dependence on fuel taxes and looser additional leverage requirements are more likely to see negative rating pressure over the medium term, particularly in states with weaker economic growth.

Motor fuel taxes are a key source of transportation funding, and regardless of a state's exposure to rating actions on transportation bonds, all states will need to explore alternative sources to address unmet long-term infrastructure liabilities.

"The Road Ahead for State Gas Taxes and Transportation Bonds" is available at www.fitchratings.com.

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TAX - NEW YORK

St. Lawrence County v. City of Ogdensburg

Court of Appeals of New York - May 23, 2023 - N.E.3d - 2023 WL 3587521 - 2023 N.Y. Slip Op. 02757

County commenced combined article 78 and declaratory judgment action against city, which had repealed prior local law that opted out of application of state tax law that outlined process for enforcement and collection of delinquent real property taxes, seeking declaratory judgment that local law that repealed prior law was not in accord with state law and impaired rights of county and county treasurer.

City moved to dismiss for failure to state cause of action, and the Supreme Court, St. Lawrence County, issued declaration in favor of city. The Appellate Division affirmed. County appealed.

The Court of Appeals held that:

- City's passage of clarifying amendment to charter rendered moot cross-claim asserted by school district;
- City ceased to be tax district with respect to future liens;
- Local law that repealed prior law did not violate state tax law that authorized tax districts to make agreements with each other with respect to real property upon which they owned tax liens in regard to disposition of such liens and property; and
- Local law did not violate mandate in state constitution and municipal home rule law.

Passage by city, which had enacted local law that repealed prior law that had opted out of application of state tax law outlining process for enforcement and collection of delinquent real property taxes, of clarifying amendment to city charter that expressly affirmed city's obligation to enforce delinquent taxes on behalf of school district, while appeal from declaration in favor of city in combined article 78 and declaratory judgment action brought by county was pending, rendered moot cross-claim asserted by school district.

City, which enacted local law that repealed prior law that had opted out of application of state tax law outlining process for enforcement and collection of delinquent real property taxes, and provided in charter for county to enforce city's delinquent taxes, ceased to be tax district with respect to future liens, and thus absolved itself of ability and responsibility to appoint enforcing officer and enforce tax law, and instead county was responsible for tax enforcement and benefits or burdens attendant thereto; upon repeal of opt-out law, city became subject to state tax law that outlined process for enforcement and collection of taxes with respect to enforcement of taxes which had become liens on or after date repeal was effective.

City's local law, which repealed prior law that opted out of application of state real property tax law that outlined process for enforcement and collection of delinquent real property taxes at local level, did not violate state tax law that authorized tax districts to make agreements with each other with respect to real property upon which they owned tax liens in regard to disposition of such liens and property, even though county argued city's amendment of charter to repeal prior law circumvented purported mandate in such tax law that city negotiate agreement with county regarding tax enforcement processes; tax law did not require that localities reach agreement or follow particular procedure, and instead it only authorized tax districts to tax agreements with respect to real property.

City's local law, which repealed prior local law that opted out of application of state real property tax law that outlined process for enforcement and collection of delinquent real property taxes at local level, did not violate mandate in state constitution and municipal home rule law that "local government shall not have power to adopt local laws which impair powers of local government or public corporation," even though county argued local law prevented it from entering into type of agreement contemplated by state tax law and impaired its power by burdening it with financial liability for city's delinquent tax obligations; legislature expressly permitted city to repeal local law, and that repeal may have imposed additional obligations on county was simply consequence of statutory structure outlined in tax law.

TAX - MAINE

Hurricane Island Foundation v. Town of Vinalhaven

Supreme Judicial Court of Maine - May 30, 2023 - A.3d - 2023 WL 3699098 - 2023 ME 33

Taxpayer, which was a nonprofit corporation that occupied most of an island pursuant to a 40-year lease, sought review under Maine Rules of Civil Procedure of town assessor's denial of its application for a local property tax exemption available to literary and scientific institutions.

The Superior Court entered final judgment that taxpayer was a scientific institution and modified assessor's decision to designate taxpayer as tax exempt. Town appealed.

The Supreme Judicial Court held that:

- Taxpayer's complaint could fairly be treated as a complaint for declaratory judgment, and thus the Superior Court had subject-matter jurisdiction, but
- Taxpayer failed to demonstrate that it was a scientific institution.

Even though complaint filed by taxpayer for review under the Maine Rules of Civil Procedure of town assessor's denial of its application for a local property tax exemption available to literary and scientific institutions could fairly be treated as a complaint for declaratory judgment, which would be a basis for the Superior Court to have subject-matter jurisdiction, the Supreme Court would not require the matter to be remanded to the Superior Court for the taxpayer to amend and label the complaint; if that happened, the Superior Court would be compelled to engage in the duplicative task of considering exactly the same arguments and exactly the same evidence and deciding exactly the same issue as it has already considered and decided in entering the judgment on appeal, i.e., dismissal would serve no purpose, would unjustifiably elevate form over substance, and would waste judicial resources as well as the resources of the parties.

Taxpayer, which was a nonprofit corporation, failed to demonstrate that it was a "scientific institution," and thus taxpayer did not show that it qualified for property tax exemption available to literary and scientific institutions; record showed that taxpayer's primary purpose was education, given that taxpayer's purpose was to promote character development, leadership skills and self-discovery through outdoor educational experiences beyond the traditional classroom, taxpayer's articles of incorporation further stated that its primary purpose was educational and listed other charitable or research purposes, and taxpayer's brochures primarily discussed education and applied sciences with some references to the sciences apart from education.

Keep Your Paws Off My Positive Arbitrage – "With Great Power Comes Some Responsibility" - Squire Patton Boggs

Our previous post kicked off our Rebate Series by introducing core concepts and terms. However, for every rule there is an exception. And, as you will learn shortly, for every exception there is an exception to that exception (except when there is not).

The next two episodes will focus on the so-called timing exceptions. In the rebate world, there are three: the 6-month, 18-month and two-year spending exceptions to the rebate requirement. Two general points to keep in mind: (1) each of these exceptions is independent of the others; so an issue could qualify under more than one, and (2) the spending exceptions are not automatically applied; so an issuer can choose NOT to apply them.

This post will cover the 6-month and 18-month spending exceptions, saving the best (or honestly, the most confusing) for last.

Continue reading.

By Natalie Vicchio on May 17, 2023

The Public Finance Tax Blog

Squire Patton Boggs

Local Governments Escape Ruling that Could Have Upended Property Tax Laws.

The Supreme Court ruled that cities and counties cannot keep surplus funds from the homes they sell after residents fail to pay property taxes. But local officials nationwide are breathing a sigh of relief that the court didn't go further.

A Minnesota county violated the Fifth Amendment when it sold and kept the excess proceeds from an elderly woman's home, the U.S. Supreme Court ruled Thursday in a unanimous decision.

"A taxpayer who loses her $40,000 house to the state to fulfill a $15,000 tax debt has made a far greater contribution to the public fisc than she owed," Chief Justice John Roberts wrote in the opinion. "The taxpayer must render unto Caesar what is Caesar's, but no more."

The case, *Tyler v. Hennepin County*, centered on how much autonomy state governments have regarding property that is seized lawfully from owners who are delinquent on their taxes. The Fifth Amendment specifies that governments cannot take private property without justly compensating its owner. So the question was whether Hennepin County improperly took the profits it made from selling the woman's house.

Continue reading.

Route Fifty

By Elizabeth Daigneau

May 25, 2023

TAX - TEXAS

Pecos County Appraisal District v. Iraan-Sheffield Independent School District

Supreme Court of Texas - May 19, 2023 - S.W.3d - 2023 WL 3556711

School district petitioned for review of decision of county appraisal review board (ARB) denying school district's challenge to valuation of taxpayer's mineral-interest real property, alleging that taxpayer's property was erroneously omitted from appraisal for certain tax years.

The 83rd District Court granted taxpayer's motion to show authority, concluding that school district's attorney lacked authority to represent district because he was engaged under an allegedly void contingent-fee contract for appraisal litigation, and granted taxpayer's plea to the jurisdiction, concluding that school district's petition was "void and of no effect" and that district had thus failed to timely appeal the ARB's decision. School district appealed. The El Paso Court of Appeals reversed and remanded. Taxpayer petitioned for review, which was granted.

The Supreme Court held that:

- Statute authorizing a 20 percent contingency fee for attorneys hired to enforce collection of delinquent taxes did not expressly authorize school district to retain attorney on contingent-fee basis for appraisal litigation;
- Attorney's authority to represent school district in appraisal litigation was not authorized by Education Code;
- Texas law did not authorize school district to retain attorney on a contingent-fee basis for appraisal litigation;
- Attorney could not show his authority to represent school district by pointing to contingent-fee contract; and
- Proper remedy for failure to show authority was to give school district a reasonable opportunity either to modify its agreement with attorney or to retain other counsel on terms that were within school district's lawful authority.

School district's lawsuit seeking to require county appraisal district to raise its valuation of taxpayer's mineral-interest real property so that taxpayer would owe additional taxes, which had not yet been imposed, was not a suit to enforce collection of delinquent taxes, and thus statute authorizing a 20 percent contingency fee for attorneys hired to enforce collection of delinquent taxes did not expressly authorize school district to retain attorney on contingent-fee basis to bring appraisal litigation; there had been no taxes imposed based on heightened valuation school district desired, so there were no delinquent taxes to collect.

Actions of attorney hired by school district on a contingent-fee basis for representation in lawsuit seeking to increase appraisal for taxpayer's mineral-interest real property so as to impose additional taxes on taxpayer was not to assess or collect school district's taxes, which could have only taken place if appraisals were in fact increased, and thus attorney's authority to represent school district in appraisal litigation was not authorized by section of Education Code providing that board of trustees of an independent school district may employ a person to assess or collect school district's taxes and may compensate the person as the board of trustees considers appropriate.

Texas law did not authorize school district to retain attorney on a contingent-fee basis for appraisal litigation seeking to increase valuation of taxpayer's mineral-interest real property; no authority could be implied from relevant statutes, and legislature had authorized taxing units to use contingent-fee agreements related to taxation in only one specific circumstance, to enforce collection of delinquent taxes, suggesting that law-making branch had not authorized taxing units to pursue appraisal litigation by engaging attorneys on a contingent-fee basis, but had not impliedly authorized such controversial contracts without saying so.

School district lacked power to retain attorneys on a contingent-fee basis to pursue appraisal litigation, and thus attorney hired by school district for appraisal litigation with respect to taxpayer's mineral-interest real property could not show his authority to represent school district by pointing to contingent-fee contract, which was an ultra vires act beyond school district's authority, on motion for attorney to show authority, in school district's challenge to valuation of taxpayer's property.

Proper remedy for failure to show authority by attorney hired by school district on contingent-fee contract for representation in appraisal litigation related to valuation of taxpayer's mineral-interest real property was not dismissal with prejudice of school district's claims challenging valuation, but rather was to give school district a reasonable opportunity either to modify its agreement with attorney or to retain other counsel on terms that were within school district's lawful authority; school district was not afforded a reasonable opportunity to hire another attorney or to adjust its arrangement with attorney, either of which would have cured problem identified by motion for attorney to show authority.

Legislation Creates Taxable Municipal Bonds to Boost Infrastructure Investments.

Bipartisan legislation recently re-introduced in the U.S. Senate would create a new class of "direct-pay" taxable municipal bonds intended to boost infrastructure investments and other public projects by providing affordable access to large taxable bonds.

The American Infrastructure Bonds Act would allow state and local governments to issue taxable bonds for any public expenditure that would be eligible to be financed by tax-exempt bonds.

American Infrastructure Bonds would be a "direct-pay" taxable bond with the U.S. Treasury paying a percentage of the bond's interest to the issuing entity to reduce costs for state and local governments. They would be issued for projects at 28 percent of the bond's interest.

The bonds could be used for a variety of infrastructure projects including bridges, broadband internet, roads, and water systems.

The bonds are modeled after the Build America Bonds issued after the 2008 financial crisis to attract more public infrastructure investment.

U.S. Sens. Michael Bennet (D-CO) and Roger Wicker (R-MS) re-introduced the bill.

"We have to continue to invest in 21st century American infrastructure to build an economy that grows for everyone," Bennet said. "The American Infrastructure Bonds Act is a bipartisan proposal to attract greater support for infrastructure projects across the country – especially in rural and underserved communities."

TRANSPORTATION TODAY

BY MELINA DRUGA | MAY 23, 2023

TAX - ILLINOIS

Harper v. Health Care Service Corporation

Appellate Court of Illinois, First District - May 4, 2023 - N.E.3d - 2023 IL App (1st) 220078 - 2023 WL 3238760

Purported taxpayer brought derivative action on behalf of city and county against city and administrator of city's employee health care plan, asserting various theories of recovery under the Municipal Code, state constitution, the Freedom of Information Act (FOIA), and Medical Practice Act, seeking return of taxpayer funds city used to pay administrator.

The Circuit Court granted administrator and city's motion to dismiss with respect to pleadings and motion for involuntary dismissal, and dismissed all of purported taxpayer's claims. Purported taxpayer appealed.

The Appellate Court held that:

- City was not required to comply with statute governing award of municipal contracts;
- City duly executed agreements with administrator under municipal ordinance;
- Purported taxpayer lacked standing to bring cause of action under the Medical Practice Act;
- Purported taxpayer could not recover taxpayer funds under theory of unjust enrichment;
- Administrator was not a "public body" within meaning of FOIA;
- Purported taxpayer failed to state cause of action that city and administrator violated the "prior appropriations doctrine"; and
- Order denying purported taxpayer's motion for partial summary judgment was appealable.

City, in exercising its home rule authority, was not required to comply with statute governing award of municipal contracts when city's mayor, comptroller, and purchasing agent's allegedly delayed signing agreements with administrator of city's employee health care plan until years after agreements' effective dates, in purported taxpayer's derivative action on behalf of city and county against city and administrator; absent any express statutory limitation or preemption of city's ability to contract for and administer health care coverage for its employees, city was free to exercise its home rule authority without being bound by requirements of the statute, including signing contracts after their effective dates, giving them retrospective effect, and providing for administrator's continuation of services in between contracts.

City, in exercising its home rule authority, duly executed contracts with administrator of city's employee health care plan for purposes of ordinance providing that no contract was binding on city unless it had been duly executed, in purported taxpayer's derivative action on behalf of city and county against city and administrator, alleging city's mayor, comptroller, and purchasing agent's delay in signing contracts with administrator until years after their effective dates rendered them null and void under statute governing award of municipal contracts, and thus were not binding under ordinance; under its home rule authority, city established its own procedures for executing contracts, which included signing them after their effective dates and giving them retrospective effect.

Purported taxpayer lacked standing to bring cause of action alleging that administrator of city's

employee health care plan violated the Medical Practice Act by negotiating reduced fees from its third-party medical providers, in purported taxpayer's derivative action on behalf of city and county against administrator and city; far from redressing any injury to the city, a successful prosecution of purported taxpayer's claims would harm city by preventing administrator from negotiating reduced fees from its medical providers and then passing on some or all of those savings to the city.

Purported taxpayer failed to specifically plead that medical providers with whom administrator of city's employee health care plan negotiated contracts for reduced fees were subject to licensure requirements under the Medical Practice Act, in purported taxpayer's derivative action on behalf of city and county against administrator and city, where some of the providers about which purported taxpayer complained were pharmacists, who were licensed under the Pharmacy Practice Act and not the Medical Practice Act.

Purported taxpayer could not recover taxpayer funds city used to pay administrator of city's employee health care plan under a theory of unjust enrichment, in purported taxpayer's derivative action on behalf of city and county against administrator and city, where agreements between city and administrator for plan administration services were proper exercises of city's home rule authority and, as such, were valid and enforceable contracts.

Administrator of city's employee health care plan was not a "public body" within meaning of the Freedom of Information Act (FOIA), and therefore was not required to make its agreements with city for plan administration services available for public inspection under FOIA, in taxpayer's derivative action on behalf of city and county against administrator and city, where administrator was a mutual insurance company.

Purported taxpayer failed to state a cause of action that city and administrator of city's employee health care plan violated the "prior appropriations doctrine" by allegedly failing to identify administrator in city's annual appropriations ordinances and in failing to fully disclose and approve administrator's fees before it began performing under contracts for plan administration services, where purported taxpayer cited no statutory provisions or constitutional law to support her invocation of the doctrine.

Purported taxpayer forfeited on appeal issue of whether city and administrator of city's employee health care plan violated the "prior appropriations doctrine" by failing to comply with state constitutional provision requiring units of local government to make payments from public funds only as authorized by law and statute providing that a municipality cannot incur expenses unless an appropriation was previously made concerning that expense, where purported taxpayer did not allege her theory in her amended complaint, but raised it for the first time on appeal.

Involuntary dismissal of purported taxpayer's claim that city and administrator of city's employee health care plan violated the "prior appropriations doctrine" was warranted, where administrator attached city's answer to purported taxpayer's interrogatories, in which it explained how its annual appropriation ordinances appropriated monies to specific funds used to pay administrator's administration of the plan, and purported taxpayer failed to present any evidence that city and administrator's affirmative defense was unfounded or required resolution of an essential element of material fact.

Order denying purported taxpayer's motion for partial summary judgment, on theory that contracts between city and administrator of city's employee health care plan was void under statute governing award of municipal contracts and ordinance providing that no contract was binding on city unless it had been duly executed because they were signed by city's mayor years after their effective date, was appealable, where subsequent dismissal of purported taxpayer's amended complaint was final

and appealable, and no trial or hearing had been conducted.

Bipartisan Senators Reintroduce Legislation to Restore Tax-Exempt Status of Advance Refunding Bonds.

- Sens. Roger Wicker (R-Miss.) and Debbie Stabenow (D-Mich.) re-introduced the bipartisan LOCAL Infrastructure Act, which would allow counties to advance refund municipal bonds on a tax-exempt basis
- The tax-exempt status of advance refunding municipal bonds has been unavailable to counties since 2017 as a result of a spending offset provision of the Tax Cuts and Jobs Act
- Counties have historically relied on tax-exempt advance refunding to lower borrowing costs, freeing up funds to be used for other important capital projects and minimizing costs to taxpayers

Continue reading.

NATIONAL ASSOCIATION OF COUNTIES

by MAXX SILVAN & PAIGE MELLERIO

MAY 17, 2023

Ken Paxton Raises Legal Concerns on Austin's Financial Model for Project Connect.

Texas Attorney General Ken Paxton says the unique financing model Austin established for Project Connect is likely illegal under state law, a position that could greatly hamper the city's efforts to build a transformational light rail system that voters approved more than two years ago.

Paxton's opinion, issued Saturday in connection to state legislation that seeks to undo the $7 billion transit investment, says Austin made "mistakes" in creating the fund and "misstatements to the voters" in the November 2020 election.

Voters approved two things that are at issue in Paxton's opinion: a 20% increase in the city portion of their property tax, and the establishment of a local government corporation to build the system, financed by debt backed by that tax revenue. That tax revenue transfer, according to a city resolution, is to continue indefinitely until funds are no longer required for "operations, maintenance, or state of good repair."

Continue reading.

by Ryan Autullo

May 21, 2023

Austin American-Statesman

TAX - NEW JERSEY

Levy v. City of Long Branch

Tax Court of New Jersey - May 5, 2023 - N.J.Tax - 2023 WL 3295416

Taxpayer applied for Freeze Act relief from increase in real property assessment based on Tax Court's final value judgment for a tax year that preceded the tax year which was subject of his county tax board case, following a global settlement for both tax years in question.

The Tax Court held that:

- Freeze Act waiver in county tax board case did not extend to Tax Court case due to global settlement;
- County tax board judgment did not negate vitality of Tax Court judgment as a base year under Freeze Act; and
- County tax board judgment was not proof of change in value that would negate application of Freeze Act.

Under the Freeze Act, which provides protection against an increase in assessed value of real property for the two years following a final value judgment of the Tax Court or a county board of taxation, the final value judgment amount for the tax year under appeal, known as the "base year," is mechanically carried forward to each of the succeeding two years, known as the "freeze years."

Taxpayer's express waiver of Freeze Act protection, of freezing real property assessments for two years following entry of a final value judgment, in his county tax board case concerning second tax year did not extend to his Tax Court case concerning first tax year due to parties' global settlement for both tax years in question, where stipulation of settlement in Tax Court case was silent as to Freeze Act, there was no condition in city's offer in county tax board case that the Freeze Act be waived in Tax Court case, taxpayer did not know that he was expected to waive application of Freeze Act in Tax Court case due to his house being in county, and taxpayer should not have been aware of any expectation/implied waiver in Tax Court case.

Existence of global multi-year settlement involving Tax Court case for first tax year and a county tax board case for second tax year did not preclude first tax year from being the controlling base year for purposes of application of Freeze Act protection, of freezing real property assessments for two years following entry of a final value judgment, to third tax year, where main issue in dispute was whether taxpayer waived benefit of Freeze Act for third tax year based on global settlement, which involved separate stipulations of settlement and only one Freeze Act waiver in county tax board case, and there was no trial on valuation of multiple years before the court.

An "internal change" in value of real property, which negates application of Freeze Act protection of freezing property assessments for two years following entry of a final value judgment, refers to easily ascertainable physical improvements to the subject property such as added floors, whereas an "external change" in value, which also negates application of Freeze Act, include extreme economic changes within close proximity of the subject property or of immediate neighboring properties which increases the subject property's value.

County tax board's value judgment for second tax year, which was lower than Tax Court's value judgment for first tax year, was not proof of a change in value of real property that would negate application of two-year Freeze Act protection for property assessments to third tax year, where parties stipulated to values for first and second tax years as part of their global settlement of both

matters, even if market data submitted supported a reduction for second tax year and the assessment for third tax year was higher than the stipulated value for first and second tax years.

Evidence that the subject property's alleged increased value is the result solely of general inflationary trends is not proof of an external change in value that negates application of Freeze Act protection of freezing real property assessments for two years following entry of a final value judgment.

Amid Economic Uncertainty, State Tax Revenues Decline.

If there's good news in April's numbers, though, it might be that most states were already planning for softer revenue growth in fiscal 2024 and many have robust rainy day funds to weather a potential downturn. Plus, more news to use from around the country in this week's State and Local Roundup.

It's Friday, May 12, and we'd like to welcome you to the weekly State and Local Roundup. There's plenty to keep tabs on, with book bans in Indiana, high lead levels in the drinking water of Illinois public schools and the signing of an "enormous package" of green bills in Colorado. But first we'll start with state budgets.

We're starting to get a sense of how state revenues fared at the height of income tax collections in April, and the good times, it seems, are coming to an end.

Fitch Ratings issued a report on state tax revenues from April. After two years of sometimes record-breaking surpluses, the bond rating agency found, revenues are coming in well below the prior year, "and in some cases below state projections."

Continue reading.

Route Fifty

By Elizabeth Daigneau,
Interim Executive Editor, Route Fifty

MAY 12, 2023

The Real Impact of State Tax Cuts.

COMMENTARY | The debate over tax cuts that's happening in statehouses across the country is about much more than revenues and spending. It's a fight over whether we will have an inclusive democracy where everyone—all races in all places—can thrive.

There's a troubling trend in state capitols across the country: Some lawmakers are pushing big, permanent tax cuts that primarily benefit the wealthy and using temporary budget surpluses to hide the cuts' true cost. Eight states have already significantly cut their income taxes this year, and debates over major tax changes continue in more than 20 states.

These tax cuts will deplete the funding available for schools, infrastructure, health care and other

public services. They will worsen inequality by making state tax codes less equitable and enriching those at the very top of the income scale. Meanwhile, there will be cuts to public assets that are crucial for poor and middle-class families and less money for teachers in the classroom and for public safety personnel, which means longer wait times for emergency response.

Continue reading.

Route Fifty

By Aidan Davis and Wesley Tharpe

May 10, 2023

Fitch: US States' Credit Resilient Despite Weaker April Income Tax Revenues

Fitch Ratings-New York-11 May 2023: As widely anticipated, state income tax revenues for April have been coming in well below the prior year, and in some cases below state projections. However, most U.S. states are still on track to meet or exceed year-end budget forecasts due to a combination of conservative revenue forecasting and continued growth in other categories of state taxes, Fitch Ratings says. Many states used prior-year revenue surpluses to improve financial resilience by boosting reserves and paying down debt, supporting state ratings stability.

As states set their budgets for fiscal 2024, most are using cautious revenue forecasts that are generally in line with Fitch's expectation for a mild recession later in 2023. Those states implementing significant new spending plans or major tax policy changes could face additional budgetary pressure in the near and medium term, depending on the severity of revenue slowdowns.

April is a key month for states given the traditional mid-April income tax deadline. Last April's robust performance drove very large budget surpluses for many states. This year loomed particularly large given the anticipated drop-off in tax revenues due to slower overall economic growth and weak capital markets performance in calendar year 2022, which is an indicator for capital gains income. Based on data from early reporting states, this is playing out largely as expected.

Continue reading.

Thu 11 May, 2023

Economic Recovery Slows Across US States, Tax Revenue Growth Stalls in CA and NY.

Fitch Ratings-San Francisco/New York-08 May 2023: Despite the economy demonstrating more near-term resilience than anticipated, most U.S. States' GDP has slowed to pre-pandemic levels due in part to rising interest rates and tighter credit conditions, according to a new report from Fitch Ratings.

"The states with the strongest growth are characterized by fast population growth and highly

diversified economies. States with the weakest recoveries are characterized by narrower and less diversified economies with high exposure to the tourism and energy sectors," said Olu Sonola, Head of U.S. Regional Economics.

State tax receipts have continued to expand at a healthy pace in fiscal 2023, but signs of a broad deceleration in revenue growth relative to the prior two years are clear. The median U.S. growth in state tax revenues was still solid at 11% yoy across all states through February; however, this compares to 24% yoy growth for the same period one year prior. California and New York were the only states to record yoy declines in tax revenue, reflecting broad based weakness in the equity markets and the technology sector.

As of March 2023, 15 states still had net job losses compared to February 2020, including the tourism-associated economy of Hawaii, as well as the natural resource-dependent economies of Alaska and North Dakota. Among the fastest growing states are Idaho, Utah and Florida, which have benefitted from significant domestic in-migration over the past three years.

Nominal personal income growth was positive across all states for the year ended in 4Q22 on the back of broad-based nominal private-sector wage growth, coupled with robust job growth. The gains were partially offset by decreased income from the roll-off of pandemic-era governmental support in all states.

For more information, a special report titled "U.S. States — Revenue and Economic Monitor 1H23" is available at www.fitchratings.com.

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The U.S. Supreme Court Could Upend Local Property Tax Laws.

The justices heard a case last week on a Minnesota county's profit on a seized condo. A ruling could change property seizure programs nationwide.

Welcome back to the Public Finance Update! I'm Liz Farmer and this week I'm looking at a U.S.

Supreme Court case that has financial implications for counties. The property tax and seizure case argued before the high court last week has led to some unlikely alliances—bringing together all parts of the ideological spectrum.

The case, Tyler v. Hennepin County, Minnesota, is about how much autonomy the U.S. Constitution allows state governments who have lawfully seized property from owners who are delinquent on their taxes. A ruling against Hennepin County in this case could limit how and when other local governments can execute a tax foreclosure and what they're allowed to do with the sale proceeds.

The case concerns a one-bedroom condominium in Minneapolis that Geraldine Tyler, now 94 years old, purchased in 1999 and lived in for more than a decade. In 2010, according to her brief, "she left her home out of concern for her health and safety and moved to an apartment building for seniors in a safe and quiet neighborhood." Although she continued to pay her property taxes on time for a while, she stopped paying them starting in 2011.

Continue reading.

ROUTE FIFTY

by LIZ FARMER

MAY 2, 2023

TAX - CALIFORNIA

Air 7, LLC v. County of Ventura

Court of Appeal, Second District, Division 6, California - April 19, 2023 - Cal.Rptr.3d - 2023 WL 2997853 - 2023 Daily Journal D.A.R. 3490

Aircraft owner brought action against county for refund of property taxes, statutory interest, and penalties county had imposed.

The Superior Court entered judgment for county. Aircraft owner appealed.

The Court of Appeal held that taxation of the aircraft violated due process because the aircraft was not "situated" or "habitually situated" in the state.

Aircraft was not "situated" or "habitually situated" in California because it was permanently removed from the state before the tax lien date with intent that such removal be permanent, and it never returned to the state, and thus, billing of $240,671.84 in property taxes and bond assessments by county of owner's domicile pursuant to provision of state Constitution giving taxing agencies authority to assess taxes in the county, city, and district in which the property is situated violated the Due Process Clause of the federal Constitution, even if it did not remain in other states long enough for them to tax it.

Inflation Reduction Act of 2022: The Newly Added Renewable Electricity Production Tax Credit - Holland & Knight

The IRS is currently in the process of implementing the Inflation Reduction Act of 2022 (IRA), which addresses energy, tax and health policy. The IRA offers, among other incentives, tax credits to an array of organizations (e.g., businesses, nonprofits, educational institutions, and state, local and tribal governments). For additional background on the IRA as it relates to the real estate industry, see Holland & Knight's previous blog posts, "Inflation Reduction Act Offers a Variety of Green Building Tax Incentives," March 31, 2023, and "Inflation Reduction Act of 2022: Business Energy Investment Tax Credit," April 6, 2023.

The Renewable Electricity Production Tax Credit (PTC) was added on April 4, 2023. According to the U.S. Environmental Protection Agency (EPA), "The PTC provides a corporate tax credit of up to 1.3 cents/kWh for electricity generated from landfill gas (LFG), open-loop biomass, municipal solid waste resources, and small irrigation power facilities, or up to 2.6 cents/kWh for electricity generated from wind, closed-loop biomass and geothermal resources. The credit is good for 10 years after the equipment is placed in service."

For systems that exceed 1 megawatt (MW) in size, the tax credit starts at 0.5 cents/kilowatt hour (kWh), although projects may qualify for the the full credit by satisfying the labor-related qualifications. Projects of any size are eligible for two bonus credits. The first such credit may be obtained in connection with the use of domestic steel/iron materials. The second bonus credit is based on a project's location within an "energy community:" a brownfield site – defined by the EPA as "real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contamination" – or an area with a high unemployment rate and an economy that has historically depended on coal, oil or natural gas extraction.

Projects less than 1 MW in size are eligible if construction began or begins after Dec. 31, 2021, and before Jan. 1, 2025. Projects 1 MW or larger are eligible if construction began or begins on or after Jan. 30, 2023, and no later than Jan. 1, 2025. According to the IRS, a project is "under construction" when "physical work of a significant nature has begun," or a minimum of 5 percent of the project's total cost has already been incurred.

To apply for the Renewable Electricity PTC, use Form 8835. Form 8835, instructions and additional information are available on the IRS website.

Holland & Knight LLP – Marcy Hart, Holly R. Camisa, Maria Z. Cortes and Olufunke Leroy

April 20 2023

TAX - CALIFORNIA

Palmer v. City of Anaheim

Court of Appeal, Fourth District, Division 3, California - April 17, 2023 - Cal.Rptr.3d - 2023 WL 2962115

City resident brought class action alleging that city violated state constitutional provision requiring voter approval for new or increased local taxes arising from city's approval of rate modification for city-owned electric utility on which city imposed a right-of-way fee and from which a portion of revenues were transferred to city's general fund.

The Superior Court granted summary judgment for city. Resident appealed.

The Court of Appeal held that:

- Parties' stipulation limiting issues for summary judgment applied on review of grant of summary judgment;
- Right-of-way fee was not a tax requiring voter approval; and
- Voters' approval of city charter amendment allowing general fund transfers satisfied voter-approval requirements.

Parties' stipulation limiting issues for summary judgment applied on appeal of grant of summary judgment for defendant city, where trial court did not misconstrue or misunderstand language of stipulation and plaintiff never sought to invalidate or withdraw from stipulation, in class action challenging city's approval of rate modification for city-owned electric utility as contrary to state constitutional voter-approval requirements for new or increased local taxes.

Right-of-way fee that city imposed on city-owned electric utility was not a "tax" under state constitutional provision requiring voter approval for new or increased local taxes, where utility had sufficient non-rate revenue to fully offset any impact that the right-of-way fee had on rates.

Cost-of-service provision in voter-approved city charter amendment allowing transfer of four percent of revenues of city-owned electric utility to city's general fund allowed city to charge ratepayers to fund the four percent transfer, and any such voter-approved charge could not be an overcharge in violation of state constitutional provision requiring voter approval for new or increased local taxes.

TAX - NEW HAMPSHIRE

Clearview Realty Ventures, LLC v. City of Laconia

Supreme Court of New Hampshire - April 18, 2023 - A.3d - 2023 WL 2977618

Owners of commercial real estate, on which they operated hotels, filed petitions against cities in applicable county superior courts, seeking abatement and proration of real estate taxes after cities either denied abatement applications or granted partial abatement.

Owners then filed assented-to motion for interlocutory transfer, which the Superior Court granted. Supreme Court accepted transferred questions.

The Supreme Court held that hotels were not "damaged" as result of COVID-19 pandemic, as necessary for owners to obtain prorated tax assessments.

Statute requiring assessing officials to prorate assessment of taxable building whenever building is damaged due to unintended fire or natural disaster to extent it renders building not able to be used for intended use offers streamlined recovery process and mandatory prorated calculation; tax reduction based on damage to building, pursuant to such statute, is therefore distinct from abatement, which concerns whether government has taxed plaintiff out of proportion to other property owners in taxing district.

Hotels on commercial property were not "damaged" by COVID-19 pandemic, as necessary for property owners to obtain prorated tax assessments for hotels pursuant to statute that required local officials to prorate assessments for taxable buildings whenever buildings were damaged due to unintended fire or natural disaster to extent it rendered building not able to be used for intended purpose, even though owners argued that, since they were not allowed to carry on business, hotels suffered significant decline in income, which negatively impacted fair market value of hotels; statute

first required physical damage to buildings before considering any economic loss.

As Americans Kick the Smoking and Drinking Habit, Sin Tax Revenue Drops.

Taxes on marijuana and vaping could replace the shrinking revenue, but analysts caution against setting new taxes without considering how they will impact behavior.

With people drinking and smoking less, governments are getting less money from so-called sin taxes. But the good news for states and localities is that more people are using cannabis and vaping, creating new ways to raise money.

“As the tax base shrinks on traditional excise taxes,” said a new report by the center-right Tax Foundation, “more and more products will be targeted for excise taxes.”

But before going all in on a new tax, policymakers must consider how taxes will impact behavior, said the report’s author, Adam Hoffer, the foundation’s director of excise tax policy.

Continue reading.

ROUTE FIFTY

BY KERY MURAKAMI

APRIL 19, 2023

Keep Your Paws Off My Positive Arbitrage: Squire Patton Boggs

Reader’s Note: As this is my first post on The Public Finance Tax Blog™ let me provide a necessary introduction. My name is Natalie, an associate with the Public Finance Tax Group here at Squire Patton Boggs. A little bit about me: I have the superhuman ability of not getting mosquito bites; I hate when people pronounce the “L” in salmon; and perhaps most relevant to you, if I can learn tax and finance concepts, so can you.

Additional Reader’s Note: This post has gone through several iterations already. Not because the information missed the mark (a junior associate’s worst nightmare, I promise you), but because I needed to “fun it up.” When tax lawyers call you boring, it may be time to rethink most if not all life decisions. Short of quitting my job, changing my name and generally falling off the face of the planet, I suppose I’ll start here. With this post. On Rebate. Naturally.

Episode 1: Rebate & Arbitrage 101 – Putting the Fun in Fundamentals

Because the fundamentals are the building blocks of fun, this post introduces the rebate requirement under Section 148 of the Internal Revenue Code and the key terms necessary for the episodes to come.

To understand rebate, you must understand arbitrage. And to understand arbitrage, well, you kind of just need to understand arbitrage. As discussed more thoroughly in a recent blog post, arbitrage occurs when securities purchased from one market are used for immediate resale in another to

profit from the interest rate discrepancy. This is not a concept specific to tax-exempt or tax-advantaged bond financings, but the monitoring of arbitrage by the federal government occupies considerable space in our little corner of the public finance cosmos.

Continue reading.

By Natalie Vicchio on April 19, 2023

The Public Finance Tax Blog

Squire Patton Boggs

Tax Liens: U.S. Supreme Court Amicus Brief

Interest of Amici Curiae

This brief is submitted on behalf of the National Tax Lien Association (NTLA), the Arizona County Treasurers Association (ACTA), and the Tax Collectors & Treasurers Association of New Jersey (NJTCTA), which recommend that this Court affirm the United States Court of Appeals for the Eighth Circuit.

The NTLA is the primary national organization advancing the legislative, regulatory, business, public relations, and educational interests of the tax lien and tax deed industry. The NTLA seeks to uphold high standards of ethical conduct and to operate in accordance with all applicable federal and state laws related to tax lien auctions and tax deed sales. The NTLA was incorporated in 1997 as a nonprofit business league to represent all industry participants—public and private. The NTLA's constituency includes tax lien bidders, tax collectors, lenders, and portfolio servicers, all of whom recognize the importance of properly collecting tax revenue. The NTLA monitors state legislation, engages in lobbying activity, and participates as amicus curiae in courts throughout the nation. Many state legislators, regulators, and tax collection officials nationwide consult the NTLA about laws and policies governing real property tax sales.

ACTA is a statewide association of Arizona's county tax collectors united to serve the public and safeguard funds generated from tax sales within the State. Its members represent all 15 Arizona counties. ACTA's purpose is to share in the exchange of ideas, experiences, and opinions among the various county treasurers; more efficiently serve Arizona's citizens and its counties through sharing best practices; and promote legislation supporting the position and duties of county treasurers. Through its membership and education efforts, ACTA enhances local governments' ability to collect delinquent property taxes through efficient notice and sale efforts, thus providing tax revenue required for Arizona's counties, fire districts, and school districts to meet their financial obligations.

NJTCTA consists of over 1,000 members from New Jersey's 565 municipalities. Many of the State's tax collectors, deputy collectors, treasurers, deputy treasurers, municipal finance officers, and utility collectors are members of the NJTCTA. Its members ensure all New Jersey property owners receive their tax bills promptly, notify taxpayers in the event of their failure to pay taxes due, and—as a remedy of last resort—conduct public sales of the various municipal liens to collect delinquent taxes. Under the aegis of Rutgers University, the NJTCTA conducts seminars and tests for those who desire to take the state examination to become tax collectors as required by state statute. NJTCTA also provides yearly seminars to help its members obtain the necessary continuing education credits to maintain the proper certification. NJTCTA is honored to ensure all tax collectors across the State can

properly perform their duties according to law.

Continue reading.

Nelson Mullins Riley & Scarborough LLP

April 6 2023

TAX - CALIFORNIA

Olympic and Georgia Partners, LLC v. County of Los Angeles

Court of Appeal, Second District, Division 8, California - April 7, 2023 - Cal.Rptr.3d - 2023 WL 2821289

Taxpayer, which was a hotel owner, sought review of property-tax assessment, which stemmed from dispute as to whether calculation of hotel's value should have excluded the subsidy that city paid to hotel owner, the one-time payment of "key money," which effectively was the equivalent of a price discount, that hotel owner received from companies that it hired to manage the hotel, and intangible "hotel enterprise" assets of goodwill, the workforce, and restaurant operations.

After a bench trial, the Superior Court determined that the county's assessment appeals board was right to include the subsidy and the "key money" payment in its valuation, and remanded the issue of the "hotel enterprise" assets. Taxpayer and county appealed.

The Court of Appeal held that:

- Subsidy that city paid to taxpayer was not to be included when determining hotel's value;
- The "key money" payment was not to be included when determining hotel's value; and
- Taxpayer demonstrated that it was possible to put a valuation on the "hotel enterprise" assets.

Subsidy that city paid to taxpayer, which owned a hotel on the property, was not to be included when determining hotel's value for purposes of property tax; subsidy was an intangible asset, it was capable of valuation, and it was necessary since without it, the hotel would not have been built.

One-time payment of "key money" that hotel owner received from companies that it hired to manage the hotel was not to be included when determining hotel's value for purposes of property tax; the payment was a discount on income to the managers from the hotel and was not income to the hotel.

Taxpayer, which was a hotel owner, demonstrated that it was possible to put a valuation on intangible "hotel enterprise" assets of goodwill, the workforce, and restaurant operations, as required for the value of such assets to be excluded from calculation of hotel's value for purposes of property tax; taxpayer's expert on business valuation proposed credible value and backed up her estimates with 16 pages of analysis and exhibits.

Hawkins Advisory: The IRS Accepts Electronic Filing of Form 8038-CP

The IRS has released revised forms to be used by issuers of build America bonds, recovery zone economic development bonds, and specified tax credit bonds to facilitate electronic filing of requests for a direct payment from the Federal Government equal to a percentage of the interest payments on

these bonds. The attached Hawkins Advisory includes copies of such forms and a link to an explanation of the revisions.

View the Hawkins Advisory.

TAX - CALIFORNIA

Cultiva La Salud v. State

Court of Appeal, Third District, California - March 27, 2023 - Cal.Rptr.3d - 2023 WL 2642948

Nonprofit organization and member of city council of charter city, in her individual capacity, brought action against state, the Department of Tax and Fee Administration, and the Department's director, alleging that statute that barred local governments, including charter cities, from imposing a tax on sodas and sugar-sweetened drinks and that penalized charter cities for imposing such a tax by depriving them of all sales- and use-tax revenue unlawfully limited charter cities' authority under state constitution's home-rule provision, and seeking declaratory and injunctive relief and a writ of mandate directing the Department not to implement the statute's penalty provision.

The Superior Court entered judgment for plaintiffs. Defendants appealed.

The Court of Appeal held that:

- Plaintiffs' facial challenge was ripe for review;
- Challenged statute's penalty provision directed at charter cities was unconstitutional because it used the threat of crippling penalties to chill charter cities from exercising their rights under state constitution's home-rule provision; and
- Penalty provision was not severable.

Constitutional challenge by nonprofit organization and member of city council to statute that barred local governments, including charter cities, from imposing a tax on sugar-sweetened drinks and that penalized charter cities for imposing such a tax by depriving them of all sales- and use-tax revenue was ripe for review, even though challenge did not involve an actual city tax on sugar-sweetened drinks, where the facts were sufficiently congealed to allow resolution of plaintiffs' facial challenge to statute, and given statute's crippling penalties, it was possible that no charter city would ever enact a tax on sugar-sweetened drinks, in which case statute would evade judicial review altogether if a facial challenge were not allowed.

Penalty provision directed at charter cities in statute barring local governments, including charter cities, from imposing a tax on sugar-sweetened drinks, and penalizing charter cities for imposing such a tax by depriving them of all sales- and use-tax revenue, used the threat of crippling penalties to chill charter cities from exercising their constitutional rights and thus was unconstitutional, where provision served to penalize a charter city only when its imposition of a tax on sugar-sweetened drinks was a "valid exercise" of the city's constitutional home-rule authority.

Penalty provision directed at charter cities in statute barring local governments, including charter cities, from imposing a tax on sugar-sweetened drinks, and penalizing charter cities for imposing such a tax by depriving them of all sales- and use-tax revenue, was not severable, even though statute contained a severance clause, where severing charter-city-specific provision would cause penalty provision to reach not just charter cities but also counties and general-law cities, the legislature had not considered a scheme in which such entities would be penalized for taxing sugar-

sweetened drinks, and the appellate court could not say that the legislature would have adopted such a scheme.

Legislation Reintroduced to Restore the Tax-Exempt Status of Advance Refunding Bonds.

- **The bipartisan Investing in Our Communities Act has been reintroduced in the 118th Congress**
- **Counties support the restoration of the tax-exempt status of advance refunding for municipal bonds**

On March 28, Reps. Dutch Ruppersberger (D-Md.) and David Kustoff (R-Tenn.) reintroduced the bipartisan Investing in Our Communities Act to restore the tax-exempt status of advance refunding municipal bonds that ultimately save counties and our taxpayers money. Rep. Ruppersberger serves as the co-chair of the bipartisan House Municipal Finance Caucus and both he and Rep. Kustoff were original cosponsors of this bill in the 117th Congress. Counties support the reinstatement of the tax-exempt status of advance refunding bonds and NACo has again endorsed this legislation.

Tax-exempt municipal bonds are predominantly issued by state and local governments for governmental infrastructure and capital needs purposes, such as the construction or improvement of schools, streets, highways, hospitals, bridges, water and sewer systems, ports, airports and other public works.

Prior to 2017, advance refunding bonds were also tax-exempt and allowed counties to refinance municipal bonds once over the lifetime of the bond and more than 90 days prior to the refunded bonds redemption date. Advance refunding bonds, when tax-exempt, allow state and local governments to lower borrowing costs and take advantage of more favorable interest rates. This frees up resources to be used for other important capital projects and minimizes costs to taxpayers. Advance refunding bonds also allow localities to address problematic bond terms and conditions or to restructure debt service payments for budget flexibility.

The 2017 tax reform law (*Tax Cuts and Jobs Act*; P.L. 115-97) eliminated the tax-exempt status of advance refunding bonds as a spending offset, however prior to this elimination advance refunding bonds made up a third of the municipal bond marketplace. As counties continue to implement the American Rescue Plan Act and Bipartisan Infrastructure Law and invest federal funds in infrastructure projects, restoring this important financial management tool is critical to future capital investments.

Counties urge Congress to pass the *Investing in Our Communities Act* to restore the tax-exempt status of advance refunding.

NATIONAL ASSOCIATION OF COUNTIES

by PAIGE MELLERIO

APRIL 6, 2023

IRS Proposes Regulations for Energy Community Bonus Tax Credit.

View the IRS Regulations.

Apr. 4, 2023

TAX - WASHINGTON

Quinn v. State

Supreme Court of Washington, EN BANC - March 24, 2023 - P.3d - 2023 WL 2620080

Owners of capital assets brought action against State alleging that the state capital gains tax facially violated the uniformity and levy requirements of the State Constitution, the privileges and immunities clause of the State Constitution, and the dormant commerce clause.

After consolidation of cases and grant of motion to intervene, the Superior Court granted summary judgment for owners. Intervenors sought direct review, which was granted.

In a case of first impression, the Supreme Court held that:

- Capital gains tax was an excise tax and not a property tax on income;
- Capital gains tax did not violate the privileges and immunities clause; and
- Capital gains tax did not violate the dormant commerce clause.

State capital gains tax was an "excise tax" and not a "property tax" on income subject to the uniformity and levy limitations of the State Constitution; capital gains tax was tax on transactions involving capital assets and not a tax on the assets themselves or the income they generated.

State capital gains tax did not facially violate the privileges and immunities clause of the State Constitution; state residents did not have a fundamental right to enjoy the same tax exemptions enjoyed by all other state residents, and legislature's express purpose in enacting the capital gains tax was to help meet the state's paramount duty to amply fund public education without exacerbating existing inequities as between individuals by requiring the state's wealthiest to pay a greater share of their overall income in state taxes.

A taxpayer's in-state domicile provided a sufficient nexus between the state and capital gains derived from the sale or exchange of tangible property located out-of-state, as required for state capital gains tax to satisfy the dormant commerce clause; capital gains tax was levied on capital transactions and not on mere ownership of capital assets or gains, and a taxpayer's exercise of power to dispose of capital assets was exercised in state in which the taxpayer was domiciled.

A taxpayer's in-state domicile provided a sufficient nexus between the state and capital gains derived from the sale or exchange of intangible property, as required for state capital gains tax to satisfy the dormant commerce clause.

State capital gains tax was internally consistent, as needed to satisfy the fair apportionment requirement of the dormant commerce clause, where the allocations found in capital gains tax statute detailed when capital gains were attributed to state, and statute also included a tax credit to prevent any possible multiple taxation.

State capital gains tax was internally consistent, as needed to satisfy the fair apportionment

requirement of the dormant commerce clause, even if another taxing jurisdiction could tax the capital transaction, where there was no showing of how the state's capital gains tax would result in multiple taxation if all states adopted the same tax.

State capital gains tax was externally consistent, as needed to satisfy the fair apportionment requirement of the dormant commerce clause; State had a valid interest in taxing capital gains derived from sale or exchange of intangible property or personal property located out-of-state, the allocations found in capital gains tax statute detailed when capital gains were attributed to state, a statutory tax credit prevented any real risk of multiple taxation, and statute also permitted taxpayers to deduct from their state capital gains the amounts that the state was prohibited from taxing under the State and Federal Constitutions.

State capital gains tax did not facially discriminate against interstate commerce, and therefore it did not violate the dormant commerce clause; plain text of capital gains tax statute did not treat out-o--state individuals unfavorably, statute provided a method for allocating capital gains to state, and statute included a tax credit which removed any risk of actual multiple taxation.

TAX - CALIFORNIA

Cultiva La Salud v. State

Court of Appeal, Third District, California - March 27, 2023 - Cal.Rptr.3d - 2023 WL 2642948

Nonprofit organization and member of city council of charter city, in her individual capacity, brought action against state, the Department of Tax and Fee Administration, and the Department's director, alleging that statute that barred local governments, including charter cities, from imposing a tax on sodas and sugar-sweetened drinks and that penalized charter cities for imposing such a tax by depriving them of all sales- and use-tax revenue unlawfully limited charter cities' authority under state constitution's home-rule provision, and seeking declaratory and injunctive relief and a writ of mandate directing the Department not to implement the statute's penalty provision.

The Superior Court, Sacramento County, entered judgment for plaintiffs. Defendants appealed.

The Court of Appeal held that:

- Plaintiffs' facial challenge was ripe for review;
- Challenged statute's penalty provision directed at charter cities was unconstitutional because it used the threat of crippling penalties to chill charter cities from exercising their rights under state constitution's home-rule provision; and
- Penalty provision was not severable.

Under the home-rule doctrine, a charter city's law is not preempted simply because it conflicts with state law, nor is it necessarily preempted even when the legislature explicitly intends preemption; it is instead preempted only when it conflicts with a state law, the state law covers a subject of statewide concern, and the state law is reasonably related to resolution of that concern and narrowly tailored to avoid unnecessary interference in local governance.

Constitutional challenge by nonprofit organization and member of city council to statute that barred local governments, including charter cities, from imposing a tax on sugar-sweetened drinks and that penalized charter cities for imposing such a tax by depriving them of all sales- and use-tax revenue was ripe for review, even though challenge did not involve an actual city tax on sugar-sweetened

drinks, where the facts were sufficiently congealed to allow resolution of plaintiffs' facial challenge to statute, and given statute's crippling penalties, it was possible that no charter city would ever enact a tax on sugar-sweetened drinks, in which case statute would evade judicial review altogether if a facial challenge were not allowed.

Penalty provision directed at charter cities in statute barring local governments, including charter cities, from imposing a tax on sugar-sweetened drinks, and penalizing charter cities for imposing such a tax by depriving them of all sales- and use-tax revenue, used the threat of crippling penalties to chill charter cities from exercising their constitutional rights and thus was unconstitutional, where provision served to penalize a charter city only when its imposition of a tax on sugar-sweetened drinks was a "valid exercise" of the city's constitutional home-rule authority.

Penalty provision directed at charter cities in statute barring local governments, including charter cities, from imposing a tax on sugar-sweetened drinks, and penalizing charter cities for imposing such a tax by depriving them of all sales- and use-tax revenue, was not severable, even though statute contained a severance clause, where severing charter-city-specific provision would cause penalty provision to reach not just charter cities but also counties and general-law cities, the legislature had not considered a scheme in which such entities would be penalized for taxing sugar-sweetened drinks, and the appellate court could not say that the legislature would have adopted such a scheme.

TAX - ARKANSAS

Gibson v. Little Rock Downtown Neighborhood Association, Inc.

Supreme Court of Arkansas - March 16, 2023 - S.W.3d - 2023 Ark. 452023 WL 2531192

Neighborhood associations and others brought action against Arkansas Department of Transportation (ArDOT), its director, members of Arkansas State Highway Commission, and state officials for declaratory and injunctive relief and for an accounting, contending that defendants' spending of funds raised by temporary sales-and-use tax on highway projects other than "four-lane highway improvements" constituted illegal exaction unauthorized by constitutional amendments establishing and continuing tax.

Plaintiffs moved and defendants cross-moved for summary judgment. The Circuit Court granted motion and denied cross-motion. ArDOT, its director, and Commission members appealed.

The Supreme Court held that:

- Declaratory judgment claim presented justiciable controversy, but
- Tax-extension amendment did not limit use of revenue to four-lane highway improvement projects.

Neighborhood associations' claim against Arkansas Department of Transportation (ArDOT), its director, and members of Arkansas State Highway Commission for declaratory judgment, which rested on contention that expenditure of funds derived from constitutional amendment extending tax originally imposed for four-lane highway improvements would constitute illegal exaction, presented justiciable controversy, even though amendment had not yet taken effect; ArDOT had already committed $350 million of revenue from amendment to certain road and highway projects that did not involve four-lane highways, defendants did not express intent to change such plans, and collection of revenue pursuant to amendment was imminent.

Plain language of constitutional amendment extending temporary sales-and-use tax levied under

previous amendment, which had been designated to fund highway improvement bonds for “four-lane highway improvements,” so as to “provide special revenue for use of maintaining, repairing, and improving the state’s system of highways, county roads, and city streets” after retirement of highway improvement bonds did not restrict use of taxes under tax-extension amendment to four-lane highway improvement projects; unlike prior amendment’s repeated references to “four-lane highway,” tax-extension amendment did not contain language indicating funds collected could only be used on four-lane highway improvements, but, rather, clearly stated funds were for “highways, county roads, and city streets.”

TAX - NEW YORK

James B. Nutter & Company v. County of Saratoga

Court of Appeals of New York - March 21, 2023 - N.E.3d - 2023 WL 2575215 - 2023 N.Y. Slip Op. 01469

Mortgagee that had obtained judgment of foreclosure against property brought action against town, county, and purchaser of the property at prior tax sale, seeking to vacate prior default judgment of tax foreclosure entered in favor of county as well as deeds conveying the property to county and purchaser.

The Supreme Court denied mortgagee’s motion for summary judgment, granted county’s cross-motion for summary judgment, and dismissed complaint. Mortgagee appealed.

The Supreme Court, Appellate Division, affirmed. Mortgagee filed motion for leave to appeal, which was granted.

The Court of Appeals held that mortgagee was permitted to raise a material issue of fact regarding whether county had complied with statutory notice requirements for the tax foreclosure proceeding even though there was no evidence that both the certified and first class mailings of the notice to mortgagee had been returned.

On motions for summary judgment in mortgagee’s action seeking to vacate prior default judgment of tax foreclosure in favor of county on the property at issue, mortgagee was permitted to raise a material issue of fact regarding whether county had complied with statutory notice requirements for the tax foreclosure proceeding even though there was no evidence that both the certified and first class mailings of the notice to mortgagee, as an interested party, had been returned; evidence that both mailings were returned was not the only means of creating an issue of fact on the matter of notice, and mortgagee could instead create a factual question regarding county’s noncompliance with notice requirements through other evidence that the notices were not properly mailed.

An interested party in a tax foreclosure proceeding is permitted to establish that a taxing authority failed to comply with the statutory notice requirements for such a proceeding, even when the taxing authority submits proof that notice that was allegedly sent by both certified and first class mail is not returned.

State Revenue Forecasts Look Bleak as Revenue Boom Subsides.

States saw robust tax revenue growth in fiscal years 2021 and 2022, largely caused by federal and

state policy actions. But forecasts now look much weaker, even as many states consider additional tax cuts.

Several states cut tax rates or provided rebates to taxpayers in 2021 and 2022, which are estimated to have reduced state tax revenues by $16 billion in fiscal year 2023. This is the largest estimated reduction on record resulting from legislative changes. Depending on how the tax cuts were structured, some states will face a bumpier fiscal path ahead.

Current revenue picture

Preliminary data for the first seven months of fiscal 2023 (July 2022 through January 2023) illustrate how much revenue growth has stalled. Overall, state tax revenues declined 0.2 percent in nominal terms in that period. Personal income tax revenues saw year-over-year declines of 9.3 percent while sales and corporate taxes fared better.

There is also significant variation across the states. California and New York are reporting large declines in overall revenues, whereas many states are still reporting growth in nominal terms – albeit much weaker compared to the prior two years.

State revenue forecasters are predicting weak revenues for both the current fiscal year and for fiscal year 2024. Besides recently enacted rebate payments and tax rate cuts, a stock market decline and an end to federal stimulus funds are playing a significant role.

Continue reading.

Tax Policy Center

by Lucy Dadayan

March 14, 2023

When Overburdening isn't a Burden: Squire Patton Boggs

Cindy Mog recently reacquainted us with abusive arbitrage devices, including the factors that evidence overburdening of the tax-exempt bond market (issuing bonds too early, issuing too many bonds, and issuing bonds with an excessive weighted average maturity) and factors that countervail what would otherwise constitute overburdening (bona fide cost underruns, bona fide need to finance extraordinary working capital items, and an issuer's long-term financial distress).

The IRS released a timely private letter ruling (PLR 202309014) on March 3 that analyzes the foregoing factors. This private letter ruling deals with whether an issue of long-term working capital (re)financing bonds was subject to the proceeds-spent-last rule and whether the issue overburdened the tax-exempt bond market. The IRS concluded that the issue was not subject to the proceeds-spent-last rule and did not overburden the tax-exempt bond market, because the issue refinanced extraordinary, nonrecurring working capital expenditures that were not covered by insurance or a reserve fund.

Perhaps if Cindy writes a post on tax-exempt advance refunding bonds, Congress will enact a law that restores them.

By Michael Cullers on March 16, 2023

The Public Finance Tax Blog

Squire Patton Boggs

TAX - MASSACHUSETTS

Reagan v. Commissioner of Revenue

Supreme Judicial Court of Massachusetts, Suffolk - March 10, 2023 - N.E.3d - 2023 WL 2437788

Taxpayer, a limited partner in limited partnerships that had owned, operated, and maintained tax-exempt urban redevelopment projects, appealed Commissioner of Revenue's notice of assessment related to distributive share of capital gains from sales of such properties, denial of application for abatement.

The Appellate Tax Board upheld the assessment. Taxpayer appealed.

The Supreme Judicial Court, sua sponte transferred case from the Appeals Court and held that:

- Tax exemption for urban redevelopment projects extends to capital gain realized from sale of such projects, and
- Conclusory statement in letter ruling was not entitled to deference.

Tax exemption for urban redevelopment projects extends to capital gain realized from sale of such projects as causally related to projects in connection with acquisition, construction, operation, and maintenance efforts, notwithstanding canon of statutory construction requiring courts to construe tax concessions narrowly; Legislature intended to provide a significant incentive to spur private investment to transform blighted areas and to build sorely needed low income housing to remedy a situation that had become a public exigency, which the Commonwealth's police powers alone could not solve and which was not being addressed by operation of the private marketplace in the absence of such an incentive, and legislative history evinced intent to spur private entities to invest in urban redevelopment projects by expanding the available tax exemption.

Conclusory statement in Commissioner of Revenue's letter ruling that sales proceeds from tax-exempt urban redevelopment projects are subject to tax under the general tax provisions of Massachusetts law, was not entitled to deference, absent citation to any authority or any rationale whatsoever, since statement conflicted with plain statutory language, statute as a whole, and legislative history.

TAX - OHIO

State ex rel. North Canton City Council v. Stark County Board of Elections

Supreme Court of Ohio - March 10, 2023 - N.E.3d - 2023 WL 2436806 - 2023-Ohio-726

City council brought expedited election action against county board of elections seeking writ of mandamus to order board to place two proposed tax levies on the primary-election ballot.

The Supreme Court held that:

- City council had statutory authority to bring suit against county board of elections for writ of mandamus;
- City council lacked adequate remedy in ordinary course of law; but
- City council's proposed tax levies were not imposed to supplement city's general fund, and, thus, city council was not entitled to writ of mandamus.

City council had statutory authority to bring suit against county board of elections for writ of mandamus to order county to place two proposed tax levies on primary-election ballot; city council had taxing authority to declare need to levy tax in excess of ten-mill limitation and to certify resolutions to that effect to board of elections for submission to city's voters, board's refusal to place levies on ballot made council the aggrieved party because its resolution for tax levy was not being carried into effect, and mandamus action was appropriate to effectuate council's resolutions.

City council lacked adequate remedy in ordinary course of law, as required for council to obtain writ of mandamus, in expedited election action to order county board of elections to place two proposed tax levies on primary-election ballot, given proximity of primary election.

City council's proposed tax levies were not imposed to supplement city's general fund, and, thus, council was not entitled to writ of mandamus ordering county board of elections to place levies on primary-election ballot; proposed levies were for city's roads and storm-sewer services and were to replace existing levies imposed for street maintenance and flood prevention and defense, existing levies were not imposed for purpose of supplementing city's general fund, all revenue from existing levies was to be credited to special funds related to purpose for each levy, and council did not show that revenue from existing levies was credited in way other than what was required by statute, and, thus, proposed levies did not qualify for exception to be placed on primary-election ballot.

Fitch: US State Tax Revenues Continue to Rise but Show Signs of Slowdown

Fitch Ratings-New York-07 March 2023: State coffers continue to benefit from a strong labor market and nominal growth in consumer spending, but signs are mounting that the unprecedented tax revenue growth of the past couple years will soon moderate, Fitch Ratings says. While last year's large tax surpluses are unlikely to be repeated this year, widespread state actions to date to build reserves and address long-term liabilities will protect US states' credit quality as revenue growth slows.

More than halfway through most state fiscal years, total tax revenues are up almost 6% on average over the prior year, based on Fitch's review of monthly revenue reports from the 18 largest states with available data for the seven months ending January 2023. In most states, solid revenue growth compares favorably to forecasts set nearly a year ago. According to the National Association of State Budget Officers (NASBO), enacted state budgets for FY23 forecasted a 3.1% revenue decline from preliminary FY22 actual collections, providing a substantial cushion in the current year. Texas, Michigan and New York have fiscal years that begin on Sept. 1, Oct. 1 and April 1, respectively.

Continue reading.

Abusive Arbitrage Devices – It's Time to Get Reacquainted (Episode 3 – What Happens to the Arbitrage Sinners and the Arbitrage Saints?) - Squire Patton Boggs

Episode 3 – What Happens to the Arbitrage Sinners and the Arbitrage Saints?

As you may remember, in Episode 1 we discussed some background regarding the prohibition against abusive arbitrage devices and the policy behind that prohibition – to encourage investment of tax-exempt bond proceeds in long-lived, tangible assets, while discouraging the generation of arbitrage on the investment of such proceeds. In Episode 2 we discussed the three factors the federal government examines to determine whether an issuer has overburdened the tax-exempt bond market, which results in an abusive arbitrage device if the issuer has also successfully exploited the difference between taxable and tax-exempt interest rates. In this episode, we will describe the penalties imposed upon rule-breakers and the rewards offered to rule-followers.

What happens if you have an abusive arbitrage device? The tax-exempt bonds become taxable arbitrage bonds. Thus, issuers of tax-exempt bonds will want to be mindful of the rules (i.e., the guardrails) set by the federal government to avoid an abusive arbitrage device. A more fun way to think about it is that, given the serious consequences of straying off of the envisioned path, issuers will want to drive the old-fashioned cars at the amusement park that keep you on track, rather than the Dodgems.

What happens if you follow the arbitrage rules? The tax-exempt bonds will remain tax-exempt (assuming, of course, that all non-arbitrage rules governing tax-exempt bonds are followed). As a bonus, the issuer may also qualify for an exception to rebate and be able to retain its positive arbitrage. For a detailed description of the various spending exceptions to rebate, please tune in to our spin-off rebate miniseries which will be coming soon to the Public Finance Tax Blog.

What is the moral of the arbitrage story for issuers? Know the basic rules. Invest and spend your tax-exempt bond proceeds wisely and efficiently while adhering to the rules, and you may end up with both tax-exempt bonds and arbitrage that you can keep.

The end.

The Public Finance Tax Blog

by Cynthia Mog

Sunday, March 12, 2023

Squire Patton Boggs

TAX - WISCONSIN

Citation Partners, LLC v. Wisconsin Department of Revenue

Supreme Court of Wisconsin - March 1, 2023 - N.W.2d - 2023 WL 2290355 - 2023 WI 16

Taxpayer, an aircraft-leasing company, sought review of Tax Appeals Commission's determination that sales tax applied to the total amount paid for an aircraft lease, even if portions of the lease

payment were purportedly for engine and aircraft maintenance.

The Circuit Court reversed. Department of Revenue appealed. The Court of Appeals reversed and remanded with directions. Taxpayer petitioned for review.

The Supreme Court held that:

- Lease's charges attributed to aircraft maintenance or engine maintenance were "consideration";
- Sales-tax exemption for sale of parts used to modify or repair aircraft did not apply to lease's charges attributed to aircraft maintenance or engine maintenance;
- Sales-tax exemption for sale of repair, service, and maintenance of any aircraft or aircraft parts did not apply to lease's charges attributed to aircraft maintenance or engine maintenance;
- Lease's total charges were subject to sales tax; and
- Lessor was not lessee's "agent" when lessor purchased aircraft repairs and engine maintenance.

TAX - CONNECTICUT

Ah Min Holding, LLC v. City of Hartford

Appellate Court of Connecticut - February 14, 2023 - A.3d - 217 Conn.App. 574 - 2023 WL 1870935

Owner of rental properties brought action against city for breach of contract and unjust enrichment, alleging that parties entered into agreement whereby owner agreed to maintain and rent specified number of dwelling units for low and moderate income persons or families in order to receive tax abatement, that city terminated agreement, that owner sold properties and paid city $176,628.15 in property taxes, and that if agreement had not been terminated, owner would only have been liable to pay abated taxes in amount of $43,500.

Following trial to the court, the Superior Court entered judgment for city. Owner appealed.

The Appellate Court held that:

- Contractual term "maintain" unambiguously encompassed obligation to provide repairs and general upkeep to dwelling units, and
- Contract incorporated statutes and municipal ordinance requiring owner to maintain premises in habitable condition.

Term "maintain" in contract between owner of rental properties and city, in which owner agreed to maintain and rent specified number of dwelling units for low and moderate income persons or families in order to receive tax abatement, unambiguously encompassed obligation to provide repairs and general upkeep to dwelling units, where only reasonable interpretation of term, based on its ordinary meaning, encompassed duty of repair and upkeep, and other provisions of contract, such as provision specifying owner's duty to "improve the quality and design of such dwelling units" and to "provide necessary related facilities and services in such dwelling units[,]" supported use of term's plain meaning.

Contract between owner of rental properties and city, in which owner agreed to maintain and rent specified number of dwelling units for low and moderate income persons or families in order to receive tax abatement, incorporated statutes and municipal ordinance requiring owner to maintain premises in habitable condition; statutes and ordinance were in effect when contract was formed and were consistent with scope of owner's contractual obligation to maintain properties, contract

did not explicitly excuse owner from compliance with statutes and ordinance, and although tax-abatement statute, which formed basis for contract, did not expressly require compliance with statutes or ordinance, tax statute's requirement that owner "provide necessary related facilities or services" supported incorporation.

TAX - MASSACHUSETTS

Murrow v. Board of Assessors of Boston

Appeals Court of Massachusetts, Suffolk - February 6, 2023 - N.E.3d - 102 Mass.App.Ct. 278 - 2023 WL 1769435

Taxpayer appealed from decision of the Appellate Tax Board, which affirmed decision of the city board of assessors, denying her application for abatement of tax assessed against her parking easement.

The Appeals Court held that:

- Taxpayer's in gross parking easement was a present interest in real estate subject to taxation, and
- Assessment of tax on parking easement owners did not amount to double taxation.

Taxpayer's in gross parking easement reserved by condominium developer in condominium's master deed, which was freely transferable and not appurtenant to any condominium unit, was a present interest in real estate subject to taxation; easement granted taxpayer the exclusive right to use the designated parking space at condominium, including right to exclude others from using the space, to collect rents from lease of space, and to sell her interest in the space and retain the profits therefrom.

Assessment of tax on parking easement owners for their nonpossessory easement interest in their respective parking spaces at condominium and assessment of tax on condominium unit owners for their possessory interest in their respective units was lawful taxation of two separate interests in real property and did not amount to double taxation.

An Introduction to Property Assessed Clean Energy Financing: Holland & Knight

Property Assessed Clean Energy (PACE) is a financing model that provides low-cost, long-term funding for eligible energy efficiency and renewable energy projects. PACE is a national initiative by the U.S. Department of Energy, but state legislation must be passed to authorize PACE programs at the local level. PACE-enabling legislation is active in 38 states and the District of Columbia, and PACE programs are now active (launched and operating) in 30 states and the District of Columbia.

Because PACE programs are established and operated at state or municipal levels, there is no uniformity in underwriting criteria, financing structures or program procedures, and property owners should pay careful attention to the particular processes and requirements of the applicable jurisdiction. Nevertheless, there are several elements that are consistent across programs.

Continue reading.

Holland & Knight LLP – Marcy Hart, Holly R. Camisa, Maria Z. Cortes and Olufunke Leroy

March 9 2023

Abusive Arbitrage Devices – It's Time to Get Reacquainted Pt. II - Squire Patton Boggs

(Episode 2 – Overburdening (Generally) Not Allowed)

As you may remember, in the first episode, we discussed how the federal government's primary goal in subsidizing tax-exempt bonds is to encourage investment by issuers in long-lived, tangible assets. We also discussed how the federal government has tried to keep issuers on the intended path by preventing them from exploiting the difference between the tax-exempt and taxable markets. Finally, we noted that bonds will generally be taxable arbitrage bonds if the issuer has successfully exploited the difference between tax-exempt and taxable interest rates and has also overburdened the tax-exempt bond market.

This episode will discuss the three rules intended to prevent the overburdening of the tax-exempt bond market – (1) You shall not issue too early; (2) You shall not issue too much; and (3) You shall not issue for too long.

Why would you issue too early? To take advantage of a low interest rate environment. For example, an issuer might not have a capital project for Year 1 when interest rates are low, but anticipates having a capital project in Year 3 when interest rates might be higher. The rule imposed by the federal government to prevent the issuer from issuing tax-exempt bonds too early is a requirement that the issuer reasonably expect on the issuance date of the tax-exempt bonds that it will spend at least 85% of the spendable proceeds within three years of the issuance date. Even though the test involves "reasonable expectations," remember that hindsight is always 20/20, and thus issuers should strive to actually meet this goal.

Continue reading.

By Cynthia Mog on February 26, 2023

The Public Finance Tax Blog

Squire Patton Boggs

TAX - WASHINGTON

Lakeside Industries, Inc. v. Washington State Department of Revenue

Supreme Court of Washington, En Banc - February 23, 2023 - P.3d - 2023 WL 2172112

Asphalt manufacturer petitioned for judicial review of Department of Revenue's (DOR) specific written instructions that manufacturer was required to utilize comparable sales instead of a "cost basis" method to calculate the amount of asphalt use-tax owed.

The Superior Court dismissed the petition for lack of subject matter jurisdiction and failure to state a

claim, and manufacturer appealed. The Court of Appeals affirmed, and manufacturer petitioned for review.

The Supreme Court held that:

- Administrative Procedure Act's (APA) general review provisions did not apply to nonconstitutional tax challenge brought by asphalt manufacturer;
- Manufacturer was expressly authorized to seek de novo review of DOR's tax reporting instructions; and
- Manufacturer was entitled to seek judicial review of DOR specific written instructions, but manufacturer had to follow DOR's instructions, pay the disputed tax, and then seek de novo review.

Administrative Procedure Act's (APA) general review provisions did not apply to nonconstitutional tax challenge brought by asphalt manufacturer, challenging Department of Revenue's (DOR's) instructions requiring manufacturer to utilize comparable sales instead of a "cost basis" method to calculate the amount of asphalt use-tax owed.

Asphalt manufacturer was expressly authorized to seek de novo review of Department of Revenue's (DOR) tax reporting instructions, requiring manufacturer to utilize comparable sales instead of a "cost basis" method to calculate the amount of asphalt use-tax owed; asphalt manufacturer was a "person" and a "taxpayer," as those terms were used in statute providing that any person having paid any tax as required and feeling aggrieved by the amount of the tax could appeal to the superior court, and if manufacturer was aggrieved by DOR's instructions, then manufacturer was necessarily aggrieved by the amount of the tax that it would be required to pay pursuant to those instructions.

Asphalt manufacturer was required to follow Department of Revenue's (DOR) reporting instructions and pay its taxes before seeking judicial review, and although manufacturer alleged that it could not follow DOR's instructions to calculate its use tax by using the comparable sales method, based on its asphalt sales to third parties, because it disagreed that these third-party sales were comparable, this disagreement did not excuse manufacturer from complying with DOR's instructions that manufacturer utilize comparable sales instead of a "cost basis" method to calculate the amount of asphalt use-tax owed.

Tax Breaks Threaten Remote Work If Cities Start Enforcing Them.

Many tax incentives hinge on employees coming to the office. Officials are deciding whether to enforce them as downtowns bear the cost of hybrid work arrangements.

Despite pleas from big-city mayors to get employees out of their pajamas and back into downtowns, US cities and states have been left with relatively few levers to jump-start office turnout.

But there is one tool that's been in their arsenal since before the pandemic: tax breaks.

Of the billions in tax incentives granted to US companies every year by cities and states, many agreements require workers to come into the office some of the time, or at least live in the region. For companies receiving these incentives, relaxing in-office attendance could be costly.

Continue reading.

Bloomberg CityLab

By Jo Constantz and Sarah Holder

February 21, 2023

TAX - WISCONSIN

Lowe's Home Centers, LLC v. City of Delavan

Supreme Court of Wisconsin - February 16, 2023 - N.W.2d - 023 WL 2028779 - 2023 WI 8

Pursuant to statute allowing an action challenging the disallowance of a claim of excessive assessment, taxpayer, which owned property on which a home improvement store sat, brought action to recover the excess amount of property taxes that it believed that it had paid for two particular years, which claim the city board of review had disallowed.

After a bench trial, the Circuit Court entered judgment against taxpayer. Taxpayer appealed. The Court of Appeals affirmed. Taxpayer petitioned for review.

The Supreme Court held that taxpayer failed to demonstrate that assessments were excessive, despite argument that vacant "big box" retail locations should have been seen as comparable to taxpayer's property under "tier 2" analysis.

In action brought pursuant to statute allowing action challenging disallowance of claim of excessive assessment, taxpayer, which owned property on which home improvement store sat, failed to present significant contrary evidence to overcome presumption of correctness in property tax assessments, despite taxpayer's argument that vacant "big box" retail locations should have been seen as comparable to taxpayer's property under "tier 2" analysis; those vacant properties were not just vacant, but "dark," i.e., vacant beyond normal time period for commercial real estate, and Wisconsin Property Assessment Manual counseled against using such properties as comparable to properties that were not similarly "dark."

TAX - RHODE ISLAND

Polseno Properties Management, LLC v. Keeble

Supreme Court of Rhode Island - February 21, 2023 - A.3d - 2023 WL 2125824

Taxpayer brought declaratory judgment action challenging tax assessment on real property by town tax assessor. After hearing in proceeding which court characterized as one on cross-motions for summary judgment, the Providence Superior Court entered judgment in favor of assessor. Taxpayer appealed.

The Supreme Court held that:

- Statute authorizing cities and towns to tax any renewable energy resource "only" pursuant to rules established by energy resources office does not prohibit cities and towns from increasing the valuation of real property due to the presence of renewable energy projects;
- Assessor acted reasonably in considering existence of a solar energy development on property when assessing the fair market value of the underlying property; and

- Notation on assessment indicating assessment had been adjusted due to presence of solar energy development on property did not effectively create a new class of property for tax classification purposes which was outside permissible statutory classifications.

E-Commerce Tax Deals Pit California Cities Against Each Other.

California cities have made deals with retailers — like Best Buy, Apple, QVC and Walmart — to be the point of sale for e-commerce purchases statewide in exchange for a cut of the sales tax proceeds. But who really benefits?

Exit Highway 99 at Mountain View Avenue in California's Central Valley and drive east past the flat expanse of stone fruit and citrus orchards, fields of grapes that will become raisins, and the occasional packing house.

Nine miles ahead, the gray-and-blue Best Buy warehouse emerges out of nowhere at the Dinuba city limits. At slightly more than 1 million square feet, it dwarfs the nearby shopping center anchored by a Walmart Supercenter — at least five of which would fit inside the warehouse.

Best Buy has been in Dinuba for 17 years, employing around 370 workers, but seven years ago it became even more vital to this 25,000-population city. That's when the Dinuba facility was designated as Best Buy's sole point of e-commerce sales in California, meaning that any state resident making an online purchase would pay the local sales tax on their transaction to Dinuba, not the city where they live. That prompted Dinuba — facing a $1.9 million budget deficit — to enter into a 40-year agreement to share those tax proceeds with Best Buy.

Continue reading.

Bloomberg CityLab

By Laura Mahoney

February 23, 2023

How One County Fixed Its Broken Property Tax System.

Property taxes are considered the ultimate "fair" tax. But that fairness hinges on the assumption that homes are being assessed accurately, regularly and thoroughly.

Welcome back to Route Fifty's Public Finance Update! I'm Liz Farmer and this week, I'm writing about why property taxes can be inequitable and what one county is doing about it.

Local governments collect roughly $500 billion per year in property taxes, which accounts for 47% of locally generated revenue and is the single-largest revenue source for cities, counties, towns and special districts.

To purists, property taxes are the ultimate "fair" tax. That's largely because jurisdictions offer homeowners' tax exemptions that give lower-value homes a bigger discount on their property taxes. For example, let's say the homeowner's tax exemption in a city is $50,000. That means that homes

valued at $150,000 pay taxes on $100,000—a 33% discount off the assessed value. Homes valued at $500,000 pay taxes on $450,000 which works out to a 10% discount.

Continue reading.

ROUTE FIFTY

by LIZ FARMER

FEBRUARY 21, 2023

IRS Issues Guidance for Energy Tax Credits in Low-Income Communities – Notice 2023-17: McGuireWoods

The Inflation Reduction Act of 2022 (IRA) created several new tax incentives to encourage developing clean energy projects that would benefit underserved communities and individuals. Among these incentives, Congress included generous adders to the Section 48 investment tax credit (ITC) for qualified solar and wind facilities deployed in specified low-income communities or residential developments (low-income community benefit adders).

To receive these increased credit amounts, project owners need to apply for an allocation of the "environmental justice solar and wind capacity limitation" through a program jointly administered by the Treasury Department and the Department of Energy.

On Feb. 13, 2023, the IRS released Notice 2023-17 establishing the initial guidance on this capacity limitation program and the standards on which projects will be evaluated, and promising more guidance to come.

Continue reading.

McGuireWoods

February 16, 2023

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