Tax

NABL Submits Comments for IRS 2023 Priority Guidance Work Plan.

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

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

Muni Issuers Face Pressures from Remote Work.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

By Michael Wolfson

BY SOURCEMEDIA | MUNICIPAL | 06/02/22

Think Twice Before Buying a Muni Below Par.

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

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

What is a discount?

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

Continue reading.

advisorperspectives.com

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

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

KEY POINTS

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

Continue reading.

CNBC.COM

BY Kate Dore, CFP®

JUN 3 2022

TAX - KANSAS

[Bicknell v. Kansas Department of Revenue]

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

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

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

The Supreme Court held that:

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

MSRB Guide to 529 Savings Plans.

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

Read the guide.

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

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

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

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

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

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

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

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

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

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Additional information is available on www.fitchratings.com

TAX - ARIZONA

[South Point Energy Center LLC v. Arizona Department of Revenue]

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

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

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

The Supreme Court held that:

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

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

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

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

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

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

THEN CAME COVID-19

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

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

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

TELEPHONIC TEFRA HEARING REQUIREMENTS

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

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

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

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

BE AWARE OF ANY OPEN PUBLIC MEETING ACT REQUIREMENTS

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

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

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

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

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

[Click here](#) to read Rev. Proc. 2022-20.

By Scott A. McJannet and Cynthia M. Weed

Thursday, May 12, 2022

[State Sales Tax Breadth and Reliance, Fiscal Year 2021.](#)

Key Findings

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

[Continue reading.](#)

Tax Foundation

by Jared Walczak

May 4, 2022

TAX - NORTH DAKOTA

[Hudye Group LP v. Ward County Board of Commissioners]

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

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

The District Court affirmed. Taxpayer appealed.

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

TAX - MARYLAND

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

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

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

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

The Court of Appeals held that:

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

TAX - RHODE ISLAND

[Verizon New England Inc. v. Savage]

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

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

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

The Supreme Court held that:

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

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

TAX - OHIO

Colonial, Inc. v. McClain

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

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

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

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

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

TAX - WISCONSIN

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

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

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

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

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

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

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

TAX - MASSACHUSETTS

RCN BecoCom LLC v. Commissioner of Revenue

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

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

The Appeals Court held that:

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

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

Telephone company, in focusing on the aggregate value of certain taxable personal property in 18 municipalities as a whole, failed to meet its burden to demonstrate that Commissioner of Revenue substantially overvalued property lying in each municipality in company's appeal to Appellate Tax Board contesting Commissioner's valuation of personal property for use by municipalities in assessing taxes against the property, although company's failure to take a municipality-b--municipality approach was not per se fatal to its appeal to Board; company made minimal efforts to apportion the aggregate value to individual municipalities, and value of physical equipment could not be determined from the overall sale of company's stock when company was taken private, as company argued.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Who Pays?

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

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

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

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

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

Florida's Risk

Challenging the tax credits could lead Disney to abandon plans to move the 2,000 workers to the state. The relocation has been controversial at the company, with many park designers presently in California preferring not to pack up and go to Florida. The issue has been one of the underlying elements fanning the internal opposition to the Florida schools bill, with a website created by employees specifically asking the company to halt the move.

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

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

Bloomberg Markets

By Christopher Palmeri

April 23, 2022

TAX - WISCONSIN

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

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

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

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

TAX - WASHINGTON

Sound Inpatient Physicians, Inc. v. City of Tacoma

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

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

The Court of Appeals held that:

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

Rising Rates Reduce Appeal of Taxable Bonds for Muni Issuers.

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

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

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

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

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

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

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

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

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

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

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

Bloomberg Markets

By Shruti Singh and Danielle Moran

April 13, 2022

TAX - PENNSYLVANIA

Circle of Seasons Charter School v. Northwestern Lehigh School District

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

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

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

The Commonwealth Court held that:

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

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

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

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

Tax Pros and Cons to Municipal Bonds.

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

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

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

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

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

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

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

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

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

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

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

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

CPA Practice Advisor

By Ken Berry, J.D. – Tax Correspondent

April 7, 2022

TAX - VERMONT

Boyd v. State

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

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

State moved for summary judgment.

The Superior Court granted motion. Plaintiffs appealed.

The Supreme Court held that:

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

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

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

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

TAX - ILLINOIS

In re County Collector

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

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

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

The Supreme Court held that:

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

TAX - COLORADO

Aurora Urban Renewal Authority v. Kaiser

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

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

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

The Court of Appeals held that:

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

TAX - ARIZONA

Vangilder v. Arizona Department of Revenue

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

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

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

The Supreme Court held that:

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

Transportation excise tax statute does not require the Regional Transportation Authority (RTA) to specify or describe the details of the transportation excise tax that would later be placed on the ballot, such that county Board of Supervisors' inclusion of a partial description of transportation excise tax did not invalidate resolution to request that Board place a transportation excise tax on the ballot or placement of tax on ballot.

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

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

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

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

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

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

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

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

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

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

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

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

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

Forbes

by Marilyn Cohen

Mar 22, 2022

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

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

View the Hawkins Advisory.

Mar 18, 2022

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

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

Continue reading.

By Johnny Hutchinson on March 19, 2022

The Public Finance Tax Blog

Squire Patton Boggs

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

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

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

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

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

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

Read the issue brief.

Date: March 18, 2022

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MSRB Warns of Liquidity, Tax Concerns on Discounted Bonds.

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

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

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

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

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

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

"If the market discount is less than one quarter of 1% of the stated redemption price of the bond at maturity, multiplied by the number of complete years to maturity from when the taxpayer acquires the bond, the market discount will be deemed de minimis and treated as a capital gain for tax purposes if the bond is held to maturity, redeemed or sold for a price above the purchase price," the MSRB issue brief said. "If the discount is greater than this de minimis threshold, the accrued market discount realized at maturity must be treated as ordinary income."

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

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

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

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

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

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

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

By Connor Hussey

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

TAX - VERMONT

Missisquoi Assoc. Hydro v. Town of Sheldon

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

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

The Supreme Court held that:

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

Property Valuation Division and Review Board hearing officer's findings were not internally inconsistent, in determining fair market value (FMV) of taxpayer's property consisting of land improved with run-of-the-river hydroelectric generating plant upon concluding that income approach, rather than town's direct sale comparison methodology, provided best estimate of FMV, where hearing officer made typographical error in stating that town's 60-40% debt-to-equity ratio was more credible than taxpayer's 40-60% ratio, but he made clear in his discussion that he credited taxpayer's ratio and explained basis for that conclusion, and consistent with his rationale, he applied taxpayer's ratio in reaching his conclusion.

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

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

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

TAX - NEW JERSEY

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

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

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

The Tax Court held that:

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

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

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

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

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

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

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

TAX - NEW JERSEY

Branchburg Hospitality LLC v. Township of Branchburg

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

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

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

The Tax Court held that:

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

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

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

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

TAX - CALIFORNIA

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

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

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

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

The Court of Appeal held that:

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

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

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

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

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

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

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

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

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

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

View the Hawkins Advisory.

TAX - WISCONSIN

Brown County v. Brown County Taxpayers Association

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

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

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

The Supreme Court held that since the ordinance funded projects that would otherwise have been paid for through additional debt obligations, the ordinance directly reduced property tax levy as required by statute on county sales and use taxes.

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

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

TAX - KANSAS

Alliance Well Service, Inc. v. Pratt County

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

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

The District Court affirmed. Taxpayers appealed.

The Court of Appeals held that:

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

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

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

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

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

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

Lawmakers Target Sports Stadium Tax Breaks.

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

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

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

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

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

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

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

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

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

Axios

by Jeff Tracy

Mar 1, 2022

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

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

Publication date: February 2022
Author: Mike Bailey

DOWNLOAD

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

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

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

That's fine as far as it goes. But rather than aiming only at pro sports (and really at Snyder), Congress should completely rethink private activity bonds. Should they be reserved only for public infrastructure, such as roads, bridges, and public schools? What about non-profit hospitals? Should Congress impose meaningful caps on the annual issuance of these bonds? Why should state and local governments use taxpayer money to subsidize any well-connected businesses to the detriment of competitors that don't have the clout to get cut-rate bond financing?

Continue reading.

Tax Policy Center

by Howard Gleckman

March 4, 2022

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

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

Download.

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

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

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

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

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

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

"This issue comes down to communities being held hostage," Blumenauer, a representative from Oregon, said in a press release. "The NFL and these other sports leagues are a money-making machine that are rich enough to build their own facilities, and we don't need to divert much-needed public funding to these projects. Let's instead focus on spending our tax dollars on creating communities where all of our families can thrive."

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

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

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

Bloomberg Markets

By Danielle Moran

February 22, 2022

— With assistance by Amanda Albright

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

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

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

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

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

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

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

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

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

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

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

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

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

Duane Morris LLP – J. Tyson Covey

February 21 2022

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

KEY POINTS

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

[Continue reading.]()

cnbc.com

by Sarah O’Brien

FEB 18 2022

TAX - RHODE ISLAND

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

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

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

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

Department petitioned for writ of certiorari and petition was granted.

The Supreme Court held that:

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

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

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

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

TAX - RHODE ISLAND

Verizon New England Inc. v. Savage

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

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

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

The Supreme Court held that:

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

How to Value Tax-Exempt Liabilities.

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

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

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

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

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

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

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

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

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

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

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

BY SOURCEMEDIA | MUNICIPAL | 02/10/22

By Andy Kalotay, Ph.D.

TAX - COLORADO

Aurora Urban Renewal Authority v. Kaiser

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

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

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

The Court of Appeals held that:

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

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

TAX - MARYLAND

Gateway Terry, LLC v. Prince George's County

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

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

The Circuit Court affirmed. Taxpayer appealed.

The Court of Special Appeals held that:

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

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

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

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

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

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

This Hidden Muni Bond Tax May Trigger Higher Medicare Premiums.

KEY POINTS

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

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

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

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

Continue reading.

cnbc.com

by Kate Dore

FEB 9 2022

High Municipal Bond Earnings Could Lead to Higher Medicare Premiums.

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

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

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

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

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

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

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

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

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

gobankingrates.com

By Vance Cariaga

February 10, 2022

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

To all of our readers, Belated Happy New Year! We will ring in 2022 with some belated news. Back in November of 2021, the IRS once again issued a memorandum that extends the ability to use an electronic or digital signature on Form 8038 (Tax-Exempt Private Activity Bond Issues), Form 8038-G (Tax-Exempt Governmental Obligations) and Form 8038-GC (Small Tax-Exempt Governmental Obligations). This current extension will remain in effect until October 31, 2023. (I have no idea why Halloween (of 2023) was selected as the deadline, but it should be easy to remember!). In additional good news, when announcing this most recent extension on its website, the IRS stated that it is considering further extensions, but needs to balance the convenience of electronic signatures against the possibility of identity theft and fraud. This enquiring mind is curious as to who is filing fraudulent Forms 8038, and what benefit are they getting by doing so?

Continue Reading

The Public Finance Tax Blog

By Cynthia Mog on January 28, 2022

Squire Patton Boggs

TAX - VIRGINIA
Emmanuel Worship Center v. City of Petersburg
Supreme Court of Virginia - January 6, 2022 - S.E.2d - 2022 WL 52390

Taxpayer filed bill of review challenging issuance of decree of sale.

The Circuit Court dismissed bill. Taxpayer appealed.

The Supreme Court held that:

- Action underlying taxpayer's bill of review sounded in equity, rather than being an action at law for which bill of review would be unavailable, and
- Fact that taxpayer would be barred by statute of limitations from bringing an action against city to challenge validity of assessments on property allegedly subject to the self-executing exemption for property owned by religious organizations did not preclude taxpayer's use of such exemption as defense to city's attempt to sell the property in a tax sale.

Action underlying taxpayer's bill of review, in which city sought to sell taxpayer's property to collect delinquent real estate taxes, sounded in equity, rather than being an action at law for which bill of review would be unavailable.

Fact that taxpayer would be barred by statute of limitations from bringing an action against city to challenge validity of assessments on property allegedly subject to the self-executing exemption for property owned by religious organizations did not preclude taxpayer's use of such exemption as defense to city's attempt to sell the property in a tax sale; it would be an absurd result if a locality could issue assessment against any tax-exempt property and then seek sale if taxpayer did not respond within limitations period.

TAX - NEW HAMPSHIRE

Appeal of City of Berlin

Supreme Court of New Hampshire - January 12, 2022 - A.3d - 2022 WL 108571

City sought judicial review of order of Board of Tax and Land Appeals (BTLA) determining that city over-assessed taxpayer, an electric utility company, and challenged BTLA's decision to apply Department of Revenue Administration (DRA) median equalization ratio for intended tax year instead of prior tax year to determine proportionality of city's assessment of taxpayer's hydroelectric facility.

The Supreme Court held that BTLA's decision was unjust and unreasonable.

Board of Tax and Land Appeals' (BTLA) decision to apply Department of Revenue Administration (DRA) median equalization ratio for intended tax year instead of prior tax year to determine whether tax placed on hydroelectric facility was disproportionately higher in relation to its true value than to other property in general in city was unjust and unreasonable; when agreeing to admit taxpayer's exhibit showing DRA median equalization ratio, BTLA expressly noted that, standing alone, it did not establish propriety of particular ratio for city, and taxpayer failed to introduce any evidence regarding general level of assessment in city or supporting its preferred equalization ratio.

Private Letter Ruling Provides Extension for LLC to Self-Certify as QOF.

The Internal Revenue Service (IRS) last week released a private letter ruling granting an extension to a limited liability company to make a timely election to be certified as a qualified opportunity fund (QOF). PLR 202202009 determined that the failure of the LLC's accounting firm to file IRS Form 8996–which allows the self-certification as a QOF for the opportunity zones (OZ) incentive–was unintentional and the LLC acted reasonably and in good faith. The IRS also ruled that the government's interests are not prejudiced by providing an additional 45 days to file a Form 8996 to self-certify as an QOF. PLRs are directed only to the taxpayer requesting them and may not be used or cited as precedents.

A range of topics concerning OZs will be discussed at the Novogradac 2022 Spring Opportunity Zones Conference, April 21-22 in Long Beach, California.

Novogradac | Jan. 17

TAX - COLORADO

Bellock v. United States

United States District Court, D. Colorado - December 8, 2021 - F.Supp.3d - 2021 WL 5893982

"This case presents an issue of first impression on a question of the interplay between two different tax provisions: Rev. Proc. 92-29 and 26 U.S.C. § 103."

To construct the infrastructure for proposed residential subdivision, the developers (Developers) formed metropolitan districts (Metro Districts). The Metro Districts sought to pay for the necessary infrastructure through advances from Developers. The Developers invested a total of approximately $39 million for infrastructure in the various Metro Districts. In exchange for these payments, the

Metro Districts issued the Developers bond anticipation notes (BANs). The Metro Districts intended to pay 8.5% interest on the BANs out of future property taxes levied on homeowners and businesses in the districts.

The Developers elected to treat their development costs pursuant to the Alternative Cost Method, set out in Rev. Proc. 92-29, 1992-1 C.B. 748. Under the Alternative Cost Method, upon the sale of a portion of property, a developer is entitled to take an allocable share of the estimated expenses for common improvements in computing the costs of goods sold with respect to the sold property. Costs of common improvement may include funds advanced to third parties, such as the advances made to the Metro Districts here. The Developers thus included the advances to the Metro Districts as costs of construction for purposes of determining the costs of goods sold. "There is no dispute that the Developers did not act improperly when using the Alternative Cost Method."

With regard to the interest from the Bond Anticipation Notes, the Developers used the "accrual basis," which required them to take income into account when earned, not necessarily when received. Each year, the Developers treated the repayment of principal on the BANs as ordinary income; the Developers separately took the interest accruals on the BANs in each year into income as tax exempt pursuant to 26 U.S.C. § 103. Pursuant to section 103, gross income does not include interest on any state or local bond.

The IRS audited the Developers' tax returns for 2010 to 2013. The IRS determined that it was permissible for the Developers to have treated their investments as development costs pursuant to the Alternative Cost Method. However, the IRS found that, having done so, the Developers were foreclosed from treating the interest accruals on the BANs as tax exempt. The IRS thus assessed increases in tax liability for the Developers.

Neither Party disputed that the interest paid on the bonds issued by the Metro Districts would ordinarily be tax-exempt and qualify for the section 103 exclusion. The United States instead argued that the Developers' application of the Alternative Cost Method transformed the underlying transaction, such that the section 103 exemption could no longer apply.

The Developers paid the assessed increases and sought a refund of their payments.

The United States District Court held that nothing in Rev. Proc. 92-29, or the Developers' application thereof, removed this transaction from the purview of section 103.

"The obligation at issue in this case is an obligation to repay the bonds issued by the Metro Districts — that is, to repay the principal on the bonds. The interest on that obligation reflects a promise to pay 8.5% for the right to defer payment on the bonds to allow the Metro Districts to pay out of future property taxes. Thus, regardless of whether the underlying obligation is characterized as a bond, a purchase of goods, etc., the interest on that obligation is distinct and remains tax-exempt under section 103."

"The exemption in section 103 applies to the transaction here. The interest at issue in this case is interest on an obligation of a political subdivision and, as such, is tax-exempt. Neither the case law nor the general tax principles cited by the United States supports its argument that the Alternative Cost Method, set forth in Rev. Proc. 92-29, forecloses tax-exempt treatment under section 103. The IRS's assessment in this matter was thus erroneous."

IRS Updates Procedures for Determination Letter Requests.

The new procedures are outlined in Revenue Procedure (Rev. Proc.) 2022-04.

Rev. Proc. 2022-04 is a general update of Rev. Proc. 2021-4, published in Internal Revenue Bulletin 2021-01, which sets forth:

- general information about the types of advice provided by the IRS Employee Plans Office of Rulings and Agreements;
- general procedures for letter ruling and determination letter requests;
- specific procedures for determination letter requests; and
- user fees associated with advice requested from Employee Plans Rulings and Agreements.

In addition to minor non-substantive changes, including changes to dates, cross references and citations to other revenue procedures, the following substantive changes have been made to Rev. Proc. 2021-4.

Sections 5.01(4) and 8.01 are revised to provide that the procedures for obtaining an opinion letter regarding a 403(b) pre-approved plan's second six-year remedial amendment cycle beginning July 1, 2020 (and subsequent cycles) are set forth in Rev. Proc. 2021-37.

Sections 6.02 and 30.07 are revised to provide that Form 5300, Application for Determination for Employee Benefit Plan, may be submitted electronically beginning June 1, 2022, and must be submitted electronically beginning July 1, 2022, and to update the procedures for submitting Form 5300 and Form 5310, Application for Determination for Terminating Plan, including payment of the user fee.

Section 6.02(2)(a) is modified to delete "Trust Document" from the list of required documents that must be included as part of a determination letter submission.

Section 8.02 is modified to specify that a Form 5307, Application for Determination for Adopters of Modified Volume Submitter Plans, should be used in the case of a determination letter request for a standardized plan that is not a multiple employer plan if the employer requests a determination solely on overriding plan language added to satisfy Section 415 or 416.

Section 10.03 is modified to delete "trust documents" from the description of materials that must be submitted with a determination letter application.

Section 11.04 is modified to clarify that a plan sponsor of a dual-qualified plan must submit a restatement showing compliance with the Internal Revenue Code and applicable lists when submitting a determination letter application.

Sections 12.02, 12.03, and 12.04 are amended to clarify that an adopting employer of a standardized plan does not file a Form 5300 to request a determination related to overriding language necessary to coordinate (1) the application of the limitations of Section 415, or (2) the requirements of Section 416 because the employer maintains multiple plans.

Section 14.02 is modified to clarify the scope of reliance for a determination letter issued for a multiple employer plan.

Appendix A, Sections .01 and .05 are revised to update the user fees relating to letter ruling requests and opinion letters on pre-approved plans.

AMERICAN SOCIETY OF PENSION PROFESSIONALS & ACTUARIES

BY JOHN IEKEL

JANUARY 5, 2022

TAX - PENNSYLVANIA

O'Donnell v. Allegheny County North Tax Collection Committee

Supreme Court of Pennsylvania - December 27, 2021 - A.3d - 2021 WL 6111680

Taxpayer, who had received qui tam payment under False Claims Act (FCA), filed a petition for administrative appeal after tax servicer for the school district and the borough mailed him a notice that his local earned income tax was delinquent.

The Appeals Board of the Allegheny County North Tax Collection Committee denied the petition for administrative appeal, and taxpayer appealed. The Court of Common Pleas affirmed, and taxpayer appealed. The Commonwealth Court reversed, and school district and borough appealed.

The Supreme Court held that:

- Taxpayer’s qui tam payment constituted “compensation” pursuant to Tax Reform Code’s definition of “compensation” as including incentive payments; qui tam payment was taxpayer’s incentive, and
- Taxpayer’s qui tam payment was taxable as compensation under Tax Reform Code and, therefore, as earned income under the Local Tax Enabling Act (LTEA).

By the terms of the False Claims Act (FCA), taxpayer’s qui tam payment was intended to incentivize whistleblowers like taxpayer to identify employer fraud, initiate the qui tam action, and provide valuable information to the federal government, and thus, taxpayer’s qui tam payment constituted “compensation” pursuant to Tax Reform Code’s definition of “compensation” as including incentive payments; qui tam payment was taxpayer’s incentive.

Because taxpayer’s qui tam payment under False Claims Act (FCA) was an incentive payment, it was taxable as compensation under the plain language of the Tax Reform Code and, therefore, as earned income under the Local Tax Enabling Act (LTEA), which authorized certain political subdivisions, such as school district, to impose a tax on the earned income of their residents.

While taxpayer’s qui tam payment under False Claims Act (FCA) was categorized most aptly as a taxable incentive payment, it also met Tax Reform Code’s definition of “compensation” for “similar remuneration for services rendered”; qui tam payment was rendered as remuneration for taxpayer’s services in providing useful information to the federal government about his employer’s fraud and for initiating the qui tam action.

Revisions to Ohio Statute Governing Centralized Municipal Business Tax Collections to Take Effect for Tax Year 2022.

The Ohio General Assembly passed House Bill 228, which will change the way municipal net profits taxes are collected beginning January 1, 2022. The provisions also include removal of a 0.5%

administrative fee that the Ohio Department of Taxation had previously withheld from distributions to municipalities, which the Ohio Supreme Court found to be unconstitutional as a result of a lawsuit brought by nearly 200 Ohio cities and villages. See *City of Athens v. Ohio Tax Commissioner*, Ohio Supreme Court, Case No. 2019-0693, 2019-0696.

On November 5, 2020, the Court held 4 to 3 that it is constitutional to give taxpayers the option of centralized collection of municipal net profits tax, but it is unconstitutional for the state to skim off a fee of 0.5%. Justices Michael Donnelly, Maureen O'Connor, Patrick Fischer, Melody Stewart in the majority. Justice Sharon Kennedy would have held both issues unconstitutional. Justices Pat DeWine and French dissent.

The revised notification process gives the state tax commissioner, rather than taxpayers, the responsibility to notify municipalities of the taxpaying business' election to use the state's centralized collection system. Under prior law, the taxpayer had to notify each municipality in which it conducted business, creating additional work for taxpayers and municipalities. Under the new law, the taxpayer notifies the tax commissioner of its election and where it does business. The tax commissioner is also required to provide quarterly reports to municipalities, streamlining communications and reducing opportunities for error.

H.B. 228 also requires the state to develop a new web portal for the secure exchange of information between the state department of taxation and municipalities. This provision does not set a deadline for the development of this portal. Lastly, the clean-up provisions eliminate the 0.5% fee that the state could withhold from municipal tax distributions under previous law. The Ohio Supreme Court held that this fee was unconstitutional because it was not encompassed within the state's authority to limit the municipal power to levy taxes. Aside from the immediate effect of keeping those municipal tax dollars for municipalities, this holding also prevents the State from increasing the fee in the future.

Municipal tax professionals and other municipal leaders should continue to track legislative proposals for changes to Chapter 718 and the centralized collection system, which will now be reliant entirely on the General Assembly for funding.

Frost Brown Todd LLC – Frank J. Reed, Jr. and Thaddeus M. Boggs

January 7 2022

TAX - COLORADO

Kerr v. Polis

United States Court of Appeals, Tenth Circuit - December 13, 2021 - F.4th - 2021 WL 5873156

Political subdivisions, elected officials, educators, and citizens brought action against governor challenging constitutionality of Taxpayer's Bill of Rights (TABOR), which limited revenue-raising power of state and local governments by requiring voter approval in advance for any new tax.

The United States District Court denied governor's motion to dismiss for lack of standing and certified its order for interlocutory appeal. The Court of Appeals accepted jurisdiction and affirmed. The United States Supreme Court granted petition for writ of certiorari, vacated, and remanded. The Court of Appeals vacated and remanded. On remand, the District Court dismissed complaint, and plaintiffs appealed. Rehearing en banc was granted.

The Court of Appeals held that:

- Subdivisions had standing to bring action;
- Guarantee Clause did not confer right on political subdivisions that they could enforce against their parent state; and
- Colorado's Enabling Act did not create cause of action permitting political subdivisions to challenge TABOR.

Political subdivisions had standing to bring action challenging constitutionality of Colorado's Taxpayer's Bill of Rights (TABOR), which limited revenue-raising power of state and local governments by requiring voter approval in advance for any new tax; subdivisions incurred costs and expenses necessary to present matters to voters for their decision, those costs were fairly traceable to TABOR's requirements, and, if TABOR were struck down, their injury would be redressed.

Colorado's Enabling Act did not create cause of action permitting political subdivisions to challenge Colorado's Taxpayer's Bill of Rights (TABOR) on ground that it violated Act's guarantee of "constitution republican in form"; clause promising constitution republican in form had no clear beneficiary, and, aside from references to common schools, references to other subordinate political entities were nowhere to be found in Act.

TAX - WISCONSIN

State ex rel. City of Waukesha v. City of Waukesha Board of Review

Supreme Court of Wisconsin - December 21, 2021 - N.W.2d - 2021 WL 6014968 - 2021 WI 89

City sought certiorari review of city board of review's determination of taxable value of particular piece of private property.

The Circuit Court granted writ and denied board's subsequent motion to quash. Board appealed. The Court of Appeals reversed and remanded. City petitioned for review.

The Supreme Court held that statute allowing certiorari review of board of review decision does not allow municipality to seek certiorari review of municipality's board of review.

In Case You Missed It: Last Week in Allyn Tax News

Arkansas: Use Tax Refund Claim for Computer Hardware Denied

A taxpayer requested a refund claim on use tax paid on purchases of computer hardware maintenance on services rendered outside of Arkansas. The Arkansas Department of Finance & Administration did not dispute the taxability of the services instead, the Department denied the request because the taxpayer failed to provide substantial documentation demonstrating that these were out-of-state services. It is the taxpayer's responsibility in this case to establish clear evidence for entitlement to a refund.

A reverse (tax) audit, sometimes called an overpayment review, is an optional review of a company's use tax accrued and/or sales tax paid on purchases for the purpose of identifying over-accruals or overpayments to states in the form of use tax or vendors in the form of sales tax. Ultimately, the goal is to obtain a tax refund from the state or locality of the sales or use tax it has overpaid. The review can be performed by a company itself or by a third-party tax professional skilled in the nuances of US state and local taxes.

Use Tax Due on Free Meal Provided to Employees in Illinois

Effective December 3, 2021, the Illinois Department of Revenue has increased the presumed average cost of free meals provided to employees for purposes of establishing employers' use tax liability from $.75 to $3.50. The amendments to Ill. Admin. Code §130.2050 requires that the use tax is to be paid at the rate that would have been imposed when the employer acquired the goods from the supplier.

Kentucky Sales and Use Tax Disaster Relief Refund Guidance

Kentucky Department of Revenue has released frequently asked questions about the sales and use tax disaster relief refund. Refunds on the sales and use tax paid on the purchase of building materials for restoration of an existing building or for construction to replace a destroyed building in a federally declared disaster area may be issued for legal building owners with damaged property from a disaster. For counties affected by severe storms, tornados, and flooding from December 10 to December 11, 2021, a disaster declaration has been issued. These counties have been determined as Caldwell, Fulton, Graves, Hopkins, Marshall, Muhlenberg, Taylor, and Warren. The refund consists of 100% of Kentucky sales and use tax paid for building materials, not including vendor's compensation, up to $6,000 for each building. The building materials must have been purchased on or after December 12, 2021, and the owner must file appropriate documentation within three years from the date the disaster area is declared. Separate refund applications must be submitted for each building. The appropriate documentation consists of an application for the Kentucky disaster relief sales and use tax refund (Form 51A600), all information providing agreements with contractors, vendors and other related parties (Form 51A601), an expenditure report with details of sales receipts and invoices (Form 51A602), any photographs or other documents evidencing the need for a refund, and either documentation that the legal building owner is eligible for assistance from the Federal Emergency Management Agency or a copy of the insurance claim filed for the damage or destruction of the building in the disaster area.

Sales of Security and Alarm Services in Arkansas: Taxable or Exempt?

In Arkansas, sales of security and alarm monitoring systems are included within taxable services. This resulted in a sales tax assessment against a taxpayer who provides security services to be sustained. While an exemption does exist for security services performed by permanent employees, temporary employees, or leased employees of the buyer, the taxpayer did not prove that he met the requirements for this exemption.

The taxpayer did not maintain adequate records to show sales of invoices. Therefore, the assessor used the taxpayer's income tax returns and 1099-misc. forms to approximate the sales of security services, which were deemed taxable.

Car Sharing in Florida Subject to a Rental Car Surcharge

Beginning January 1, 2022, when a motor vehicle is rented through a peer-to-peer car sharing program, the peer-to-peer car-sharing program must collect and remit the applicable tax and rental car surcharge due in connection with the rental. A peer-to-peer car-sharing program is a business platform that enables peer-to-peer car sharing by connecting motor vehicle owners with drivers for financial consideration.

A peer-to-peer car sharing program is required to register to collect sales tax, discretionary sales surtax and the rental car surcharge applicable to motor vehicles rented through the peer-to-peer car sharing program. Peer-to-peer car-sharing programs are required to submit a registration application for each county in which business is located. A $1.00 per day rental car surcharge applies to the first 30 days of the agreement involving shared vehicles through peer-to-peer car-sharing programs. If the car-sharing period is less than 24 hours, the surcharge is $1.00 per use. The rental car surcharge should be separately stated on the sales invoice and is subject to sales tax and discretionary sales surtax. The surcharge applies to vehicles designed to carry fewer than nine passengers.

U.S. Supreme Court has ruled Ohio Billboard Tax is Unconstitutional

The U.S. Supreme Court was asked to review a case regarding the city of Cincinnati's excise tax on billboard signs on grounds of it being unconstitutional. The city requires an "advertising host," meaning the billboard company, to pay the greater of either 7% of gross receipts generated from a billboard, or an annual minimum amount. A selective tax like this is subject to analysis and will only continue to be enforced if the government defends the tax by demonstrating that it promotes a compelling government interest and is customized to achieve that interest. The issue of this tax is that it is imposed only on a small number of billboard companies, so it was thought of as violating the rights to freedom of speech and a free press which is protected by the First Amendment to the U.S. Constitution. Through definitions and exemptions with the City's municipal code, the burden falls mainly on only two billboard companies. These companies may not be singled out or targeted, since they are speakers and publishers of speech engaging in an act protected by the First Amendment. Even though the City has interest in raising money to support the local government, there are other sources of revenue it can pursue. Consequently, the tax was ruled unconstitutional.

Allyn International

December 28 2021

TAX - WISCONSIN

[State ex rel. City of Waukesha v. City of Waukesha Board of Review]

Supreme Court of Wisconsin - December 21, 2021 - N.W.2d - 2021 WL 6014968 - 2021 WI 89

City sought certiorari review of city board of review's determination of taxable value of particular piece of private property.

The Circuit Court granted writ and denied board's subsequent motion to quash. Board appealed. The Court of Appeals reversed and remanded. City petitioned for review.

The Supreme Court held that statute allowing certiorari review of board of review decision does not allow municipality to seek certiorari review of municipality's board of review.

[Local Assessors Seek Federal Help to Make Property Taxes Fairer.]

Municipal officials want information from Fannie and Freddie's appraisal database.

A group of municipal property-valuation officials from across the U.S. has asked President Joe Biden's administration for help in tapping national data about the condition and quality of millions of homes to address widespread unfairness in local property taxes.

The effort follows a series of Bloomberg News reports this year about how residential property taxes, which raise roughly $500 billion a year nationwide, are plagued by systemic flaws: Official assessments tend to overstate the taxable value of inexpensive homes while understating the value of expensive ones. As a result, working-class homeowners pay higher effective property tax rates than the wealthy do.

In Chicago, the problem is most acute "in the bottom third of prices," said Cook County Assessor Fritz Kaegi. "And we think this is due to things that we are not measuring" with available data, he said: "quality and condition of homes."

Kaegi has suggested that the Uniform Appraisal Database maintained by the federally chartered mortgage buyers Fannie Mae and Freddie Mac might help plug the gap. The UAD contains information on the condition and quality of millions of U.S. homes that were appraised for mortgages. Kaegi recruited 15 other tax officials from major urban areas — including Seattle, Miami, Philadelphia and Dallas — to join him in asking for access to that information.

Federal officials haven't committed to granting the request; one primary concern centers on the need to filter out private information, such as names of owners and lenders, while preserving useful data on homes' quality. But the local officials' group is scheduled to meet with representatives of the Federal Housing Financial Agency in January to discuss the proposal.

Residential property taxes are generally based on the fair market value of a home, as determined by local officials. Most assessments are based on recent sales. Generally, assessors use sales data to estimate values for all the homes in a jurisdiction. That process, known as mass appraisal, relies on computer models that calculate the average value of individual attributes, such as square footage of living space and number of bathrooms, and applies them to each residence.

But local assessors are barred from entering homes without permission, so they have no real data on each one's relative quality, including individual improvements or maintenance issues that might affect value. It's generally accepted that affluent homeowners are less likely to put off repairs, making high-priced housing stock more uniform and therefore easier to value. Experts say assessed values at the low end of the scale tend to vary more, contributing to inflated values.

Kaegi, who took office in 2018, says the UAD can provide the information assessors currently lack. He argues that because Fannie and Freddie are under federal conservatorship, administration officials can release the data to local assessors.

A former portfolio manager and neophyte politician, Kaegi won office by promising to bring fairness and accuracy to a deeply regressive system in Chicago. One study showed that inaccurate assessments in the area had shifted more than $2.2 billion in taxes from the highest-priced homes to the lowest over five years' time. Now three years into his four-year term and seeking re-election, Kaegi has upgraded the agency's valuation models — the new ones use machine learning — and expanded the data sources used to value properties. He boosted transparency by posting detailed statistical reports on assessments online, with explanations of the agency's methods. But while his staff has narrowed disparities in the county's valuations, Kaegi says, gaps remain, especially among the least valuable properties.

Moreover, his efforts to correct valuations that were inaccurate and unfair for years have drawn opposition from business groups and some homeowners, illustrating the political difficulty of overhauling property tax systems.

Critics complain that Kaegi used sketchy data to justify a roughly 10% Covid reduction for residential assessments in early 2020, just as most office buildings and some small businesses saw dramatic increases as assessors addressed chronic inaccuracies. Then, during the pandemic, residential property values boomed while downtown office buildings and businesses reeled, and Cook County saw just the kind of unwarranted tax shift Kaegi had said he'd end. Opponents say he was currying favor with homeowners. Kaegi says he used the best data sources he had at the time, primarily unemployment figures and information about the impact of Covid on real estate investment trusts.

"It was the opposite of fair and accurate," said Farzin Parang, executive director of the Building Owners and Managers Association of Chicago, an office building trade group, and staunch critic of Kaegi. "From our perspective, the entire thing was completely political."

Now Kaegi's trying to foster nationwide improvements.

Last March, after Bloomberg published a story that highlighted a new, nationwide study about widespread regressivity in property taxes, the University of Chicago professor who led the research met with White House staff members. Christopher Berry, a professor of public policy, walked the officials through his data analysis, which found unfair valuations in roughly nine out of every 10 U.S. counties it examined. Kaegi joined a follow-up meeting in April, where he pitched his request to use the UAD to gain insights about the condition and quality of homes.

In an interview, Berry said he thinks tapping the UAD is a good idea that would involve few costs for the federal government — but said it may lead to only marginal improvements. "That's the only way this thing is going to get better, small continuous improvements," he said.

Kaegi's analysts have estimated that missing information about a home's condition and quality could swing a valuation estimate up or down by tens of thousands of dollars. For homes at the lower end of the price scale — $100,000 or less in Chicago — that could result in highly unfair valuations.

In August, Kaegi and his 15 counterparts from across the country wrote to the White House for help in accessing the relevant UAD data. A senior administration official said a presidential task force that's examining racial equity in home-loan appraisals is also committed to exploring property-tax fairness, though federal officials have little authority over local taxes.

Sharing appraisal data from the UAD would be a good start, said King County Assessor John Wilson in Seattle. "The information is well worthwhile," he said. "It would help us on some of the questions we've all had about whether there are some things inherently discriminatory in our assessments."

Bloomberg Business

By Jason Grotto

December 23, 2021

U.S. Supreme Court Has Ruled Ohio Billboard Tax is Unconstitutional.

The U.S. Supreme Court was asked to review a case regarding the city of Cincinnati's excise tax on billboard signs on grounds of it being unconstitutional. The city requires an "advertising host," meaning the billboard company, to pay the greater of either 7% of gross receipts generated from a billboard, or an annual minimum amount. A selective tax like this is subject to analysis and will only continue to be enforced if the government defends the tax by demonstrating that it promotes a compelling government interest and is customized to achieve that interest. The issue of this tax is that it is imposed only on a small number of billboard companies, so it was thought of as violating the rights to freedom of speech and a free press which is protected by the First Amendment to the U.S. Constitution. Through definitions and exemptions with the City's municipal code, the burden falls mainly on only two billboard companies. These companies may not be singled out or targeted, since they are speakers and publishers of speech engaging in an act protected by the First Amendment. Even though the City has interest in raising money to support the local government, there are other sources of revenue it can pursue. Consequently, the tax was ruled unconstitutional.

Allyn International

December 23 2021

TAX - CALIFORNIA

Lejins v. City of Long Beach

Court of Appeal, Second District, Division 1, California - December 1, 2021 - Cal.Rptr.3d - 2021 WL 5628744

Property owners petitioned for writ of mandate challenging surcharge municipality imposed on its water and sewer customers by embedding surcharge in rates water department charged its customers for service.

The Superior Court granted judgment for owners and awarded them attorney fees. Municipality appealed.

The Court of Appeal held that:

- Voter-approved surcharge had been imposed upon parcel or upon person as incident of property ownership within meaning of constitutional provision governing special taxes;
- Voters' approval of surcharge did not prevent it from violating constitutional provision governing special taxes; and
- Transfer or surcharge that was not in any way related to costs of providing water and sewer services was prohibited by Constitutional provision governing special taxes.

Ability of person to own real property without obtaining water or sewer service did not prevent voter-approved surcharge for water and sewer services that supported variety of municipal services, such as 9-1-1 emergency response, police-fire protection, street-pothole repairs, senior services, parks, and libraries from being imposed upon parcel or upon person as incident of property ownership within meaning of constitutional provision governing special taxes.

Surcharge for water and sewer services that supported variety of municipal services, such as 9-1-1 emergency response, police-fire protection, street-pothole repairs, senior services, parks, and libraries violated constitutional provision governing special taxes although it had been approved by voters.

Transfer or surcharge that was not in any way related to costs of providing water and sewer services was prohibited by Constitutional provision governing special taxes; although surcharge raised unrestricted revenue to support variety of municipal services, such as 9-1-1 emergency response, police-fire protection, street-pothole repairs, senior services, parks, and libraries, it did not reimburse municipality for costs associated with water department's use of its infrastructure.

TAX - WYOMING

Winney v. Hoback Ranches Property Owners Improvement and Service District

Supreme Court of Wyoming - November 24, 2021 - P.3d - 2021 WL 5504238 - 2021 WY 128

Landowners in rural residential subdivision brought action against neighbor and property owners improvement and service district, alleging violations of protective covenants and illegal imposition of property tax levies, and neighbor and district filed counterclaim alleging that landowners violated protective covenants.

The District Court granted summary judgment for district and, after a bench trial, entered judgment for neighbor on claim against him. Landowners appealed.

The Supreme Court held that:

- District's authority to levy taxes was not limited to eight mills as outlined in petition to form district;
- Protective covenant requiring buck and pole fencing applied to subdivision's perimeter fence on landowners' property;
- District's alternative argument as to inequities in enforcing covenant as to fencing was best left for a first determination on remand; and
- Neighbor's performance of road maintenance and snowplowing for subdivision did not violate covenant prohibiting commercial activity.

Authority of property owners improvement and service district, as a political subdivision of state, to levy taxes in rural residential subdivision in county was not limited to eight mills as outlined in petition to form district, where Improvement and Service District Act did not impose a mill levy or other cap on a district's authority to tax, Act specifically allowed a district to change amount or rate it charged for use of improvements and services it provided, and landowners were on notice that any district that was formed would have authority to collect revenue and to "change the amount or rate thereof.

TAX - LOUISIANA

Calcasieu Parish School Board Sales & Use Department v. Nelson Industrial Steam Company

Supreme Court of Louisiana - December 10, 2021 - So.3d - 2021 WL 5860861 - 2021-00552 (La. 10/10/21)

School board sales and use department and administrator of the department filed suit against steam company for failure to pay use tax on its purchase of limestone.

The District Court granted summary judgment in favor of plaintiffs. and denied company's exceptions, motion for summary judgment, and cross motion for summary judgment. Company appealed. The Court of Appeal reversed. The Supreme Court reversed and remanded. The Third Circuit Court of Appeal reversed. Application for review granted.

The Supreme Court held that amendment to use tax provision for materials further processed was new tax, within meaning of Tax Limitation Clause.

Amendment to use tax provision for materials further processed into a byproduct for sale, which included as taxable incidental byproducts that had previously been exempt from use tax as sales for further processing was "new tax," within meaning of Tax Limitation Clause, requiring that any levy of a new tax or tax increase be approved by two-thirds of the state legislature.

TAX - OHIO

State ex rel. Pike County Convention and Visitor's Bureau v. Pike County Board of Commissioners

Supreme Court of Ohio - November 16, 2021 - N.E.3d - 2021 WL 5313119 - 2021-Ohio-4031

County convention and visitor's bureau brought action against county board of commissioners and county auditor, seeking writ of mandamus compelling board and auditor to disburse to bureau the proceeds of a county-imposed sales tax on hotel lodging.

The Supreme Court held that:

- Bureau's claim was cognizable in mandamus;
- Board had discretion to redirect the tax proceeds to new entity;
- Board did not abuse its discretion in redirecting tax proceeds to new entity; and
- Bureau failed to establish clear legal right to retrospective monetary relief.

County convention and visitor's bureau's claim against county board of commissioners and county auditor, seeking disbursement to bureau of proceeds of county-imposed sales tax on hotel lodging based on statute authorizing the tax, was cognizable in mandamus; bureau's complaint sought to compel rather than prohibit official action, even though the requested relief would, in effect, prohibit the enforcement of certain resolutions of the board.

County board of commissioners, under statute authorizing tax on lodging, had discretion to redirect from county convention and visitor's bureau to another entity the proceeds of county-imposed sales tax on hotel lodging; other than prescribing a duty on board to earmark a residual percentage on tax proceeds for "the convention and visitors' bureau operating within the county," the statute said nothing more concerning the recipient of the funds, and the absence of statutory guidance concerning how an entity was designated to receive tax revenue was to be read as a grant of discretion on that point.

County board of commissioners did not abuse its discretion in redirecting from county convention and visitor's bureau to another entity the proceeds of county-imposed sales tax on hotel lodging, precluding bureau's claim for mandamus relief ordering board to disburse the proceeds to bureau prospectively; board explicitly enacted resolution redirecting the proceeds to new entity in response to documented findings of financial negligence by bureau, resolution referred to the findings as basis for the action taken, and period of more than a year between publication of the findings and passage of the resolution did not establish an arbitrary or unconscionable attitude on the part of the commissioners.

County convention and visitor's bureau failed to establish a clear legal right to retrospective monetary relief with respect to proceeds of county-imposed sales tax on hotel lodging allegedly withheld unlawfully or redirected by county, in bureau's mandamus action; resolution of county board of commissioners redirecting the proceeds to another entity was not an abuse of discretion under statute authorizing tax on lodging, and even if an earlier resolution of the board improperly withheld proceeds from the bureau, the bureau no longer qualified as entity designated to receive the proceeds under the statute in light of subsequent actions of the board.

Pot Taxes May Yield $12 Billion for States by 2030 Says Barclays.

- **Legal weed will blunt budget pain after federal aid runs out**
- **California raised about $1 billion in pot revenue in 9 months**

When U.S. states and municipalities burn through their federal coronavirus relief money, taxes on legal weed will help blunt the budget pain.

Cannabis tax revenue generated more than $2 billion in the U.S. last year and that could grow to $10 billion to $12 billion for states by 2030, exceeding tax revenue from alcohol, according to municipal-bond strategists at Barclays Plc. This year, five states–New York, New Jersey, Connecticut, Virginia and New Mexico legalized recreational pot, bringing to 18 the number of states enacting law to regulate and tax cannabis for adult use.

"We'll have some long lasting consequences of the pandemic and you'll need to make money up somewhere," said Mikhail Foux, Barclays head of municipal strategy.

For now, U.S. municipalities are swimming in cash. States and cities collected $350 billion from the Covid-19 stimulus package to spend on everything from subsides for low income renters to pay increases for teachers. They also plan to fund hundreds of millions of dollars on projects like broadband and water and sewer upgrades — and that's before they get another massive infusion of cash from the $550 billion infrastructure package approved last month.

Municipalities must commit the stimulus money by 2024, and spend it by 2026. And when the federal money's gone, municipalities will need to find new revenue to pay for ongoing programs they funded with one-time aid.

Legal sales of cannabis totaled $17 billion in 2020 and should grow to as much as $27 billion this year, according to Barclays. By 2030 sales should reach about $80 billion, the London-based bank estimates.

California took in almost $1 billion in cannabis tax revenue in the first three quarters of 2021, a 21% increase over the same period the prior year. California may bring in $1.7 billion in cannabis revenue by 2026, while New York, New Jersey and Connecticut could generate as much as $2 billion, Barclays estimated.

There's more growth potential in populous states like Florida and Pennsylvania that haven't yet legalized recreational weed.

Bloomberg Politics

By Martin Z Braun

December 3, 2021

[What Happens if Muni Bonds Stop Being Tax-Free?]

The 2017 Tax Cuts and Jobs Act was a wake-up call, one analyst says

For decades, everything from sewer systems to schools to stadiums have been built by debt issued by state and local governments. Municipal bonds are a mainstay of the American economy: They level the playing field between tiny towns and massive state economies, letting every issuer reach investors who want a steady stream of income that's also tax-free.

But what if tax-free bonds stopped being tax-free?

One analyst thinks the market should be more prepared for such a shift. "I don't see an immediate threat," said Tom Kozlik, head of municipal research at HilltopSecurities, in an interview with MarketWatch. But in an era where deficit reduction may start to resonate more for lawmakers even as low taxes reign supreme, Kozlik says the muni market needs to be vigilant.

Continue reading.

MarketWatch

By Andrea Riquier

Dec. 2, 2021

Fitch: Home Price Increases Have Varied Effect on Property Taxes

Fitch Ratings-New York-03 December 2021: Local governments in some states are better positioned to benefit in the near to medium term from strong home price growth, says Fitch Ratings. The potential revenue impact depends on a municipality's property tax regime, home price trends and the historical relationship between home price trends and property taxes, which reflects tax policy and government action. Fitch ranked states according to the possible tax revenue impact based on an index of these three factors.

Home price growth has surged in all states but has been uneven. Municipalities in states near the top of the ranking may see a boost to property taxes because of higher home price growth, the contribution of property taxes to total revenues and tax policies that capture this growth.

Property taxes are a smaller portion of overall tax revenues for municipalities in states ranked near the bottom. These states have had less exuberant home price growth, and there is little or no correlation between historic property taxes and house prices, partially due to atypical valuation cycles, rate limits and policy choices.

Continue reading.

IRS Sets Releases New Rules For Private Activity Municipal Bonds.

On November 10, 2021, the IRS released Rev. Proc. 2021-45 setting forth calendar year 2022 methodologies for establishing private activity bonds volume cap (state ceiling) as well as brokerage commissions on guaranteed investment contracts or investments purchased for a yield restricted defeasance escrows, such as those often used in housing and other community-oriented private activity bonds.

For calendar year 2022, the amounts used under § 146(d) of the Internal Revenue Code to calculate the state ceiling for the volume cap for private activity bonds is the greater of (1) $110 multiplied by the State population, or (2) $335,115,000. In addition, Rev. Proc. 2021-45 places limits on the issuance of agricultural bonds. For calendar year 2022, the loan limit amount on agricultural bonds under § 147(c)(2)(A) for first-time farmers is $575,400.

Rev. Proc. 2021-45 also set forth safe harbor rules for brokerage commissions on guaranteed investment contracts or investments purchased for a yield restricted defeasance escrow. For calendar year 2022, under § 1.148-5(e)(2)(iii)(B)(1), a broker's commission or similar fee for the acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow is reasonable if (1) the amount of the fee that the issuer treats as a qualified administrative cost does not exceed the lesser of (A) $43,000, and (B) 0.2 percent of the computational base (as defined in § 1.148-5(e)(2)(iii)(B)(2)) or, if more, $4,000; and (2) for any issue, the issuer does not treat more than $122,000 in brokers' commissions or similar fees as qualified administrative costs for all guaranteed investment contracts and investments for yield restricted defeasance escrows purchased with gross proceeds of the issue.

Taft Stettinius & Hollister LLP – Raymond Headen

November 23 2021

House Build Back Better Act: Details & Analysis of Tax Provisions in the $1.75 Trillion Reconciliation Bill.

The House Build Back Better plan would result in an estimated net revenue increase of about $1 trillion, 107,000 fewer jobs, and on average less after-tax incomes for the top 80 percent of taxpayers over the long run.

Read more.

Tax Foundation

[Links to State Tax-Exempt Bond Allocating Agencies: Novogradac]

[View the links.]

[2022 QAPs and Applications: Novogradac]

[View the 2022 QAPs and Applications.]

TAX - RHODE ISLAND

[Athena Providence Place v. Pare]

Supreme Court of Rhode Island - November 10, 2021 - A.3d - 2021 WL 5226361

Taxpayers petitioned for relief from city's tax assessments of their dwelling units in residential condominium development following a revaluation of units upon expiration of tax stabilization agreement for development.

After a bench trial, the Superior Court entered judgments for taxpayers. Tax assessor appealed.

The Supreme Court held that revaluation was not a selective assessment.

City's revaluation of taxpayer's dwelling units in residential condominium development upon expiration of tax stabilization agreement for development was not a selective assessment, where city's normal practice was to revalue and reassess properties upon expiration of a tax stabilization agreement, and there was no evidence that similar properties in city were not subjected to revaluation.

[Section 48D: A New Tax Credit for Electric Transmission Property - Foley & Lardner]

The Biden Administration has proposed the creation of a new tax credit under the new Section 48D of the Code for qualifying electric power transmission property that is placed in service after December 31, 2021, but before January 1, 2032 (such credit, the "**Section 48D Credit**"). The proposal would also allow a direct-pay option to elect a cash payment. The proposed credit would be for an amount equal to 6% of a to-be-determined eligible basis (the "**Base Rate**"), with a possible increase to 30% (the "**Bonus Rate**") if certain criteria are met.

Qualifying property would include overhead, submarine and underground transmission facilities meeting certain criteria, including a minimum voltage of 275 kV and a minimum transmission capacity of 500 MW, and any ancillary facilities and equipment necessary to operate such project. A qualifying electric transmission line may be a replacement, or upgrade, to an existing electric transmission line if the transmission capacity of such electric transmission line, as upgraded, increases to an amount equal to the existing capacity of such transmission line plus 500 MW. However, the basis allocable to the existing transmission line would not be eligible for the Section 48D Credit.

Certain property and projects already in process are not eligible for the Section 48D Credit if (i) a state or political subdivision thereof, any agency or instrumentality of the US, a public service or public utility commission or other similar body of any state or political subdivision, or the governing or rate-making body of an electric cooperative has, before the date of the enactment of these rules, selected such property for cost recovery, (ii) construction begins before January 1, 2022, or (iii) construction of any portion of the qualifying electric transmission line to which such property relates begins before January 1, 2022.

In addition to the technical requirements, to claim the credit at the Bonus Rate, the project must satisfy the new prevailing wage and apprenticeship requirements. To satisfy the prevailing wage requirement,any laborers and mechanics employed by contractors and subcontractors must be paid prevailing wages during the construction of such project and, in some cases, a defined period after. To satisfy the apprenticeship requirement, no less than the applicable percentage of total labor hours (5% for projects for which construction begins in 2022, 10% for projects beginning construction in 2023, and 15% thereafter) must be performed by qualified apprentices. Additionally, each contractor and subcontractor who employs four or more individuals to perform construction on an applicable project must also employ at least one qualified apprentice or, in the case of a lack of availability, show a good faith effort to do so. If a non-exempt project fails to meet the wage and apprenticeship requirements, but otherwise meets the technical requirements for the Section 48D Credit, such property will qualify for the Base Rate.

Finally, qualifying electric power transmission property is eligible for an increase to either the Base Rate or the Bonus Rate if such project meets the domestic content requirement, which requires the steel, iron, or other manufactured products that comprise the project be produced in the United States (i.e., at least 55% of the total cost of the components of such product is attributable to components that are mined, produced, or manufactured in the United States). Projects satisfying this requirement could be eligible for a 2% increase to the Base Rate or a 10% increase to the Bonus Rate.

Friday, October 15, 2021

Foley & Lardner LLP

TAX - GEORGIA

Executive Limousine Transportation, Inc. v. Curry

Court of Appeals of Georgia - October 26, 2021 - S.E.2d - 2021 WL 4979102

Licensed limousine carrier filed action challenging the decision of the commissioner of the department of revenue denying carrier's application for a refund of previously remitted state and local-option sales taxes as well as a declaration that owner would owe no such taxes in the future.

The Tax Tribunal granted summary judgment in favor of commissioner. Carrier appealed. The Superior Court affirmed. Application for discretionary review was granted.

The Court of Appeals, as a matter of first impression, held that Georgia Limousine Carrier Act did not prohibit local governments from imposing state or local-option sales taxes on for-hire limousine carriers.

Georgia Limousine Carrier Act, which barred local governments from imposing excise, license, and occupation taxes on limousine carriers, did not prohibit local governments from imposing state or local-option sales taxes on for-hire limousine carriers and their customers for the rental of limousines.

TAX - ILLINOIS

Guns Save Life, Inc. v. Ali

Supreme Court of Illinois - October 21, 2021 - N.E.3d - 2021 IL 126014 - 2021 WL 4898891

Gun rights organization, firearm supply retailer, and individual resident of county brought action against county and related defendants for declaratory judgment and injunctive relief challenging county ordinances imposing taxes on sale of firearms and certain types of ammunition.

Following order dismissing retailer and resident's challenges to firearms tax, the Circuit Court denied plaintiffs' motion for summary judgment and granted summary judgment in favor of defendants. Plaintiffs appealed, and Appellate Court affirmed. The Supreme Court allowed leave to appeal.

The Supreme Court held that tax ordinances were unconstitutional under the uniformity clause.

Relationship between tax classifications in county ordinances imposing taxes on sale of firearms and certain types of ammunition and use of tax proceeds was not sufficiently tied to the stated objective of ameliorating costs of gun violence, and thus tax ordinances were unconstitutional under the uniformity clause; revenue generated from the firearm taxes was not directed to any fund or program specifically related to curbing the cost of gun violence, and nothing in the ordinances indicated that the proceeds generated from the ammunition tax must be specifically directed to initiatives aimed at reducing gun violence.

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Georgia Limousine Carrier Act, which barred local governments from imposing excise, license, and occupation taxes on limousine carriers, did not prohibit local governments from imposing state or local-option sales taxes on for-hire limousine carriers and their customers for the rental of limousines.

It's Long Overdue for Public Finance Scholars to Study Racism in the Tax Code.

In reckoning and renewed attention to issues of racial equity and justice. This long-overdue awakening led me to read extensively about racism and to think about interactions between race and tax policy. In a new paper, "Public finance and racism," I explore some of these links.

While I've studied tax policy for over 30 years, I'd not yet spent much time focusing on connections between race and tax issues that clearly exist.

Three observations, however, are abundantly clear. First, widespread and long-standing racial discrimination in the United States has had enormous, lasting, and deleterious economic effects on Black households. Second, tax policies and other government policies have contributed materially to this problem. Third, changes to the tax code, spending programs, or regulations can help ameliorate the effects of racism, but it is crucial to take into account the persistent effects of racism and the impact of past policies on Black households. Policies that some may view as race-blind may still cement the status quo and reinforce the ills of past and continuing racism.

Continue reading.

The Brookings Institution

by William G. Gale

November 4, 2021

S&P: Online Sales Tax Collections Continue To Grow; Helped Offset Pandemic Declines Last Year

Key Takeaways

- Since the South Dakota v. Wayfair, Inc. decision in June 2018, online sales tax collections have surged across the U.S. with the enactment of economic nexus laws, which consider remote sellers to have an economic presence in a state if they meet certain sales or revenue thresholds.
- All states with a sales tax have enacted marketplace facilitator collection laws. This requires online marketplaces to collect taxes on behalf of their sellers, leading to more online sales being incorporated into governments' tax bases.
- Online sales tax collections helped mitigate pandemic-related declines in total sales tax collections for many U.S. cities in 2020 and we expect these collections will help support sales tax revenues as online sales proliferate the marketplace.

Continue reading.

28 Oct, 2021

TAX - NEW HAMPSHIRE

Shaw's Supermarkets, Inc. v. Town of Windham

Supreme Court of New Hampshire - October 20, 2021 - A.3d - 2021 WL 4888979

Commercial tenant appealed town's denial of its property tax abatement claim.

The Superior Court denied town's motion to dismiss for lack of standing, and the Court granted the tax abatement request. Town appealed.

The Supreme Court held that:

- Tenant had standing to maintain property tax abatement claim, and
- Tenant's appraisal was credible and thus supported determination of fair market value of the property.

Commercial tenant had standing to maintain property tax abatement claim, as it actually paid the allegedly disproportionate tax to the town on the landowner's behalf, and, under its lease, would have been required to reimburse the landowner for 100% of the tax paid if the landowner had made the payment itself.

Appraisal by commercial tenant's appraiser was credible and thus supported determination of fair market value of the property, even if it deviated from the uniform standards of professional appraisal practice; trial court addressed the deviations and determined that the appraiser's trial testimony sufficiently responded to the town's objections.

IRS Moves to Mandatory E-Filing of Forms for Direct Payment Bonds.

The Internal Revenue Service has moved to mandatory electronic filing of its Form 8038-CP, its form for returning credit payments to issuers of qualified bonds.

That and a number of other developments were announced during the IRS update as part of the Government Finance Officers Association's 3rd annual MiniMuni conference.

"The IRS is moving to e-filing of 8038-CP for those of you that want direct payments on your Build America Bonds," said Johanna Som de Cerff, senior technician reviewer, IRS Office of Chief Counsel Financial Institutions and Products Division Branch 5.

The IRS published its proposal for electronic filing in the federal register on July 23 requesting comments and on Oct. 22, announced that they will officially be moving to electronic filing of these forms. Soon, electronic filing will be mandatory, despite not rolling the program out quite yet.

"New forms have been designed and those, even the paper form, needs to be used for the 2022 filing year," Som de Cerff said.

She also urged panelists to subscribe to the IRS's newsletter, where all related developments of this sort will be announced. "You'll be getting detailed later as to when the electronic filing is actually going to be available," she said.

This is part of a larger effort by the IRS to respond to the COVID-19 pandemic, in addition to wider modernization and restructuring efforts happening across the agency, with further updates for bond issuers coming down the line.

"We are going to update the revenue procedure on the recovery of rebate overpayments," Som de Cerff said. She didn't mention updates to Form 8038-R, which deals with this issue, by name, but mentioned that updates to the procedure for how to ask for those rebates will be centralized in one document.

"We don't know if it's exactly going to be this year, but it's certainly one of our priorities that we're working on," she said.

The agency is also working on developing regulations for the transition from LIBOR.

"You saw proposed regulations a couple years ago, we had a revenue procedure on fallback rates," Som de Cerff said. "But the final regulations are being worked on being very conscious of the fact that LIBOR and other IBORs may be disappearing fairly soon," she added. "So that is a very active project as well.

The Bond Buyer

By Connor Hussey

October 22 2021

[Hawkins Advisory: Revisions to IRS Form 8038-CP and Instructions for Issuers of Tax Credit Bonds]

The Internal Revenue Service has released, in draft form, a new Form 8038-CP, Return for Credit Payments to Issuers of Qualified Bonds (the "Form"), and new Schedule A, Specific Tax Credit Bonds Interest Limit Computation ("Schedule A"). While the new Form and Schedule A are not yet final, and should not yet be used by issuers in their current form, the IRS's objective in revising these documents is to facilitate electronic filing of the Form in 2022.

Attached, please find the Hawkins Advisory regarding the new Form 8038-CP and Schedule A.

Ending the State and Local Taxes (SALT) Deduction: Brookings Podcast

Millions of American taxpayers itemize their deductions, one of which is for state and local taxes, or the SALT deduction. Most of these filers are at the upper end of the income distribution and live in high-income urban areas. On this episode, Senior Fellow Richard Reeves, director of the Future of the Middle Class Initiative at Brookings, says the SALT deduction mostly benefits the wealthiest taxpayers, gives little or no benefit to the middle class, and should be eliminated entirely. He also talks about the unusual politics of the debate in Washington, where Democratic leaders are calling for repeal of the SALT deduction CAP put in place in the 2017 tax law, championed by congressional Republicans.

Listen to Podcast.

The Brookings Institution

Richard V. Reeves and Fred Dews

Friday, October 22, 2021

[Illinois Supreme Court Strikes Down Cook County Tax on Guns as Unconstitutional.]

Majority leaves door open for narrower tax language

The Illinois Supreme Court ruled Thursday that a Cook County tax on gun purchases is unconstitutional, but it left the door open for a more tailored tax that specifically goes toward mitigating gun violence and its effects.

The Cook County gun tax, which took effect in April 2013, imposed a $25 fee for retail gun purchases in the county, as well as a 5 cent fee per cartridge of centerfire ammunition and 1 cent per cartridge fee for rimfire ammunition.

The taxes were challenged by the trade group Guns Save Life Inc. in a lawsuit against the county.

The Supreme Court's Thursday opinion, written by Justice Mary Jane Theis, stated that, "While the taxes do not directly burden a law-abiding citizen's right to use a firearm for self-defense, they do directly burden a law-abiding citizen's right to acquire a firearm and the necessary ammunition for self-defense."

In the 14-page, 6-0 opinion, the Supreme Court reversed an appellate court ruling that would have allowed the taxes to stay in place. Chief Justice Anne Burke did not take part in the decision.

While the court rejected the tax, it did specifically note that the county's failure to earmark the revenue from the tax for gun violence prevention programs played a major role in the decision.

It gave particular scrutiny to the question of whether the tax violated the uniformity clause of the Illinois Constitution, which states: "In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly."

Citing previous court precedent related to that clause, the court wrote it had to determine whether the tax on guns "bears some reasonable relationship to the object of the legislation or to public policy."

"Under the plain language of the ordinances, the revenue generated from the firearm tax is not directed to any fund or program specifically related to curbing the cost of gun violence," the court wrote. "Additionally, nothing in the ordinance indicates that the proceeds generated from the ammunition tax must be specifically directed to initiatives aimed at reducing gun violence. Thus, we hold the tax ordinances are unconstitutional under the uniformity clause."

Justice Michael Burke agreed with the opinion, but issued a four-page special concurrence disagreeing with the majority's analysis that the county's spending plans affected whether the tax was permissible.

"The majority's analysis is problematic because it leaves space for a municipality to enact a future tax — singling out guns and ammunition sales — that is more narrowly tailored to the purpose of ameliorating gun violence," Michael Burke wrote.

He argued the majority opinion is leading the county "down a road of futility," citing Article 1, Section 22 of the state constitution, which reads: "Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed."

"The only problem with the majority's approach — and the guidance it offers the county — is that such counsel, if followed, would still violate the provision of the Illinois Constitution noted above that plainly states that the right of the individual to keep and bear arms is subject only to the police power, not the power to tax," he wrote.

"Thus, the majority is leading the county down a road of futility," he added.

One major precedent cited by the court was from Boynton vs. Kusper, a 1986 Supreme Court ruling which struck down a $10 state tax on marriage licenses in certain counties that went to the Domestic Violence Shelter and Services fund.

The court said at the time the marriage license tax "directly impeded the exercise of the fundamental right to marry," and should be subject to greater scrutiny.

The court ruled in the Boynton case that even though the $10 fee was "de minimis," or small, if the court granted that authority, it would essentially mean "there is no limit on the amount of the tax that may be imposed," according to previous case law.

The same argument can be applied to the gun tax, the court wrote, noting that a stricter level of scrutiny is needed because the tax applies to a fundamental right.

Given that necessary scrutiny, the court ruled the gun taxes unconstitutional.

"In applying that standard to the firearm and ammunition taxes, we recognize that the uniformity clause was 'not designed as a straitjacket' for the county … and acknowledge the costs that gun violence imposes on society," the court wrote. "Nevertheless, the relationship between the tax classification and the use of the tax proceeds is not sufficiently tied to the stated objective of ameliorating those costs."

In a statement, a Cook County spokesperson noted shootings in Chicago are up nearly 10% over the last year with almost 2,900 shooting incidents this year, and said guns "have had a significant impact on the County's public safety, health and general expenditures."

The county intends to meet with its legal counsel and "determine any next steps that may be warranted," according to the statement.

"Addressing societal costs of gun violence in Cook County is substantial and an important governmental objective," the spokesperson said. "We continue to maintain that the cost of a bullet should reflect, even if just a little bit, the cost of the violence that ultimately is not possible without the bullet. We are committed to protecting County residents from the plague of gun violence with or without this tax."

Capitol News Illinois

by Jerry Nowicki

Oct 22, 2021

Capitol News Illinois is a nonprofit, nonpartisan news service covering state government and *distributed to more than 400 newspapers statewide. It is funded primarily by the Illinois Press Foundation and the Robert R. McCormick Foundation.*

TAX - NEW HAMPSHIRE

Merrimack Premium Outlets, LLC v. Town of Merrimack

Supreme Court of New Hampshire - October 1, 2021 - A.3d - 2021 WL 4487259

Property owner and operator of retail outlet shopping mall, which leased property, brought action against town for declaratory judgment and injunctive relief challenging town's reassessment of taxable property.

The Superior Court granted town's motion to dismiss complaint for failure to state claim, to extent that it sought declaratory relief on basis that town lacked authority to change assessed value of property, and dismissed constitutional claim with prejudice as discovery sanction, and subsequently denied plaintiffs' motion for reconsideration. Parties cross-appealed.

Holdings: The Supreme Court, Hicks, J., held that:

- Some "change" is a prerequisite to a municipality's legal authority to adjust a property's tax assessment under provision of statute which directs assessors and selectmen to annually adjust assessments to reflect changes;
- Extreme underassessment of property was not "change" that would allow town to adjust assessment the following year; and
- Reassessment of value of property was not necessary to ensure proportionality required by statute or state Constitution.

Town's extreme underassessment of property on which retail outlet shopping mall was operated was not "change" that would allow town to adjust assessment under provision of statute which directed assessors and selectmen to annually adjust assessments to reflect changes; statute governing how property was appraised required assessors and selectmen to appraise all taxable property, other than certain types of property specifically excepted, "at its market value," meaning property's full and true value as the same would be appraised in payment of a just debt from a solvent debtor, and town's acquisition of information bearing on property's value, in connection with property's use as collateral for loan, was not change in value itself.

Reassessment of value of property on which retail outlet shopping mall was operated to correct extreme underassessment of property the previous year was not necessary to ensure proportionality required by statute governing adjustment of assessments and state Constitution; under statute's plain language, annual adjustment so that all assessments were reasonably proportional within municipality had to occur "to reflect changes," and underassessment did not qualify as "change," current statutory scheme sought to ensure proportionality through municipality-wide reappraisals at least every five years and annual adjustments to assessments of properties that had changed in value, and town did not raise developed claim that statutory scheme violated Constitution.

A Tax Loophole for Greenwich.

The House Ways and Means bill includes a carve-out for munis.

The House Ways and Means Committee section of the $3.5 trillion tax and spending bill includes myriad tax carve-outs and credits for liberal special interests. Drawing particular attention from the wealthy in Greenwich and Silicon Valley is an exemption for municipal bonds from a 3% income-tax surcharge.

The proposed 3% surcharge applies to modified adjusted gross income (MAGI) above $5 million a year. A taxpayer's MAGI includes some deductions that are excluded from AGI such as tax-exempt interest for municipal bonds. The IRS uses MAGI rather than AGI to determine a taxpayer's eligibility for several deductions, including IRA contributions.

Democrats are applying the 3% surcharge to MAGI to capture more of high earners' income and limit tax arbitrage. So a taxpayer with an AGI well below $5 million could get soaked. Yet the bill carves out interest from muni debt from MAGI so that states and cities don't get caught in the backwash.

Many high earners use muni bonds to avoid taxes. Muni bonds are especially valuable in states with high income-tax rates like California and New York because they are also exempt from state and local taxes. Investors have poured into muni bond funds this year as Democrats have threatened enormous tax increases. This has pushed down muni-bond yields to record lows and reduced borrowing costs for states and cities. The S&P muni-bond index was yielding a mere 1.07% on Friday.

State and local governments raised alarms that the 3% surcharge, if applied to interest on municipal bonds, could reduce their value to investors and raise borrowing costs. Suddenly, California and New York might have to pay more to fund their bloated governments.

"We were concerned that this proposal, if implemented, could impact tax-exempt interest as well, and would be bearish for municipals," Citigroup explained in a research note last week. "However, based on feedback from tax experts and Ways and Means Committee staff, we now believe that the 3% surcharge will not apply to tax-exempt interest." Sighs of relief all around in Albany, Springfield—and the Goldman Sachs executive floor.

The surcharge will raise the top marginal income-tax rate to 46.4%, including the 3.8% net investment tax. Add state and local taxes and the wealthy in Silicon Valley and New York could pay some 60% of their income in taxes. But they will pay nothing on munis. Some tax avoidance schemes are apparently more equal than others.

The Wall Street Journal

By The Editorial Board

Sept. 27, 2021 6:45 pm ET

TAX - OHIO

Lamar Advantage GP Company, L.L.C. v. Cincinnati

Supreme Court of Ohio - September 16, 2021 - N.E.3d - 2021 WL 4201656 - 2021-Ohi--3155

Billboard operators filed suit against city challenging the constitutionality of an excise tax on billboards and moved for a permanent injunction to preclude the city from enforcing the tax.

After granting a preliminary injunction the Court of Common Pleas found the tax unconstitutional and granted permanent injunction. City appealed. The First District Court of Appeals affirmed in part, reversed in part, and remanded. Billboard operators appealed.

The Supreme Court held that City excise tax that fell predominantly on two billboard operators violated the First Amendment.

City excise tax on outdoor advertising signs, which was imposed solely upon two billboard operators, was a discriminatory tax that violated the rights to freedom of speech and free press protected by the First Amendment; tax liability was based on means of communication, was not generally applicable and did not even apply to all advertisers or all advertising signs, but rather, applied to signs that were leased to third parties and included so many exceptions that it targeted and fell upon two billboard operators, and it burdened First Amendment activities, as it required the two operators to remove almost 10% of their billboards, thereby limiting dissemination of protected content.

TAX - GEORGIA

[Stanford v. City of Atlanta]

Court of Appeals of Georgia - September 27, 2021 - S.E.2d - 2021 WL 4397479

Commercial property owner brought putative class action against city, alleging that city's assessment of annual frontage fees constituted an illegal tax as opposed to a reasonable fee for solid waste services.

The Superior Court granted city's motion to dismiss. Owner appealed.

The Court of Appeals held that:

- Plaintiff sufficiently pled the terms and provisions of city ordinances, so as to withstand motion to dismiss based on her failure to attach certified copies to the complaint, and
- Right for any reason doctrine did not apply to affirm trial court's grant of the motion to dismiss.

Commercial property owner sufficiently pled the terms and provisions of city ordinances that modified the city code section on frontage fees by increasing annual solid waste fees assessed on commercial property owners and initiating a new mandatory multi-family unit fee to owners of multi-family units, even though she did not attach certified copies of city code or ordinances to her original or amended complaints, so as to withstand city's motion to dismiss in her putative class action alleging that the collection of the frontage fees constituted an illegal tax, where copies of the ordinances had been made part of the record after being introduced at a certification hearing by owner's predecessor-in-interest and owner demonstrated that a certified copy of the ordinances could be introduced at trial or during an evidentiary proceeding.

Right for any reason doctrine did not apply to affirm trial court's grant of city's motion to dismiss commercial property owner's putative class action alleging that city's assessment of solid waste and multi-family unit frontage fees constituted an illegal tax as opposed to a reasonable fee for solid waste services, where judicial economy would be maximized by returning the case to the trial court due to issues having been left undecided by the trial court, including owner's allegations that city had not engaged in collection of solid waste from owners of commercial properties despite collection of solid waste fees and that assessment of mandatory solid waste and multi-unit fees substantially exceeded the actual reasonable cost of the services.

TAX - DISTRICT OF COLUMBIA

Davis v. District of Columbia

District of Columbia Court of Appeals - September 16, 2021 - A.3d - 2021 WL 4203053

Former employee of District of Columbia Office of Tax and Revenue (OTR) brought action against District of Columbia, alleging that she was terminated for disclosing that method for appraising certain properties was wrong and perpetuating tax scam and seeking to hold District liable for her termination under the D.C. Whistleblower Protection Act.

The Superior Court granted summary judgment to District and denied former employee's motion to amend complaint. Former employee appealed.

The Court of Appeals held that:

- Disinterested observer could not have reasonably concluded that using cost method to assess commercial properties was gross mismanagement;
- Disinterested observer could not have reasonably concluded that using cost method was gross misuse or waste of public resources or funds; and
- Claim that former employee was wrongfully discharged in violation of public policy was futile.

Disinterested observer, with employee's knowledge of essential facts, could not have reasonably concluded that using cost method, rather than income method, to assess commercial properties in city was gross mismanagement, for purpose of determining whether disclosure by employee of District of Columbia Office of Tax and Revenue (OTR) that OTR's use of cost method to value property was wrong and costing District tax revenue was "protected disclosure" under D.C. Whistleblower Protection Act; employee did not identify authority that said cost approach could not appropriately be applied to properties that were fully depreciated but producing significant income, like those at issue, and evidence showed that valuations based on income approach were not much higher or more accurate predictors than cost-approach valuations.

Disinterested observer, with employee's knowledge of essential facts, could not have reasonably concluded that using cost method, rather than income method, to assess commercial properties in city was gross misuse or waste of public resources or funds, for purpose of determining whether disclosure by employee of District of Columbia Office of Tax and Revenue (OTR) that OTR's use of cost method to value property, was wrong and costing District tax revenue was "protected disclosure" under D.C. Whistleblower Protection Act, even though employee argued that OTR's use of cost method grossly wasted public funds by costing District millions in tax revenue; yet-to-be collected revenue, which was not in District's coffers, was not public resource or fund.

TAX - NEW HAMPSHIRE

Appeal of Town of Chester

Supreme Court of New Hampshire - September 16, 2021 - A.3d - 2021 WL 4202532

Towns sought judicial review of an order of the Board of Tax and Land Appeals granting taxpayer, an electric utility company, abatements of taxes assessed against its property located in the towns.

The Supreme Court held that:

- Board had jurisdiction to grant abatements, and
- Board properly applied stipulated equalization ratios to aggregate fair market values of taxpayer's property.

Board of Tax and Land Appeals had jurisdiction to grant abatements of taxes assessed against electric utility company's fee simple land interests, where company submitted abatement requests to towns' assessors listing all of its property in each municipality for each relevant tax year, and company submitted the same list of properties as the subject of its appeals to the Board and responded "n/a" to application sections requesting information about company's other properties, so that the record showed that company challenged the proportionality of the towns' assessments of all of company's land interests.

Board of Tax and Land Appeals properly applied stipulated equalization ratios to the aggregate fair market values of electric utility company's taxable property as set forth in an expert's appraisal report to determine whether towns' assessments were proportionate, on appeal from towns' denial of company's abatement requests; both experts whose reports were considered by the Board opined that the final valuations of company's land interests set forth in their reports reflected the fair market value of those interests, not equalized assessed values, and the fact that both experts concluded that the assessed value of company's fee simple land interests represented the fair market value of those interests did not necessarily mean that the towns assessed those interests proportionately.

TAX - CONNECTICUT

Rainbow Housing Corporation v. Town of Cromwell

Supreme Court of Connecticut - September 1, 2021 - A.3d - 2021 WL 3918895

Taxpayers, which were tax-exempt charitable organizations, sought review of town board of assessment appeals' denial of charitable exemption for real property used for residential mental health treatment program.

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

The Supreme Court held that:

- Parties' stipulation as to a "complete" tax exempt application was stipulation as to facts allowing finding of aggrievement for standing purposes, and
- Housing provided by treatment program was temporary housing under charitable exemption.

Taxpayers that were tax-exempt charitable organizations were aggrieved by town's denial of their application for charitable exemption for their real property used for a residential mental health treatment program, and thus taxpayers had standing for tax appeal, even if taxpayers did not provide assessor with information about average stay of residents at property, rents, amount of income received from rent, and existence of any rent subsidies by government, where parties stipulated that tax exemption application was complete.

Supreme Court would review town's unpreserved claim that taxpayers lacked aggrievement as a component of standing, since claim implicated trial court's subject matter jurisdiction, in tax appeal concerning denial of tax exemption for real property owned by a tax-exempt charitable organization and used exclusively for charitable purposes.

Housing provided by residential mental health treatment program of tax-exempt charitable organizations was “temporary housing” under charitable tax exemption pertaining to real property used for temporary housing, where housing was not permanent, furthered organizations’ charitable purpose of providing treatment to men with severe mental health issues, and was designed to successfully transition residents into community.

[Future Opportunity Zone Reform, With Mike Novogradac And John Sciarretti.]()

What tax policy changes may unfold soon, and how might Opportunity Zones be reformed later this year or in 2022? Mike Novogradac is the managing partner of Novogradac, a top 50 accounting firm founded in…

[CONTINUE READING »]()

OpportunityDb

September 29, 2021

TAX - ARIZONA

[Fann v. Arizona]()

Supreme Court of Arizona - August 19, 2021 - 51 Arizona Cases Digest 26 - 493 P.3d 246

Taxpayers brought action against State challenging constitutionality of a citizens’ initiative imposing income tax surcharge on high-income taxpayers to provide direct funding to schools as violative of education expenditure and tax enactment clauses of State Constitution.

The Superior Court denied taxpayers’ motion for preliminary injunction. Taxpayers appealed, and transfer was granted.

The Supreme Court held that:

- Case was ripe for decision;
- Initiative’s provision stating that monies were not local revenues was facially unconstitutional under education expenditure clause;
- Initiative’s allocation provision was unconstitutional to extent that the allocated revenues exceeded expenditure limits;
- Allocation provision could not be severed;
- Initiative’s provision on revenue control limitations was unconstitutional to extent expenditures exceeded expenditure limits; and
- Initiative was not an “act” subject to requirements of tax enactment clause.

Direct funding to schools under a citizens’ initiative imposing income tax surcharge on high-income taxpayers was not a “grant” under grant exception of education expenditure clause of State Constitution, which exempted grants from definition of local revenues, and therefore the initiative’s local revenues provision, stating that monies from the initiative were not considered local revenues under the expenditure clause, was facially unconstitutional.

Allocation provision of citizens' initiative that imposed income tax surcharge on high-income taxpayers to provide direct funding to schools was unconstitutional to the extent that the allocated revenues exceeded expenditure limits set by education expenditure clause of State Constitution, under which the initiative's local revenues provision was facially unconstitutional in stating that monies from initiative were not local revenues for purposes of the education expenditure clause.

TAX - MARYLAND

[Mayor and City Council of Ocean City v. Commissioners of Worcester County, Maryland]()

Court of Appeals of Maryland - August 5, 2021 - A.3d - 2021 WL 3417685

Municipality brought action seeking declaratory judgment that tax setoff laws were unconstitutional because they treated different municipalities differently.

The Circuit Court dismissed the action. Municipality appealed. The Court of Special Appeals affirmed. Municipality's petition for writ of certiorari was granted.

The Court of Appeals held that statutes providing for mandatory real property tax setoffs did not violate uniformity requirement in Constitution.

Statutes providing for mandatory real property tax setoffs did not regulate matters of purely local concern, and therefore they did not violate Constitutional provision requiring General Assembly to act in relation to government or affairs of any municipal corporation only by general laws that in their terms and in their effect applied uniformly, since tax setoff statutes strongly affected county residents who resided outside of municipality.

The requirement of the Constitutional provision requiring General Assembly to act in relation to government or affairs of any municipal corporation only by general laws that in their terms and in their effect apply uniformly does not apply to statutes providing for mandatory real property tax setoffs because those statutes do not relate to purely local affairs.

[Sun Belt OZs vs. Midwest OZs, With Lawrence Jatsek.]()

What are some of the key similarities and differences between Sun Belt Opportunity Zone deals and Midwest Opportunity Zone deals?

[CONTINUE READING »]()

September 22, 2021

TAX - PENNSYLVANIA

[City of Erie v. Erie County Board of Assessment Appeals]()

Commonwealth Court of Pennsylvania - July 14, 2021 - Slip Copy - 2021 WL 2944364

City of Erie and Erie City School District (collectively, Taxing Authorities) appealed the order of the

Erie County Court of Common Pleas granting the summary judgment motion of the Erie County Board of Assessment Appeals (Board) and Erie County Convention Center Authority (Convention Authority) and finding that the Sheraton (Sheraton) and Courtyard by Marriott (Courtyard) hotels (collectively, Hotels) and appurtenant parking garages owned by the Convention Authority are not subject to real estate taxation by the Taxing Authorities.

The Commonwealth Court affirmed.

The Convention Authority built the Bayfront Convention Center (BCC) located on the shoreline of Presque Isle Bay, which opened on August 2, 2007. At the same time, the Convention Authority constructed the 200-room Sheraton, which opened in 2008. The Convention Authority also constructed the 192-room Courtyard, which opened in 2015.

On September 28, 2016, the Board sent a "Notice of Change of Assessment" to the Convention Authority regarding the tax-exempt status of the hotel properties. The Board's action was premised on the fact that at least 63% of hotel occupancy was attributable to the general public, rather than to convention-related business.

The Commonwealth Court found that, "the commingling of the general public's use of the Sheraton and Courtyard hotel rooms with those used for BCC-related functions in no way affects the immunity of the Convention Authority's hotel properties herein. All such uses are a necessary and essential component of, and directly tied to, the Convention Authority's statutory purpose as set forth in the Act and the Alternative Act 'for the public purpose of promoting, attracting, stimulating, developing and expanding business, industry, commerce and tourism[,]' and 'of acquiring, holding, developing, designing, constructing, improving, maintaining, managing, operating, financing, furnishing, fixturing, equipping, repairing, … and owning convention center facilities, or parts thereof,' because the statutory definition of 'convention center facilities' specifically includes 'any land, improvement, structure, building, or part thereof, or property interest therein, … owned by … an authority, … and all facilities, furniture, fixtures and equipment necessary and incident thereto, including hotels ….'"

[Environmentally Sustainable Workforce Housing in OZs.]

Environmentally Sustainable Workforce Housing in OZs, With Majesty Gayle

How can Opportunity Zones be leveraged to create more affordable housing that has a commitment to sustainability? Majesty Gayle is…

CONTINUE READING »

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September 8, 2021

Coalition Building In Opportunity Zones.

Coalition Building In Opportunity Zones, With Bob Richardson

What are some of the biggest lessons learned from the first three years of the Opportunity Zones program? Bob Richardson…

CONTINUE READING »

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September 15, 2021

Cincinnati's Billboard Tax Declared Unconstitutional by Ohio Supreme Court Ruling.

The Ohio Supreme Court on Thursday blocked the city of Cincinnati's tax on billboard advertising, saying it violates the billboard operator's First Amendment rights.

The city enacted the tax on billboard advertising in 2018 to help close a $2.5 million budget gap.

Ohio Supreme Court Justice Sharon Kennedy wrote in the majority opinion that "a selective tax creates the intolerable potential of self-censorship by the press and abuse by governmental actors aimed to suppress, compel, or punish speech."

The high court's decision reverses a ruling by the First District Court of Appeals.

Cincinnati City Council imposed the billboard tax, which called for 7% on gross receipts generated by the billboard or an annual minimum fee based on the sign location and size. It was projected to raise $709,000 a year.

Lamar Advantage GP Co. and Norton Outdoor Advertising, which control 90% of Cincinnati's billboard signs, sued to block the tax. The companies said it'd make it unsustainable to operate their least-profitable billboards and 70 to 80 of the 865 signs the companies operate in Cincinnati would be removed.

So where does the First Amendment issue come in? Roughly 25% to 30% of the sign space is donated for public service announcements and the companies' own speech, such as tributes to notable public figures.

Kennedy said that the "press" includes not only newspapers, books, and magazines, but has been extended to many other media, including cable television.

by Laura A. Bischoff

September 16, 2021

Cincinnati Enquirer

Telephonic TEFRA Hearings are Now Available Through March 31, 2022: Squire Patton Boggs

On November 4, 2020, we all thought that the COVID-19 pandemic was going to be long over by now. We certainly did not think we were going to get so far down the Greek alphabet of variants of this virus. And, this author certainly did not think that she was going to have to keep looking up what the next letter of the Greek alphabet is. Now we are at mu, and there does not seem to be an end in sight.

It seems like when the IRS issued Revenue Procedure 2020-49, it thought that the COVID-19 pandemic was going to be over by now too. As a reminder, on November 4, 2020, the IRS issued Revenue Procedure 2020-49, which allowed telephonic TEFRA hearings to continue through September 30, 2021. Specifically, during this period, a governmental unit can meet the TEFRA requirement that the public hearing be held in a convenient location for affected residents by affording the general public access to the hearing by toll-free telephone call.[1]

With September 30th right around the corner, public finance tax attorneys were starting to get nervous[2] about whether these hearings were going to have to be in-person as cases are back on the rise. We can all breathe a sigh of relief because yesterday the IRS has further extended the period during which telephonic TEFRA hearings can be held in lieu of in-person TEFRA hearings until **March 31, 2022** through issued Revenue Procedure 2021-39.

Hopefully this will be the last extension that we need and we won't have variants that start sounding like sororities.

[1] The authors of this blog are still explaining to people what constitutes a toll-free number.

[2] More nervous than we usually are.

By Taylor Klavan on September 1, 2021

Squire Patton Boggs

Hawkins Advisory: Rev. Proc. 2021-39 - Extension of Ability to Hold Telephonic TEFRA Hearings

In response to the ongoing COVID-19 public health concerns and the continuation of local restrictions on public gatherings, the Internal Revenue Service has issued Revenue Procedure 2021-39, extending the period during which issuers may hold telephonic hearings to March 31, 2022.

Read the Hawkins Advisory.

TAX - CONNECTICUT

Boardwalk Realty Associates, LLC v. M & S Gateway Associates, LLC

Supreme Court of Connecticut - August 13, 2021 - A.3d - 2021 WL 3610351

Court-appointed receiver of rents brought action car dealership operators seeking to collect unpaid rent as well as use and occupancy payments as part of town's effort to collect unpaid property taxes on parcel of commercial property that was abandoned by its owner.

The Superior Court entered summary judgment for operators. Receiver appealed.

The Supreme Court held that as a matter of first impression, receiver did not have statutory authority to impose or collect rent or use and occupancy payments where the property had been abandoned prior to his appointment.

Receiver who was appointed under statute that permitted appointment of a receiver of rents when real property taxes due to a municipality were delinquent was not statutorily authorized to impose or collect rent or use and occupancy payments where the property had been abandoned by the owner prior to the appointment of the receiver and there was no existing obligation for the receiver to enforce

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Act Before Year End to Maximize Opportunity Zone Benefits.

If you are planning to acquire or build a senior living facility that is located in an opportunity zone, there are many tax benefits that are available to you. One of these benefits is that 10% of the capital gains that you defer when you make your investment in an opportunity zone will be forgiven, provided your investment is made by December 31, 2021, and held for at least 5 years.

Time is running out on when you can make your investment. However, while the investment must be made before year end, your acquisition can occur after this date if you properly structure your transaction to take advantage of the working capital safe harbor.

For a discussion of the tax benefits associated with opportunity zone investments and the requirements to qualify for them, download our brief primer.

If you cannot make your investment until after December 31, do not fret. You can still qualify for the other tax benefits available to opportunity zone investments. It is only the forgiveness of 10% of deferred gain that ceases to be available after year end.

Lowndes

August 27, 2021

Turbocharging OZ Returns with Historic Tax Credits, with John Blatchford.

Can opportunity zones be leveraged for historic renovation projects? How does the combination of historic tax credits and the opportunity…

CONTINUE READING »

OpportunityDb

September 1, 2021

Tax-Loss Selling and the January Effect Revisited: Evidence from Municipal Bond Closed-End Funds and Exchange-Traded Funds.

Abstract

We revisit the tax-loss selling hypothesis as a potential explanation of the well-known January effect in securities markets. We expand the empirical evidence from municipal bond closed-end funds (CEFs) by extending the sample period by almost 20 years and adding exchange-traded funds (ETFs) to the sample. Our updated sample covers the recent growth of municipal bond ETFs and a significant increase in municipal bond trading volume and liquidity. Both developments reduce arbitrage costs and thus are expected to increase tax loss selling in the funds and increase the transmission of price effects to the underlying bonds. We find that the January effect of municipal bond CEFs becomes stronger in more recent years, and show evidence that largely supports the tax-loss hypothesis. We also find some evidence indicating a smaller discrepancy between the abnormal returns of the funds and underlying bonds. For the municipal bond ETFs, we find a smaller January effect that cannot be explained by the tax-loss selling hypothesis.

Read the paper.

August 18, 2021

Senator Wyden Proposes Sweeping Housing Tax Credit Reforms.

Senate Finance Committee Chairman Ron Wyden (D-OR) proposes sweeping changes to affordable housing in the US, including expansions and improvements to the Low Income Housing Tax Credit (LIHTC) program.

On August 18, Senator Wyden released the Decent Affordable, Safe Housing for All (DASH) Act, which implements sweeping reforms to affordable housing financing in an effort to combat homelessness and expand affordable housing access.

The legislation proposes to expand and improve the Low-Income Housing Tax Credit (LIHTC) program and make other fixes to the Housing Credit program. The bill also proposes reforms to local zoning and housing development practices, expands vouchers to combat homelessness, and includes a first-time homebuyer tax credit, a rental tax credit, and a Middle Income Housing Tax Credit.

As the chairman of the Senate Finance Committee, the bill represents a major show of support for affordable housing from a key Senate office. Specifically, Senator Wyden proposes a range of spending and tax policy reforms, including:

- Extending Housing Choice Vouchers to all families or individuals experiencing or at risk of homelessness
- Instituting reforms to local zoning and housing development practices
- Expanding and improving the Low-Income Housing Tax Credit;
- Repealing the qualified contract loophole;
- Modifying and clarifying the Section 42 nonprofit Right of First Refusal;

- Creating a tax credit for affordable housing supportive services;
- Establishing a Renter's Tax Credit;
- Creating a Middle Income Tax Credit; authorizing the Neighborhood Homes Investment Act; and
- Establishing a First-time Homebuyer Refundable Credit.

Combatting homelessness, expanding the supply of affordable housing (including through the Low-Income Housing Tax Credit program), expanding supportive services in affordable housing, and fixing the Right of First Refusal issue are key priorities for LeadingAge.

LOW-INCOME HOUSING TAX CREDIT PROGRAM: EXPANSION AND IMPROVEMENTS

The legislation also includes the Emergency Affordable Housing Act, which would strengthen the Low-Income Housing Tax Credit by preserving and protecting existing LIHTC properties, expanding production of affordable housing, and extending housing to people who earn extremely low incomes. Some of the main provisions of the EAHA would expand the 9% housing tax credit by 50% to house more families; provide a 50% basis boost to projects that prioritize extremely low-income renters; expand the 4% credit for rural areas; reduce the tax-exempt bond financing threshold for 4% credit projects from 50% to 25% for three years; and preserve tens of thousands of affordable housing units by closing a loophole. The EAHA is projected to produce nearly 1 million new affordable housing units over the next 10 years.

Some portions of the bill are expected to move through the Reconciliation process currently underway in Congress. LeadingAge supports key provisions of the bill and will work with the Senate office to advance the legislation.

AUGUST 18, 2021 | BY JULIANA BILOWICH

Capital Analysis of the Proposed Middle-Income Housing Tax Credit.

Novogradac conducted capital analysis at the request of Senate Finance Committee Chairman Ron Wyden that looks at the effect of enacting the proposed middle-income housing tax credit (MIHTC) on financing affordable rental housing for households earning just above the low-income housing tax credit (LIHTC) income limits. In addition to a pool of tax credit authority allocated to states, this analysis also examines the potential of a separate pool of tax credits that would be generated by the allocation of tax-exempt private activity bonds (PABs) and could be used in conjunction with the 4% LIHTC.

Reducing the Need for Soft Financing
"Soft" subsidies are funds and grants that are available from government sources or other lenders used to fill the financing gap between what is needed to develop the property and what the property can receive in equity and supportable debt. This free report examines how enacting a MIHTC, to be used with LIHTC and PABs, would enable developers to finance properties in a variety of markets with less additional soft financing to fill the financing gaps, making it easier to address the severe affordable rental housing shortage in the United States.

Increasing the Amount of Affordable Housing
The proposed tax credit is intended to significantly jump-start affordable rental housing financing and reduce the tremendous deficit in the supply of affordable rental housing for more renters earning a little more than the traditional LIHTC income-targeting threshold nationwide.

Download the report.

Important Ohio Supreme Court Decision Clarifies Proper Method to Value “Big Box Stores.”

The Ohio Supreme Court issued an important decision today clarifying the proper method under Ohio law to value big box stores—in this case, a Lowe’s store.

The Ohio Supreme Court rejected the property owner’s argument that an appraiser should presume that the property is vacant when appraising the property. Instead, the Court agreed with the school board and county that a property should be valued using market rent rather than the actual rent from an existing lease encumbering the property at the time of the sale and transfer.

The Court was called upon to interpret somewhat recent changes to R.C. 5713.03, which requires county auditors to value property based upon the value of the “fee simple estate, as if unencumbered.” Rejecting the property owner’s argument, the Court clarified that this statute invokes a market-lease rule, rather than a vacant-at-transfer rule. This decision, commonly referred to as *Rancho Cincinnati*, is the latest in a series of decisions in Ohio that affect the valuation of big box stores. The Court’s decision will be perceived as more favorable to political subdivisions and taxing authorities; in contrast, the Court’s decision will diminish the salience of appraisals that use a “go-dark” value of big box stores.

The *Rancho Cincinnati* decision was issued by the Ohio Supreme Court on August 18, 2021 and may be cited as *Rancho Cincinnati Rivers, LLC v. Warren County Board of Revision, et al.*, slip opinion no. 2021-Ohio-2798.

If you have questions about how this case impacts the valuation of properties located in your school district, please contact your legal counsel.

Bricker & Eckler LLP

August 19, 2021

Solving The Housing Crisis With OZs, With Riaz Capital.

In this webinar, Garrick Monaghan discusses the need for affordable housing in the Bay Area and the Riaz Capital Ozone Fund III.

Watch the webinar.

OPPORTUNITYDB

by JIMMY ATKINSON

AUGUST 13, 2021

Real Estate Technology And Opportunity Zones, with Steve Nson.

How does real estate innovation intersect with Opportunity Zones? How can Opportunity Zones catalyze business development and business investment in low income communities?

Steve Nson is founder of AnySizeDeals, a conference organizer with a focus on real estate innovation. Their upcoming AnySizeDeals Festival of Real Estate Innovation event will focus on the innovation that is transforming the real estate industry.

Listen to audio.

OPPORTUNITYDB

by JIMMY ATKINSON

AUGUST 18, 2021

Barring California Taxpayers from the Courts.

Big government interests – and by "big government interests" we mean elected officials, bureaucrats, public sector unions and private corporations that live off taxpayer dollars – do everything they can to erect barriers to taxpayers seeking to vindicate their rights.

As this column has previously addressed, those barriers include making it difficult to vindicate rights at the ballot box by consistently changing election laws – often in the middle of an election cycle – in a manner designed to protect the existing political power structure.

But there is an equally virulent set of hurdles placed before taxpayers consisting of procedural barriers to obtaining relief in the courts. Just a few examples are short statutes of limitations, requirements that taxpayers must "exhaust administrative remedies" before filing a legal action, requirements that taxpayers must first pay the disputed tax in full before filing suit, and severe restrictions on the use of class actions that preclude meaningful tax relief when entire communities are hurt by an illegal tax.

Another example is the requirement that challenges to certain tax increases be brought exclusively as "validation actions." Such actions may be brought by government entities to "bulletproof" their tax or fee increases from any future legal attack. Typically, the lawsuit will be filed against "All Persons Interested" in the legality of a bond issuance or other public finance matter and, once filed, taxpayers have only a very limited time to respond.

The short time to respond to a validation action, however, isn't the biggest headache for taxpayers. Specifically, if the government entity doesn't file its own action, then the validation action must be filed by citizens (any "interested party") within 60 days of the resolution authorizing a bond or tax. The citizens' failure to do so results in the bond or tax becoming automatically "validated" through inaction, and forever insulated from judicial review. This puts the costs of litigation on the shoulders of those having to pay the tax. And those costs include the very expensive price tag of having to "publish" a summons in the local newspaper over several days.

Ordinary taxpayers rarely have the expertise or financial wherewithal to initiate a "validation" action in court and must rely on advocacy groups such as the Howard Jarvis Taxpayers Association, which has been involved in numerous such lawsuits. But even with that expertise, there remains much wrong with expanding the circumstances where the law requires that challenges must be brought as a validation action as opposed to more traditional legal actions such as taxpayer injunctions, declaratory relief or money damages.

Validation actions may make sense in the limited area of protecting municipal bonds from legal attack well after the bonds have been issued. There is arguably a public interest in protecting the "marketability" of public bonds so that government entities have access to capital markets in order to construct public projects such as schools.

However, a bill currently pending in the California Legislature, Senate Bill 323, would hijack the validation statutes and apply them to preclude ratepayers from challenging unlawfully high rates for water or sewer – essential public services that no one can live without.

Simply stated, this expansion of the validation statutes is an unfair denial of due process that can have the effect of cementing into law illegal government acts that are then insulated from judicial review. Even the state Supreme Court has taken notice, writing in City of Ontario v. Superior Court that some applications of the validation statutes are "of doubtful constitutionality." Not surprisingly, the Howard Jarvis Taxpayer Association opposes all attempts to enlarge the universe of government actions that are subject to the validation statutes. And we are not alone.

Even a couple of water agencies in Orange County see a problem with this expansion. While generally supportive of the bill's aims, they also recognize the importance of providing adequate notice to ratepayers "in recognition of public water and sewer agencies' Constitutional responsibility to guarantee that ratepayers – particularly economically disadvantaged residents and marginalized communities – know their rights."
What ratepayers should really know about their rights is how Senate Bill 323 takes them away. The validation statutes were never meant to insulate water, sewer, or other agency rates and fees from legal challenge. If such rates are imposed in a manner contrary to the constitutional protections guaranteed to taxpayers by Proposition 13 and other laws, ratepayers must not have the courthouse door slammed in their faces by a burdensome process that makes such challenges difficult, if not impossible.

PE.COM

By JON COUPAL

August 16, 2021

Jon Coupal is president of the Howard Jarvis Taxpayers Association.

TAX - MARYLAND

Mayor and City Council of Ocean City v. Commissioners of Worcester County, Maryland

Court of Appeals of Maryland - August 5, 2021 - A.3d - 2021 WL 3417685

Municipality brought action seeking declaratory judgment that tax setoff laws were unconstitutional because they treated different municipalities differently.

The Circuit Court dismissed the action. Municipality appealed. The Court of Special Appeals affirmed. Municipality's petition for writ of certiorari was granted.

The Court of Appeals held that statutes providing for mandatory real property tax setoffs did not violate uniformity requirement in Constitution.

Statutes providing for mandatory real property tax setoffs did not regulate matters of purely local concern, and therefore they did not violate Constitutional provision requiring General Assembly to act in relation to government or affairs of any municipal corporation only by general laws that in their terms and in their effect applied uniformly, since tax setoff statutes strongly affected county residents who resided outside of municipality.

The SALT Deduction Cap Makes it Harder for Communities to Recover.

To help our communities recover from the COVID-19 pandemic and its economic fallout, Congress has a historic opportunity to rebuild our economy and create a sustainable future for all Americans by enacting President Joe Biden's full Build Back Better agenda — an agenda that will improve the lives of everyday people by investing in well-paying jobs, health care, infrastructure, public schools, higher education, child care, elder care and more.

Congress should go one step further to incentivize communities to invest in themselves by reversing former President Donald Trump's cap on deductions for state income tax and local property taxes, the so-called SALT cap, which limits these governments' ability to invest tax revenue in public schools, higher education, public health, police, firefighting and emergency medical services.

Reviving the SALT deduction is especially important for our frontline workers — firefighters, teachers, and public health workers who have helped our country survive the pandemic, keeping our schools open, our hospitals running and our communities safe — and those they serve. SALT is not just another tax break for the wealthy, as some claim; it's an opportunity for many everyday people to offset the taxes they pay for the services our communities rely on.

Here's the math: An average two-income family with a firefighter and a teacher makes between $100,000 and $200,000 annually. If they claim the SALT deduction — which more than 85 percent of families in that tax bracket do — they receive an average tax break of $15,859. When the SALT deduction is capped, those same middle-class families see a tax increase of $5,000.

That means, even as they are paying more in taxes, the budgets for their schools, hospitals and firehouses are being cut.

The SALT deduction is a tax break you receive for supporting your community: providing schools the resources necessary to meet our children's needs; ensuring that our public health system can confront a deadly pandemic; keeping us from shutting down firehouses; preparing the next generation of adults for their careers without saddling them with debt, and supporting a safety net for when people experience job loss or homelessness. The deduction helps ensure the collective funding of these programs, making it easier for state and local governments to provide these services that benefit all of us. It effectively puts money in everyday taxpayers' pockets to help keep up with the rising costs of basics like gas and groceries.

Allowing taxpayers to deduct the full amount of their state and local taxes on their federal tax returns is one of the federal government's most powerful tools for incentivizing states and local governments to invest in critical public services. Lawmakers have long recognized this: The Revenue Act of 1913 introduced the federal income tax and provided a deduction for state, county, schools and municipal taxes. Years later, the Revenue Act of 1964 specified that real and personal property, income and general sales taxes could be deducted from federal taxes. As the Government Finance Officers Association pointed out in 2017:

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

As cities, towns and families continue to recover from the pandemic, Congress should be making things easier on state and local governments and the people who pay taxes to fund them. The American Rescue Plan, the American Jobs Plan and the American Families Plan are major steps in the right direction but reforming the SALT cap would go a long way toward helping working families access a more robust recovery.

THE HILL

BY RANDI WEINGARTEN AND EDWARD A. KELLY, OPINION CONTRIBUTORS — 08/09/21

Randi Weingarten is president of the American Federation of Teachers. Edward A. Kelly is general president of the International Association of Firefighters.

MSRB Research Paper on the Taxable Municipal Bond Market.

New MSRB research paper studies the evolution of the taxable municipal bond market over the last decade and reviews the market dynamics of two years when taxable municipal bond issuance was particularly high—2010 and 2020.

Read the MSRB research paper.

Opportunity Zone Redevelopment Areas Still Reaping Benefits Of National Home-Price Boom In Second Quarter 2021.

Median Values Again Rise Annually By At Least 15 Percent in Half of Zones; Opportunity Zone Price Spikes Remain on Par with Those Outside of Zones

IRVINE, Calif., Aug. 12, 2021 /PRNewswire/ — ATTOM, curator of the nation's premier property database, today released its second-quarter 2021 Opportunity Zones report analyzing qualified low-income zones established by Congress in the Tax Cuts and Jobs Act of 2017 (see full methodology below). In this report, ATTOM looked at 5,236 zones across the United States with sufficient sales data to analyze, meaning they had at least five home sales in the second quarter of 2021.

The report found that median single-family home prices increased from the second quarter of 2020 to the second quarter of 2021 in 75 percent of Opportunity Zones and rose by at least 15 percent in about half of them. Price patterns in Opportunity Zones continued to roughly track trends in other areas of the U.S., even surpassing them in some ways, much as they did in the first quarter of this year.

Home values in Opportunity Zones did continue to lag well behind the national median of $305,000 in the second quarter of 2021. About three-quarters of the zones with enough data to analyze had typical second-quarter prices below the national figure. Some 39 percent also still had median prices of less than $150,000 in the second quarter of this year. But that was down from 47 percent a year earlier as values inside some of the nation's poorest communities kept surging ahead with the broader national housing market, despite the Coronavirus pandemic remaining a threat to the U.S. economy.

Even as the national economy was gradually recovering during the Spring of 2021 from the economic damage that came after the pandemic hit early last year, the impact continued to hit hardest in lower-income communities that comprise most of the zones targeted for tax breaks designed to spur economic redevelopment. Nevertheless, Opportunity Zones largely kept pace with national home-price trends as increases roughly paralleled the nationwide boom now in its 10th year.

Opportunity Zones are defined in the Tax Act legislation as census tracts in or along side low-income neighborhoods that meet various criteria for redevelopment in all 50 states, the District of Columbia and U.S. territories. Census tracts, as defined by the U.S. Census Bureau, cover areas that have 1,200 to 8,000 residents, with an average of about 4,000 people.

"Housing markets kept chugging along in some of the nation's poorest neighborhoods during the second quarter of this year in another sign that the decade long home-price boom across the nation knows pretty much no boundaries. Values kept rising inside specially designated Opportunity Zones at around the same rate as they did in other areas even as the Coronavirus pandemic continued causing economic hardship," said Todd Teta, chief product officer with ATTOM. "For sure, property values in Opportunity Zones remain depressed. But the price spikes there not only suggest that those communities are a very viable option for households priced out of more-upscale neighborhoods. They also indicate the ongoing potential for the economic revival that underpins the Opportunity Zone tax breaks."

High-level findings from the report include:

- Median prices of single-family houses and condominiums rose from the second quarter of 2020 to the second quarter of 2021 in 2,901 (75 percent) of the Opportunity Zones with sufficient data to analyze and increased in 2,916 (64 percent) of the zones from the first quarter to the second quarter of this year. By comparison, median prices rose annually in 81 percent of census tracts outside of Opportunity Zones and quarterly in 70 percent of them. (Of the 5,236 Opportunity Zones included in the report, 3,850 had enough data to generate usable median prices in the second quarters of both 2020 and 2021; 4,577 had enough data to make comparisons between the first quarter of 2021 and the second quarter of 2021).
- Measured year over year, median home prices rose at least 15 percent in the second quarter of 2021 in 2,011 (52 percent) of Opportunity Zones with sufficient data. Prices rose that much during that time period in 51 percent of other census tracts throughout the country.
- Opportunity Zones did even better when comparing areas where prices rose at least 25 percent from the second quarter of 2020 to the second quarter of 2021. Measured year over year, median home prices rose by that level in 1,366 (35 percent) of Opportunity Zones but in only 30 percent of census tracts elsewhere in the country.

- Typical home values in four of every 10 Opportunity Zones increased annually in the second quarter of 2021 by more than the 22-percent increase in the overall national single-family median home price during that time period.
- Among states with at least 20 Opportunity Zones, those with the largest percentage of zones where median prices rose, year over year, during the second quarter of 2021 included New Hampshire (median prices up, year over year, in 95 percent of zones), Massachusetts (94 percent), Idaho (91 percent), Utah (90 percent) and Arizona (89 percent).
- Of all 5,236 zones in the report, 2,021 (39 percent) still had median prices in the second quarter of 2021 that were less than $150,000 and 914 (17 percent) had medians ranging from $150,000 to $199,999. The total percentage of zones with typical values below $200,000 was down from 65 percent in the second quarter of 2020 to 56 percent in the second quarter of 2021.
- Median values in the second quarter of 2021 ranged from $200,000 to $299,999 in 1,081 Opportunity Zones (21 percent) while they topped the national median of $305,000 in 1,183 (23 percent).
- The Midwest continued in the second quarter of 2021 to have the highest portion of Opportunity Zone tracts with a median home price of less than $150,000 (63 percent), followed by the South (45 percent), the Northeast (41 percent) and the West (6 percent).
- Median household incomes in 88 percent of Opportunity Zones were less than the medians in the counties where they were located. Median incomes were less than three-quarters of county-level figures in 56 percent of zones and less than half in 16 percent.

Report methodology
The ATTOM Opportunity Zones analysis is based on home sales price data derived from recorded sales deeds. Statistics for previous quarters are revised when each new report is issued as more deed data becomes available. ATTOM compared median home prices in census tracts designated as Opportunity Zones by the Internal Revenue Service. Except where noted, tracts were used for the analysis if they had at least five sales in the second quarter of 2021. Median household income data for tracts and counties comes from surveys taken the U.S. Census Bureau (www.census.gov) from 2015 through 2019. The list of designated Qualified Opportunity Zones is located at U.S. Department of the Treasury. Regions are based on designations by the Census Bureau. Hawaii and Alaska, which the bureau designates as part of the Pacific region, were included in the West region for this report.

About ATTOM
ATTOM provides premium property data to power products that improve transparency, innovation, efficiency and disruption in a data-driven economy. ATTOM multi-sources property tax, deed, mortgage, foreclosure, environmental risk, natural hazard, and neighborhood data for more than 155 million U.S. residential and commercial properties covering 99 percent of the nation's population. A rigorous data management process involving more than 20 steps validates, standardizes, and enhances the real estate data collected by ATTOM, assigning each property record with a persistent, unique ID — the ATTOM ID. The 20TB ATTOM Data Warehouse fuels innovation in many industries including mortgage, real estate, insurance, marketing, government and more through flexible data delivery solutions that include bulk file licenses, property data APIs, real estate market trends, and more. Also, introducing our latest solution, that offers immediate access and streamlines data management – ATTOM Cloud.

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[U.S. ‘Opportunity Zones’ Use Tax Breaks for Developers to Help Poor Neighborhoods - But Are They Really Helping?]

By most accounts, Beaverton, part of Oregon’s Sunset Corridor, is a desirable American suburb. It’s 15 minutes from downtown Portland, home to Nike headquarters and has a median household income of around US$50,000 range.

Why, then, are American taxpayers subsidizing developers to build in Beaverton, along with dozens of other economically robust communities just like it?

The answer lies in an ambitious public-private partnership initiative known as opportunity zones. Embedded in the U.S. Tax Cuts and Jobs Act of 2017, aimed at incentivizing private investors to develop real estate in low-income communities and spur local business growth, the program has attracted billions of dollars in projects from Beaverton to Boston.

Continue reading.

theconversation.com

August 12, 2021

QOFs Tracked by Novogradac Surpass $17.5 Billion in Equity Raised.

Qualified opportunity funds (QOFs) tracked by Novogradac raised $17.52 billion in equity as of midyear, according to the Novogradac Opportunity Zones Investment Report: Data Through June 30, 2021, which was released today. The semiannual report includes information on the geographic and investment-type focus of more than 1,000 QOFs and includes the top 20 states and top 40 cities for planned investment, as well as the number of QOFs in each of several ranges of equity raised. The report also features a historical section, where trends are examined over time. Michael Novogradac published a blog post on the data and the report is the subject of today’s Tax Credit Tuesday podcast.

The report will part of the discussion at the Novogradac 2021 Fall Opportunity Zones Conference, Oct. 21-22 in Cleveland.

August 10, 2021

Webinar: Driving Investment into Texas’ Rural Opportunity Zones.

September 7, 2021 – 1:00 PM – 2:30 PM

Attracting investors to rural Opportunity Zones is a well-known challenge. Federal reserve data show that at least 60% of opportunity zones in Texas are at least partially in a rural census tract. In order to attract investment in these rural Opportunity Zones, local leaders must be able to identify priority projects and businesses and build a local investment strategy. During this webinar, expert panelists will provide best practices and tips for economic development practitioners on driving investments into rural Opportunity Zones in Texas.

Click here to learn more and to register.

The Infrastructure Plan Could Boost N.J.'s Opportunity Zones.

The U.S. Senate this week moved closer to passing President Biden's $1 trillion infrastructure bill — the biggest investment in America's rails, roads, broadband and electrical grid in decades. New Jersey political leaders hope the landmark legislation will help fund critical state projects like the Gateway Tunnel.

One of the hallmarks of the Infrastructure Investment and Jobs Act is channeling investments to under-served communities, including those in New Jersey, positioning them as hubs for next-generation jobs and innovation. The White House aims to "revitalize manufacturing, secure U.S. supply chains, invest in R&D, and train Americans for the jobs of the future." This goal has eluded presidential administrations for much of the 21st century. Yet a convergence of factors makes the next few days a particularly favorable window to make progress — though perhaps not in the way policymakers expected.

One way the Biden administration plans to pay for the infrastructure bill is by nearly doubling the tax rate wealthy Americans pay on profits from their sale of stock. This capital gains hike would have major financial impacts, and observers are debating what it would mean for economic fairness and federal revenue. The increase could also have a surprisingly powerful effect on jobs and business growth in low-income areas by pivoting investors toward Opportunity Zones.

Continue reading.

nj.com

By Charles Meyer

Aug 10, 2021

TAX - CALIFORNIA

City and County of San Francisco v. All Persons Interested in Matter of Proposition G

Court of Appeal, First District, Division 4, California - July 26, 2021 - Cal.Rptr.3d - 2021 WL 3140071 - 21 Cal. Daily Op. Serv. 7511

Following amendment to California Constitution, which required that any special tax adopted by a local government entity take effect only if approved by a two-thirds vote of the electorate, city and county brought action to establish that initiative measure entitled "Parcel Tax for San Francisco Unified School District," was validly enacted.

The Superior Court granted summary judgment in favor of city.

The Court of Appeal held that:

- Constitutional provision does not repeal or abridge by implication the people's power to raise taxes by initiative;
- Constitutional provision did not constrain initiative power;
- Constitutional provision cannot prevent the people, exercising their initiative power, from adopting an identical tax; and
- State initiative qualified for ballot measure through method in which voters could propose measure by initiative petition.

Although the constitutional provision requiring two-thirds vote of qualified electors to approve special taxes, requires governmental entities to gain approval of supermajority of voters before imposing a special tax, it does not repeal or otherwise abridge by implication the people's power to raise taxes by initiative, and to do so by majority vote; any such partial repeal by implication is not favored by law, which imposes a duty on courts to jealously guard, liberally construe and resolve all doubts in favor of exercise of the initiative power.

Constitutional provision requiring two-thirds vote of qualified electors to approve special taxes adopted by a "local government" did not constrain initiative power for the same reasons that supermajority vote requirements did not apply to citizens' initiatives; the text of the constitutional provision did not reach the electorate, as the electorate was not an "agency."

Just as the State Constitution does not prohibit local government from adopting a special parcel tax with voter approval, so it cannot prevent people, exercising their initiative power, from adopting an identical tax.

State initiative measure entitled "Parcel Tax for San Francisco Unified School District," qualified for ballot measure based on city charter recognizing two ways to put measures on the ballot, and specifically method in which voters could propose measure by initiative petition; city's evidence showed that initiative qualified for the ballot showing that initiative qualified for ballot, including evidence of a declaration from director of elections and copies of the material submitted to director by three citizen proponents of initiative.

A "Good" Tax-Advantaged Bond Bill Tells Issuers Whether They Can Refund – A Case Study: Squire Patton Boggs

This is the second in a series of posts about neutral principles that make for "good" tax-advantaged bond legislation.

We pick up our series as the Senate prepares for a final vote on a bipartisan infrastructure bill in the coming days. In the last post, we stated the general rule that a good piece of tax-advantaged bond legislation tells issuers how and when they can refund bonds issued under any new bond program. Here's an example in current law to illustrate the point.

In 2005, Congress created a new category of tax-exempt "exempt facility" private activity bonds for highway facilities and surface freight transfer facilities.[1] These bonds are exempt from the typical private activity bond volume cap[2] but are subject to a special volume cap administered by USDOT. Unlike the typical PAB volume cap (which is apportioned among the states annually based on population), the special volume cap for these bonds is a national $15 billion cap that is available indefinitely, although all of it has now been spoken for.[3]

Continue reading.

The Public Finance Tax Blog

By Johnny Hutchinson on August 6, 2021

Squire Patton Boggs

IRS Notice Provides Population Figures for Disaster-Zone LIHTC Allocation.

Internal Revenue Bulletin 2021-31 provides state and territory low-income housing tax credit (LIHTC) allocating agencies with population figures to calculate disaster LIHTCs they can allocate under the Taxpayer Certainty and Disaster Tax Relief Act of 2020. Notice 2021-45 identifies the counties and parishes eligible for the disaster LIHTCs along with their combined populations. The disaster LIHTCs are equal to the lesser of $3.50 multiplied by the population in the disaster zones or 65% of the state LIHTC ceiling for calendar year 2020. California's 23.1 million residents in disaster zones was the largest of the 11 states plus Puerto Rico eligible for the credits.

The 2021 edition of the Novogradac Low-Income Housing Tax Credit Handbook is an essential resource for affordable rental housing owners, developers, managers and investors.

Novogradac

Monday, August 2, 2021

OZ Exit Plans and Structural Risks: Podcast

What are the advantages of a Qualified Opportunity Fund that is structured as a REIT instead of a partnership? How does the level of diversification in a fund impact its risk/return profile?

Peter Ciganik is Managing Director at GTIS Partners, a global real estate investment firm based in New York.

Episode Highlights

- How the REIT structure may be advantageous for real estate investments with extended holding periods.
- Why exit strategy planning is important in determining the bottom line returns that OZ investors realize.
- How opportunity zone funds are attracting investors to real estate as an asset class for the first time.
- The potential benefits of diversification when investing in real estate, and the risks associated with single-asset strategies.
- The structural regulatory benefits that come with multi-asset strategies.
- Why rising costs pose challenges for real estate development in the current environment.

- How the opportunity zone program is achieving its objective of catalyzing community investment.

Listent to audio.

OPPORTUNITYDB

by JIMMY ATKINSON

JULY 28, 2021

Tax Policy Changes & Opportunity Zones, an OZ Pitch Day Panel: Podcast

What changes to tax policy are likely coming under the Biden administration? If enacted, how will these changes impact the appeal of Opportunity Zone funds and the returns available to investors? Several Opportunity Zone experts provided their insights on a live panel recorded on July 27, 2021 during OZ Pitch Day, titled “Tax Policy Changes & Opportunity Zones.”

Today’s podcast episode is the audio version of that panel. Moderated by OpportunityDb founder Jimmy Atkinson, the panel featured Shay Hawkins of the Opportunity Funds Association, Kunal Merchant of CalOZ, and John Sciarretti of Novogradac.

Episode Highlights

- A crash course in Opportunity Zone basics.
- The tax policy changes that are likely coming down the pipeline, on both the regulatory and legislative sides.
- How the Opportunity Zone program is winning support in Congress, even among some of its one-time critics.
- The likelihood of changes to the Opportunity Zone program, including transparency and reporting requirements via the IMPACT Act.
- Why an increase in capital gains tax rates may do little to diminish the appeal of Opportunity Zone incentives.
- The potential to give preferential treatment to Opportunity Zone investments in any new tax legislation.
- The role that Opportunity Zones can play in the economic recovery from COVID-19.
- How the trend towards increased state and local incentives may be a boon to projects located in Opportunity Zones.
- Why the rumored changes to 1031 exchanges may never materialize.
- What is likely to be included in a comprehensive Opportunity Zone expansion bill.
- The possible permutations of a reconciliation bill in the current Congress.
- Technical discussions of the tax advantages of different QOF structures.

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OPPORTUNITYDB

by JIMMY ATKINSON

AUGUST 4, 2021

Buckle Your Seatbelts: Tax Ramifications of the LIBOR Transition - Arent Fox

Although this article is focused on tax-exempt debt, the tax ramifications of the LIBOR transition are not limited to the municipal finance world, and the elimination of LIBOR may also have a significant impact on taxable debt, interest swap transactions and other transactions utilizing LIBOR.

For Our Complete Archive of LIBOR Analysis Click Here

General

In connection with LIBOR's impending demise, it became clear to many tax lawyers that numerous tax-exempt bond transactions face the risk of adverse tax consequences because the documents under which they were issued do not contemplate this transition and, therefore, must be amended to provide for a replacement ("fallback") index. This risk arises as a result of a basic tax principle – when a debt instrument is modified in a significant manner after it is issued, the debt is deemed exchanged for a new debt instrument. This exchange, or 'reissuance,' can trigger a tax recognition event to the borrower or bondholder (sometimes a bank or other institutional lender) and, if certain facts are present, may cause tax-exempt debt to lose its tax-exempt treatment under the Internal Revenue Code.

IRS Rev. Proc. 2020-44

General

Following the announcement that LIBOR would be phased out, the Internal Revenue Service (IRS) issued Revenue Procedure 2020-44 aiming to: (1) facilitate the use of alternative reference rates recommended by (a) the Alternative Reference Rates Committee (ARRC) and (b) the International Swaps and Dealers Association (ISDA); and (2) provide that if adequate fallback language is used in loan agreements, the result will prevent a reissuance. The Rev. Proc. attempted to achieve this beneficial outcome by providing that the change in yield that results from the effectiveness of an appropriate alternative rate index would not itself be material, thus treating the effectiveness of such a fallback index as not a taxable exchange of property for other property differing materially in kind or extent for purposes of Treasury Regulation §1.1001-1(a).

Substantially Equivalent Value Test

Tax-Exempt Bond Rule

For municipal bonds, under existing regulations, changes to the terms of a tax-exempt bond transaction are not in themselves considered significant enough to trigger a reissuance if they result in a change in the yield on the bonds of less than 25 basis points. Rev. Proc. 2020-44 increases the circumstances in which this safe harbor applies to certain changes made to accommodate the end of LIBOR.

General Debt Instruments

The general rule under Rev. Proc. 2020-44 is that implementation of certain provisions in documents to replace LIBOR with a new benchmark index will not, by itself, result in reissuance because of the resultant changes in yield without regard to the 25 basis point rule if the fair market value of the altered instrument is substantially equivalent to the fair market value of the unaltered instrument.

Given that LIBOR will cease to exist and, thus, there will be no way to measure a replacement index against LIBOR, and given that SOFR and many other replacement indices have not been in existence for long enough to predict their relationship to LIBOR in all interest rate environments, it is unclear how this equivalence requirement can practically be satisfied.

Accordingly, in many transactions we have asked, on behalf of our borrower clients, that a substantially equivalent test be used in amendments to debt instruments contemplating the LIBOR transition. However, banks have been very resistant to this suggestion because of (i) market uncertainty, (ii) lack of history with SOFR and many other replacement indices, and (iii) bank desire to control the rate setting process in connection with the LIBOR transition.

Rev. Proc. 2020-44 attempts to address this problem since it provides that the fair market value may be determined by any reasonable valuation method so long as that method is applied consistently. The question will then be whether a bank's sole discretion in setting of the new interest rate is a reasonable valuation method even if it is done consistently by each bank and consistently within the financial industry.

Integrated Hedges

While Rev. Proc. 2020-44 gives some relief in municipal bond transactions, it is also important to consider how the end of LIBOR will impact transactions that utilize hedges and, specifically, 'integrated hedges.'A debt instrument may be 'integrated' with a hedge for purposes of determining the yield on an instrument for tax purposes, and the amount and timing of taxpayer income, deduction, gain or loss if certain procedures are followed. When amending debt instruments to address the elimination of LIBOR, if an integrated hedge is not simultaneously amended in the same manner, the change to the debt instrument could itself qualify for exclusion from the reissuance rule but the transaction could still lose the benefit of the integrated hedge, and thus be treated as reissued nonetheless. This could lead to potentially unfavorable tax consequences.

The key to avoiding this tax risk will be amending the debt instrument and the hedge in the same manner and at the same time to deal with the LIBOR transition. However, interest rate hedge transactions are generally governed by ISDA documentation, whereas the changes to a debt instrument are dictated by agreements of the parties to the debt instrument – typically the issuer/borrower and the bank/lender. Matching the provisions adopted in contemplation of the phase-out of LIBOR in integrated transactions may be difficult, but may also be critical to avoid adverse tax consequences.

Dichotomy of Fallback Provisions

ARRC

No Recommended Benchmark

ARRC initially announced that the Secured Overnight Financing Rate (SOFR) would be its recommended new interest rate benchmark index for formerly LIBOR-based debt. However, ARRC subsequently announced that banks could utilize any interest rate benchmark they so choose. In the face of this revised ARRC announcement, most banks that we have dealt with that have confronted the LIBOR transition issue have, so far, proposed as a fallback solution that the bank would use a replacement index chosen in the bank's sole and absolute discretion, without any input from the borrower/issuer.

In most cases, under existing regulations and notwithstanding the Rev. Proc. 2020-44 safe harbor, when banks unilaterally choose the new benchmark in a variable rate financing prepayable at any time, a reissuance event could result. Thus, these unilateral pronouncements may fail to allow the lenders to take advantage of the favorable tax treatment (avoidance of reissuance) intended to be available under Rev. Proc. 2020-44 because, absent the safe harbor treatment offered by the Rev. Proc., it is impossible to predict whether the 25 basis point safe harbor will be met now for these benchmark replacement substitutions.

No Recommended Spread Adjustment

Even when SOFR (or an alternative benchmark) is utilized as a replacement index for LIBOR (thus securing Rev. Proc. 2020-44 safe harbor treatment), it is clear that a spread must be added to SOFR for it to yield effective interest rates similar to LIBOR prior to the transition. Although it has tried several times, ARRC has not developed a recommended spread adjustment. In light of this, and absent negotiations, bank transition documentation often state that the new recommended benchmark spread adjustment to equate LIBOR with the new benchmark is to be chosen in the bank's sole and absolute discretion, without any input from the borrower/issuer. This also will likely result in reissuance.

Fair Recommended Fallback Language

ARRC has published recommended fallback language to be used in loan agreements as well as in many other commercial agreements. However, our experience has shown that very few financial institutions are using the ARRC recommended fallback language.

ISDA

Required Fallback

For swaps and derivatives, ISDA has developed what some consider to be a more robust fallback language to specify the rate to be used upon a LIBOR cessation. Although the use of the ISDA fallback may be the scenario expected by the swap counterparties, it is not automatically effective in pre-existing swaps. Therefore, issuers and borrowers must either agree to adopt the ISDA fallback in existing swaps, or amend or replace existing swaps or other derivatives with other new bilateral agreements.

Required Response

In our view, entering into a new agreement or new amendment in the case of swaps facing the end of LIBOR without built-in fallbacks (currently, silence is the most common fact pattern), rather than just agreeing to the ISDA Protocol, is highly recommended, as the ISDA Protocol leaves, at the sole and absolute discretion of the bank: (i) the determination of the new benchmark index, and (ii) the timing of the LIBOR transition. In addition, the ISDA Protocol locks in the benchmark spread adjustment as of March 5, 2021, which may (or may not) be a fair spread adjustment today, much less a year from now. Further, the ISDA Protocol strips away certain existing legal rights of borrowers. Moreover, as noted above, harmonizing these changes with changes to the underlying debt instrument (and vice versa) may also be crucial.

Further Analyses

General

As noted, reissuance, with its potential adverse tax consequences, can be triggered by: (i) changes in the benchmark index referenced from LIBOR to SOFR (or another benchmark as the banks have not eagerly adopted SOFR) together with a benchmark spread adjustment that do not satisfy the requirements of Rev. Proc. 2020-44, and (ii) changes in the other fallback provisions (e.g., interest payment and calculation periods) which are innocuously referenced to as ‘conforming changes.’

These changes could constitute an alteration of the terms of a debt instrument, be treated as a significant modification, trigger a tax realization event and, in some cases, result in a loss of tax exemption. Therefore, if borrowers and their lenders are to develop truly helpful LIBOR replacement fallback provisions, a main objective must be to avoid reissuance, which neither the ISDA nor the ARRC language achieves.

Associated Alterations

Rev. Proc. 2020-44 gives relatively broad protection from reissuance treatment for what are termed “associated alterations” done in connection with the change of the reference rate. It further permits, without causing reissuance, a one-time payment to correlate the old fair market value with the new fair market value, in the event an adjustment to the spread or to the rate is not enough to make the debt instruments economically substantially equivalent immediately prior to, and subsequent to, the LIBOR transition. Again, how this will be satisfied is not enumerated in the Rev. Proc. and remains unclear.

Conclusion

Accordingly, borrowers should take particular note of the tax risks summarized here and not merely accept bank proposed changes, particularly because in most bank documents, a change in taxes or regulatory requirements for a particular loan that have negative consequences to the bank are passed on to the borrower.

In a similar vein, in many transactions on behalf of our borrower clients, we have requested that negative implications to the end of LIBOR be retained by the bank, in no small part because (i) this LIBOR transition is taking place as a result of bank manipulations of LIBOR and not from any actions of borrowers and (ii) of the banks’ insistence on unilateral decision-making on alternative index and spread selection causing tax risk not created by the borrower. As with other suggested changes to the ‘industry-standard’ documentation, this position has not been generally accepted by the banks, though it would keep the issuers/borrowers in a similar economic position pre- and post-LIBOR transition.

Consequently, all LIBOR transition documentation should be carefully analyzed prior to execution, even if represented as ‘industry-standard,’ so as to avoid, among other things, adverse tax consequences borne by the borrower.

Arent Fox, LLP

by Alyssa Gould, Les Jacobowitz & Richard Newman

July 28, 2021

TAX - MAINE

Madison Paper Industries v. Town of Madison

Supreme Judicial Court of Maine - July 6, 2021 - A.3d - 2021 WL 2793717 - 2021 ME 35

Taxpayer, which owned paper mill and hydro-electric power plants, petitioned for review after State Board of Property Tax Review upheld denial by town board of assessors of taxpayer's request for property tax abatement.

The Superior Court affirmed decision. Taxpayer appealed.

The Supreme Judicial Court held that:

- Two of taxpayer's arguments were subject to review for clear error;
- Board's decision to uphold town's valuation of paper mill assets based on current use was warranted;
- Board did not improperly assess mill in determining highest and best use;
- Board's finding that assessment had not involved double-counting of value of energy produced by plants was consistent with evidence; and
- Board properly applied statute in determining that town's assessment and taxpayer's appraisal were within 10% of each other.

Arguments of taxpayer, operator of paper mill and hydro-electric power plants that sought property tax abatement, that State Board of Property Tax Review committed legal error by deciding that power plant assets should have been valued based on highest and best use, but that mill assets should have been valued based on current use, and that Board committed legal error in deciding that difference between assessed property value and taxpayer's asserted value was within range designated as accurate within reasonable limits of practicality raised primarily factual, not legal, challenges to Board's decisions, and thus such arguments were subject to review for clear error, even though operator proposed de novo standard of review.

Decision of State Board of Property Tax Review to uphold town's valuation of taxpayer's paper mill assets, which were located partially in town, based on assets' current use as operating mill, rather than based on assets' liquidation or salvage value, was warranted, even though taxpayer asserted that liquidation or salvage value was assets' highest and best use; Board pointed out that, at time of property tax assessment, mill was state-of-the-art facility that operated in the black, that its owners were not in financial difficulty, and that owners had announced mill's closure without communicating cooperatively with town, and Board found that mill had been closed and its equipment and machinery sold as scrap under restrictions because owners no longer wanted to operate mill, but that owners' decisions should not have dictated mill's highest and best use.

State Board of Property Tax Review, in determining highest and best use of taxpayer's paper mill, for purpose of determining mill's just value, and thus proper property tax assessment, did not improperly assess mill; Board simply rejected taxpayer's appraisal of mill as incredible, starting with taxpayer's view of mill assets' highest and best use as being liquidation value, which was within Board's prerogative as fact-finder, and determined that taxpayer failed to prove that judgment of assessors was so irrational or unreasonable that property was substantially overvalued.

Finding of State Board of Property Tax Review that assessment of taxpayer's paper mill and hydro-electric power plants had not involved double-counting of value of energy produced by plants was consistent with evidence, even though taxpayer asserted that value had been counted once by including value of energy in valuation of plants as "merchant power plants" and again by attributing value of energy supplied to mill as "avoided cost"; while Board found that 40% of mill's energy requirement that plants provided constituted avoided cost to mill, such finding did not necessarily mean that town, in assessing property tax, factored avoided cost into assessment of mill assets, and individual who provided assessment calculations as guidance relied on cost approach, which did not count value of energy as avoided cost equivalent to income.

State Board of Property Tax Assessment properly applied statute indicating that, in proceedings related to protested assessment, it is sufficient defense of assessment that it is accurate within reasonable limits of practicality, except when proven deviation of at least 10% from relevant assessment ratio exists, in determining that town's assessment of value of portion of taxpayer's hydro-electric power plants that was within town and value offered in taxpayer's appraisal were within 10% of one another; while Board used town's valuation that excluded equipment that was exempt from taxation pursuant to Business Equipment Tax Exemption (BETE) program, such equipment was not included in protested assessment, and BETE statute required town to value and assess BETE-eligible assets only for purposes of reimbursement.

CDFA-TEDC Webinar: Driving Investment into Texas' Rural Opportunity Zones

September 7, 2021 | 1:00 – 2:30 PM Central

Click here to learn more and to register.

OZ Exit Plans and Structural Risks.

What are the advantages of a Qualified Opportunity Fund that is structured as a REIT instead of a partnership? How does the level of diversification in a fund impact its risk/return profile?

Peter Ciganik is Managing Director at GTIS Partners, a global real estate investment firm based in New York.

Episode Highlights

- How the REIT structure may be advantageous for real estate investments with extended holding periods.
- Why exit strategy planning is important in determining the bottom line returns that OZ investors realize.
- How opportunity zone funds are attracting investors to real estate as an asset class for the first time.
- The potential benefits of diversification when investing in real estate, and the risks associated with single-asset strategies.
- The structural regulatory benefits that come with multi-asset strategies.
- Why rising costs pose challenges for real estate development in the current environment.
- How the opportunity zone program is achieving its objective of catalyzing community investment.

Listen to audio.

Opportunitydb.com

by JIMMY ATKINSON

JULY 28, 2021

Evolution of Tax Increment Financing: Indiana, Kentucky, Ohio, and West Virginia - Frost Brown Todd

Tax increment finance (TIF) legislation continues to evolve in many states within the Frost Brown Todd footprint. Below are summaries of recent legislative changes in Indiana, Kentucky, Ohio and West Virginia. These changes may provide additional opportunities for local governments or developers looking to utilize TIF to complete their capital stacks. In addition, the changes may provide additional financing opportunities for existing districts and projects.

Indiana

The General Assembly of the State of Indiana passed limited modifications to the TIF statutes and related provisions during this session. Some of the more relevant amendments to TIF and redevelopment commissions were included in House Bill 1271. The bill was the omnibus legislation for the Department of Local Government Finance (DLGF). It was signed into law by Governor Eric Holcomb on April 8, 2021, and included, among many other things, the following:

Negotiated Bond Sales – The bill extended the sunset provision permitting sales of general obligation, revenue (including tax increment revenue), or special tax bonds at negotiated sales until July 1, 2023.

Allocation Areas – There were several amendments providing that one parcel may not be included in multiple allocation areas. This provision, however, does not apply retroactively to parcels currently located in multiple allocation areas.

Annual Notification to DLGF – The bill shifted responsibility for annual notification to DLGF of the amount of excess tax increment revenue from the redevelopment commission of the local governmental unit to the county auditor.

The above is a short summation of some of the legislation passed by the General Assembly that affects TIF and redevelopment commissions. The 2022 General Assembly session will likely yield more changes to Indiana’s TIF statutes and related provisions.

Kentucky

During the 2021 legislative session, the Kentucky legislature passed an amendment to Section 65.7047 of the Kentucky Tax Increment Financing Act. The amendment, effective June 29, 2021, places certain preliminary requirements on cities and counties that are establishing or modifying local development areas over previously undeveloped land. The amendment requires the city or county to engage a “qualified independent outside consultant or financial adviser” to prepare a report that analyzes data related to the project and the proposed development area.

The component parts of the required report include:

1. the estimated approved public infrastructure costs;
2. an assessment of the feasibility of the project;
3. the estimated amount of local tax revenues that will be generated by the project over the term of the local development area;
4. the estimated amount of local tax revenues that will be displaced as a result of the project;
5. the estimated amount of old revenues that would have been generated in the local development area in the absence of the project; and

6. a determination that the project will not occur “but for” the existence of the local development area.

The amendment also addresses improvements to local development areas that will be financed through the issuance and sale of increment revenue bonds or “TIF bonds.” Where such bonds will be issued and sold, the required report must also include projected financing costs as well as the relationship of the estimated revenues to the financing needs of the project.

Finally, with respect to the legislative approval of a local development area, the amendment provides that the ordinance approving the development area must include the estimated net positive fiscal impact as set forth in the required report.

Ohio

The Ohio General Assembly recently passed several bills that will impact the implementation and administration of TIF districts in Ohio. Below is a summary of key updates that will be of interest to local governments, developers, and other community stakeholders.

Amendments to Sections 5709.40 and 5709.41 of the Ohio Revised Code – The biennium budget bill, signed into law by Governor Mike DeWine on July 1, 2021, includes amendments to Sections 5709.40 and 5709.41 of the Ohio Revised Code, which are the tax increment provisions that govern the establishment of TIF districts in municipal corporations. The amendments incorporate the following updates:

- ***Off-Street Parking Facilities:*** A Section 5709.40(A)(8) amendment updates the definition of “public infrastructure improvement” to expressly include “off-street parking facilities” as a qualifying expenditure of TIF service payments. This update will give municipalities more certainty with respect to their participation in the financing of projects that incorporate structured parking.
- ***Exemption Period Commencement Flexibility Allowing Designated Tax Year or Value:*** A Section 5709.41(D) amendment gives municipalities greater latitude when designating the commencement date for a TIF exemption under an authorizing ordinance. Under the updated provision, municipalities may elect to have a TIF exemption commence with any tax year specified in the TIF ordinance other than a tax year that precedes the effective date of the ordinance. Alternatively, the amendment permits municipalities to refrain from designating a tax year for the commencement of a TIF exemption and to instead utilize an improvement value as the basis for commencing a TIF exemption. For projects that incorporate multiple parcels, the amendment permits a municipality to establish different commencement dates for each parcel identified in the authorizing ordinance. These updates bring Section 5709.41 in alignment with the parallel provisions under Section 5709.40.

Minimum Service Payment Obligations Under Section 5709.91 – Substitute Senate Bill 57 was signed by Governor DeWine on April 27, 2021 and will be effective on August 3, 2021. This legislation approves several updates to Section 5709.91 of the Ohio Revised Code with respect to the status of “minimum service payment obligations” as they pertain to real property located in TIF districts. “Minimum service payment obligations” are payment obligations that supplement a property owner’s obligation to make statutory service payments under Section 5709.42 and related provisions of the Ohio Revised Code. The updates to Section 5790.91, include the following changes pertaining to minimum service payment obligations:

- ***Covenant Running with the Land:*** Recorded agreements or instruments memorializing a property owner’s consent to a minimum service payment obligation shall constitute a covenant running with the land and be binding against subsequent owners of the property;

- ***Insurable Interest**:* Minimum service payment obligations constitute an insurable interest for purposes of issuing title insurance in Ohio;
- ***Collected Like Property Taxes:*** Minimum service payment obligations may be certified to the county auditor and shall be collected in the same manner as real property taxes; and
- ***Security Mechanism for Financing:*** Minimum service payment obligations may be established to ensure sufficient funds to "finance expenditures" authorized under Chapters 725, 1728, and 5709. This update provides for broad authority to utilize "minimum service payment obligations" as compared to the prior provision which limited the use of "minimum service payment obligations" to ensuring sufficient funds to finance expenditures attributable to "public infrastructure improvements" and "housing renovations."

These changes provide greater flexibility and increased opportunity for local governments to incorporate the "minimum service payment obligations" into the financing of projects.

Payment Limitation on TIF District Extensions – Certain TIF districts in Ohio may be eligible for an extension of the exemption period. As a reminder, the ability to extend TIF districts in 2020 is gone, but TIF districts may still be extended in 2021 and beyond. For extensions after January 1, 2021, service payments may not exceed $1,500,000 for all calendar years prior to the calendar year immediately preceding the adoption of the extension amendment.

West Virginia

The West Virginia legislature continued passing amendments to the West Virginia Tax Increment Financing Act during the 2021 legislative session. The Act was previously amended during the 2004, 2014, 2016 and 2018 legislative sessions. The 2021 amendments primarily address:

1. extending the termination date of certain districts;
2. procedures to combine two districts;
3. the maturity date of certain refunding bonds; and
4. agreement for payments in lieu of taxes for properties within districts.

The amendments discussed below were effective on July 9, 2021.

Extension of Termination Date of Certain Districts – County commissions or municipalities may extend the termination date of certain districts for up to five years or to December 31, 2050, whichever is earlier. Only districts for which tax increment financing obligations were issued prior to December 31, 2020 may be extended. The extension of the term of a district may not occur simultaneously with the modification of the boundaries of the district. The local government proposing the extension is required to hold a public hearing, obtain the approval of the director of the West Virginia Department of Economic Development, and, if applicable, obtain the approval of any municipality in which a portion of a district is located.

Combining Districts – The amendments to the Act clarified: (i) the base assessed value of the property of a district resulting from the combination of two prior districts and (ii) the termination date of a combined district. The base assessed value of property in a combined district is the base assessed value of such property in each of the prior separate districts. The termination date of a combined district is the termination date of the district that had the latest termination date prior to the combination of the districts. This provides the opportunity to create a new district adjacent to an existing district, and following the combination of the two districts, the termination date would be nearly 30 years.

Payments in Lieu of Taxes – Prior to the most recent amendments to the Act, agreements for payments in lieu of taxes with respect to property in a district were required to have any such payments be equal to the property taxes that otherwise would have been due. The amendments permit agreements for payments in lieu of taxes to be negotiated among the public entity owning the property, the lessee of the property, and the applicable local levying bodies. These changes provide flexibility to provide property tax incentives for projects within a district. In addition, these changes provide for a written agreement to address the amount of property taxes to be deposited in the tax increment financing fund for the term of the agreement which eliminates assessment risk for any property covered by such an agreement.

Frost Brown Todd LLC – Carrie J. Cecil , Emmett M. Kelly, Emma H. Mulvaney, Donald L. Warner III and Beau F. Zoeller

July 28 2021

OZ Investing in the New Economy.

Do record stock market levels, the high inflation environment, and the new economy pose an opportunity for Opportunity Zone investors?

CONTINUE READING »

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July 21, 2021

IRS Extends Continuity Safe Harbor For ITC And PTC Projects.

Renewable energy developers breathed a sigh of relief Tuesday when the Internal Revenue Service and Department of the Treasury issued guidance extending the safe harbor for wind and solar projects to qualify for the investment tax credit (ITC) and production tax credit (PTC).

Citing delays related to the COVID-19 pandemic, the extension provides relief to developers struggling with the interconnection delays, supplier backlogs, and contractor constraints that have been plaguing the industry. Notice 2021-41 extends the Continuity Safe Harbor for projects that began construction in 2016 through 2020 and clarifies the methods that taxpayers can use to satisfy the Continuity Requirement.

Under prior IRS guidance, taxpayers have two options to demonstrate that a project has begun construction under Section 45 or Section 48(a)(5) of the Internal Revenue Code – the Physical Work Test or the Five Percent Safe Harbor. Both methods require continuous progress toward completion of the facility once construction has begun (Continuity Requirement). The Continuity Requirement can be satisfied in two ways, either by (1) satisfying the test applicable to the method used to establish start of construction, or (2) satisfying the Continuity Safe Harbor.

Continuity Safe Harbor Extension

The Continuity Safe Harbor allows a facility to be deemed to have satisfied the Continuity Requirement if the facility is placed in service within a certain amount of time after start of construction is established.

Notice 2021-41 provides that for any qualified energy project that began construction under either the Physical Work Test or the Five Percent Safe Harbor, the timeline to achieve placed in service and still satisfy the Continuity Safe Harbor is extended, as follows:

- Projects that began construction in 2016, 2017, 2018, or 2019, the Continuity Safe Harbor is satisfied if the project is placed in service by the end of the calendar year that is six years after the year construction began.
- Projects that began construction in 2020, the Continuity Safe Harbor is satisfied if the project is placed in service by December 31, 2025.

Satisfaction of Continuity Requirement

Projects that fail to be placed in service within the timeline allowed to satisfy the Continuity Safe Harbor can nevertheless still satisfy the Continuity Requirement.

Prior IRS guidance allowed a taxpayer to satisfy the Continuity Requirement by establishing facts sufficient to demonstrate compliance with the test associated with the method that was used to establish start of construction. The Continuous Construction Test had to be satisfied if start of construction was established under the Physical Work Test, or, if start of construction was established under the Five Percent Safe Harbor, the taxpayer had to satisfy the Continuous Efforts Test. Notice 2021-41 revises prior guidance by clarifying that regardless of the method used to establish start of construction, if the taxpayer satisfies either the Continuous Construction Test or the Continuous Efforts Test, the Continuity Requirement has been satisfied.

Husch Blackwell LLP

July 1, 2021

S&P: U.S. Highway User Tax Bonds Prove Resilient

Key Takeaways

- Credit trends have been stable, despite variations in the price of fuel, temporarily lowered driving activity during the pandemic, increasingly restrictive federal gasoline mileage standards, and potential future loss of revenue due to electric vehicles (EVs), plug-in hybrid electric vehicles (PHEVs), hybrid electric vehicles (HEVs) and other technologies.
- Stable credit quality stems from strong debt service coverage and additional bonds tests, stable fuel consumption trends despite price swings, active management by states in raising tax rates when necessary, and a mix of pledged stable revenue sources beyond fuel taxes, such as license and registration fees.
- We believe states will find alternative sources of pledged revenue to the extent gas tax revenue flowing into state highway funds declines, such as by imposing vehicle mileage or other taxes, or by direct transfers of general tax revenue.
- Recent changes to highway user tax bond outlooks have been the result of the linkage to state general obligation credit quality under our priority lien criteria.

Continue reading.

14 Jul, 2021

TAX - NEW JERSEY

Winberry Realty Partnership v. Borough of Rutherford

Supreme Court of New Jersey - June 28, 2021 - A.3d - 2021 WL 2639787

Taxpayers brought action under § 1983 and state Civil Rights Act against borough and borough's tax collector alleging violation of right of redemption arising from tax collector's refusal of taxpayers' attempt to redeem tax sale certificate before entry of final foreclosure judgment on their home.

The Superior Court granted summary judgment for borough and tax collector. Taxpayers appealed. The Superior Court, Appellate Division, affirmed in part and reversed in part. Parties filed petition and cross-petition for certification, which were granted.

The Supreme Court held that:

- Tax collector was not entitled to qualified immunity, and
- Borough had potential municipal liability for tax collector's conduct.

Borough's tax collector did not act in an objectively reasonable manner and thus was not entitled to qualified immunity from taxpayers' civil rights suit alleging violation of right of redemption arising from tax collector's refusal of taxpayers' attempt to redeem tax sale certificate before entry of final foreclosure judgment on their home, where tax collector withheld, or made no effort to secure, the information necessary for taxpayers to vindicate their substantive right to reclaim home under Tax Sale Law, apparently due to taxpayers' noncompliance with tax collector's policy requiring a written redemption request, and tax collector flatly refused to accept redemption payment at a point when right to redeem tax sale certificate had not been cut off.

Borough's tax collector had final policymaking authority on matters relating to redemption of tax sale certificates such that borough could be liable under § 1983 and state Civil Rights Act for her conduct that allegedly violated civil rights of taxpayers in refusing their attempt to redeem tax sale certificate before entry of final foreclosure judgment on their home; Tax Sale Law identified a tax collector as sole person with authority to accept payment to redeem a tax sale certificate and, by her own account, tax collector implemented unwritten policies and procedures governing redemption during her tenure as tax collector including requirement of written redemption calculation requests before that practice was directly authorized by statute.

Opportunity Zones and the Return to Cities, with Riaz Taplin

Are there misperceptions in the market? Do investors overreact to sentiment? And is there an opportunity for level-headed contrarian view Opportunity Zone investors?

Riaz Taplin is principal and founder of Riaz Capital, an Oakland, California based real estate management firm focused on developing workforce housing in California's urban Opportunity Zones.

Click here to my conversation with Riaz.

Episode Highlights

- The investment thesis behind creating workforce housing in urban markets.
- Real estate market fundamentals and misperceptions, particularly in the California Bay Area.
- Early indicators of a return to urban areas: how 250,000 people returning to the Bay Area over a very short period may coincide with a collapse in supply, leading to a price spike.
- The impact that tax reform may have on the Opportunity Zones marketplace.
- How the Opportunity Zone incentive may be ideally suited to capitalize on ongoing demographic macro trends.
- Highlights of Opportunity Zone projects that Riaz Capital is developing and why they appeal to investors.

OPPORTUNITYDB

JIMMY ATKINSON

JULY 14, 2021

Factors Influencing Capital Inflows For Tax-Exempt Municipal Bond Funds.

Summary

- Tax-exempt municipal bond funds (including both conventional funds and ETFs) have recorded 19 straight weeks of estimated net inflows.
- Money market funds attracted $23.6 billion over that Lipper fund-flows week, and the VIX ended at 28.43 (currently around 17.01)-safe to say uncertainty was more abundant in the market at the time.
- The first week in March aside, tax-exempt municipal bond funds have recorded weekly inflows of more than $1 billion in 70.4% of the weeks this year.

Continue reading.

Seeking Alpha

Jul. 16, 2021

Tax-Increase Talk Prompts Wealthy to Splurge on Muni Bonds.

Municipal bond investments hit new highs in 2021 as Democrats consider proposals to raise taxes

Wealthy Americans eyeing potential tax increases are helping drive record amounts of money into municipal bond funds.

In the first six months of 2021, U.S. municipal bond funds attracted an estimated $56.9 billion in net new money—the most for any first half of the year going back to 1992, according to data from Refinitiv Lipper.

Advisers to high-income investors say the potential for higher taxes has been a focus of conversation in recent months, drawing attention to munis.

Continue reading.

The Wall Street Journal

By Karen Langley

July 19, 2021

TAX - OHIO

O'Keeffe v. McClain

Supreme Court of Ohio - June 30, 2021 - N.E.3d - 2021 WL 2671329 - 2021-Ohio-2186

Property owner sought judicial review of a decision of the Board of Tax Appeals affirming tax commissioner's denial of owner's complaint challenging an exemption from property taxation for parcel on which state university operated a full-service airport.

The Supreme Court held that:

- University had burden of proving its entitlement to exemption;
- Exemption could be predicated on operational relationship between use of airport and university's activities;
- University established its right to exemption; and
- Hangars and offices leased for private use did not have to be split-listed as taxable.

State university had the burden of proving its entitlement to an exemption from property taxation for parcel on which the university operated a full-service airport, in action challenging the exemption brought by another property owner.

State university could predicate an exemption from property taxation for parcel on which the university operated a full-service airport on the operational relationship between the use of the airport and the university's activities, subject to a primary-use test.

State university established its right to an exemption from property taxation for parcel on which the university operated a full-service airport; student flight education, course in airport management, and course in airport planning and design were examples of how university's operating a public airport directly served educational purposes, of the approximately 100 employees who maintained airport operations, 35 were student employees, and there were two research facilities on the property, namely, a gas-turbine lab and an aerospace-research center.

Hangars and offices leased for private use on parcel on which state university operated a full-service airport did not have to be split-listed as taxable; statute governing exemption from taxation for property of a state university did not say that property had to be used exclusively in an operational relationship with university activities, but instead the statute used the phrase "used for the support of" the university, which encompassed the receipt of income from ancillary activities on the property.

TAX - GEORGIA

Jones v. City of Atlanta

Court of Appeals of Georgia - June 25, 2021 - S.E.2d - 2021 WL 2621445

Water and sewer customer, on behalf of a class similarly situated, sought review of decision of appeals board for the city department of watershed management finding that it lacked jurisdiction to rule on legality of city ordinances authorizing department to impose a franchise fee and a payment in lieu of taxes (PILOT), which customer alleged were illegal taxes for which he and similarly situated customers were entitled to a refund.

The Superior Court granted city's motion to dismiss, finding that it lacked subject matter jurisdiction over customer's claims due to customer's failure to meet 30-day deadline for applying for a writ of certiorari, and, alternatively, granted city's motion for judgment on the pleadings, concluding that the fees were not illegal taxes. Customer appealed.

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

- Limitation period in statute governing refunds of erroneously or illegally assessed taxes, rather than 30-day limitation period for seeking a writ of certiorari, applied to customer's suit seeking review of appeal board's decision, and
- Customer exhausted his administrative remedies.

Limitation periods in statute governing refunds of erroneously or illegally assessed taxes, providing that "no suit may be commenced until the earlier of the governing authority's denial of the request for refund or the expiration of 90 days from the date of filing the claim" and "under no circumstances may a suit for refund be commenced more than five years from the date of the payment of taxes or fees at issue," rather than 30-day limitation period for applying for writ of certiorari, applied to suit seeking review of agency's decision on water and sewer customer's claim for refund of franchise fee and payment in lieu of taxes (PILOT) paid to city department of watershed management; tax refund statute did not reference certiorari procedure or its 30-day limitation period.

Water and sewer customer, who claimed that franchise fee and a payment in lieu of taxes (PILOT) paid to city department of watershed management were illegal taxes for which he was entitled to a refund, exhausted his administrative remedies, where customer received a final decision from appeals board for department, pretermitting whether department was proper "governing authority" with whom to challenge tax, and customer's remaining course of action was to seek judicial review of appeal board's decision.

A "Good" Tax-Advantaged Bond Bill Tells Issuers Whether They Can Refund: Squire Patton Boggs

This is the first in a series of posts about neutral principles that make for "good" tax-advantaged bond legislation.

A good muni bond tax bill deals with refundings. For new programs, it provides the terms and conditions under which the new bonds may be refunded.

Over the long life of a project and the bonds that finance it, prevailing market interest rates are almost certain to be more favorable at some point than they were when the bonds were issued.[1] Refinancing transactions thus have always been a part of life in our corner of the world. And so the clock will begin to tick as soon as the bonds under a new bond program are issued, and once the issuer can call the bonds, our phones will begin to ring with the question: Can we refund?

A good tax-advantaged bond program will tell issuers in clear language whether and how they can refund bonds under the program.

Continue Reading

By Johnny Hutchinson on July 1, 2021

The Public Finance Tax Blog

Squire Patton Boggs

CDFA Publishes New Private Activity Bond Volume Cap Data and Resource Center.

The CDFA Volume Cap Resource Center allows users to search, sort, and compare comprehensive private activity bond volume cap data from all 50 states and the District of Columbia dating back to 2005. As a leader in the development finance industry, CDFA serves as the principal source for private activity bond volume cap data, reporting, and trends.

CDFA collects and analyzes the best available national volume cap data as reported by managing state agencies by surveying and interviewing representatives from each state's volume cap allocating and issuing authorities. The data represents the best available figures as reported by each state to CDFA.

The CDFA Annual Volume Cap Report contains information critical to understanding and evaluating the efficiencies, effectiveness, costs, and benefits of private activity bonds.

Click here for Volume Cap Data.

Opportunity Zone Marketplace Roundtable, an ADISA Conference Panel.

Are Opportunity Zones being underutilized? And what's in store for the Opportunity Zone marketplace as we come out of the…

CONTINUE READING »

opportunitydb.com

June 23, 2021

[The Upcoming Inflection Point for Opportunity Zones, with Nick Parrish.]

With impending tax policy changes and upcoming investing deadlines, is the Opportunity Zones marketplace nearing a critical inflection point? Nick…

CONTINUE READING »

opportunitydb.com

June 30, 2021

TAX - COLORADO

In Re Interrogatory on House Bill 21-1164 Submitted by Colorado General Assembly

Supreme Court of Colorado - May 24, 2021 - P.3d - 2021 WL 2069700 - 2021 CO 34

General Assembly submitted interrogatory asking whether it could require school districts to gradually eliminate temporary property tax credits without obtaining voter approval.

The Supreme Court held that:

- Supreme Court would exercise original jurisdiction;
- Legislation did not need statewide voter approval; and
- As a matter of first impression, General Assembly was not required to obtain further voter approval before passing the legislation.

Supreme Court would exercise original jurisdiction to consider the General Assembly's petition asking whether it could require school districts to gradually eliminate temporary property tax credits without obtaining voter approval, as interrogatory at issue was connected with pending legislation and directly related to the constitutionality of that legislation, and the legislation presented important questions upon a solemn occasion; absent guidance, state and local school districts will lack certainty as to the appropriate level of school districts' total program mill levies, school districts would risk the costs and delays of legal action and potentially substantial refund obligations under Taxpayer's Bill of Rights (TABOR) if the increases in total program mill levies were ultimately found to be unconstitutional, and individual lawsuits would create substantial unnecessary costs and confusion.

General Assembly's incremental elimination of temporary property tax credits, which were granted to mitigate the effect of the correction of Department of Education's improper advisement that school districts calculate the mill levied in accordance with the Taxpayer's Bill of Rights (TABOR) notwithstanding voter waiver of TABOR requirements, did not need statewide voter approval; districts were responsible for tax rates and increases and were the only entities with the authority to change tax policy within the meaning of TABOR.

General Assembly, consistent with Taxpayer's Bill of Rights (TABOR) requirements, was not required to obtain further voter approval before passing legislation which gradually eliminated temporary property tax credits adopted in prior legislation to mitigate impact of reversal of Colorado Department of Education guidance which advised local school districts to calculate mill levies in accordance with TABOR's growth-plus-inflation limits despite voter waivers of those limits; district voters had validly waived TABOR's revenue limits and necessarily approved the mill levies in effect at the time they voted, and legislation simply effectuated what the voters had already approved and did not permit mill levies above that level.

TAX - TEXAS

Odyssey 2020 Academy, Inc. v. Galveston Central Appraisal District

Supreme Court of Texas - June 11, 2021 - S.W.3d - 2021 WL 2386137 - 64 Tex. Sup. Ct. J. 1304

Taxpayer, a public open-enrollment charter school, sought review of county appraisal district's denial of ad valorem exemption from county taxes for private property that taxpayer leased with contractual agreement for taxpayer to pay property owners' ad valorem taxes.

The District Court granted summary judgment for appraisal district. Taxpayer appealed. The Court of Appeals affirmed. Taxpayer petitioned for review, which was granted.

The Supreme Court held that:

- Taxpayer was not entitled to ad valorem exemption for public property, and
- Taxpayer was not entitled to exemption for school property.

Taxpayer, a public open-enrollment charter school, was not entitled to ad valorem tax exemption from county taxes under public property clause of State Constitution or under state constitutional section providing exemption for property of counties, cities, and towns owned and held for public purposes, for private property that taxpayer leased with contractual agreement for taxpayer to pay property owners' ad valorem taxes, even if property was characterized as public property under statute governing a charter school's lease of property with state funds, where there was no actual public ownership of property.

Issue of whether taxpayer, a public open-enrollment charter school, was entitled to ad valorem tax exemption from county taxes for leased private property under constitutional section providing exemption for property of counties, cities, and towns owned and held for public purposes was not properly before Supreme Court, where taxpayer did not ask county appraisal district for exemption, taxpayer did not raise exemption in trial court, taxpayer did not assign the failure to grant exemption as error in Court of Appeals, taxpayer did not mention exemption in its petition seeking Supreme Court's review, and taxpayer raised exemption for first time in its merits brief after it was addressed in an amicus brief.

Taxpayer, a public open-enrollment charter school, was not entitled to ad valorem tax exemption from county taxes under school property clause of State Constitution authorizing exemptions for school buildings and furniture used for school purposes, for private property that taxpayer leased with contractual agreement for taxpayer to pay property owners' ad valorem taxes, where property owners and taxpayer, as school operator, where not same people or entities.

What Makes a "Good" Muni Bond Tax Bill? - Squire Patton Boggs

Do you feel it? Good vibes for tax-advantaged bond legislation permeate the air around us. White smoke emerged from the White House on June 24, signifying that the President and key Senate leaders had reached a deal on an infrastructure bill. The deal includes “public private partnerships, private activity bonds, direct pay bonds and asset recycling for infrastructure investment.” Hey, that’s us![1]

It feels downright 2009ish. The prospect of new bond legislation has us thinking: Is there a right or wrong way to write a tax-advantaged bond bill?

Continue Reading

By Johnny Hutchinson on June 24, 2021

The Public Finance Tax Blog

Squire Patton Boggs

State Pass-Through Entity Taxes Let Some Residents Avoid the SALT Cap at No Cost to The States.

This week, Colorado became the 14th state to either require or allow some pass-through businesses such as partnerships to pay state income taxes at the entity level rather than on their personal income tax returns.

Why does this matter? It’s an increasingly popular way for states to give some residents relief from the 2017 Tax Cuts and Jobs Act’s (TCJA) $10,000 cap on the state and local tax (SALT) deduction without lowering state tax revenue by a dime.

Continue reading.

Tax Policy Center

by Kim S. Rueben

June 24, 2021

How It Works: When Mayors Use TIFs To Steer Investment Dollars

Millennium Park, Lincoln Yards and INVEST South/West are three signature projects from Daley, Emanuel and Lightfoot. But what’s really going on?

This story is part of the Re-Imagine Chicago project, a collaboration between the University of Chicago’s Center for Effective Government and WBEZ’s Reset, investigating how city government, community investment, public safety and schools could work better.

In March 2018, former Mayor Rahm Emanuel tweeted a 90-second video. It begins with the melancholy call of a single horn against an otherwise dark screen. As swirls of white form ribbons of light, the words “Amazon Makes Its Second City The Second City” come into focus.

A few seconds later, William Shatner, known for his role as Captain Kirk on Star Trek, tells the viewer that Chicago is a modest but resilient place, one with a story that parallels Amazon's own humble origins. "Really the press release writes itself," Shatner intones.

The video was released on the heels of Emanuel's bid for the corporate behemoth's second headquarters, a move that secured Chicago a spot on Jeff Bezos's shortlist. During his tenure, Emanuel spent much of his time wooing large companies to the city. He was successful, too.

[Continue reading.](#)

wbez.org

By Elly Fishman

June 28, 2021

TAX - GEORGIA

[Love v. Fulton County Board of Tax Assessors](#)

Supreme Court of Georgia - June 1, 2021 - S.E.2d - 2021 WL 2194523

Citizens, who own real property and pay ad valorem taxes in county, filed petition for writ of mandamus and other relief against county board of tax assessors, individual tax board members, and board's chief appraiser, alleging that board failed to exercise its duty to diligently investigate and determine whether stadium lessee was subject to ad valorem property taxation, and seeking temporary and permanent injunctive relief, to enjoin defendants from recognizing stadium property as tax exempt, and declaration that taxable leasehold interest, rather than non-taxable usufruct, had been transferred to lessee.

The Superior Court granted defendants' motion to dismiss for failure to state a claim. Citizens appealed. The Court of Appeals affirmed in part and reversed in part. On remand, the Superior Court dismissed citizens' claims for mandamus, declaratory and injunctive relief, and refund of taxes paid. Citizens appealed.

The Supreme Court held that:

- Citizens failed to state claim for mandamus;
- Permanent injunction prohibiting board members from continuing to implement board's exemption decision was not warranted; and
- Citizens failed to show they were in position of uncertainty as to an alleged right, as required to obtain declaratory judgment.

Citizens failed to state claim for mandamus, in action against county board of tax appraisers, individual tax board members, and board's chief appraiser, alleging that board failed to exercise its duty to diligently investigate and determine whether stadium lessee was subject to ad valorem property taxation, where their petition and attached exhibits disclosed with certainty that board investigated taxability of lessee's interest and reached decision on that question.

Permanent injunction prohibiting members of county board of tax assessors, in their individual capacities, from continuing to implement board's decision that lessee's interest in football stadium was exempt from ad valorem property taxation was not warranted, in citizen's action to enjoin board members from recognizing stadium property as tax exempt, where petition and attached exhibits showed that board members' exemption decision was founded on evidence that lessee's interest was non-taxable usufruct, that board members did not exercise their discretion in unreasonable, arbitrary, or capricious manner that would constitute gross abuse of duty, and that stadium license and management agreement did not materially change nature of lessee's interest in stadium.

Citizens, who owned real property and paid ad valorem taxes in county, failed to show they were in position of uncertainty as to an alleged right, as required to obtain judgment declaring that taxable leasehold interest, rather than non-taxable usufruct, had been transferred to lessee of football stadium.

Ohio Supreme Court Denies Village of Obetz Attempt to Reinstate Expired TIF Exemption.

A recent decision by the Ohio Supreme Court addressed whether a municipality can retroactively reinstate an expired TIF exemption by amending the legislation that authorized the original exemption. The case arose from a TIF ordinance passed by the Village of Obetz in April 1997, which enacted a TIF arrangement related to the development of a warehouse located in the Village. The TIF ordinance provided for a 25 percent exemption of the increase in true value from the improvements for a period of 16 years. However, when the tax commissioner granted the exemption in October 1999, the commissioner inexplicably ordered a 100 percent exemption to last for the shorter of *30 years* or the end of the obligation to make service payments. In 2017, after being notified that the 16-year exemption had expired in 2015, the Village attempted to pass another ordinance, this time seeking to amend the original 1997 legislation. The Village's latest ordinance sought to extend the exemption from 16 to 30 years and increase the exemption from 25 percent to 100 percent, effectively trying to effectuate the tax commissioner's erroneous determination through 2017. The tax commissioner denied the Village's application, reasoning that retroactively approving this exemption would violate Ohio's TIF laws.

The Supreme Court agreed with the tax commissioner's denial, finding that retroactively applying the exemption would have violated Section 5709.40(G) of the Ohio Revised Code, which states that "[a]n exemption from taxation […] commences with the tax year specified in the ordinance so long as the year specified in the ordinance commences *after* the effective date of the ordinance." The Court reasoned that despite the tax commissioner's error in 1999, the plain language of the 1997 ordinance specified that the exemption would expire after 16 years, period. Accordingly, the Village's 2017 ordinance would have effectively created a new exemption. And under R.C. 5709.40(G), this new exemption could not commence until the year after the ordinance's effective date. In other words, because the ordinance was passed in 2017, the earliest the TIF exemption could commence was 2018. Thus, the Court denied the Village's attempt to extend its earlier TIF and rejected any application of the exemption retroactively to 2015, 2016 and 2017.

Bricker & Eckler LLP

June 8, 2021

[S&P: U.S. Big Box Retailers’ 'Dark Store' Practices Continue To Pressure Some Local Governments’ Finances]

Key Takeaways

- E-commerce continues to pressure traditional brick-and-mortar retail as online sales account for an ever-greater share of total U.S. retail sales.
- Big box and other retail chains are expanding their use of the “dark store” tactics to appeal assessed valuations and reduce their property taxes.
- In some states, these appeals can have a fiscal impact on local governments, resulting in significant devaluation of retail properties and sometimes large tax settlements.
- The widespread use of dark store appeals has spawned calls for legislative reform in many states as local governments push back at the threat of losing much-needed tax revenue.

Continue reading.

8 Jun, 2021

TAX - OHIO

Willacy v. Cleveland Board of Income Tax Review

Supreme Court of Ohio - May 25, 2021 - N.E.3d - 2021 WL 2093284 - 2021-Ohio-1734

Taxpayer appealed determination of the Board of Tax Appeals affirming city board of income tax review’s denial of her claim for refund of income tax on value of stock options she exercised as a nonresident but received as compensation during her prior employment in city.

The Supreme Court granted taxpayer’s petition to transfer appeal.

Holdings: The Supreme Court held that:

- Ordinance’s three-year limitations period for city to make a tax assessment of stock options income ran from the date taxpayer exercised her stock options, and
- Res judicata did not preclude city from assessing income tax on value of stock options taxpayer exercised after she retired from employment with employer in city.

Ordinance’s three-year limitations period for city to make a tax assessment of stock options income, which prohibited city from making an assessment more than three years “from the time the city income tax was due or the city income tax return was filed, whichever is later,” ran from the date taxpayer exercised her stock options, not from the date she was granted the stock options by her employer.

The change to regulation, which provided, as amended, that an employer was not required to withhold municipal income tax with respect to an individual’s disqualifying disposition of an incentive stock option if, at the time of the disqualifying disposition, the individual was not an employee of either the corporation with respect to whose stock option has been issued or of such corporation’s successor entity, did not apply to taxpayer’s challenge to city’s refusal to refund her income tax assessed on value of stock options she exercised; regulation just relieved an employer of the duty to withhold a tax obligation, it did not render the income nontaxable.

Res judicata did not preclude city from assessing income tax on value of stock options taxpayer exercised after she retired from employment with employer in city, even though city had refunded amounts employer had withheld when taxpayer received stock-option income in prior years when she was still employed by employer; taxpayer failed to show there were any court or administrative proceedings concerning the prior tax years or that city issued the refunds in response to a judgment or adjudication.

TAX - WISCONSIN

State ex rel. Collison v. City of Milwaukee Board of Review

Supreme Court of Wisconsin - June 2, 2021 - N.W.2d - 2021 WL 2216215 - 2021 WI 48

Taxpayer, proceeding pro se, sought review of city board of review's decision upholding the assessment of taxpayer's real property.

The Circuit Court affirmed. Taxpayer appealed. The Court of Appeals affirmed. Taxpayer petitioned for certiorari review.

The Supreme Court held that the assessor, by valuing the property according to its highest and best use as a parking lot, properly considered the impairment of the property's value due to contamination.

Preparing Opportunity Zone Investors For Higher Capital Gains.

Will clients who've taken advantage of recent tax breaks for economic development soon regret their decision?

Qualified opportunity zones (QOZs) were established as part of 2017's tax reform. A key attraction of investments in this program is deferred capital gains taxes. President Joe Biden's proposed tax changes could increase the latter significantly—meaning investors might pay more tax when the deferment ends.

The recent American Families Plan bumps up taxes for wealthy taxpayers—including increasing the tax rate on long-term capital gains from the current 20% for households making more than $1 million. QOZs provide tax incentives for long-term investments in certain low-income communities, the biggest being deferment of recognized capital gains until the end of 2026.

Taxpayers with these deferred capital gains might, however, then face the 2026 rate, which under Biden's proposal could be 39.6% for wealthy taxpayers. It's unknown now if the Biden proposal will grandfather in QOZ investors at the current lower capital gains rates.

But advisors still advantages to these investments.

"Overall, we expect Opportunity Zone investments—and other tax-advantaged investments—will be more attractive in a higher-rate environment, since the tax savings they yield will be more meaningful," said Chris Catarino, CPA and shareholder at Drucker & Scaccetti in Philadelphia. "It is possible that investments into QOZs could temporarily freeze up until the higher tax rates go into effect."

“We actually think that the tax increase may enhance the attractiveness of QOZ investments,” added Aaron Brachman, Washington, D.C.-based managing director, wealth manager and founding partner at Washington Wealth Group at Steward Partners.

Biden’s proposal could hurt capital gains deferment, Brachman admitted, but enhance the program’s other two main benefits:

• Appreciation of the new property is exempt from capital gains if held in accordance with all QOZ guidelines. If the property sees appreciation, this is the most powerful benefit by far. It is further enhanced if the capital gains rate is near 40%.

• Investors can depreciate properties to offset the income received to the investor. If the property is, again, held in accordance with all QOZ guidelines “they should not see any depreciation recapture upon sale,” Brachman said. “This essentially provides a highly tax efficient stream of income that won’t be penalized with recapture upon sale.”

An often-overlooked aspect of the Biden plan is the proposed elimination of IRC Section 1031 “like-kind” exchanges. And “most qualified opportunity funds today invest in real estate projects and plan to use this provision of the code to cycle through a handful of different projects during their 10-year life without incurring any tax friction,” Catarino said. “Elimination of 1031 exchanges would prevent these funds from executing this plan.

“It will be interesting to see if the Biden administration proposes increased reporting requirements on Opportunity Zone funds to monitor and evaluate the program’s impact on the communities,” he added. “The reporting requirements have been fairly minimal in comparison to the tax benefits.”

The year 2026 is also after the next presidential election. “Even if the income tax rates on capital gains go up under President Biden, it’s possible the rates could come down under the next administration,” Catarino said.

An investing plan to realize a few years’ return on the money for the eventual tax bill—should capital gains rise as much as proposed—is one strategy. Also, advise patience to clients who invested in QOZs and who fear tax changes, advisors say.

“The most significant tax benefit of QOZ investing is that capital gains realized on the sale of an investment held 10 years or more are essentially tax-free due to a basis step-up,” Catarino said. “Investors should be taking the long-view. Maybe they will have to pay more tax in 2026 from a rate swing, but the payoff even further down the line could be far more beneficial.”

FINANCIAL ADVISOR

JUNE 7, 2021 • JEFF STIMPSON

Biden Administration Proposes Increase in PAB Limits Amongst Other Potential Tax Changes.

The Biden Administration has released its annual “Green Book,” which includes a plethora of proposed tax changes for the coming fiscal year. While many changes proposed in the Treasury document are historically ignored on Capitol Hill, these documents can be used as a road map for where the Administration’s priorities lie.

Bond Components

The "Green Book" included several bond provisions, including some BDA and MBFA priorities. While the tax document did not include key priorities such as the reinstatement of tax-exempt advance refundings, Congressional Leadership remains priorities.

The Administration is calling for an increase in the PAB limit for transportation infrastructure, doubling the limit to 30 billion dollars. The plan also calls for the authorization of a new direct-pay bond, Qualified School Infrastructure Bonds. According to the Green Book, the QSIB's would:

- Have a total national QSIB limitation of $50 billion $16.7 billion each for 2022, 2023, and 2024.
- Interest on QSIBs would be taxable and either the bondholders' interest would take the form of a tax credit equal to 100% of the interest on a QSIB of or the bondholders would receive cash from the bond issuer, and the Federal Government would make corresponding direct payments to the bond issuer.
- Each State would have to use no less than 0.5 percent of its total QSIB allocation for outlying areas.

We will continue to provide updates as they become available.

Bond Dealers of America

June 1, 2021

TAX - LOUISIANA

Comeaux v. Louisiana Tax Commission

Supreme Court of Louisiana - May 20, 2021 - So.3d - 2021 WL 2023073 - 2020-01037 (La. 5/20/21)

Parish assessor filed petition for declaratory judgment, asserting that statute governing changes or corrections of assessments by tax was unconstitutional as applied by Tax Commission.

The District Court declared statute unconstitutional as applied. Taxpayers appealed.

The Supreme Court held that:

- Repeal of related regulation, also challenged by assessor, did not render action moot, and
- Statute, as applied by Commission to docket taxpayers' appeal of assessment, issue a rule to show cause, hold a hearing to review correctness of assessment, and correct assessment outside of an ordinary tax appeal, violated constitutional provision requiring an assessment to be first subject to review by board of review and then by Commission.

Repeal of regulation which provided that a decision by Tax Commission determining fair market value of a property would be applied until reappraisal absent change in condition of property did not render moot parish assessor's declaratory judgment action challenging constitutionality of statute governing correction of assessment outside of ordinary tax appeal process, in which action assessor also challenged validity and constitutionality of regulation; Commission's sudden switch in position was more indicative of attempt to create technical mootness than of genuine change of heart, and it was significant that statute had not been repealed or amended.

Statute governing correction of assessment outside of ordinary tax appeal process, as applied by Tax Commission to docket taxpayers' appeal of assessment, issue a rule to show cause, hold a hearing to review correctness of assessment, and correct assessment outside of an ordinary tax appeal, violated constitutional provision requiring an assessment to be first subject to review by board of review and then by Commission; Commission's actions were not merely enforcement but rather of review.

TAX - GEORGIA

[City of Hapeville v. Sylvan Airport Parking, LLC]

Court of Appeals of Georgia - May 17, 2021 - S.E.2d - 2021 WL 1960195

Owner of real property brought action against city, mayor, and city council members, seeking declaratory and injunctive relief regarding city's threatened enforcement of occupational tax ordinance to prevent it from operating parking facility on parcel of land.

The trial court denied defendants' motion to dismiss, and defendant sought interlocutory review.

The Court of Appeals held that:

- Sovereign immunity was waived for purposes of property owner's claim for declaratory judgment against city and mayor and council members in their official capacities;
- Sovereign immunity barred claims for injunctive relief against city and mayor and council members in their official capacities;
- Sovereign immunity did not bar individual capacity claims against mayor and council members;
- Property owner stated claim for declaratory and injunctive relief against city's mayor and members of its council in their individual capacities; and
- Trial court did not err in failing to make factual findings in ruling on motion to dismiss based on sovereign immunity.

City's sovereign immunity, and that of mayor and city council members in their official capacities, was waived for purposes of property owner's claim for declaratory judgment with regard to the validity of city's occupational tax ordinance; statutory provision providing that, in any proceeding involving validity of municipal ordinance, municipality "shall be made a party" constituted waiver of sovereign immunity.

Sovereign immunity barred property owner's claims against city, and official capacity claims against mayor and city council members, to enjoin defendants from enforcing provision of city's occupational tax ordinance against it; statutory waiver of sovereign immunity did not apply because property owner did not seek to impose liability on municipal defendants.

Sovereign immunity did not bar property owner's claims against mayor and city council members in their individual capacities, seeking declaratory and injunctive relief regarding city's threatened enforcement of occupational tax ordinance to prevent it from operating parking facility on parcel of land; individual municipal defendants' contention that they were not real parties in interest had no merit, because relief sought be property owner would not alter title, possession, or usage of any real property of city or interfere with any city contracts.

Owner of real property stated claim for declaratory and injunctive relief against city's mayor and members of its council in their individual capacities, in which property owner challenged validity and threatened enforcement of city's occupational tax ordinance to prevent it from operating parking facility on parcel of land, where property owner alleged that city council was governing authority of city and was empowered to enact and implement land use regulations.

Trial court did not err in failing to make factual findings in ruling on motion to dismiss based on sovereign immunity, in property owner's action against city, and mayor and city council members in their official capacities, where resolution of sovereign immunity claims did not involve any factual disputes.

TAX - OHIO

Obetz v. McClain

Supreme Court of Ohio - May 20, 2021 - N.E.3d ----2021 WL 2004808 - 2021-Ohio-1706

After expiration of ordinance providing for a property tax exemption under a tax-increment-financing (TIF) arrangement, village applied for a tax-incentive-program exemption.

The tax commissioner denied the exemption for tax years 2015, 2016, and 2017 and the Board of Tax Appeals affirmed. Village appealed.

The Supreme Court held that:

- Village adequately preserved for appellate review its claim that the 2017 amendment to 1997 ordinance would permit an extension of the original property tax exemption under the 1997 ordinance from 16 to 30 years;
- Tax commissioner's entry did not extend the original property tax exemption once ordinance granting exemption had expired; and
- County auditor had the authority to retroactively remove property from the exempt list, and return the property to the tax list.

Village adequately preserved for appellate review its claim that the 2017 amendment to 1997 ordinance would permit an extension of the original property tax exemption under the 1997 ordinance from 16 to 30 years because the tax commissioner's 1999 entry had authorized a maximum 30-year exemption, even though village failed to specifically refer to the 1999 entry in its notice of appeal to the Board of Tax Appeals (BTA); amendment eliminated the requirement to "specify the errors," and village's notice of appeal, which contested the commissioner's finding that the 2017 ordinance created a new tax increment financing (TIF) exemption rather than amending the TIF exemption created by village in 1997 ordinance, gave fair notice of the issue on appeal.

The tax commissioner's entry, which granted property tax exemption based on tax-incremen--financing (TIF) arrangement and provided that the exemption would continue for 30 years, even though ordinance stated the exemption would last for 16 years, did not extend the original property tax exemption once ordinance granting exemption had expired; the tax commissioner's entry granted the exemption "in accordance with the provisions of the municipal ordinance," the commissioner's entry did not permit village to retroactively reinstate exemption after it had expired.

County auditor had the authority to retroactively remove property from the exempt list, and return the property to the tax list, for tax years 2015 – 2017 at the tax commissioner's directive, even though the property was originally maintained it on the exempt list for 2015, 2016, and 2017; statute permitted the tax commissioner to revise at any time the list of exempt property in every county so no property was improperly or illegally exempted from taxation.

The tax commissioner was not estopped from denying the extension of the tax-increment-financing

(TIF) property tax exemption for tax years 2015 – 2017; tax commissioner's entry initially granting TIF exemption in 1999 stated the exemption ended "on the earlier of thirty years from such date of passage or the date on which the City can no longer require semiannual service payments in lieu of taxes," and 1997 ordinance expressly provided that the exemption expired after 16 years.

Novogradac Low-Income Housing Tax Credit Handbook

2020 Edition– SOLD OUT

The 2020 edition of this title is sold out. Novogradac will publish the 2021 edition in June.

The 2020 edition of the Low-Income Housing Tax Credit Handbook is an essential resource for affordable rental housing owners, developers, managers and investors–and the professionals who counsel them. This authoritative guide provides a clear explanation of Internal Revenue Code Section 42 and examples of model transactions to illustrate complex concepts.

The 2020 edition features information and discussions on the fiscal year 2020 appropriations bills, including additional LIHTC allocations. It also includes new sections on calculating the average-income designation income limits and on contract sales of real estate assets and property management.

This edition includes updated sections about the Community Reinvestment Act, verification of tenant income and assets, managing re-syndicated LIHTC properties, certification and review provisions in monitoring compliance, and more.

The 2020 edition of the Low-Income Housing Tax Credit Handbook is an essential resource for every active participant in the LIHTC market.

Click here to learn more and to preorder.

Treasury Department Releases 2022 Green Book.

Green Book—Treasury's explanation of tax proposals in FY 2022 budgetU.S. Treasury Department released the "Green Book"

The U.S. Treasury Department this afternoon released the "Green Book"—a 114-page explanation of the tax proposals in the Biden Administration's FY 2022 budget.

The title of the Green Book is "General Explanations of the Administration's Fiscal Year 2022 Revenue Proposals."

May 28, 2021

Senate Finance Committee Advances Energy Tax Credit Overhaul Bill Amid

Partisan Deadlock.

Dive Brief:

- Members of the Senate Finance Committee vied on Wednesday to add and preserve resource-specific tax credits to the Clean Energy for America Act, a bill intended to replace some 40 individual tax incentives with broader and more uniform tax credits tied to carbon emissions reductions.
- Committee Chairman Ron Wyden, D-Ore., announced that he planned to place the Clean Energy for America Act directly onto the Senate calendar without further committee hearings after a vote on the amended bill ended in a tie split along party lines.
- Democratic members of the committee generally supported the bill, arguing that it would allow renewable energy and fossil fuels to compete in a free-market system, and would reduce carbon emissions. Republicans rejected the final version, saying what started as an effort to level the playing field between energy resources ultimately ended up as a bill that would promote renewable energy at the expense of fossil fuels.

Continue reading.

Utility Dive

By Emma Penrod

May 27, 2021

Applying Opportunity Zones to Oil and Gas Investments, with Matt Iak.

How can the Opportunity Zone incentive be applied to energy investments in the oil and gas sector? Matthew Iak is…

CONTINUE READING »

opportunitydb.com

May 26, 2021

TAX - MINNESOTA

Mayo Clinic v. United States

United States Court of Appeals, Eighth Circuit - May 13, 2021 - F.3d - 2021 WL 1916000

Taxpayer, a Minnesota nonprofit corporation and tax-exempt organization that was the parent organization of several hospitals, clinics, and a college of medicine and science comprised of five distinct medical schools that offered M.D., Ph.D., and other degrees, as well as residencies, fellowships, and continuing medical education, brought tax refund suit against the government, alleging that it qualified as an educational organization and thus was entitled to a tax exemption for certain passive income.

The United States District Court for the District of Minnesota granted summary judgment for taxpayer. Government appealed.

The Court of Appeals held that:

- Taxpayer had to be educational organization, i.e. tax-exempt organization whose primary activity was education, to be eligible for unrelated business income tax (UBIT) exemption, and
- Factual issue existed as to whether taxpayer qualified as educational organization, and thus was entitled to tax refund for taxes paid on certain passive income.

Merely carrying on charitable or educational purposes is not enough to qualify as an educational organization, and thus be entitled to a tax exemption for certain passive income, given the faculty, curriculum, students, and place requirements in the governing statute; the taxpayer still must meet the essential statutory elements, even if its primary function need not be presentation of formal instruction.

Genuine issue of material fact existed as to whether taxpayer qualified as educational organization, and thus was entitled to tax refund for taxes paid on certain passive income, precluding summary judgment in tax refund suit against government alleging that it qualified as educational organization and thus was entitled to unrelated business income tax (UBIT) exemption.

A taxpayer is not disqualified from being an educational organization on the basis that some of its educational purposes and functions also fall within other charitable categories, and vice versa, but the presence of a single non-educational purpose, if substantial in nature, will destroy the unrelated business income tax (UBIT) exemption regardless of the number or importance of truly educational purposes.

TAX - ALABAMA

Barnett v. Jones

Supreme Court of Alabama - May 14, 2021 - So.3d - 2021 WL 1937259

Local education officials and other public-education-related plaintiffs, after the Morgan County Commissioners refused to comply with requirements of local law that appropriated a portion of Morgan County's proceeds from the Simplified Sellers Use Tax (SSUT) to the county and city boards of education in Morgan County, brought action against the Commissioners, both in the Commissioners' individual and official capacities, for a judgment declaring that the local law was constitutional.

The Circuit Court entered judgment upholding the local law. Commissioners appealed.

The Supreme Court held that the local law did not violate Alabama Constitution's provision prohibiting local laws that pertained to matters covered by a general law.

Local law that appropriated portion of Morgan County's proceeds from Simplified Sellers Use Tax (SSUT) to county and city boards of education in Morgan County did not violate Alabama Constitution's provision prohibiting local laws that pertained to matters covered by general law; despite argument that local act covered same matter provided for by SSUT Act or Budget Control Act, SSUT Act only provided that each county's portion of SSUT proceeds was to be deposited into their general funds, local act covered how Morgan County's proceeds were to be spent once received, and Budget Control Act manifested Legislature's authority to direct county commissions as to how funds allocated to them by Legislature had to be spent.

JCT Report: Qualified Opportunity Funds Invested $24 Billion Through 2019

The Joint Committee on Taxation issued a report which found that according to tax return data, Qualified Opportunity Funds have made roughly $24 billion in total investments as of the end of 2019. Over 92 percent of these investments went into low-income Opportunity Zone communities, and about six percent went to Opportunity Zones contiguous to low-income communities. To put this into perspective, about $3.5 billion annually has been awarded to qualifying organizations in New Market Tax Credits program.

Last week, Wilmington, Delaware-based Second Chances Farm announced their second Opportunity Zone location. Their expansion into the Philadelphia market enables the indoor vertical farm startup to continue its social mission of enabling returning citizens to become entrepreneurs.

On the deal front, GTIS Partners announced a joint venture with Baker Development Corporation and Foundation Capital Partners to develop a 490,000 square-foot logistics center in a Goodyear, Arizona Opportunity Zone. This $45 million project, Yuma|143, will address the e-commerce needs of fast-growing consumer populations within the Phoenix metropolitan area.

Continue reading.

OPPORTUNITYDB

by JILL HOMAN

MAY 24, 202

IRS Releases Reference Prices for Energy Production Credits.

SUMMARY BY TAX ANALYSTS

The IRS has published (Notice 2021-32, 2021-21 IRB 1159) the inflation adjustment factors and reference prices used to determine the availability of the renewable electricity production credit, the refined coal production credit, and the Indian coal production credit for calendar year 2021.

Continue reading.

How Much Does Your State Collect in Property Taxes Per Capita?

Property taxes are an important source of revenue for local and state governments. In fiscal year (FY) 2018 (the most recent year of data available), property taxes generated 31.1 percent of total U.S. state and local tax collections and 71.7 percent of local tax collections. Local governments rely heavily on property taxes to fund schools, roads, police departments, and fire and emergency medical services, as well as other services associated with residency or property ownership.

On average, state and local governments collected $1,675 per capita in property taxes nationwide in FY 2018, but collections vary widely from state to state. The highest state and local property tax collections per capita are found in the District of Columbia ($3,740), followed by New Jersey ($3,378), New Hampshire ($3,362), Connecticut ($3,107), New York ($3,025), and Vermont ($2,738). The lowest collections per capita are found in Alabama ($598), Oklahoma ($771), Arkansas ($776), Tennessee ($799), and New Mexico ($832).

Continue reading.

Tax Foundation

by Janelle Cammenga

May 19, 2021

Why Is Opportunity Zone Deal Flow Increasing, And By How Much?

Chris Loeffler is co-founder and CEO of Caliber, an asset management and real estate services firm headquartered in Scottsdale, Arizona. Caliber Funds is currently offering a $500 million mixed-asset Qualified Opportunity Fund geographically focused in the greater southwest region of the United States.

Listen to the podcast.

Leveraging Opportunity Zones for Infrastructure Investment.

Read the report.

Joint Committee on Taxation | May. 18

Qualified Opportunity Zone Investing: A Life Saver For Tax Reform

The Biden tax reform proposals target many tax benefits associated with real estate investing. If adopted, the ability to do tax free like kind exchanges may be eliminated and the maximum long term capital gains rates on sale may rise from 20% to 43.4% (marginal rate of 39.6% plus NIIT of 3.8%). Also, the ability to step-up the tax basis of assets at death may be eliminated. If all or any portion of this new tax landscape is adopted, investing in qualified opportunity zone funds ("QOFs") may become of greater value and should be explored by all real estate investors.

Taxpayers facing higher taxes on capital gains can defer taxation of those gains until 2026 if they timely invest those gains into a QOF. If that investment is made before the end of this year, ten percent of that gain would be forgiven. While that still leaves 90% of the gain to be taxed in 2026, the QOF offers the ability to avoid paying any tax on a sale of the interest in the QOF or its underlying investments after holding it for at least ten years. Unlike LKEs, elimination of gain does not require finding a suitable replacement property and the need to invest all the sales proceeds to acquire that property. The cash from sale can be used for any purpose.

Use of leverage by a QOF substantially magnifies the tax savings. If investors contribute $2M to a QOF that incurs $8M of debt to buy and improve the real estate, and that $10M investment grows in value by only six percent per year then after 10 years, the real estate will be worth more than $17.9M. On sale, the $7.9M economic gain will not be taxed. Each year, depreciation deductions can be taken to shelter from taxation rental income from the property. While those deductions reduce the tax basis of the property and increase the taxable gain realized on sale, none of that added depreciation recapture income is taxed on sale after holding the investment for 10 years. If a taxpayer passes away before ten years, their heirs can step into their shoes and eliminate tax on a sale ten years or more after the investment was made.

Some investors may believe that a QOF must be structured as a traditional investment fund created by an investment manager and others who may charge fees that can reduce their economic yield. However, a QOF includes any partnership formed between two or more investors to invest in an opportunity zone. Two investors or a family group can pool their resources to invest in an opportunity zone as long as they have competent advisers who can ensure they comply with the technical qualification requirements that apply throughout the life of the fund.

Some investors may believe that investments can only be made in economically blighted areas where the chance for economic reward from operations and sale may be remote. However, there are more than 8,760 opportunity zones around the nation, and many have already started the transition to highly promising and profitable sites.

Some investors may think the technical requirements for operating a QOF can become overwhelming. However, in principle, a fund that buys existing real estate must improve it by investing cash greater than the purchase price of the building over a 30-month period, which gives them time to complete their project. The QOF will usually form a subsidiary partnership to acquire the real estate and construct the improvements to allow it to retain cash for working capital, but the added burden of having a second partnership and an added tax filing is usually manageable with the right set of tax accountants.

Some investors may fear that opportunity zone benefits may also be scrapped by Congress. However, no proposal has yet been made to eliminate them. While some criticism has been leveled as to whether the QOF program is producing as much new jobs as expected, the program’s focus on aiding communities in need makes the chance of elimination seem small especially compared to other more visible targets such as LKEs and capital gain preferential taxation.

The bottom line is that the closer we get to tax reform becoming a reality, the more prices may climb in opportunity zones. As a result, now is the time to start considering investing in a QOF, whether formed by an investment manager or a small group of investors.

by Philip Hirschfeld

May 17, 2021

Cole Schotz

[How Panama City Is Using OZs to Rebuild after Hurricane, with Mark McQueen.]()

Panama City, Florida suffered massive damage from Hurricane Michael in 2018. How is the city using Opportunity Zones to rebuild?

Mark McQueen is a former two-star general of the U.S. Army and current city manager for the City of Panama City.

Listen to audio.

OPPORTUNITYDB

by JIMMY ATKINSON

APRIL 28, 2021

Tax Considerations for Municipal Bond Investors.

To combat low yields, fixed income investors can opt for taxable municipal bonds via ETFs like the Invesco Taxable Municipal Bond ETF (BAB).

Getting taxable municipal bonds might seem counterintuitive given that one of the main reasons investors gravitate to munis is because of their tax advantages. However, investors can also get higher yield in lieu of these tax benefits.

BAB seeks to track the investment results of the ICE BofAML US Taxable Municipal Securities Plus Index. The fund generally will invest at least 80% of its total assets in securities that comprise the index. ICE Data Indices, LLC, oversees the underlying index, which is designed to measure the performance of U.S. dollar-denominated taxable municipal debt publicly issued by U.S. states and territories, and their political subdivisions, in the U.S. market.

Continue reading.

NASDAQ

MAY 24, 2021

S&P: A New Dawn For Shuttered U.S. Nonprofits In 2021

Key Takeaways

- The pandemic brought disruption and uncertainty to a historically stable sector, and with it pressure on ratings.
- A return to stability is likely for many entities given slow but steady re-openings, quick responses from management on expense savings and mitigation, and generally good market returns.
- Uncertainty remains because no one knows what the “new normal” will be and investments are always subject to market volatility.

Continue reading.

13 May, 2021

TAX - IOWA

StateLine Cooperative v. Iowa Property Assessment Appeal Board

Supreme Court of Iowa - April 30, 2021 - N.W.2d - 2021 WL 1702891

Taxpayer, an agricultural cooperative, petitioned for review of Property Assessment Appeal Board's (PAAB) decision upholding county's denial of property tax exemption for stand-alone corn silos and overhead ingredient bins within taxpayer's feed manufacturing facility.

The District Court affirmed. Taxpayer appealed. The Court of Appeals affirmed in part. PAAB and county applied for further review, which was granted.

In a case of apparent first impression, the Supreme Court held that:

- Corn silos were not tax-exempt machinery used in a manufacturing establishment;
- Overhead ingredient bins were tax-exempt machinery; and
- PAAB acted unreasonably, arbitrarily, and capriciously in attributing no value to ingredient bins for exemption purposes.

Supreme Court would decline to give deference to Property Assessment Appeal Board's (PAAB) interpretation of statute providing for property tax exemption for machinery used in manufacturing establishments, since Iowa Code did not expressly confer interpretive authority on PAAB, and the term "machinery" was not a substantive term within PAAB's special expertise.

Stand-alone corn silos that were connected to feed manufacturing facility of taxpayer, which was an agricultural cooperative, by underground conveyor were not "machinery" used in a manufacturing establishment, and thus did not qualify for a property tax exemption, where no processing or manufacturing occurred at silos themselves.

Customized overhead ingredient bins within feed manufacturing facility of taxpayer that was an agricultural cooperative were "machinery" used in a manufacturing establishment, and thus qualified for a property tax exemption; bins constituted, essentially, part of a continuous piece of machinery within that building.

Property Assessment Appeal Board (PAAB) acted unreasonably, arbitrarily, and capriciously in attributing no value to customized overhead ingredient bins within taxpayer's feed manufacturing facility for purposes of bins' exemption from property tax as machinery used in a manufacturing establishment, where county's own expert valued bins at $778,240.

A remand to Property Assessment Appeal Board (PAAB) for a determination of value of tax-exempt ingredient bins in taxpayer's feed manufacturing facility was warranted upon Court of Appeals' reversal of denial of property tax exemption, where there was conflicting evidence as to appropriate exemption amount, even though there was sufficient evidence in record for Court to reach values of claimed exemptions.

IRS Confirms Qualified OZ Boundaries Unaffected by 2020 Decennial Census Changes, Not Subject to Change.

The Internal Revenue Service (IRS) today issued Announcement 2021-10, confirming that the boundaries of designated qualified opportunity zones (OZs) were established at the time they were designated, are unaffected by 2020 decennial census changes and are not subject to change.

Find more information about designated qualified OZs with the Novogradac Opportunity Zone Mapping Tool.

Friday, May 14, 2021

How a Tax Rate Increase May Impact Opportunity Zone Investors, with Alex Bhathal.

Tax rates could be on the rise under the Biden administration. What impact would a huge capital gains tax increase...

CONTINUE READING »

OppportunityDb

May 5, 2021

"Biden Unveils Script for The American Jobs Plan and a Leading Role Goes to Infrastructure – What Does It Mean to the Transportation Industry?" RECORDING NOW AVAILABLE

Was your schedule incredibly busy on April 8th? Was your schedule so busy that you missed the Squire Patton Boggs webinar on what President Biden's American Jobs Plan and what it means for the transportation industry? If it was, and you're disappointed that you missed former Secretary of Transportation Rodney E. Slater, former Republican Congressman and former Chairman of the House Transportation and Infrastructure Committee Bill Shuster, the former Chairman of the House Democratic Caucus Joe Crowley, and former Vice-Chairman of the House Republic Conference Jack Kingston discuss their insights and perspectives on President Biden's American Jobs Plan and how it could affect the transportation industry with Jane Garvey, North America Chairman of Meridiam Infrastructure, Robert (Bob) Poole, Director of Transportation Policy, Reason Foundation, and Robert (Rob) Puentes, President and CEO of the Eno Center for Transportation we have some good news! You can watch the recording of the webinar here!

During the webinar a Wall Street Journal article regarding how the private section is helping fund infrastructure developments through Public-Private Partnerships (P3) financing is discussed. We are including the article here for your reference as you watch!

By Taylor Klavan on May 12, 2021

Squire Patton Boggs

[Modernizing Rental Car and Peer-to-Peer Car Sharing Taxes for a Post-Pandemic Future.]

Key Findings

- As the travel and hospitality industries recover from the coronavirus pandemic, policymakers have an opportunity to reevaluate and repeal discriminatory excise taxes imposed on rental car transactions.
- Unlike other excise taxes, rental car excise taxes are not imposed to reduce a harm or ensure drivers are paying for infrastructure. Rather, the revenue is used for unrelated purposes and the taxes create a byzantine structure of taxes and fees that dissuade travelers from using rental cars. States relying on these taxes experience lower economic growth when travelers adjust their behavior to avoid the tax.
- Efforts to impose rental car excise taxes onto peer-to-peer car sharing arrangements increases the harm of these taxes and will make it harder for the travel industry to recover from the pandemic.
- Rather than extending rental car excise taxes, policymakers should ensure rental car and peer-t--peer car sharing services are within the state and local sales tax base and refine ways to reimburse sales tax paid on a vehicle purchased for personal use but also used for business purposes, such as car sharing or ridesharing.

Continue reading.

Tax Foundation

by Garrett Watson

April 22, 2021

Industrial Development Coming to Mesa, Arizona Opportunity Zone.

Last week, Los Angeles-based development firm Banyan Residential, in partnership with Indianapolis-based firm, Milhaus, broke ground on Banyan Beckley, a…

CONTINUE READING »

OpportunityDb

May 10, 2021

SLGS Window Likely to Close in August.

The Treasury is expected to suspend the sale of State and Local Government Series securities at the beginning of August if there is no congressional deal to raise the debt limit.

Suspension of SLGS sales is used by the Treasury as it takes extraordinary measures to prevent breaching the nation?s debt ceiling.

Susan Gaffney, spokeswoman for the National Association of Municipal Advisors, said in an email, “If it comes to that, hopefully the Treasury will provide adequate notice so that issuers and their financing team can smoothly execute alternative arrangements.”

Sam Gruer, managing director of Blue Rose Capital Advisors in Millburn, N.J., said that making the adjustment would be a “nonevent.”

“We have seen SLGS underperform the open market for all but the smallest escrows,” Gruer said. “Where you are going to see the SLGS window closure cost issuers is for the really small borrowers, the $5 million to $7 million or smaller escrow. And that’s because of the fees involved.”

SLGS are typically used by state and local governments and other entities that issue tax-exempt municipal bonds because of yield restrictions and arbitrage rebate requirements under the Internal Revenue Code.

For the month ended April 2021 there were 19,893 SLGs valued at $123.7 billion, up from 16,069 in May 2020 valued at $88.6 billion.

The likelihood of Congress not reaching a deal on the debt limit prior to July 31 appears high given that the Biden administration is committed — at least for now — to negotiating with congressional Republicans on infrastructure legislation.

The SLGS window has been closed 14 times since 1995, the most recent lasting just over five months from March 1 through August 5, 2019.

The two times immediately prior to that were Dec. 8, 2017 through Feb. 12, 2018 and March 15 through Sept. 11, 2017.

The SLGS program began in 1972 to assist state and local government entities in complying with IRS arbitrage regulations. The securities are not available to the general public.

One of the reasons why a closing of the SLGS window is likely this year is the Biden administration also has not yet released its full 2022 proposed budget, which will include a Treasury Department Green Book of detailed tax proposals.

Officials in the public finance sector are hoping the Green Book will contain numerous changes favorable to the muni market, including a restoration of tax-exempt advance refundings.

The role of SLGS has been significantly diminished by the termination of tax-exempt advance refundings under the 2017 Tax Cuts and Jobs Act.

There still are three uses for SLGS. First, they are sometimes used for escrows in current refundings. Second, they also are sometimes used for equity defeasance escrows which are yield restricted. The third use is for longstanding advance refunding escrows.

The Treasury on Monday announced that it is “assuming a cash balance of approximately $450 billion at the expiration of the debt limit suspension on July 31.”

That estimate is “based on expected outflows under its cash management policies and consistent with its authorities and obligations,” Treasury said.

Congress suspended the debt limit through July 31 of this year as part of a two-year budget agreement as part of the Bipartisan Budget Act of 2019.

The Bipartisan Policy Center on Thursday said its updated model of when the nation's debt limit might be breached will arrive in the fall of this year if Congress set a new limit or extend the suspension of the ceiling.

Shai Akabas, director of economic policy at BPC, issued a statement estimating the so-called "X-date" when the ceiling might be breached as sometime after the Oct. 1 start of the new fiscal year.

"That would realistically allow Congress to address the debt limit as part of an appropriations package and potentially pair that move with a longer-term reform of the statute to eliminate financial risk from these recurring episodes," Akabas said.

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 05/07/21 02:10 PM EDT

TAX - MAINE

City of Old Town v. Expera Old Town, LLC

Supreme Judicial Court of Maine - April 20, 2021 - A.3d - 2021 WL 1538226 - 2021 ME 23

Owner of wood pulp and paper mill appealed decision of the State Board of Property Tax Review which denied tax abatement requests for the mill.

The Superior Court vacated and remanded. On remand, the Board granted the tax abatement requests. City appealed, and the Superior Court affirmed. City appealed.

The Supreme Judicial Court held that evidence supported determinations that prior bankruptcy and liquidation sales of wood pulp and paper mill were not accurate representations of fair market value.

Evidence supported State Board of Property Tax Review determinations that prior bankruptcy and liquidation sales of wood pulp and paper mill were not accurate representations of fair market value for property tax assessment purposes, even if they were arms-length transactions; at time of bankruptcy sale, mill's owner was facing an involuntary creditors' petition in the bankruptcy court, mill was no longer operating, the sale occurred after a truncated marketing period, the seller performed only a very limited due diligence, and the sale price ultimately included items not directly related to the fair market value of real and personal property assets, while two years later, mill was sold at liquidation sale with the understanding it would be scrapped.

Fitch: State Tax Changes May Have Uncertain Post-Recovery Effects

Fitch Ratings-New York-06 May 2021: Fifteen state legislatures are considering or have implemented tax policy revisions, including changes to tax rates and tax rebates, as part of FY 2022 budget negotiations coming out of the pandemic, says Fitch Ratings. Most of the tax changes are a small percentage of total revenues and would have a negligible effect on states' operating funds. We do not expect any near-term rating changes as a result of enacted or proposed tax changes.

States that introduced substantial tax cuts, including Idaho, Iowa, Nebraska and Oklahoma, have healthy reserves and strong budgetary flexibility, which should enable them to adapt to any revenue stresses that may emerge in the near to medium term.

However, changes that affect future tax revenue in an environment of heightened economic and revenue uncertainty may have unintended budgetary consequences in the out-years. The greater the policy shift, the larger and more challenging the future budget-adjustment measures could be if revenues do not perform as anticipated.

Tax collections for FY 2021 for most US states are tracking well above initial projections, with further solid growth likely for FY 2022. Direct aid of $195.3 billion to states under the American Rescue Plan provides a significant one-time revenue boost that states must use by YE 2024.

Major shifts in business and consumer spending in response to the federal stimulus and the aftermath of the pandemic, however, could lead to material short-term swings in tax receipts. Sales taxes, for example, which generally outperformed in 2020 as consumers spent a large portion of discretionary income on tangible goods, could decline in FY 2022 and FY 2023 as spending shifts away from goods to services, which are less likely to be taxed.

Tax policy changes are mixed in terms of their likely fiscal effect. Oklahoma, Iowa, Idaho, Utah and Tennessee have all proposed a mix of income, sales and property tax cuts and/or credits, with Georgia and Nebraska recently signing personal income tax (PIT) cuts into law. The size of the cuts is less significant as a percentage of budget for Georgia, Tennessee and Utah but are more sweeping and material for Iowa and Nebraska.

Iowa seeks to accelerate previously-enacted tax cuts by scrapping required revenue triggers. This would result in a $1.3 billion decline in tax revenues over four years, with a FY 2027 decline equal to 4.7% of general fund (GF) revenues. Iowa's measure faces considerable resistance in the state house of representatives and is unlikely to be fully implemented.

Nebraska's measure will substantially expand existing income and property tax credits, reducing state revenues by $770 million over the next biennium, an annualized amount equal to 7.5% of budgeted FY 2022 GF revenues. Both Iowa and Nebraska possess healthy rainy-day reserves and substantial cash balances, which will cushion any short-term negative revenue effects that may emerge.

Other states have either proposed or implemented noteworthy tax increases. New York's April 2021 temporary increase to the top marginal tax rate, along with a smaller temporary surcharge to the corporate tax rate, will raise substantial revenue, with the PIT surcharge alone estimated to raise $2.8 billion in FY 2022. Risks include a potentially slower recovery from the pandemic resulting from lower consumer spending due to the tax increase.

Hawaii's legislature has likewise proposed raising the highest income tax rate to 16% from 11% along with higher capital gains and corporate income taxes (CIT) but the chances of full adoption are unclear. Minnesota's legislature has pushed back against the governor's proposed CIT increase and other tax changes that would raise total GF revenues by more than 3%, causing the governor to modify his plan.

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

TIGTA Summarizes TE/GE Statistical Trends.

SUMMARY BY TAX ANALYSTS

The IRS Tax-Exempt and Government Entities Division is composed of seven functions and serves entities that employ nearly 25 percent of the American workforce, the Treasury Inspector General for Tax Administration said in a report dated May 3.

In May 2017 TE/GE realigned various processes that were embedded in five of its functions, and the reorganization affected these functions' staffing, budget, and processes, the report said. Also, TE/GE established five new compliance groups in October 2018 that completed 4,863 compliance checks for three of the functions in fiscal 2019, resulting in a 72 percent change rate.

The Tax Cuts and Jobs Act and the Taxpayer First Act significantly affected TE/GE's operations from 2015 to 2019, TIGTA said. Further, TE/GE experienced inventory backlogs in processing tax-exempt status applications and completing compliance cases because of the federal lapse in appropriations from December 2018 to January 2019. Mitigation actions such as temporary overtime were taken, according to the report.

TIGTA noted that TE/GE's budget decreased by over $22.5 million from fiscal 2015 to 2019, although there was an increase in the fiscal 2019 budget over the previous year. TE/GE's staffing also decreased by 12 percent over the same time period. By the end of fiscal 2019, TE/GE had 1,500 employees, which was 2 percent of the IRS's total staffing level, according to the report.

TIGTA made no recommendations because the report was made to provide statistical information.

DATED MAY 3, 2021

Fitch Ratings Updates U.S. Public Finance Tax-Supported Rating Criteria.

Fitch Ratings-New York-04 May 2021: Fitch Ratings has published the following report: "U.S. Public Finance Tax-Supported Rating Criteria." It updates and replaces the prior report published on March 27, 2020. The key criteria elements remain consistent with those of the prior report, and the limited changes to the report will have no impact on outstanding ratings. Previous versions of the criteria have been retired.

Changes include addition of a forward-looking metric to enhance the evaluation of the impact of carrying costs on expenditure flexibility, additional guidance about rating through periods of economic stress and incorporating the use of GDP as an alternative to personal income in the evaluation of a state's long-term liability burden when appropriate.

The full report is available at www.fitchratings.com.

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Additional information is available on www.fitchratings.com

How a Tax Rate Increase May Impact Opportunity Zone Investors, with Alex Bhathal.

Tax rates could be on the rise under the Biden administration. What impact would a huge capital gains tax increase…

CONTINUE READING »

Opportunity Db

May 5, 2021

TAX - ARIZONA

State v. Arizona Board of Regents

Court of Appeals of Arizona, Division 1 - April 20, 2021 - P.3d - 2021 WL 1540961

Attorney General's Office sued Arizona Board of Regents (ABOR) and vice president of state university, seeking injunctive relief and relief under quo warranto statute related to an agreement between ABOR and operator of hotels to build and operate hotel and conference center on ABOR's property.

Attorney General's Office later amended complaint to allege that agreement violated state constitution's gift clause and constituted illegal payment of public money. The Superior Court granted ABOR's motion for summary judgment on claim under gift clause, granted ABOR's motions to dismiss remaining counts, entered judgment for ABOR and vice president, and awarded ABOR and vice president attorney fees and costs. Attorney General's Office appealed.

The Court of Appeals held that:

- Provision of statute governing actions brought to recover state monies illegally paid that requires any suit brought by Attorney General's Office to be filed five years or less after illegal payment was ordered is not a statute of limitations but rather is a statute of repose;
- Claim that agreement violated gift clause accrued, and one-year limitations period began to run, when attorneys from Attorney General's Office circulated internal legal memorandum and opinion editorial on the topic and one of the attorneys specifically called transaction "pretty suspicious";
- Trial court did not abuse its discretion when it denied discovery request to access ABOR's entire file, including deal drafts and communications, pertaining to agreement;
- Count alleging violation of gift clause and illegal payment of public money did not relate back to filing of original complaint;
- Attorney General's Office lacked authority under statute authorizing it to enforce payment of taxes to bring claim that ABOR abused its tax-exempt status and improperly diverted property tax revenues;
- Attorney General's Office lacked authority under quo warranto statute to bring action based on claims that ABOR made conveyance to evade taxes and exceeded its authority to enter into leases; and
- Attorney General's Office failed to meet its burden to establish that attorney fees requested by ABOR were unreasonable.

TAX - MISSOURI

City of Crestwood v. Affton Fire Protection District

Supreme Court of Missouri, en banc - April 20, 2021 - S.W.3d - 2021 WL 1554743

City and taxpayers brought action against fire protection district, the Governor, and the Attorney General, alleging that statutes governing the provision of and payment for fire protection services in certain annexed areas were unconstitutional.

The Circuit Court granted judgment on the pleadings for defendants, and city and taxpayers appealed.

The Supreme Court held that:

- Fire district funding statutes were not improper special laws;
- Fire protection service fee imposed upon city which annexed land served by fire district was not a tax on city residents; and
- Statute did not create an unfunded mandate in violation of the Hancock Amendment.

Economic viability of fire protection districts in particular county was a plausible reason for statutory classification, and interrelated exclusion, requiring annexing cities to pay fire protection districts which continue to provide services to the annexed areas what the districts would have collected in tax revenue within the annexed areas, and thus there was a rational basis for the classification scheme and the statutes were not improper special laws.

Statutory fire protection service fee imposed upon city which annexed land served by fire district was not a tax on city residents, and thus did not violate constitutional due process or taxation provisions; statute did not impose a financial obligation upon city residents, and no city resident paid money to the district.

Statute requiring annexing cities in county to pay fire protection districts which continue to provide services to the annexed areas what the districts would have collected in tax revenue within the annexed areas did not create an unfunded mandate in violation of the Hancock Amendment; city voluntarily annexed the unincorporated area within the district, and statute did not shift responsibility for financing fire protection services from the state to a local political subdivision, but rather shifted it between political subdivisions.

Why a $10,000 Tax Deduction Could Hold Up Trillions in Stimulus Funds.

The fight over SALT is a case study in the age-old conflict between constituent politics and national policy.

In 2017, congressional Republicans capped a tax break that benefits America's highest-earning households and people with multimillion-dollar homes. Coastal Democrats have been trying to get it back ever since.

The break, the state and local tax deduction, known to policy wonks as SALT, does what it says it does. It allows people to deduct payments like state income and local property taxes from their federal tax bills. The deduction, previously unlimited, was capped at $10,000 as part of the 2017 tax bill, which was President Donald J. Trump's main domestic achievement.

Republicans added the cap to reduce the cost of a tax package that gave more than $1 trillion in breaks to corporations and wealthy families, while increasing the federal deficit despite claims that the cuts would pay for themselves. But the move also struck many Democrats as punitive, because its greatest impact was felt by a very specific kind of taxpayer: People who live in heavily Democratic areas.

Continue reading.

The New York Times

By Conor Dougherty

May 1, 2021

How Panama City Is Using OZs to Rebuild after Hurricane, with Mark McQueen.

Panama City, Florida suffered massive damage from Hurricane Michael in 2018. How is the city using Opportunity Zones to rebuild?

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April 28, 2021

Construction Underway for Multifamily Development in North Tempe, Arizona Opportunity Zone.

In contrast to New York where legislators are making their state less attractive for Opportunity Zone investment and investors, Alabama's…

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April 26, 2021

TAX - MARYLAND

Comptroller of Maryland v. Broadway Services, Inc.

Court of Special Appeals of Maryland - March 31, 2021 - A.3d - 2021 WL 1206643

Comptroller of Maryland denied property management company's application for an offset credit and refund for sales tax as a "reseller" of the cleaning supplies used at three non-profit hospitals, and assessed the company unpaid sales and use taxes.

Company appealed to the tax court, which ruled for the company on the alternative ground that it acted as an agent of the hospitals. The Circuit Court denied Comptroller's petition for judicial review and affirmed the decision of the tax court. Comptroller appealed.

The Court of Special Appeals held that:

- Company had arms-length relationship with hospitals;
- Company did not have the power to alter hospitals' legal relationships;
- Hospitals did not control company's purchase of cleaning supplies;
- Company had no duty to act primarily for benefit of hospitals; and
- Company was not precluded on remand from seeking juridical review of Tax Court's rejection of its "reseller" theory.

For-profit property management company had arms-length relationship with non-profit hospitals for purpose of determining whether company acted as agent of hospitals for sales tax purposes when purchasing cleaning supplies, although company was a subsidiary of a corporation co-owned by hospital and its affiliated university, where contracts between company and hospitals was based on template used by national independent competitors, company made independent decisions regarding what cleaning supplies to provide to hospitals and how to procure them, company bore the financial risk of increased price of cleaning supplies, and contracts contained integration clause and “no oral modifications” clause that precluded assumption of any duties not therein expressed.

Property management company did not have the power to alter non-profit hospitals’ legal relationships, as element in determining whether company acted as agent of hospitals for sales tax purposes when purchasing cleaning supplies, although company was a subsidiary of a corporation co-owned by hospital and its affiliated university; company was solely liable for the purchase of any cleaning supplies and its vendors had no recourse against hospitals.

on-profit hospitals did not control property management company’s purchase of cleaning supplies, as element in determining whether company acted as agent of hospitals for sales tax purposes when purchasing supplies, although hospital required supplies to comply with its infectious disease policies; hospital could not require company to use a particular product.

For-profit property management company had no duty to act primarily for benefit of non-profit hospitals when purchasing cleaning supplies, as element in determining whether company acted as agent of hospitals for sales tax purposes when purchasing the supplies, although hospital had ownership interest in company; contract between company and hospitals did not create a fiduciary duty, and there was no evidence that company accepted such a duty through parties’ course of performance.

Hospitals’ contractual requirement that property management company provide cleaning supplies that complied with their infectious disease control guidelines and their legal obligations did not establish an agency relationship between hospital and company; the choice of supplies was left to company.

The Court of Special Appeals could not review Tax Court’s rejection of property management company’s theory that it was not liable for sales tax on the purchase of cleaning supplies for hospitals because it was a “reseller” of the supplies, where Tax Court ruled for company on other grounds and company did not petition for review of the issue, and Court of Special Appeals could affirm solely on the grounds and reasons stated by the Tax Court.

Property management company was not precluded on remand from seeking juridical review of Tax Court’s rejection of its theory that it was not liable for sales tax on the purchase of cleaning supplies for hospitals because it was a “reseller” of the supplies, although company did not appeal this issue following Tax Court’s decision in their favor on other grounds; whether company was required to cross-petition for judicial review on this issue following Comptroller’s appeal of Tax Court decision was a novel issue that had not been briefed.

Why Struggling Cities Should Cut Property Taxes.

It’s the perfect time to reboot urban economies and help the country’s poorest homeowners.

As the pandemic recedes, cities and towns are feeling the budget pinch. Many will be tempted to raise property taxes to fill the gaps. They should cut them instead. This isn’t only sound economics—it’s also an antidote to a regressive taxation scheme whose costs fall unfairly on the country’s poorest homeowners, many of them minority residents of struggling cities.

The traditional case against high property tax rates is that they deter investment, chase people out of cities, and make it harder to attract new residents. Growing empirical evidence from across the country shows that property taxes are also inequitable, saddling low-income homeowners with a lopsided share of municipal tax burdens.

On the surface, it isn't intuitive why property taxes are unfair. They are calculated, after all, as a fixed percentage of a home's assessed value. The problem is that houses in poor neighborhoods generally sell for less than the assessment values used to calculate their property taxes, while expensive homes in affluent communities reliably sell for more than their assessed values. Tax assessors systematically undervalue America's priciest homes and consistently overvalue the country's least expensive homes. Affluent homeowners may be paying less in taxes than they should, and poorer homeowners have been paying more than they should.

Take Baltimore. According to data from a recent University of Chicago study, more than 75% of the city's least valuable homes sold between 2007 and 2018 yielded prices that were lower than the assessment value used for property taxes. The exact opposite is true when it comes to Baltimore's most lavish homes. During that same period those residences sold on average for more than twice the value used to compute property taxes.

This absurdity is amplified by Baltimore's high property tax rate, which is twice that of neighboring counties, even as the city hemorrhages people. Baltimore has fewer residents in 2020 than it had in 1920. In return for paying the highest property taxes in the state, city dwellers get a stew of the worst services and outcomes in the U.S.: Municipal ineptitude leading to uncollected water bills, potholes pockmarking every other street, alleys strewn with trash. Many of Baltimore's public school buildings lack heat or drinkable water, and the city's homicide, drug-overdose, illiteracy and lead-poisoning rates are among the highest in America.

What an injustice that the residents most directly affected by this dysfunction are often the same homeowners who, because of inflated assessments, pay a higher share of the city's property taxes. Baltimore isn't alone in this regard. The same cruel irony persists in Detroit, Atlanta, St. Louis and other cities caught in the quicksand of exorbitant taxes.

Because of the myopia caused by the current crisis, leaders in cities like Baltimore may be unwilling to cut taxes. To reverse decades of decline and inequity, however, this is exactly what they must do. And they need to start now because U.S. cities are about to enter a fierce contest for capital as the economy emerges from pandemic-related strictures. How we work and where we live will never be the same, and unrivaled investments will accompany this transformation. Relief dollars from Washington will be dwarfed by pent-up private capital spilling into markets as American consumers begin to spend money again. This could be the biggest infusion of federal capital into the economy since the New Deal and the largest introduction of private investment ever.

Those investments won't be distributed evenly, however, and cities will need to set themselves apart, conspicuously and fast. In the scramble to grab a share of this gold rush, there's no time to lose. Cities should pledge to cut property taxes immediately because investment decisions are being made now.

The economic upside of cutting property taxes is evident in the academic literature. A 1999 school-finance reform in New Hampshire resulted in property-tax cuts across the Granite State. In low-density areas, economists found an 11% to 22% jump in residential construction; in southern New Hampshire, where housing concentration was already high, tax cuts drove up home prices instead. Both results—a surge in construction and higher home values—materialized in Boston and San Francisco too. Many forget that before they were two of America's darling coastal cities, both were in steep decline, with substantial population loss between 1950 and 1980. Critical to their turnaround were statewide ballot measures in California (1978) and Massachusetts (1980), which slashed taxes. San Francisco's property-tax rate plunged 57% practically overnight. Over the course of two years, Boston's property-tax rate fell 75%.

These are lessons with renewed importance today. A modern cataclysm sparked by disease could give way to a renaissance of smart and righteous reform. In cutting property taxes, cities have a chance to reboot their economies and dismantle hidebound tax policies that have hurt poor homeowners the most. Leaders who seize this moment will see their cities surge ahead. Those who don't will fall further behind.

The Wall Street Journal

By Thiru Vignarajah

April 16, 2021 5:58 pm ET

Mr. Vignarajah, a fellow with the Institute for Corporate Governance and Finance at New York University School of Law, previously served as deputy attorney general of Maryland.

OZ: NY Moves to Reduce Certain State Opportunity Zone Benefits for NY deals - Smart, Necessary or Something Else?

New York legislators have moved forward in their 2021 budget process to **limit some of the state Opportunity Zone benefits** that had previously applied in New York. Some commentators have pointed to the budget process reduction of benefits as a "left wing" reaction to former President Trump's support of the federal OZ program (which applies in all 50 states and the US Virgin Islands and Puerto Rico). Others have stated that it is a necessary move to reduce benefits for deals that should not be receiving federal and state benefits.

If the budget is approved, and the provisions become operative, New York will no longer offer some of the state tax benefits to real estate investors funding Opportunity Zone projects in New York, placing New York deals at a disadvantage to New Jersey, Connecticut, Ohio and other adjacent states that have approved and will retain their state benefits.

The OZ program is a Federal program that was enacted in 2017 and which became operative in 2018. Governors of all 50 states, including New York, were asked to review census data provided by the federal government which focused the Opportunity Zone program on low income areas throughout the US as identified in HUD census data from 2010. The Governors of all 50 states were then given 3 months to choose from within the potential applicable opportunity zones in their state which zones should become Opportunity Zones. Thereafter, once these zones were selected by the various governors, they were sent to Treasury for final approval, all of which selected zones were ultimately approved.

This process occurred during early 2018. Thereafter, the majority of states also "followed form" and permitted zones that the states had previously selected to be OZs to also be eligible for state benefits which would be the same as the federal benefits that existed under the program (i.e., (1) **deferral** of capital gains until 12-31-2026 (the "**Deferral Benefit**"); (2) potential **reduction of the amount that is subject to tax** by 15% if gain eligible dollars were invested into a qualified opportunity zone fund in 2018 or 2019, or 10% if gain eligible dollars were invested into a qualified opportunity zone fund in 2020 or 2021 (the "**Reduction Benefit**"); and, (3) if the investor followed the rules of the OZ Program and invested an amount of gain eligible dollars into a QOF (the "fund") and left its investment in the QOF for 10 years or more, and, thereafter the QOF sold the property or the business it owned after the 10 year period but before 12-31-2047, then all gain on the sale of the business or real estate would NOT be subject to federal capital gains tax (the "**Exclusion Benefit**"). By electing to follow form, the states that did so, elected to have the Deferral Benefit, the Reduction Benefit and the Exclusion Benefit also apply at the state level on gains that would have otherwise been payable to the state; meaning the applicable states would also permit investments in their applicable OZ areas to obtain a state level Deferral Benefit, Reduction Benefit and the Exclusion Benefit.

New York, like all of its adjacent neighboring states, was one of the states that enacted legislation to incent Opportunity Zone investments by permitted such OZ benefits at the state level (i.e., the Deferral Benefit, the Reduction Benefit and the Exclusion Benefit at the New York level).

Under the 2021 New York budget proposal, the **New York Deferral Benefit and the New York Reduction Benefits** at the New York level would **NO LONGER** be applicable. The result of this change is that investors in New York businesses in the New York OZs and in real estate in the New York OZ, will no longer receive the same benefits as neighboring states, which could result in investors looking at these other adjacent states first or in a more meaningful way, given that the state level OZ incentives exist there rather than in New York.

While some commentators have stated this will "deal[] another blow to the program and developers taking advantage of it", my personal view is that the benefits being eliminated in the budget process (i.e., deferral of capital gains payments until 12-31-2026 and reduction of the amount subject to tax by 10% if investment was made in 2020 or 2021), are not the real driver of the OZ program and the massive amount of investment that has occurred in the low and moderate income opportunity zones nationally since the enactment of the OZ program – rather, it is the **Exclusion Benefit, which is NOT being eliminated in New York**, that is the main driver of behavior in the OZs.

Even with the New York budget modifications, New York's 514 census tracts included in the program will still qualify for federal tax incentives for investing in these distressed areas and the **New York Exclusion Benefit will still apply**.

Follow The Yellow Brick Road: So, has New York cut off its nose to spite its face? Slightly, as some investors who are seeking both federal and state benefits to justify a more difficult project will likely look elsewhere. That said, the real driver of transactions in the OZ space as noted above is the Exclusion Benefit which applies once one has been invested in the applicable opportunity zone for 10 years or more, and this benefit, notwithstanding the New York change, will still exist at BOTH the federal and New York state level. On balance, while the budget change sounds like a big move and strikes a blow for anti-Trump sentiment, in reality, the real opportunity of the OZ program in hopefully creating jobs for local residents will remain and the Exclusion Benefit driver will remain in tact and continue to provide a reinforcer for this type of behavior.

Brad A. Molotsky

April 19 2021

Duane Morris LLP

Novogradac-Tracked QOF Investment Grows $1 Billion Since End of 2020.

Qualified opportunity funds (QOFs) tracked by Novogradac reported an increase of more than $1 billion in investment since the end of 2020. QOFs tracked by Novogradac reported an equity raise of $16.34 billion for investment in opportunity zones (OZs) as of April 12, up from $15.16 billion reported at the end of 2020. Novogradac is now tracking 1,002 QOFs, of which 708 reported a dollar amount of equity raised. A blogpost by Michael Novogradac looks deeper at the most recent data, including the average equity raise and the types of investment that are most common.

The updated QOF investment figures, as well as discussions of the state of the OZ incentive, the OZ marketplace and more will be the focus at the Novogradac 2021 Spring Opportunity Zones Virtual Conference, Thursday and Friday. Registration is still open.

April 21, 2021

How to Invest in Opportunity Zones, an OZ Pitch Day Panel.

What should an investor consider before investing in a Qualified Opportunity Fund? Several Opportunity Zone experts provided their insights on…

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April 21, 2021

New York State Decouples from Opportunity Zone Tax Incentive.

This week, the New York state $212 billion budget passed by lawmakers included a provision decoupling the state and New…..

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April 20, 2021
