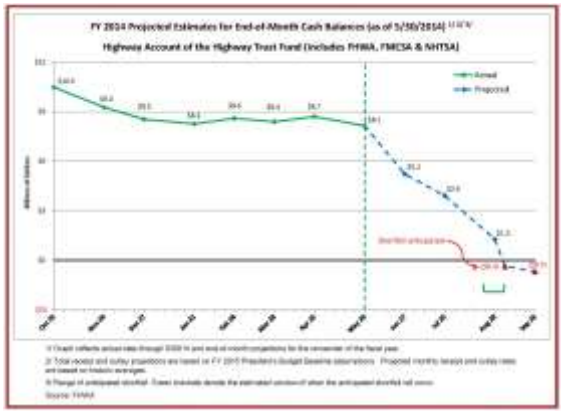
eNews

June 20, 2014

Where is the Trust? (Hint: running out of gas.) Lawmakers in both chambers and both parties are struggling to find ways to shore up the highway trust fund, which could run out of money in weeks without congressional action—and run out as Congress heads towards its month-long vacation this summer. House Republicans had pushed to use savings from limiting six-day mail delivery to give the trust fund an infusion of revenue, but lobbyists say that idea was dropped after Majority Leader Eric Cantor (R-Va.) lost his primary. Members of the Senate Finance Committee claim they are looking for ways to at least keep the trust fund going until after November's elections, with Senate Majority Leader Harry Reid (D-Nev.) suggesting the use of a corporate tax holiday to help stave off bankruptcy for the trust fund, but the White House this week indicated it would not support such a plan, and, mayhap more to the point, Congress' Joint Committee on Taxation has written that such a tax holiday, like the one enacted a decade ago, would increase the debt and deficit by tens of billions of dollars over a decade. So while the House this week focused on ways to ensure state and local leaders would be preempted from raising their own revenues, there appears to be little progress on addressing the looming trust fund insolvency. Moreover, the issue is further complicated by an inability of the relevant Congressional committees to appreciate that a short-term band aid—without any serious long-term measure to extend the trust fund—could drive up capital costs for state and local capital budgets: Last year, states and local governments and agencies had nearly $200 billion in outstanding transportation bonds—bonds which assume a portion of the payment over the average 15-30 life of the bond would come from the federal highway trust fund: *Part of the problem appears to be that the federal government, because it does not have a capital budget like every state and local government, tends to encounter problems addressing capital investment needs of the nation.* Yet even a short-term band aid will be difficult: according the Congressional Budget Office, Congress must find an additional $100 billion in addition to the current gas tax to pay for a six-year transportation bill—meaning that many think the most likely solution will be kicking the can down the road: a temporary fix to keep the road graders running through the election. Any such temporary patch will, of course, vastly complicate the issue for cities, counties, states, and metropolitan regional authorities to issue debt for transportation-related purposes. Already, revenue from federal gasoline and diesel taxes dedicated to the trust fund account for less than 75% of total spending. Maintaining the highway fund at current income and expenditure levels would require an additional $18 billion of new



revenues, spending cuts, or general fund transfers in fiscal 2015 - almost $170 billion over the next decade, according to the Congressional Budget Office. This week Sens. Bob Corker (R-Tenn.) and Patrick Murphy (D-Conn.) proposed legislation to boost federal gasoline and diesel taxes by 12 cents per gallon over two years, which, it is estimated, would generate $18 billion in the first full year of the increase and $164 billion over 10 years, but Sen. Corker said there is little chance the higher tax could be in place by the time the highway fund hits its crisis later this summer or before the current highway bill, Moving Ahead for Progress in the 21st Century or MAP-21, expires on Sept. 30th. Their bill would hike the gas tax by 6 cents in each of the next two years and then index the levy for inflation. The current federal gasoline tax has been 18.4 cents since 1983 (diesel is an additional 6 cents). They estimate their tax hike would raise about $164 billion over the next decade—enough to support the Highway Trust Fund at currently projected spending levels for 10 years. At the same time, however, the proposed Corker-Murphy bill would offset this new revenue by permanently restoring $190 billion in targeted tax breaks that expired last December—that is, their bipartisan proposal would replenish the highway fund with $164 billion in new tax revenues, but increase the federal deficit by about $190 billion by restoring the expired tax breaks.

U.S. House Preemption. The House Judiciary Committee Wednesday reported (30-4) federal preemption legislation, H.R. 3086, the so-called *Permanent Internet Tax Freedom Act* (PITFA) to make permanent the provisions of the *Internet Tax Freedom Act* (ITFA) that currently temporarily bans states and local governments from taxing Internet access or placing multiple or discriminatory taxes on e-commerce. The new bill would eliminate a grandfather clause that permits some half-dozen states to apply their telecommunications taxes to Internet access fees. The vote follows on the heels of a decision by the Oregon Court of Appeals last month (Please see *City of Eugene v. Comcast of Oregon II, Inc*., Court of Appeals of Oregon, A147114, 5/21/2014, in Little Legalities below.) where the court ruled in a case involving the Internet Tax Freedom Act, and where the issue was whether the current federal moratorium preempts local registration and license fees, which are levied on "telecommunications service" as defined under a local ordinance (on broadband Internet access services). To decide whether ITFA barred these two levies, the court looked to the sequence of events specific to the complaint. It concluded that ITFA's definition of "tax" meant that the license fee is a fee, not a tax, but the registration fee is clearly a tax. The court also said that the registration fee is not grandfathered under ITFA. Even though the registration fee was technically imposed prior to ITFA's original Oct. 1, 1998 effective date, it was not enforced. (City officials did not believe ITFA applied to the dial-up Internet access charges that were available at that time.) With full House passage virtually a given, the legislation could create an opportunity for the Senate to attach its bipartisan Marketplace Fairness Act, which state and local governments to require large online retailers to collect and remit use taxes on purchases made by their residents. The law would only apply to online sellers that have sales of at least $1 million outside of states where they have physical operations, like a store or a warehouse. The Senate version was adopted last year on a 67-29 vote.

State & Local Finance

Uh oh. The property tax burden has shifted in Ohio. Since 2005, lawmakers have significantly reduced property taxes on utilities and businesses, leaving homeowners and farmers with a larger share of the property tax burden to support schools. In 1991, Ohio homeowners and farmers paid 47.5% of the nearly $4.4 billion collected in property taxes funding schools, but twenty years later, in 2011, they paid 70 percent of the $8.75 billion collected. At the same time, Ohio income-tax cuts are reducing the state tax base while funding for schools remains below 2010 levels.

Distressed Municipalities Act 47 Changes. The Pennsylvania legislature, this year, is trying to address concerns that the Commonwealth's municipal fiscal distress program, so-called Act 47, is structured so that it is almost like methadone—that is, it creates disincentives to leave the program, instead of acting as a bridge to fiscal restoration. After the Pennsylvania House last month passed and sent to the Senate

legislation designed to move distressed Pennsylvania municipalities through the so-called Act 47 process, the Senate Local Government Committee this week modified the House-passed version by adding a provision that would allow a distressed municipality to increase the rate of the Local Services Tax (LST) to no more than $156 per year on residents and non-residents working in the distressed municipality *in-lieu of* an increase in the rate of the earned income tax (EIT). As adopted, the provision would mean that, with annual court approval, the legislation would permit the levy of a payroll preparation tax not in excess of the amount of revenue raised from the municipality's mercantile or business privilege tax generated during the previous fiscal year, with the so-called BP/Mercantile tax suspended during the levy of the payroll preparation tax. The amendment would make the payroll preparation tax an optional, permanent replacement for the business privilege/mercantile tax even if the distressed municipality's Act 47 status were rescinded (the rate would not change as currently provided in the bill). The committee reinserted provisions providing for the option, with annual court approval, to levy a higher local services tax (LST) up to $156 *in-lieu* of levying a higher non-resident earned income tax under Act 47 (NREIT or "Commuter Tax"), with this option limited to only those municipalities who are not restricted by law from levying an enhanced EIT on non-residents (Pittsburgh). The Committee added a special provision for levying a higher LST for those distressed municipalities that also have distressed pension systems under Act 205 of 1984 without court approval: While in Act 47: Act 205 distressed municipalities would be limited to utilizing the authorization under Act 205 to raise the earned income tax to levy an increase in the EIT that is at least as high on residents as nonresidents. An increase of the LST would be limited to $104 if the municipality continued to levy an enhanced NREIT under Act 205, or $156 if it did not. The LST would be levied *in-lieu* of the enhanced EIT under Act 47. If a municipality successfully exited from Act 47, the committee's version would provide that the authority to continue a higher rate of the LST after leaving Act 47 was permitted, provided that the municipality meets certain requirements, including a requirement that the revenue produced by the enhanced LST be used to retire pension debt. A higher LST could not be levied during the same year as an enhanced NREIT under Act 205. The committee also added a provision that would require that a City of the Second Class A (Scranton) increase an EIT under Act 47 by at least as much on residents when it petitions the court for an increase of the EIT on nonresidents. (The thinking apparently being that an increased LST to replace the EIT is gaining support, because a higher EIT likely would deduct more out of the paychecks of residents and non-residents as opposed to the LST, which is a maximum of $3 per week. Additionally, use of the LST, as opposed to the EIT, offers businesses a clear understanding about what is expected of them and their employees who live outside the distressed municipality.

GASP! GASB, or the Governmental Accounting Standards Board this week published draft statements, which detail how state and local post-employment (OPEB) benefit and pensions should be reported in annual financial statements. The draft statements on OPEB are similar to GASB statements 67 and 68, on pension reporting. (In FY2012, according to Moody's, states reported a total of more than $530 billion in unfunded total OPEB liabilities.) GASB chairman David Vaudt said in a media call this week that as stakeholders are able to look at net OPEB and pension liabilities over the years, they will be able to see whether liabilities are growing or shrinking, so that the increase or decrease would "*give you an indication of how well the elected officials are making policy decisions about funding and reducing that liability.*" Moody's, in its report issued earlier this month, described the GASB proposals as follows; "OPEB and pension accounting standards in the governmental sector contribute to a lack of transparency and comparability for these items…GASB attacked this lack of transparency and comparability in pension accounting by issuing GASB 67 and 68 in 2012. The proposed standards attempt to address the same issue for OPEB." Richard Ellis, Utah Treasurer and president of the National Association of State Treasurers, said that from an accounting perspective, it makes sense to report liabilities, but Mr. Ellis also said that governments' priority is to determine how to deal with liabilities on an annual basis and make sure that the way states and local governments fund OPEB is sustainable. The three proposed statements, which were approved last month, would not be binding if eventually adopted, but would be necessary for a clean audit opinion. Two of the draft statements propose reporting standards for OPEB, and the third

proposes accounting and reporting standards for certain kinds of pension plans. Of the two OPEB drafts, one contains guidance for governments that provide OPEB to their employees or employees of other governments; the other provides guidance for reporting by the OPEB plans that administer the benefits. The newly released pension draft would establish requirements for pensions and plans that are not administered by trusts meeting certain criteria. GASB has developed an OPEB web page with "plain English" resources in order to help users, preparers and auditors of financial statements familiarize themselves with the drafts. These include the summary and full text of the draft statements, a fact sheet that answers frequently asked questions, and an article about the key ways the OPEB proposals will change how governments calculate and report their OPEB costs and obligations. They also include an article geared to financial statement users about how the proposed changes would affect the information users receive, as well as a video of Mr. Vaudt discussing the key principles of the OPEB proposals. GASB is encouraging state and local governments to provide comments about the drafts by Aug. 29th. The board will be holding two webinars and public hearings about the proposals, with GASB proposing that the requirements in the draft for OPEB plans be effective for periods beginning after Dec. 15, 2015, and that the requirements in the draft for governments are effective for periods beginning after Dec. 15, 2016. The most significant effect of the OPEB Exposure Drafts would be to require governments to recognize their net OPEB liabilities on the face of their financial statements - providing all financial statement users with a more comprehensive understanding of these significant OPEB promises than is currently available.

The ever astute Matt Fabian, a managing director for Municipal Market Advisors, warned: "This is a major step toward getting these funded…This is a problem that is as big as pension funding. Investors are clamoring for this." Moody's Investors Service estimates states' total unfunded retiree benefit liabilities at $530 billion, which would be added to governments' balance sheets under the GASB proposals. Currently, the liabilities are reported only in the footnotes to government financial statements. The figure doesn't include local governments' benefit obligations, for which it is difficult to get an accurate total. Another important change would revamp the way the obligations are valued. Most governments have not yet committed money to pay for their retiree benefits and work on a "pay as you go" basis. But to the extent that governments have not funded their benefits, they would have to measure the current value of those benefits using a lower interest-rate assumption. That has the effect of increasing the obligations' current value and widening the plans' funding shortfalls. Marcia Van Wagner, a Moody's analyst, is cautious about whether any changes in reporting retiree benefits will lead to more pressure on governments to fund their benefit plans, noting that state and local governments have already been trying to trim benefits and reduce costs because of their overall financial problems, not specifically because of any changes in accounting rules, adding: "I'm not sure that accounting standards really drive the policies of state and local governments."

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As we observe the changing economy—what with the sharing economy, the impact of the internet on work hours and locations, we can anticipate it will lead to profound changes in transportation and housing. Because the internet is permitting more people to work from anywhere, anytime, the old model of cities and suburbs is becoming increasingly obsolete.

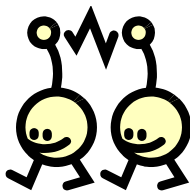
The Schumpeter blog in the *Economist* this week, noting Karl Marx's adage about all that is solid melting into air has never seemed more apposite, writes that even staid businesses such as law firms and universities are threatened by technology-cum-globalization. But the blog notes that in the midst of this disruption, "if you look closely, you can see some strange objects floating around: Swiss watches, Montblanc fountain pens, Harris Tweed jackets, Folio Society books and old-fashioned sailing boats."

That is, notwithstanding those who warn we must bow down before the great god of disruptive innovation, it turns out that whether it is bikes and watches in downtown Detroit (Shinola: dedicated to producing American-made products, including watches, bicycles, leather goods, and journals of the highest possible quality…), some companies are cheerfully doing the opposite—preserving or resuscitating traditional technologies and business models, or what Ryan Raffaelli, of Harvard Business School, terms "re-emergent technologies," the most striking of which, it turns out, is the Swiss mechanical-watch industry—an industry that in the 1970s it was almost washed away by a tide of cheaper and more accurate digital watches, but today is more successful than ever, providing the country's largest source of exports after pharmaceuticals and machinery, and the engine of its revival is the old-fashioned wind-up watch. In cities, the *Economist* blog notes: "Trams looked destined to become nothing more than tourist attractions in proudly quaint cities such as San Francisco and New Orleans (where you can still take a Streetcar Named Desire). But 30 American cities have either installed new tram systems or have plans to do so. They are even coming to two cities which did their best to bury them in the early 20th century, Detroit and Los Angeles. Sales of vinyl LPs in the United States have increased from almost nothing in 1993 to more than 6m in 2013. The number of independent bookshops is rising for the first time in decades." Mr. Raffaelli argues that "the key to success lies in redefining the product's value and meaning. Swiss watchmakers redefined their products as status goods rather than a means of telling the time. That they are so much harder to make than digital watches added immeasurably to their desirability. Independent booksellers are redefining themselves as communities where people who care about books meet and socialize. Trams are re-emerging as a green solution to both pollution and urban sprawl: a striking number of the cities that are adopting them are formless Sunbelt cities."

The blog warns, however:

> However, while peddling their traditions and reassuring customers and craftsmen that they are holding true to them, revival businesses also need to be willing to change. Nicolas Hayek and Ernst Thomke saved the Swiss watch industry from impending death by applying a succession of electric shocks. In a series of deals they brought together a bunch of ailing businesses into the mighty Swatch Group, whose sales last year reached SFr8.8 billion ($9.5 billion). They fought back against cheap digital watches by first redefining Swiss watches as fashion items, with Swatches, and then redefining them as luxury items, with brands such as Breguet, Blancpain and Omega which sell watches for six-figure sums. Politics & Prose, a thriving independent bookshop in Washington, DC, is remodeling itself as a factory as well as a café-cum-lecture hall, installing a printing press for customers to print their e-books. Revival industries need to be willing to take tough decisions: for example, sacrificing market share to new entrants while holding firm on price. They also have to be ready to reorientate themselves to new markets: the Chinese have proved enthusiastic buyers of Western heritage goods.

Concluding: "The success of these re-emergent technologies also has important lessons for how we think of disruptive innovation. New technologies do not simply displace old ones. Some old technologies, like sailing boats and paper books, have an enduring appeal; some, like watches, can redefine their value; and some, like condoms, can get a new lease of life for unexpected reasons. In addition, people do not just buy something because it provides the most efficient solution to a problem. They buy it because it provides aesthetic satisfaction—a beautiful book, for example, or a perfectly made shirt—or because it makes them feel good about themselves. This suggests a paradox: the more that disruptive innovations like the internet boost the overall productivity of the economy, the more room there will be for old-fashioned industries that focus on quality rather than quantity and heritage rather than novelty. Sometimes the best way forward is backwards."



Shared Services. East Hartford, Conn., and its board of education plan to increase the number of services they share in the wake of a difficult budget season that led to drastic education cuts for the 2014-15 school year. Although the two have collaborated over the last decade on computer services, purchasing and on-call services for repairs; they are now seeking to identify other areas where they can share costs or eliminate overlapping services, according to Town Council Chairman Richard Kehoe: "There have been attempts to do shared services and there are things which the town does with the board, but there's a sense that we could be doing more." The council voted Tuesday to have members of its budget committee reach out to the board of education: the goal is to establish a committee composed of members of the council's budget committee, three school board members, and Mayor Marcia Leclerc. Working with Blum Shapiro, an outside auditing firm, the committee will be charged with identifying overlapping services and opportunities for cost sharing. Chairman Kehoe said Blum Shapiro has helped set up similar models in multiple towns, including Plainville, Middletown and New London, adding: "When you look at the typical board of education and a town, both have payroll, human resources, purchasing. Clearly, there are areas where they ought to be able to work together…There's a whole host of potential benefits — not only cost savings, but simply doing things better." The decision appears to have been spurred by a looming $5 million gap in next year's school budget that could force closing the pool at East Hartford Middle School and closing some school buildings during weekday evenings and weekends—or, as Chairman Kehoe noted: "What the board's budget cuts dramatized is the overlap in services by the board of education and the town and the need for a more collaborative process in deciding how best to provide services when both the town and the board of education do not have the resources."

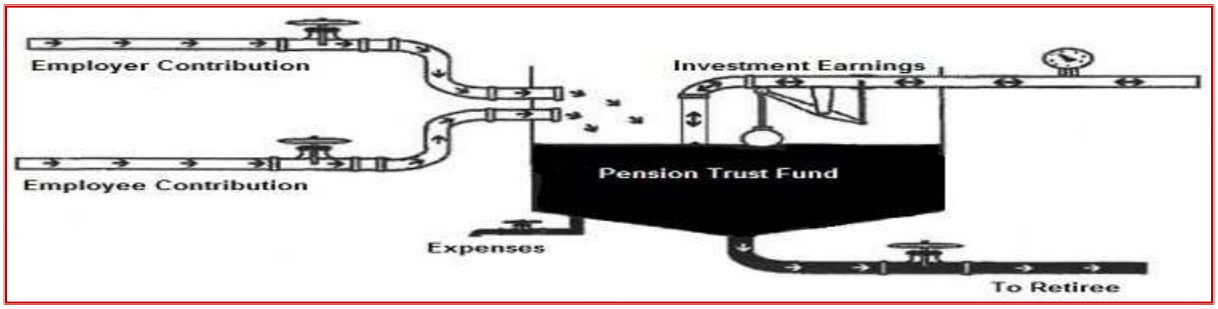


Figure 1 Illustration by David P. Hayes

Pensionary Tidings

New Jersey & You. The Public Employees' Retirement System board, New Jersey's biggest pension fund, Wednesday voted to sue New Jersey Gov. Chris Christie over his announced intention to contribute less to the state's pensions, mirroring the earlier decision by the board of the Police and Firemen's Retirement System to sue the governor. Last month, Governor Christie had stated that the Garden State should contribute $1.38 billion to the pensions this fiscal year and next—about $2.5 billion less than the $3.8 billion that Christie had agreed in 2011 to contribute for these fiscal years. The respective pension board decisions are consistent with the decision by several public employee unions to sue the governor over his new plans for reduced payments.

A big telephone tax hike will fund Chicago's public pensions, at least for a little while. Illinois and Chicago put off addressing the city's $20 billion pension crisis until after November's gubernatorial election and February's municipal elections, thanks to a 56 percent increase in Chicago's telephone tax.

The increase won out over a hike in property taxes—which, after the elections, may have nowhere to go but up.

Disparaging State & Local Leaders & federally mandated Pension Disclosure. A coalition of state and local groups has written a letter to Securities and Exchange Commission member Daniel Gallagher countering his recent comments (**Commissioner Gallagher's remarks to the MSRB)** about pension obligation disclosure and arguing that any problems in the area are individual and not universal. Mr. Gallagher, in a speech last month at the Municipal Securities Rulemaking Board's 1st Annual Municipal Securities Regulator Summit, stated that problems with pension and other post-employment benefit liability disclosure remain despite efforts at reform, and that municipalities should value and disclose their total liabilities using a risk-free discount rate such as the treasury yield curve. In response, this week, 11 groups, including the National Governors Association, the National League of Cities and the National Association of State Retirement Administrators responded (**Read the letter)**, noting that state and local leaders had already taken action on a wide variety of reforms: "We understand the SEC's interest in appropriate disclosure of state and local government pension obligations…However, your comments could lead many to believe that the disclosure issues are systemic, rather than individualized problems. Public pension funds hold some $3.6 trillion in assets, professionally managed and invested in diversified portfolios. This amount equals 16 times the annual payout of these funds, assuming no additional contributions or investment earnings…You may not be aware of the many significant changes state and local governments have made to their retirement plans…Nearly every state and numerous local governments have made changes to strengthen their pension reserves and to ensure the sustainability of their retirement plans since the Great Recession. These changes have included increases in employee contributions to pension plans, increased risk-sharing and other hybrid features, reduced benefit levels, higher retirement ages and lower cost-of-living adjustments." Mr. Gallagher said that state and local retirement systems mislead citizens and taxpayers people about their true financial conditions, and that the federal government could mandate that states and local governments be forced to report at least half a trillion dollars of additional costs on their books under proposed SEC rules that would shine a harsher light on the growing expense of retired public workers' OPEB and other benefits. The tiff comes as the Governmental Accounting Standards Board or GASB has released new standards (please see in preceding section) that would require state and local governments to report retiree-benefit promises to their balance sheets, making state and local governments' overall financial position appear worse. In addition, the GASB standards could force many state and local governments to change the way they calculate their benefit obligations in a way that could make their shortfalls or short and long-term deficits appear greater than they do now—potentially adversely affecting credit ratings—or, as GASB's Chairman, David Vaudt put it: "It will provide a better picture of the cost and liabilities for these benefit promises."

The GASB proposals, which the board approved last month, are subject to public comment and possible reconsideration before the board adopts them. The board is accepting public comments through August 29th, and the Board intends to hold public hearings on the proposals in September in New York, Illinois, and California. The proposals follow similar changes GASB made in 2012 to state and local governments' disclosure of pension obligations, which also were intended to give taxpayers and investors more information but would make pension funding appear weaker. (According to the Center for Retirement Research at Boston College, a group of 150 public-employee pensions that were 72%-funded in 2013, meaning their assets were 72% of their obligations, would have been only 65%-funded under the revamped rules.)

Last month Commissioner Gallagher said that state and local governments were not appropriately accounting for "trillions of dollars in liabilities" in pension benefits promised to workers. Part of the issue is that the financial crisis devastated the chief source of revenues for public pensions - investment returns - just as the recession forced many governments to cut their contributions to the retirement systems.

While the federal government moved swiftly to bail out both Wall Street and the nation's major auto corporations, states and local governments laid off tens of thousands of employees as revenues plummeted—exacerbating OPEB and retirement accounts. Nevertheless, recent Federal Reserve data demonstrates that state and local government employee retirement funds were short $1.37 trillion at the end of the first quarter of 2014—a much smaller gap than the $1.5 trillion shortfall in the first quarter of 2013, but larger than the $1.12 trillion gap five years earlier.

Public Trust & Ethics

The *Pasadena Star-News* this week reported that San Marino Mayor Dennis Kneier resigned Tuesday after a non-Hollywood surveillance video revealed that Mayor Kneier had thrown a bag of dog poop onto a political opponent's property. Unfortunately for the former Mayor, his political opponent recognized him on the video and called police. Video of the incident went, pardon the expression, dog wild. In his resignation letter, the former mayor wrote that his actions were inconsiderate and disrespectful—and that, because the event continues to be embarrassing to him and to the city, he could no longer serve as Mayor—albeit he remains a member of the City Council. Aesop might have written: 'Don't count your poopies until they're hatched."

From the *Richmond Times Dispatch*: "Successful government relies on trust. The breakdown of comity at all levels reflects the citizenry's lack of confidence in institutions and individuals. Washington's woes are well documented. Local jurisdictions suffer self-inflicted damage as well."

Quotes of the Week

"Detroit is, for better or worse, an inseparable part of this state: It simply cannot be liquidated like a private business and sold away. The citizens will remain. The infrastructure will remain. And we must address it." ~ Michigan House Speaker Pro Tem John Walsh (R-Livonia), who is chairing a special committee in the legislature to oversee the package of bills that will determine the City of Detroit's future.

TIME TO STEP UP

Daily Press Editorial (Paywall for certain articles)

Running for public office takes courage, confidence and the committed support of family and friends. The endeavor is not easy — walking through neighborhoods and knocking on doors takes plenty of time and effort — nor is it cheap, since campaign signs do not grow on trees. So as we head down the stretch toward Election Day, we extend our gratitude to those who volunteered for the experience and seek a place in local government. And we encourage other civic-minded citizens to lend their time and talent to the calling of public service, since our communities will surely benefit as a result.

"Property values are back up faster than expected, but the pressure is still there…It's hard to be a city in Michigan because state policy is very negative toward cities in general." ~ Eric Scorsone, an economist at Michigan State University in East Lansing who specializes in municipal finance.

"The decision here is most likely all or nothing: One side is going to win and the other side is going to lose — and that's going to be very happy on one side and very tough on the other side." ~ U.S. Bankruptcy Judge Steven Rhodes.

"Municipal Bankruptcy, to a large degree, is like 'Let's Make A Deal.' " ~ The incomparable Jim Spiotto.

"State and local finances are very important to the stability of our economy. I think that the complete elimination of the state and local deduction would be something that would be a real challenge for many jurisdictions." ~ U.S. Treasury Secretary Jacob Lew, testifying before Congress on the proposed tax reform plan recently released by Ways and Means Chairman Dave Camp (R-Mi.).

Little Legalities

Preemption & Procedural Issues

Retaliation against State & Local Public Employees. Justice Sonia Sotomayor, yesterday, writing for a unanimous U.S. Supreme Court, wrote that public employees cannot be fired in retaliation for testifying truthfully on matters of public corruption or public concern. The case here involved Edward Lane, who was fired after he testified that an Alabama state legislator was a no-show employee being paid by the taxpayers for no work. Mr. Lane was employed as a manager of a program for at-risk juvenile offenders which was run out of Central Alabama Community College. When he began in that position, he conducted an audit and found that one of the program's employees, Alabama State Representative Suzanne Schmitz, appeared to be a phantom worker. Consequently, and notwithstanding warnings from colleagues not to mess with Rep. Schmitz because of her influence as a state legislator; he went ahead—explaining: "It was against the law…It's sort of like being president of the bank. If I know that one of my tellers was stealing from the bank, and I allow it to go on, then I'm complicit." Thus, he dismissed Ms. Schmitz. Shortly thereafter, the FBI subpoenaed Mr. Lane to testify as part of a public corruption investigation. He gave sworn testimony, first before a grand jury and later at Ms. Schmitz's two trials—after which the former state representative was convicted of fraudulently obtaining $177,000 in public funds and sentenced to 30 months in prison. But the president of Central Alabama Community College fired Mr. Lane—leading him to sue, claiming he had been punished for his testimony, in violation of his First Amendment right of free speech. Mr. Lane's suit was rejected when a federal appeals court ruled that under a 2006 Supreme Court decision, public employees have no free speech right to testify about information they learn on the job. Yesterday, however, the Supreme Court reversed that decision, with Justice Sotomayor writing that testimony in judicial proceedings "is the quintessential example of speech as a citizen for a simple reason: anyone who testifies in court bears an obligation to the court and society at large, to tell the truth:" No public employee should be forced to choose between testifying truthfully and losing his or her job, she said. Moreover, her opinion went beyond the issue of just the question of testifying, with the Justice noting that the public interest lies in "encouraging, rather than inhibiting, speech by public employees," because those employees are "often in the best position to know what ails the agencies for which they work." Justice Sotomayor clarified, however, that the ruling leaves open the question of when — if ever — the First Amendment protection applies to state and local employees whose job it is to testify in court, such as law enforcement officers and lab technicians—harking back, in effect, to a sharply divided 2006 Supreme Court decision that public employees have few, if any, rights when they speak out about matters involving their job duties. *Lane v. Franks*, U.S. Supreme Court, #13-483, June 19, 2014.

Federal Preemption. Here, the Board of County Commissioners of Kay County appealed the district court's dismissal of its complaint seeking a declaratory judgment that Fannie Mae and Freddie Mac, along with the FHFA as their conservator, violated state law by failing to pay Oklahoma's documentary stamp tax (the Transfer Tax). The court held that 12 U.S.C. §'s1452(e), 1723a(c)(2), 4617(j)(1)-(2) exempt the entities from all state and local taxation, including Oklahoma's Transfer Tax, and that the Transfer Tax did not constitute a tax on real property such that it fell into the real property exceptions from the exemptions—arguing that because the right to transfer is an integral "stick in the bundle", e.g., the tax is "intimately connected with the real property itself," the tax was owed. The federal court, however, noted that the Transfer Tax, which is triggered only at transfer, was clearly an excise tax. The court also held that Kay County has forfeited its argument that the exemptions represent an invalid exercise of the Commerce power. Accordingly, the court affirmed the judgment of the district court. *Board of County Commissioners of Kay County v. Federal Housing Finance Agency*, U.S. Circuit Court of Appeals, No. 13-7114, June 13, 2014.

Standing and application of Anti-Injunction Act to Establishment Clause suit. A federal district court has dismissed a suit challenging the process used by the IRS to determine tax-exempt status for certain organizations. The organization, American Atheists, argued that the process gave preferential treatment to religious organizations and churches, in violation of the Establishment Clause, equal protection, and the constitutional prohibition against religious tests and sought to enjoin the use of that process. While the court found that the Anti-Injunction Act did not bar the suit and the organization stated a claim for violation of the Establishment Clause, it nevertheless lacked standing. The organization argued that religious organizations and churches are given preferential treatment compared to all other organizations entitled to tax exemptions under IRC §501(c)(3). The organization claimed that it therefore suffered from unconstitutional discrimination, although it admitted that it had never sought recognition as a religious organization or church. Rather, the organization asserted that it would violate its members sincerely held beliefs to seek such a classification. The court found that the organization failed to allege an injury-in-fact and its assertion that it would not qualify as a church or religious organization was mere speculation, especially given that the IRS asserted that atheist and non-theist organizations might be eligible for treatment as religious organizations under the applicable provisions. Nor could the organization assert representative or taxpayer standing. The court also addressed whether the suit was barred by the Anti–Injunction Act, finding that it was not. Similar to the Tax Injunction Act, which applies to state tax matters, the AIA states that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person." The court relied on the U.S. Supreme Court's decision in *Hibbs v. Winn* (a TIA case), which held that a suit challenging a state tax credit on Establishment Clause grounds was not barred because the suit did not seek to interfere with the state's assessment or collection of taxes. The court also concluded that the organization here had stated a cognizable claim under the Establishment Clause (but not the Equal Protection Clause). Here, the court relied on *Texas Monthly, Inc. v. Bullock*, which in which the Supreme Court held that a sales tax exemption for religious periodicals violated the Establishment Clause by creating a subsidy exclusively for religious organizations not required by the Free Exercise Clause. Although the IRS argued that the process challenged in this case was necessitated by the Free Exercise Clause in order to alleviate governmental interference with religious organizations—the court concluded that the challenge had sufficiently raised the question, but the claim was nevertheless barred by a lack of standing. *American Atheists, Inc. v. Shulman*, U.S. District Court, E.D. Ky, CV No. 2012–264 (WOB), 5/19/2014.

No Takings Clause or due process claims for seizure of contraband cigarettes. A federal district court in Indiana has ruled that plaintiffs failed to state federal Takings Clause and due process claims challenging the seizure of cigarettes on which no escrow payment had been made, as required under state law, and declined to exercise supplemental jurisdiction over related state law claims. There could be no Takings Clause claim, the court concluded, because the cigarettes were seized using the state's police powers

rather than its powers of eminent domain. There could also be no claim that the plaintiffs' due process rights were violated because, under both federal and state law, cigarettes on which an escrow payment is due and not paid are considered contraband. Since there is no protected interest in the possession of contraband (the possession of contraband being illegal) there could be no violation of due process for the seizure of the cigarettes. *KTKSB Enterprises, III, L.L.C. v. Zoeller*, U.S. District Court, S.D. Ind., No. 1:13–cv–1031–WTL–TAB, 5/8/2014.

The Tax Injunction Act: when is it a fee versus a tax? A federal district court has ruled that the federal Tax Injunction Act (TIA) does not bar a suit challenging a local assessment, since the imposition constituted a fee and not a tax. The fee was imposed by the local government on outdoor advertising displays. The court considered three factors in determining if the imposition was a tax: 1) the governmental entity imposing the charge; 2) the population on which it was imposed, and 3) the use of the funds generated. Applying these factors here, the court found that the imposition might have been characterized as either a tax or a fee. On the one hand, it was imposed by the city council. On the other, it applied to only a handful of payees. Finally, it was unclear exactly what the funds would be used for. The court therefore considered the purpose expressed for the imposition of the charge. The ordinance contained two recitals of purpose: 1) offsetting the economic burden caused by outdoor advertising displays, and 2) reducing traffic and aesthetic harms. Neither of these purposes indicated that the charge was a tax. Rather, these purposes appeared to serve the traditional regulatory goals of discouraging conduct by making it more costly, and generating income to cover the cost of regulation. *Clear Channel Outdoor, Inc. v. Mayor and City Council of Baltimore*, U.S. District Court, D. Md., No. GLR–13–2379, 5/19/2014.

No personal liability imposed on individual who is not an officer, or who becomes an officer after taxes are incurred. The Michigan court of appeals has ruled that state statutes do not permit the imposition of personal liability for unpaid corporate tax obligations on the widow of a sole shareholder and director of a corporation, even though she was appointed administrator with authority to take actions for the corporation on behalf of the estate and even though she represented herself to be an officer of the corporation during the period at issue. The applicable statute originally provided that: "If a corporation…liable for taxes administered under this act fails for any reason to file the required returns or to pay the tax due, any of its *officers*...is personally liable for the failure." The court rejected the treasury department's claim that the widow could be held liable as a de facto officer, since the statute could have, but did not, provide for imposition of liability on de facto officers. Nor was the court willing to impose liability on the widow for taxes incurred prior to the point at which she became an actual officer of the corporation, rejecting the department's argument that, because the taxes continued to be "due" on that date, the widow therefore became responsible for them. Furthermore, retroactive amendments to the statute clarified that corporate officers are not liable for taxes incurred prior to their tenure. *Shotwell v. Department of Treasury*, Court of Appeals of Michigan, 314860, 5/27/2014.

Sales, Telcom, Intenet & Use Tax Decisions

Is internet access a "telecommunications service," does ITFA bar local fees? The Oregon court of appeals has ruled in a case involving whether the Internet Tax Freedom Act (ITFA) preempts local registration and license fees. The fees are levied on "telecommunications service" as defined under the local ordinance. The fees were imposed in this case on broadband internet access services. The case raised questions of whether the definition of "telecommunications service" was broad enough to include the internet access services, whether the fees imposed were "taxes" as defined by ITFA, and if so, whether they were grandfathered under that Act. The court noted that the sequence of certain events was important. First, in 1996, Congress amended the federal telecommunications act, which defines "telecommunication service." The following year, the city adopted the ordinance at issue here imposing the registration and license fees. The ordinance sets out its own separate definition of "telecommunications services." At the time of its adoption, city officials stated that the ordinance would not apply to internet service providers (ISPs), which predominantly used "dial-up" technology. Soon

after, Congress enacted ITFA, which preempted taxes on internet access but grandfathered taxes "imposed and actually enforced prior to October 1, 1998." The following year, the provider in this case began offering broadband internet cable modem service. Then, in 2002, the FCC issued a ruling that cable modem services were not "telecommunications services" under the federal telecommunications act. As for whether the cable modem services were "telecommunications services" under the ordinance, the parties agree that the court should focus on the first four words of the definition—"the transmission for hire"—but they disagreed over whether this term should be given its broader plain meaning, or a narrower interpretation asserted by the provider, on the theory that "transmission for hire" was a term of art in the telecommunications industry. Ultimately, although the provider had experts testify about the technical aspects of cable modem services, the court found that this testimony did not support the conclusion that the term "transmission for hire" had any particular meaning within the industry. Nor could the provider rely on the federal telecommunications act or the FCC's ruling. First, the definition of telecommunications service under the federal act was fundamentally different than the definition in the ordinance. Second, the FCC's ruling came out after the city had adopted the ordinance. It was also clear from the ruling and subsequent history that the FCC was interpreting ambiguous language in the federal telecommunications act that was not found in the ordinance here. Therefore, the court concluded that the broader plain meaning should apply and that the Internet access service here fell within the term "transmission for hire." As for whether ITFA barred either of the fees, the court concluded that under ITFA's definition of "tax," – "any charge imposed by any governmental entity for the purpose of generating revenues for governmental purposes, and is not a fee imposed for a specific privilege, service, or benefit conferred" – the license fee, imposed as compensation for use of the public right-of-way, was a fee and not a tax. The registration fee, however, was clearly a tax. Nor was it grandfathered under ITFA since, while it was technically imposed prior to October 1, 1998, it was not actually enforced, as evidenced by the fact that city officials believed it did not apply to Internet access services (dial-up) that were available at that time. *City of Eugene v. Comcast of Oregon II, Inc.*, Court of Appeals of Oregon, A147114, 5/21/2014.

Online information service. The Michigan appeals court has ruled that the state's use tax did not apply to a subscription to an online research program, holding that the subscription was primarily the sale of a nontaxable service, rather than taxable prewritten software. The service in this case provided subscribers access to a wide collection of information through an Internet web browser. The lower court had concluded that the primary object in selling the subscriptions was the sale of tangible personal property, because what the customers wanted was the "information," which was "tangible personal property;" however, the appeals court disagreed, determining that Michigan's law defines "prewritten computer software" as "software…delivered by any means." Thus, the court determined, when a transaction involves the transfer of both tangible personal property and services, the Michigan Supreme court has adopted an "incidental to the service test," based on factors including: the purchaser's object, the seller's business, whether any goods were provided with a profit-making motive, whether goods were available for sale without the service, the extent services contributed to the value of the goods, and any other relevant factors. The court found that here, any transfer of tangible personal property (software) was incidental to the service provided. The service in this case was information designed to help customers obtain information more easily and the organization of that information to make its use more efficient. The prewritten computer software was incidental to this service and the service was what contributed any value to that software. Nor did it matter that past versions of the product might have been deemed prewritten software, since the nature of the product had changed. *Thomson Reuters Inc. v. Department of Treasury*, Michigan Court of Appeals, No. 313825, 5/13/2014.

No offset against refund claim. The Louisiana appellate court has rejected an attempt by a parish tax collector to offset an unassessed (but assumed) sales tax liability beyond the limitations period against a sales tax refund claimed by the taxpayer for that period. The court noted that the common law of offsets did not apply. It also determined that under the state's tax code, collectors may determine whether a

taxpayer has any liability to offset against a claimed overpayment before refunding that payment. But there was nothing that would toll the limitations period for assessment simply because a refund claim had been filed. The court rejected the collector's argument that the legislature could not have intended taxpayers to claim refunds for periods without also allowing the collector to audit and assess any taxes owed on other transactions during that same period. But, if the limitations period for assessment has not passed, the court found that the collector could assert an offset for assumed liabilities. *Cajun Industries LLC et al. v. Vermilion Parish School Board et al*, Louisiana Court of Appeal, Docket No. 14-22, 5/15/2014.

Exemption for sale of prosthetics "by prescription." The South Carolina administrative law court has ruled that certain prosthetic devices sold to a hospital are exempt, but "blood derivatives" are not. The exemption for prosthetic devices had been interpreted by the Palmetto Supreme court to impose three requirements: 1) the sale must require a prescription, 2) the device must actually be sold *by prescription*, and 3) the device must replace a missing part of the body. Only the second and third requirements were at issue. The court determined that there was a difference between the first and second requirements and that the second requirement addressed whether the sale was made under a prescription to a particular patient. Here, the hospital provided evidence that in some cases, it would order prosthetics from a vendor for a particular patient (and the vendor was often present in the operating room to make sure the proper prosthetic was used). The court concluded that in these cases, the prosthetic device was sold by prescription. (Other devices ordered and held in inventory by the hospital would not qualify for exemption.) As for whether the devices replaced a missing body part, the court noted that the state supreme court had distinguished the substitution of a body part and the replacement of a bodily function. Using that principle, the court found that implanted cardiac devices were not prosthetic devices (because they replaced a bodily function) but bone, muscle, and tissue implants were prosthetic devices. As for the blood derivatives, the hospital argued that they were exempt (or not taxable) under state law limiting the application of implied warranties of merchantability and fitness to such products. That provision of law states that blood products and blood derivatives "must not be considered commodities subject to sale or barter, and the transplanting, injection, transfusion, or other transfer of these substances into the human body are considered a medical service." The court found there was no reason to believe the legislature intended this provision to control the taxability of blood products. And given that the legislature had exempted certain healthcare related products, the court concluded that the failure to specifically exempt blood derivatives was controlling. (Nor did it matter that the revenue department may have changed its position on the question.) *CareAlliance Health Services v. South Carolina Department of Revenue*, South Carolina Dept. of Rev. Commission Decisions, 12-ALJ-17-0405-CC, 5/20/2014.

Resold Food, Beverages, and Ammo. The South Dakota Supreme court has ruled that food, beverages, and ammunition purchased by a hunting lodge for guests who purchased packaged hunting trips were not subject to use tax, but were, instead, resold. The lodge provided only packaged trips, did not allow guests to purchase food, beverages or ammunition separately, and charged a single price. The revenue department argued that the items were, therefore, consumed by the lodge in the performance of a service. The court, however, concluded that the items were excluded from the definition of a taxable "use" as items sold in the regular course of business: noting that "sale" means, "any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration," the court found there was no dispute that the items here were transferred to guests in exchange for consideration. Guests, not the lodge, controlled how much of these items they consumed, and they, no doubt, considered the value of meals and ammunition in the amount paid for the package trips. They also had an expectation the items would be provided as part of the consideration paid. Therefore, these items were not the same as items often provided to hotel guests for their convenience. Nor was it necessary, the court concluded, for the guests here to separately negotiate for these items. The court also concluded that the items were sold in the regular course of the lodge's business, rejecting the department's argument that the lodge's primary business was a service. Rather, said the court, the question was simply whether it was part of the lodge's

regular business practice to sell the items. *Paul Nelson Farm v. South Dakota Department of Revenue*, Supreme Court of South Dakota, 2014 S.D. 31, 5/21/2014.

Property Tax Decisions

Real estate exempted "notwithstanding any general or specific law to the contrary." The Massachusetts appeals court has ruled that real estate owned by the Massachusetts Bay Transportation Authority (MBTA) and leased to a private, for-profit entity, is exempt from tax along with the tenant improvements to that property. The property was a train station where the tenant, under a long-term lease, was required to expend a substantial amount of money to renovate and operate the property, and was not intended to be a conventional, profitmaking commercial real estate lease. Also tenant improvements not removed would become property of the MBTA at the end of the lease. Under the lease, amounts paid to the MBTA would be reduced as a result of property taxes imposed. State law provides that: "Notwithstanding any general or special law to the contrary, the [MBTA] and all its real and personal property shall be exempt from taxation…" The use of the "notwithstanding" language, said the court, showed plainly that the MBTA's property was to be exempt regardless of the purpose to which that property might be put or any general statutes that might impose tax on government property when leased. This conclusion was consistent with prior rulings of the state's supreme court. Nor did it necessarily make sense that the legislature would have intended to impose tax on the lessee where the tax would have reduced the amount paid to the MBTA. Finally, the court also noted that the legislature, subsequent to the period at issue, had expressly amended the exemption, adding language specifically narrowing its scope to exclude property that is "leased, used, or occupied in connection with a business conducted for profit." This, said the court, also showed that the pre-amendment language was not similarly limited. The court also rejected the assessor's argument that the tenant improvements could be separately assessed and taxed. The court reasoned that real estate taxes are usually assessed on land and buildings as a unit. Nor was there any dispute that the land and buildings comprising the station were owned by the MBTA. There was no authority under law to impose real estate taxes on tenant improvements where the rest of the property was plainly exempt, the court concluded. Furthermore, this conclusion was consistent with the assessor's own actions which treated the property as a whole, without attempting to separately assess the improvements. Nor would such treatment be in keeping with the purpose of the exemption. Beacon South Station Associates, LSE 1 v. Board of Assessors of Boston, Appeals Court of Massachusetts, 13-P-739, 5/14/2014.

Conservation land. The Massachusetts Supreme court has ruled that forest land owned by a nonprofit corporation and held for conservation purposes was entitled to tax exemption. The board below had denied exemption because the land was properly classified as forestland and the organization did not "occupy" the land for a charitable purpose. The justices first addressed the assessor's argument that certain more specific exemptions under state law for forestland and trustee reservations would apply to the property, and, therefore, it could not qualify for general charitable use exemption. The assessor argued that because classification as forestland carries certain responsibilities to protect the land from development, the legislature could not have intended to grant a full exemption for charitable use, since such use would carry no particular protections. The court rejected this reasoning, noting that the charitable use exemption might encompass many different purposes where the charitable organization, in effect, makes an "in-kind" contribution to the community. Nor would overlap between tax exemptions or classifications necessarily indicate a legislative intent for one statute to somehow "preempt" the other—especially where, as here, there was nothing to indicate that either provision was intended to apply exclusively. As for trustee reservations, under state law, because such lands are exempt from tax if acquired by the Trustees of Reservations, the assessor argued that land held privately for conservation purposes was not intended to qualify separately for exemption. The court found that this ignored the historical context in which the enabling act creating the Trustees of Reservations was the first passed. It was not uncommon for statutes establishing nonprofit or benevolent organizations in that era to contain language granting tax exemption for property and referencing the general tax exemption for charitable organizations. So the language treating land acquired by the trustees as exempt "to the same extent" as

land held by other charitable organizations likely demonstrated the legislature's intent to ensure that the trustees were covered by the general charitable tax exemption. The court then turned to the question of whether the organization in this case could meet the charitable purpose requirement of the general charitable use exemption. The court noted that it had long recognized that "charity" constituted more than "mere alms giving." The court found that the organization in this case had a traditionally charitable purpose in that the benefit of its activities inured to an indefinite number of people and, because the science of conservation had advanced, it was apparent that properly preserved and managed conservation land could provide a tangible benefit to a community even if few people actually entered the land. Other courts had also recognized that conservation organizations serve a traditionally charitable purpose by lessening the burdens of government—especially where the state has a strong public policy in favor of environmental protection. Finally, the court addressed whether the organization "occupied" the property for charitable purposes. Occupancy, said the court, is something more than simple ownership and possession. It signifies an active appropriation. But, as long as the property is appropriated to a use that furthers the organization's purposes, courts will defer to the organization's officers and directors in determining the specific uses that will best promote those purposes. The requirement that land be "occupied" for a charitable purpose, said the court, is best understood as a protection to ensure that the land is being held for the public good. To require affirmative duty not found in the statute. And, in certain circumstances, a public access requirement could thwart conservation objectives. On the other hand, the court reasoned, if a charitable organization actively excluded the public, then it should face a heightened burden to show that such exclusion is necessary. Here, the organization did not take active steps to exclude the public from its land and even promoted access for certain uses. Since the overall charitable purpose was conservation, this was occupancy for the organization's charitable purpose. *New England Forestry Foundation, Inc. v. Board of Assessors of Hawley*, Supreme Judicial Court of Massachusetts, SJC-11432, 5/15/2014.

Valuation of condominium units. The Ohio Supreme court has ruled that a bulk valuation method applied to condominium units under construction was improper. Under state law, condominium units must be assessed as separate parcels. The assessor used a "single economic unit" approach arguing that the condominiums were owned by a single owner and the owner was expected to sell the condominiums as a single property to one investor. The court nevertheless determined that assessing the units as a whole was unlawful. Nor was the approach justified under precedent holding that, if a sale of a condominium property as a whole does occur, the price paid will be given weight over other evidence of value when assessing the individual units. Assessing the units as a whole was also inconsistent with the assessor's own conclusion that the highest and best use of the condominiums was as owner-occupied residential condominiums. *Dublin City Schools Board of Education v. Franklin County Board of Revision et al.*, Supreme Court of Ohio, 2012-1432, 5/15/2014.

Impact of management and franchise fees on assessed property values. The California court of appeal has ruled that excluding management and franchise fees paid by a hotel from the income generated by the business when applying the income method of valuation did not suffice to exclude all intangible property identified from the value subject to tax under state law. California's constitution and statutes require the exclusion from taxable value any intangibles that have "a quantifiable fair market value." Such intangibles include goodwill, customer base, and favorable franchise terms or operating contracts. Here, the hotel argued that the method used by the assessor failed to exclude the value of the hotel's workforce, its leasehold interest in the employee parking lot, and its agreement with the golf course operator. The assessor's expert testified that by subtracting from the income stream the management and franchise fees paid by the owner to the hotel chain, the income method excluded the majority of the intangible value. The court applied a de novo standard of review, concluding that the question was one of law since the owner claimed that identifiable intangible property had not been excluded from the assessed value. The court also concluded that the method used by the assessor would produce systematic errors if applied to properties in that class. The evidence showed that the exclusion of the management and franchise fees

from income in applying the income method would serve to reduce the property value for intangible goodwill, but the evidence did not show that this method would address the other specific intangibles identified as contributing value to the property in this case. Evidence of separate intangible assets could not simply be ignored, the court concluded. *SHC Half Moon Bay v. County of San Mateo*, California Court of Appeal, First Appellate District, Division Five, A137218, 5/22/2014.

No use for public purpose inferred for governmental property excluded from tax under in-lieu-of provision. The Nebraska Supreme court has ruled that a governmental entity could not be assessed tax on property for which an in-lieu of payment had been made under the state constitution, even though the property was not used for a public purpose, but rather, instead, had been leased to a for-profit entity. The state constitution clearly provided that, for property owned by the entity, the payment in lieu of tax substituted for *all* other taxes except certain listed taxes (not including property tax). The assessor nevertheless argued that a separate provision of the constitution imposed a general requirement that governmental property be used for a public purpose in order to be exempt from tax. The court found that this separate provision was inapplicable for several reasons. First, the provision noted that governmental property not used for a public purpose could be taxed "except as provided by law." Since the constitution is law, the in-lieu-of provision would provide such an exception. Second, the more general provision for exemption of public property would have to yield to the more specific in-lieu-of provision. Third, since the in-lieu of provision did not contain a public use requirement, the court was reluctant to add one. And even though the general exemption also included the language, "notwithstanding…any other provision of this Constitution to the contrary," the court was not convinced that the in lieu-of provision was a contrary provision. Instead, the court concluded that the two provisions could be construed harmoniously, noting that the legislature had done so itself by imposing tax not on the governmental entity that had made the payment in lieu, but on the lessee's interest. (Procedural issues, however, had prevented the tax from being imposed on the lessee in this case.) *Conroy v. Keith County Board of Equalization*, Supreme Court of Nebraska, S-13-277, 5/23/2014.

Collateral estoppel. The California court of appeal has rejected a claim by a lessee that the assessor was collaterally estopped from uncapping the value of the property upon the recording of the lease because, in a prior inverse condemnation suit, a court had determined that the lessee could assert standing on the basis of its letter of intent to enter into the lease. For collateral estoppel to apply, the court noted, the issue litigated must be the same. But whether a putative lessee might have an interest in property sufficient to create standing was not the same issue as whether the property had been transferred in such a way to trigger a revaluation under applicable tax law. Nor did the court agree that the grant of standing in the prior litigation was founded on a determination that a leasehold interest had already been established. Rather, such a finding was entirely unnecessary to a determination of standing. *Encinitas Country Day School, Inc. v. County of San Diego*, California Court of Appeal, Fourth Appellate District, Division One, D063098, 5/27/2014.

Grants

CFDA	Opportunity Title	Federal Agency	Opportunity Number	Eligibility	Due Date	Match ?
10.171	Organic Certification Cost Share Program	Department of Agriculture-Agricultural Marketing Service	USDA-AMS-NOP-AMA-2014	State governments	6/20/2014	
10.171	Organic Certification Cost Share Program	Agricultural Marketing Service	USDA-AMS-NOP-NATL-2014	State governments	6/20/2014	
10.200	Alfalfa and Forage Research Program	National Institute of Food and	USDA-NIFA-OP-004536	State agricultural experiment	7/7/2014	

		Agriculture		stations, Institutions of Higher Education (IHEs)		
10.500	1890 Facilities Grant Program (Renewals)	National Institute of Food and Agriculture	USDA-NIFA-EF47-004542	1890 Land-Grant Institutions, including Tuskegee University, and West Virginia State University	7/11/2014	
10.500	Healthy Homes Partnership	National Institute of Food and Agriculture	USDA-NIFA-EXCA-004538	Land-Grant Institutions	7/7/2014	
10.912	FY 2014 Conservation Innovation Grant - MA	Massachusetts	USDA-NRCS-MA-14-01	State and local governments, IHEs	7/31/2014	X
10.500	Renewable Resource Extension Act - National Focus Fund Projects	National Institute of Food and Agriculture	USDA-NIFA-OP-004541	1862 and 1890 land-grant institutions	7/16/2014	
12.300	Fiscal Year 2015 Non-Lethal Weapons Technologies	Department of Defense- Office of Naval Research	ONRBAA14-008	Unrestricted	9/26/2014	
12.420	DoD Spinal Cord Injury Clinical Trial Award	Dept. of the Army -- USAMRAA	W81XWH-14-SCIRP-CTA	Unrestricted	10/30/2014	
12.420	DoD Spinal Cord Injury Investigator-Initiated Research Award	Dept. of the Army -- USAMRAA	W81XWH-14-SCIRP-IIRA	Unrestricted	10/30/2014	
12.420	DoD Spinal Cord Injury Qualitative Research Award	Dept. of the Army -- USAMRAA	W81XWH-14-SCIRP-QRA	Unrestricted	10/30/2014	
12.420	DoD Spinal Cord Injury Translational Research Award	Dept. of the Army -- USAMRAA	W81XWH-14-SCIRP-TRA	Unrestricted	10/30/2014	
N/A	Natural Resource Management Education and Training for High School Students near Fern Ridge Lake	Dept. of the Army -- Corps of Engineers	NWP-14-0012	Independent school districts	6/24/2014	
14.259	HUD Community Compass Technical Assistance and Capacity Building	Department of Housing and Urban Development	FR-5800-N-12	State and local governments, IHEs	7/23/2014	
14.902+	Healthy Homes and Lead Technical Studies Programs Pre-Application	Department of Housing and Urban Development	FR-5800-N-06	State and local governments, IHEs	7/8/2014	
15.224	Youth Employment - Archaeology	Department of the Interior- Bureau of Land Management	L14AS00123	Unrestricted	7/1/2014	

15.224	BLM UT GSENM Kaiparowits Critical Fossil Inventory and Protection Project	Bureau of Land Management	L14AS00130	Unrestricted	6/24/2014	
15.224	Data Sharing with State Historic Preservation Office in Montana	Bureau of Land Management	L14AS00132	State governments	7/21/2014	
15.224	BLM WY Rock Art Identification Special Management Area	Bureau of Land Management	L14AS00133	IHEs	6/23/2014	
15.225	BLM OR-WA Recreation and Field Site Improvements, Roseburg District	Bureau of Land Management	L14AS00125	Unrestricted	6/25/2014	
15.231	BLM WY Grizzly Wildlife Habitat Management Area Improvement	Bureau of Land Management	L14AS00127	State governments	6/23/2014	
15.231	BLM CA Bi-State Distinct Population of Greater Sage-Grouse Strategic Action Plan DPS	Bureau of Land Management	L14AS00134	Local governments	7/7/2014	
15.231	BLM-CO Wildlife Studies	Bureau of Land Management	L14AS00139	Unrestricted	6/19/2014	
15.234	Row River Trail (RRT) Mechanical Maintenance	Bureau of Land Management	L14AS00126	Local governments	6/17/2014	
15.236	BLM OR-WA CESU Climate Data - Identifying Tools Based on What Users Do	Bureau of Land Management	L14AS00124	IHEs	7/16/2014	
15.517	Upper Missouri River Pallid Sturgeon Tagging and Telemetry Study	Bureau of Reclamation	R14AS00055	State and local governments	6/23/2014	
15.517	Hualapai Tribe Zebra Tailed Lizard Translocation	Bureau of Reclamation	R14SS00010	State and local governments, IHEs	6/15/2014	
15.560	AgriMet Irrigation Scheduling Study	Bureau of Reclamation	R14AS00056	IHEs	6/23/2014	
15.658	Upper Delaware River Wetland Restoration	Fish and Wildlife Service	F14AS00220	Unrestricted	9/1/2014	
15.677	DOI Project #NJ077; Hurricane Sandy; Protect Gandy's Beach; Downe Township; NJ	Fish and Wildlife Service	F14AS00215	Unrestricted	7/4/2014	
15.808	Cooperative Ecosystem Studies Unit, Chesapeake Watershed CESU	Geological Survey	G14AS00075	Participating partners of the Chesapeake Watershed Cooperative Ecosystem Studies Unit (CESU) Program	6/17/2014	
15.808	Cooperative Ecosystem Studies Unit, Great Basin	Geological Survey	G14AS00076	Participating partners of the Great Basin CESU Program	6/13/2014	
15.808	Cooperative Ecosystem Studies Unit, Californian CESU	Geological Survey	G14AS00077	Participating partners of the	6/17/2014	

				Californian CESU Program		
15.808	Cooperative Ecosystem Studies Unit, North Atlantic Coast	Geological Survey	G14AS00079	Participating partners of the North Atlantic Coast CESU Program	6/17/2014	
15.808	Cooperative Ecosystem Studies Unit, Great Plains CESU	Geological Survey	G14AS00080	Participating partners of the Great Plains CESU Program	6/17/2014	
15.808	Cooperative Ecosystem Studies Unit, Rocky Mountain CESU	Geological Survey	G14AS00082	Participating partners of the Rocky Mountains CESU Program	6/17/2014	
15.808	Cooperative Ecosystem Studies Unit, Rocky Mountain CESU	Geological Survey	G14AS00083	Participating partners of the Rocky Mountains CESU Program	6/17/2014	
15.808	Cooperative Ecosystem Studies Unit, Colorado	Geological Survey	G14AS00085	Participating partners of the Rocky Mountains CESU Program	6/17/2014	
15.808	Cooperative Ecosystem Studies Unit, Southern Appalachian Mountains CESU	Geological Survey	G14AS00087	Participating partners of the Southern Appalachian Mountains CESU Program	6/17/2014	
15.811	Cooperative Ecosystem Studies Unit, Great Basin CESU	Geological Survey	G14AS00078	Participating partners of the Great Basin CESU Program	6/17/2014	
15.944	Lidar Elevation Data Acquisition NOI not a request for Proposals	National Park Service	P14AC00827	State governments	6/13/2014	
15.945	NOI Create Virtual Missouri National Recreational River Water Trail E-Float	National Park Service	P14AC00804	IHEs	6/10/2014	
15.945	Cooperative Watershed Studies Program (SWAS/VTSSS)	National Park Service	P14AS00117	IHEs	6/14/2014	
15.945	Shorebirds Study, Western Arctic Parklands	National Park Service	P14AS00118	IHEs		
15.945	Coastal Landform Change in the NPS Arctic Inventory and Monitoring Network	National Park Service	P14AS00119	IHEs		
15.945	MONITORING SURVEYS TO SUPPORT LONG-TERM MONITORING OF BIRD COMMUNITIES IN NPS UNITS (GRCA, WUPA) OF THE SOUTHERN COLORADO PLATEAU NETWORK: PHASE 2	National Park Service	P14AS00120	IHEs		

15.954	CIRO FY14 Funding of Operations	National Park Service	P02AC0000150	State governments	6/13/2014	
16.601	Leadership Development for Corrections Supervisors	Department of Justice-National Institute of Corrections	14AC07	Public agencies, IHEs	6/30/2014	
16.601	Victims and Reentry: A handbook for Probation and Parole Officers	National Institute of Corrections	14CS11	Public agencies, IHEs	6/30/2014	
16.602	A Best Practices White Paper Specific to Lesbian, Gay, Bisexual, Transgender and Intersex Juvenile Offenders in Corrections	National Institute of Corrections	14CS10	Public agencies, IHEs	6/30/2014	
19.017	Lower Mekong Initiative (LMI) Environment and Water Pillar Training Program (PTP)	Department of State-Ocean and International Environmental Scientific	OES-OER-14-002	IHEs	6/30/2014	
19.345	Bureau of Democracy, Human Rights and Labor (DRL) Internet Freedom Annual Program Statement	Bureau of Democracy	DRLA-DRLAQM-13-099	IHEs	12/5/2014	
19.522	FY 2014 Funding Opportunity Announcement for Global Innovation Programs to Help the Humanitarian Community Better Respond to Refugees Outside of Camps	Bureau of Population	PRM-PRMOAPGL-15-001	IHEs	7/2/2014	
19.705	South Africa Wildlife Transnational Crime Investigations-Communication Intervention	International Narcotics and Law Enforcement Affair	INL-14-CA-0020-INLAME-060214	IHEs	7/4/2014	
19.705	South Africa Wildlife Crime Investigation Interventions	International Narcotics and Law Enforcement Affair	INL-14-CA-0021-INLAME-060214	IHEs	7/4/2014	
19.750	ASGM Community-Driven Remediation Planning Competition	Bureau of Western Hemisphere Affairs	WHAP-WHAAQPPC-14-002	IHEs	7/7/2014	
19.703 +	Justice and Youth Programs	International Narcotics and Law Enforcement Affair	INL-14-GR-0022-INLCOSTARICA-060514	IHEs	7/11/2014	
19.800	14.PMWRA.Cambodia. RFA	PM Weapons Removal and Abatement	PM-PMWRA-14-017	Unrestricted	7/18/2014	
19.800	14.PMWRA.Laos.SavannakhetClearance. RFA	PM Weapons Removal and Abatement	PM-PMWRA-14-018	Unrestricted	7/18/2014	
19.800	14.PMWRA.Laos.XiengKhouangClearance. RFA	PM Weapons Removal and Abatement	PM-PMWRA-14-019	Unrestricted	7/18/2014	
20.200	Regional Surface Transportation Workforce Centers	Department of Transportation-Federal Highway	DTFH6114RA00011	IHEs	7/10/2014	X

		Administration				
20.500	Section 5309 Bus and Bus Facilities, Ladders of Opportunity Program	DOT/Federal Transit Administration	FTA-2014-004-TPM	State and local governments, IHEs	8/4/2014	X
47.075	Methodology, Measurement, and Statistics	National Science Foundation	14-574	IHEs	9/2/2014	
47.041 +	ADVANCE: Increasing the Participation and Advancement of Women in Academic Science and Engineering Careers	National Science Foundation	14-573	IHEs	9/22/2014	
81.087	Fuel Cell Technologies Incubator - Innovations in Fuel Cell and Hydrogen Fuel Technologies	Department of Energy- Golden Field Office	DE-FOA-0000966	State and local governments, IHEs	9/3/2014	X
84.133	OSERS/NIDRR: Disability and Rehabilitation Research Projects and Centers Program: Rehabilitation Engineering Research Centers (RERCs): Technologies to Enhance Independence in Daily Living for Adults with Cognitive Impairments	Department of Education	ED-GRANTS-060514-001	State and local governments, IHEs	8/4/2014	
84.220	Office of Postsecondary Education (OPE): Center for International Business Education Program	Department of Education	ED-GRANTS-060314-001	IHEs	7/3/2014	X
84.229	Office of Postsecondary Education (OPE): Language Resource Centers Program	Department of Education	ED-GRANTS-060614-001	IHEs	7/9/2014	
84.334	Office of Postsecondary Education (OPE): Gaining Early Awareness and Readiness for Undergraduate Programs (State Grants)	Department of Education	ED-GRANTS-060314-002	State governments	7/7/2014	X
84.334	Office of Postsecondary Education (OPE): Gaining Early Awareness and Readiness for Undergraduate Programs (Partnership Grants)	Department of Education	ED-GRANTS-060414-001	IHEs	7/7/2014	X
93.048	Model Approaches Phase II Systems Expansion Grants	Department of Health and Human Services- Administration for Community Living	HHS-2014-ACL-AOA-LE-0087	State governments	7/7/2014	
93.067	Public Health Systems Capacity Building in India	Centers for Disease Control and Prevention	CDC-RFA-GH14-1416	State and local governments, IHEs	7/17/2014	
93.103	The Use of Polyethylene Glycol in the Pediatric Population (R01)	Food & Drug Administration	RFA-FD-14-088	State and local governments, IHEs	7/15/2014	
93.110	State Systems Development Initiative Grant Program	Health Resources & Services Administration	HRSA-15-002	State governments	9/2/2014	
93.243	Statewide Peer Network Development Program for Recovery and Resiliency	Substance Abuse &	SM-14-023	SAMHSA Network	8/7/2014	

	Grants	Mental Health Services Adminis.		grantees in the nine states where there is a RCSP-SN award and either one or both a Statewide Consumer Network and Statewide Family Network		
93.262	NIOSH Support for Conferences and Scientific Meetings (U13)	Centers for Disease Control and Prevention	PAR-14-229	State and local governments, IHEs	12/13/2016	
93.268	Increasing IIS Sentinel Site Capacity for Enhanced Program Support	Centers for Disease Control and Prevention	CDC-RFA-IP14-1407	State and local governments	7/21/2014	
93.273	Specialized Alcohol Research Centers (P50)	National Institutes of Health	RFA-AA-15-001	State and local governments, IHEs	12/3/2014	
93.273	Comprehensive Alcohol Research Centers (P60)	National Institutes of Health	RFA-AA-15-002	State and local governments, IHEs	12/3/2014	
93.319	Programs to Reduce Obesity in High Obesity Areas	Centers for Disease Control and Prevention	CDC-RFA-DP14-1416	Land Grant Colleges and Universities that have counties in their state with an obesity prevalence over 40%	7/23/2014	
93.351	Developing and Improving Institutional Animal Resources (G20)	National Institutes of Health	PAR-14-251	IHEs	8/1/2014	
93.394	Limited Competition: Biospecimen Banks to Support NCI-Clinical Trials Network (NCTN) (U24)	National Institutes of Health	RFA-CA-14-501	See announcement	8/15/2014	
93.564	Behavioral Interventions for Child Support Services	Administration for Children and Families - OCSE	HHS-2014-ACF-OCSE-FD-0818	State governments	8/5/2014	
93.564	Evaluation of Behavioral Interventions for Child Support Services Grants	Administration for Children and Families - OCSE	HHS-2014-ACF-OCSE-FD-0822	State governments	8/5/2014	
93.600	Early Head Start Expansion and EHS-Child Care Partnership Grants	Administration for Children and Families	HHS-2015-ACF-OHS-HP-0814	State and local governments, IHEs	8/20/2014	X
93.676	Residential Services for Unaccompanied Alien Children	Administration for Children	HHS-2015-ACF-ORR-ZU-0833	Unrestricted	8/5/2014	

		and Families - ORR				
93.764	2014 PPHF-2014 Cooperative Agreements to Implement the National Strategy for Suicide Prevention	Substance Abuse & Mental Health Services Adminis.	SM-14-016	State Mental Health Authorities	7/16/2014	
93.859	Limited Competition: Large-Scale Collaborative Project Award Renewals (U54)	National Institutes of Health	RFA-GM-15-003	Applicants must have an active NIGMS-supported large-scale collaborative project award submitted in response to PAR-07-412	9/24/2014	
93.866	Clinical Trial on the Effects of Interventions Aiming to Reduce Chronic Inflammation in Older Adults: Pilot Phase (U01)	National Institutes of Health	RFA-AG-15-006	State and local governments, IHEs	10/8/2014	
94.002	2015 RSVP Competition	Corporation for National and Community Service	CNCS-06-05-2014	State and local governments	9/9/2014	X
98.001	Microbicide Research, Development, and Introduction, Round 3	Agency for International Development	APS-OAA-14-000076	Private organizations associated with IHEs	7/9/2014	
98.001	Family Planning, Maternal, Newborn and Child Health (FP/MNCH) Interventions					

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