



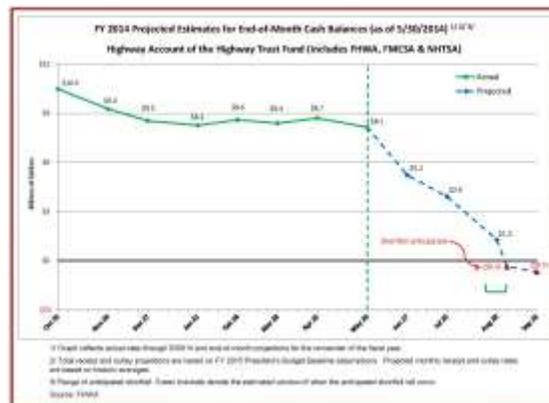
eNews

July 3, 2014



Where is the Trust? (Hint: running out of gas.) Congress was out of town (on the road, as it were) for its 4th of July recess this week, leaving an even emptier federal highway Trust Fund—with just over three weeks to act before its month-

long August vacation, when the federal government reducing highway and local governments. The in the first week of August, about \$4 billion left in the according to the Department the trust fund is supposed to expenses, DOT Secretary trust fund will have trouble consequently, he said DOT when the bills Secretary, the balance in the federal Highway Trust Fund is dropping and will soon go below \$4 billion, the cushion federal officials say is needed for incoming fuel tax revenue to cover outgoing payments to states. The cuts will vary from state to state, but will average about 28 percent, according to the department. Under the administration’s new allotment plan, each state will receive a certain share of the money that comes in through the federal gasoline tax during the two-week allotment periods. By the end of August, the trust fund’s balance is forecast to fall to zero (please see chart), and the cuts could deepen. Revenue from federal gas and diesel taxes continue to flow into the fund, but the total is expected to be about \$8 billion short of the transportation aid the government has allocated to states this year. Over the next six years, a gap of about \$100 billion is forecast if transportation spending is maintained at current levels. In addition, the current surface transportation authorization (PL 112-141) is set to expire at the end of September.



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State (& Local) Dilemma: Cuts of the size in highway and transit funds to states could not only jeopardize ongoing state and local projects and payments to contractors, but also risk outstanding highway and transit bonds issued by states, local governments, and other transportation/transit authorities. According to Sifma, in the first Quarter, state/local mass transit bond issuance was \$3.559 billion, and highway issuance was \$3.712 billion. The potential abrupt and sharp cuts thus could create not only the problem for state and local governments and transit authorities in meeting payrolls, contractor payments, etc. beginning in August—but also to keeping current on quarterly or semiannual payments to bondholders. While most GARVEE bonds have significant debt service coverage, Moody’s has downgraded \$8.5 billion worth. In the best case, state DOT’s will have to manage making both transportation and bond payments, with some prioritization necessary. Moody’s is moody about the

complex situation, because of the three-pronged state and local threat: an August 28% cut, an expiring authorization of the federal law, and the Trust fund's deep troubles.

New Unfunded Mandates. The Congressional Budget Office (CBO) has issued its Cost Estimate on H.R. 3086, the Permanent Internet Tax Freedom Act, finding that while the Act would have no impact on the federal budget, the Congressional legislation will impose unfunded mandates on state and local governments: “H.R. 3086 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the mandate would cause some state and local governments to lose revenue beginning in November 2014; those losses exceed the threshold established in UMRA for intergovernmental mandates (\$76 million in 2014, adjusted annually for inflation) beginning in 2015. CBO estimates that the direct costs to state and local governments would probably total more than several hundred million dollars annually.”

Reliable Home Heating Act. President Obama on Tuesday signed the Reliable Home Heating Act ([S. 2086](#)) into law, bipartisan legislation to enhance state ability to address critical shortages of home heating fuels by providing states with greater authority to extend “state of emergency orders” and ensuring that they have more advance warning of when their states may experience a significant decline in their inventories of propane, heating oil, and natural gas.

State & Local Finance

State Capital (not Capitol) Budgeting. The quintessential Marcia Howard of Federal Funds Information for States this week explored one of the most critical state and local fiscal challenges, examining capital budget practices of the states—the timing mattering because of the inability of Congress to address this issue so vital to the U.S. economy—not to mention the potential threat to both local and state capital budgets and outstanding related municipal debt. As she deftly writes, this part of state budgeting (not to mention local) is not “the sexiest area of state budgeting—if there is such a thing—but it is one of the most important. In contrast to the federal government, which finances capital improvements in a single, unified budget, states typically budget separately for capital expenditures.” She notes that the National Association of State Budget Officers (NASBO) has just released a compendium of state capital budgeting practices [Capital Budgeting in the States Report](#), which includes some 42 tables and identifies a host of good practices in summary form—as well as lays out tables that outline state practices in a tabular display, noting that twenty-nine states feature a mechanism for funding maintenance projects within their capital budget. She also notes that a key feature of most state (and local) capital budgeting is that it typically is built upon a long-term capital improvement plan (CIP)—the report identifies 43 states with such a plan—adding that even amongst those states that do not claim to have a CIP, most offer something that appear to resemble one. The NASBO report identifies 39 states that report they use the CIP for capital budgeting purposes—and identifies 25 states which report having a joint legislative/executive review board that approves capital projects before they are adopted as a part of the respective state’s budget. Importantly, and, again, in stark contrast with the federal government, forty-three states report having a requirement that capital budget requests include the impact on future operating budgets. The NASBO report identifies a number of different options different states use to estimate the total cost of a capital project:

- cost standards building type,
- gross square footage or space utilization standards,
- life-cycle costing,
- market comparisons and
- historical comparisons for similar projects.

Each of these methods is used by at least half the states, and 16 states report using all five. 41 states, NASBO finds, boast contingency funds to address little things like cost overruns. Importantly, the report Since capital projects are commonly financed by debt, state policies are important to guide and limit the issuance of such debt. NASBO devotes three full tables to outlining state variations in this regard. They show that 38 states have a constitutional or statutory limit on outstanding GO debt, 25 states have such a limit on GO debt service and 20 states have some type of debt affordability criteria.

The NASBO report finds that in lieu of construction or purchase, some states enter into long-term leases for capital acquisitions—with the majority of states (35) treating such leases as an operating expense, while 14 treat long-term leases primarily as a capital expense. Just fewer than half the states subject leases to the same selection criteria they use for capital projects, with a similar number of states including leases in their calculation of total outstanding debt. Many states make reference to the comprehensive annual financial report (CAFR) in their explanatory notes. Again, unlike the federal government, the report looks at state variations in capital asset management and valuation, identifying 44 states that keep an inventory of capital assets, and detailing a number of items that might be part of that inventory, such as the age of a facility, its condition, and its capacity. In determining the value of the assets in such an inventory, state practices also vary widely, with most states using replacement value, while others use the original cost of construction or market value. As the gifted Ms. Howard writes: “The foregoing only skims the surface of the state capital budgeting practices outlined in the new NASBO report. The report is a testament to the notion that states are laboratories of democracy, each carving out its own capital budgeting niche based on needs, preferences and conventions.”

State (& local) capital budgets are financed with federal grants and appropriations, state appropriations, and municipal debt financing. According to Thomson Reuters, long-term public municipal issuance volume totaled \$60.4 billion in the first quarter of 2014, a decline of 17.7 percent and 25.7 percent, respectively, from the prior quarter (\$73.4 billion) and year-over-year (\$81.3 billion). Year to date, first quarter issuance figures are well below the 10-year average of \$83.7 billion. Including private placements (\$2.2 billion), long-term municipal issuance for 1Q’14 was \$62.6 billion. By use of proceeds, general purpose led issuance totals in 1Q’13 (\$19.6 billion), followed by primary & secondary education (\$10.5 billion), and water & sewer facilities (\$5.6 billion).

Keystone State Balancing. Facing a \$1.5 billion budget shortfall, the Pennsylvania House this week passed and sent to the state Senate a \$29.1 billion general fund budget that would suspend 13 state tax credits worth \$48.2 million, representing a 1.9 percent, or \$536 million, increase over this year—and \$300 million less than Gov. Tom Corbett had proposed in February in recognition of the persistent shortfalls in state tax collections. The plan provides \$10.3 billion for K-12 education including the first increase in seven years for special education, but holds level funding for higher education.

Get Out the Vote. 38 states have already certified just over 100 ballot measures for the 2014 primary and general election ballots. That number may increase throughout the as petitioners in several jurisdictions can still gather signatures in hopes of making this November’s ballot. In the fiscal arena, Alaska will vote on the repeal of tax incentives for the oil industry. California voters will consider whether or not to increase the state’s rainy day fund. Oregon voters will vote on a measure to legalize the use of marijuana by those over 21 years of age and tax marijuana and its products. Georgia, Louisiana, Nevada, Missouri, North Dakota, and Tennessee will vote on tax matters, with the majority of these ballot questions limiting the ability of the government to levy or increase certain taxes.

How Will Climate Change Affect Governance? This week, bipartisan representatives of the three levels of government met at a panel of sea-level-rise experts at Old Dominion University in Hampton Roads, Virginia, where water levels are expected to rise at least a foot by 2050: the issue: what projects are

needed to protect the region and how much will they cost? The sub-issues: who will pay what share? Who will coordinate? Hampton Roads, partly because of sinking land, has the highest rate of sea level rise on the East Coast, so public officials are grappling with how to prepare for it and deal with the increased flooding that is already happening. From the Congress, Republican U.S. Reps. Scott Rigell and Rob Wittman were joined by Democrats Sen. Tim Kaine and Rep. Bobby Scott—while local representatives included Norfolk Mayor Paul Fraim, and Virginia Beach Mayor Will Sessoms: who recognized that answers to what is happening in Hampton will directly affect their respective municipalities. For the local leaders, part of the issue involves the recognition that sea level rise is a problem beyond the scope of municipal governments. Rep. Rigell noted that planning for sea level rise is a “challenging managerial leadership effort.” He told the attendees it would be helpful to have a point person or agency—asking Molly Ward, Virginia’s Secretary of Natural Resources, whether the state could take the lead. Sec. Ward noted that Gov. Terry McAuliffe this week planned to announce the reformation of Virginia’s climate change commission, but said the state would need federal support. Sen. Kaine—a former councilmember and Mayor of Richmond, and former Governor—noted the numbing challenge to go from studying sea level rise to taking action: “We have to move from endless diagnosis to prescriptions.” The unspoken issue there, of course, is which level of government will pay—and assume the lead role. For Hampton Roads, the issue is further complicated by apprehension about the future desirability of Hampton Roads for U.S. military installations—John Conger, U.S. Under Secretary of Defense for Installations and Environment, noted that rising sea levels could be seen as a form of encroachment by future Base Closure and Realignment Commissions, or BRAC’s.

State & Local Resiliency: Who’s in Charge? Drought, wildfires, and rising sea levels seem immune to worrying about discerning between neither state and local political boundaries— nor job description boundaries. The issues, after all, involve emergency response and rescue, land use & zoning, assessed property values, public infrastructure, etc. But the impacts—and the first response—will fall on local governments. So maybe it should not be a surprise that last Friday, Norfolk, Virginia announced the hiring of its first chief resilience officer, Christine Morris, an assistant to City Manager Marcus Jones. The city noted the position, was created: “to help Norfolk prepare for, withstand, and bounce back from catastrophic events and chronic stresses,” with examples given by the city also citing: poverty, violence, unemployment, and transportation problems. But, in a broader sense, the city defines “resiliency” as the new “sustainability,” but with a focus on adapting to vagaries of climate change, which in Norfolk largely means flooding and sea level rise. In an interview Friday, Ms. Morris said part of her job would be to help the city figure out how to “react to the issue of water coming into places where we’d rather it not be,” adding that: “Part of resiliency is interdisciplinary thinking, and that could mean having city departments work together better...Conceiving of a flood protection project that also doubles as a recreation area could be an example of resiliency planning. She noted that a \$4.6 million federal grant the city recently received to prepare for sea level rise, restore wetlands, and create a “green infrastructure” plan will lead to projects that fall under the umbrella of resiliency. Her position is an outgrowth of the Rockefeller Foundation’s 100 Resilient Cities program of Norfolk last year—with the foundation noting selections were based focused on “cities who have demonstrated a dedicated commitment to building their own capacities to prepare for, withstand, and bounce back rapidly from shocks and stresses.”

Similarly, San Francisco’s first earthquake czar, Patrick Otellini, broke ground by stepping up to becoming that city’s first Chief Resilience Officer. Mr. Otellini previously spent a decade in the private sector managing complex planning, building and fire code issues, before former San Fran Mayor Gavin Newsom appointed him to the city’s Soft Story Task Force. Two years ago, he was named by Mayor Ed Lee as the Director of Earthquake Safety, which he will continue to oversee in his newly expanded role—another of Rockefeller’s 100 global resiliency positions. Mr. Otellini describes the role of a local resiliency leader to be thinking outside the box about how a city can thrive after a disaster, noting that “[R]esiliency is an all-encompassing term. At some point, it actually becomes such an encompassing term

that it's very hard to define. It's not just sustainability. It's not just seismic safety. It's not just energy assurance. It's all of these things together. I think we'll see CRO's [Chief Resiliency Officers] serving as point people for other departments doing the work...adding: "I think my personal definition of resilience is actually less important than what the community's definition of resilience is. San Francisco has done very well: looking to the community to define what it means to make our city more resilient. We've heard loud and clear that it's not only seismic safety, about making sure we're prepared for the big one, but also things like energy assurance, like protecting our infrastructure, like rebuilding our city's seawall to be able to adapt to climate change — all these things are major concerns." Mr. Otellini pointed to New Orleans as an example of a city which, in the wake of Katrina, "really banded together as a community to create a resilience strategy," adding that he find what the city is doing to be "really exciting and cutting edge, as far as resiliency goes." But he also pointed to Rotterdam as a terrific example, noting that it is an entire city below sea level, so that it has exercised the leadership to address climate change faster than anybody else. In San Francisco, he said, "We're bolstering up our own city infrastructure, we're retrofitting our own buildings, and we're asking the private sector to respond the same way. As long as we're walking in lockstep with one another, it's a very consistent message. These issues are really critical, especially with the tech boom happening here in San Francisco. Most of these tech businesses cannot afford to be offline for 24 hours. Mr. Otellini has described building capacity in a community as one of the most significant challenges—"because people don't like to think about long-term or abstract problems...especially when considering our hard-to-reach, vulnerable populations in the community — these are folks that are focused on making sure there's a meal on the table, not, "What am I going to do in the 72 hours after an earthquake?"

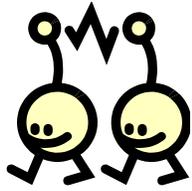
Nota bene: The climate-related issues of drought and rising sea levels present complex challenges in the intergovernmental arena—not to mention political challenges, so we are keenly interested in input from readers about examples or ideas for ways state and local leaders could or should think about this issue and the tangled web of intergovernmental relationships.



Prairie Home Uncompanion. Kansas ended its fiscal year June 30 with revenues running \$338 million below projections—even as the state awaits the next phase of its planned state tax cuts. The fall in projected revenue has already led Moody's to downgrade the state from Aa2 to Aa3, with the ratings agency citing the state's weak economy and patchwork approach to balancing the state budget. Kansas Department of Revenue Secretary Nick Jordan has predicted that last month's revenues would be \$10 million to \$20 million lower than estimates. The revenue numbers, at least so far, have failed to live up to Governor Brownback's hopes that cutting Kansas income taxes would lead to higher state revenues, because the cuts would provide an "adrenaline shot" to the state's economy. State revenue fell beneath projections by \$93 million in April, \$217 million in May, and \$28 million last month—even as credit ratings analysts have said the economy is relatively stagnant. Over the fiscal year, tax collections were 5.8% or \$338 million below projections.

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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.



Shared Services. Higher Education. Clayton Christensen of Harvard Business School considers MOOCs (massive open online courses) a potent “disruptive technology” that will kill off many inefficient universities. “Fifteen years from now more than half of the universities [in America] will be in bankruptcy,” he predicted last year. The ability to leverage technology to provide education without massive expenditures for athletic directors, football and basketball coaches, luxury dorms, etc., while sharing exceptionally talented teaching in an unphysical setting could certainly vastly alter today’s dynamics.

Shared Services & Governance. Columnist David Brooks of the *New York Times*, this week, writes about other kinds of disruptive technology: shared services. In his column “The Evolution of Trust,” he noted that eleven million travelers have stayed in Airbnb destinations, according to data shared by the company—so that there are about 550,000 homes currently being shared by hosts, adding that “Airbnb is only a piece of the peer-to-peer economy. People are renting out their cars to people they don’t know, dropping off their pets with people they don’t know, renting power tools to people they don’t know.” He attributes this to what he terms the “effects of middle-class stagnation: With wages flat and families squeezed, many people have to return to the boardinghouse model of yesteryear. They have to rent out rooms to cover their mortgage or rent.” He also described what he terms “the transformation of social trust: In primitive economies, people traded mostly with members of their village and community. Trust was face to face. Then, in the mass economy we’ve been used to, people bought from large and stable corporate brands, whose behavior was made more reliable by government regulation. But now there is a new trust calculus, powered by both social and economic forces...Economically, there are many more people working as freelancers. These people are more individualistic in how they earn money. They often don’t go to an office. They have traded dependence on big organizational systems for dependence on people they can talk to and negotiate arrangements with directly. They become accustomed to flexible ad-hoc arrangements...The result is a personalistic culture in which people have actively lost trust in big institutions. Strangers don’t seem especially risky by comparison. This is fertile ground for peer-to-peer commerce.” When I talk to my daughter, I begin to get it: as these disruptive shared services establish trust through ratings mechanisms and technology; one can better appreciate what is happening. Whereas my neighbor has now—twice in a week’s span, called for a cab—a city regulated cab—to pick him up; both times despite an affirmative acceptance, no cab came. In contrast, my daughter comments that companies like Lyft and Uber, when one connects, one can immediately see the driver’s rating and see on one’s smart phone exactly where the car is and when it will be at your door. She would no longer even consider calling for a cab in D.C.—especially during a storm or rush hour period. Moreover, because Airbnb, Lyft, Sidecar, Uber and the like rely on trust—online ratings create powerful incentives to protect and enhance their competitive reputations—instead of local government regulation.

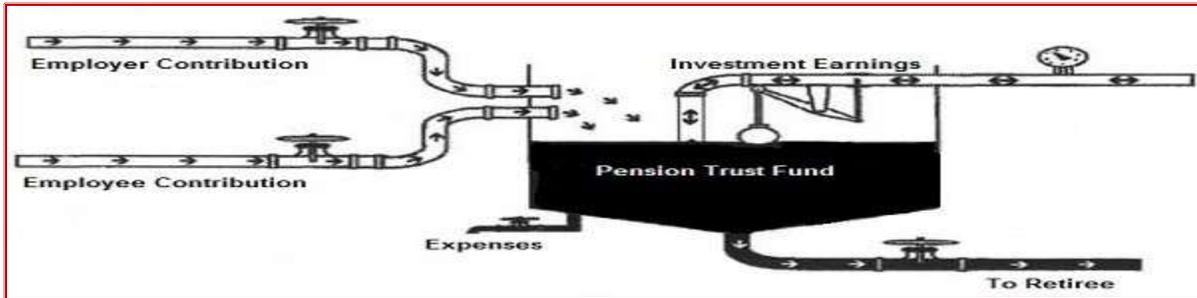


Figure 1 Illustration by David P. Hayes

Pensionary Tidings

Garden State Pension Battle. Garden State Gov. Chris Christie’s plan to withhold \$800 million in pension payments in order to balance New Jersey’s the budget survived a court challenge by the state’s unions, when Mercer County Superior Court Judge Mary Jacobson refused the request of government workers that the court step in to force the Governor Christie to make the budgeted pension payments in the remaining days of fiscal year 2014, which ends Monday night. Nevertheless, Judge Jacobson affirmed that the unions were irreparably harmed by the action, finding that the Governor’s actions qualified as an emergency measure, but only for this fiscal year, even though she wrote that the unions had a legitimate concern about their pension and a legal right to their funding: “Perhaps most importantly, these pension contributions are a contractual right of the members of the pension system...The governor’s action was a substantial breach of that right.” Judge Jacobson said she would deny the unions’ request that she order the New Jersey government to adhere to the 2011 pension agreement in its fiscal year 2015 budget, because the government was still preparing the budget. She said she had no standing to rule on a budget that had not yet been adopted. The court found that the unions had succeeded on two of the four points they needed for the injunctive relief. First, the unions had succeeded in showing that the state had made a contractual promise in the 2011 agreement to ramp up its contributions to the pensions. Second, the unions had succeeded in showing the likelihood of irreparable harm if the state did not make the scheduled full pension payment by the end of June. This was because any money not appropriated by the state to the pension fund by July would go back to the state’s coffers. On the other hand, the unions had failed to show likelihood of success on the merits of their argument and in terms of the balance of the equities of the situation, the judge said. New Jersey has dramatically scaled back its pension funding contribution for FY2014 because it was necessary to do so to meet essential service spending, Jacobson said. The unions had asked for the judge to use the state’s \$300 million unreserved fund balance for making part of the pension payment, but the Judge responded that the state had shown that financial experts believed the state’s \$300 million was already very slim. The state succeeded in showing that the state’s fiscal health would be threatened if the state did not pay its debt service or if it used the undesignated fund balance. Moreover, the court determined, the Governor’s order reducing the current fiscal year’s pension payments was justified by the serious situation, which allowed the impairment of the contracts with the workers: Governor Christie has legally acted under the Disaster Control Act to breach the contractual pension promise. Judge Jacobson noted that since the Governor’s action did not mean the government employees were in danger of not getting their pensions in the next few years and making the pension payments would endanger essential civil services, the equities did not favor the unions.



Do you swear? The most important state & local pensionary developments this week came in courtrooms in the First U.S. Circuit Court of Appeals (Maine), the

Garden State Supreme Court, and just a few moments ago, the Illinois Supreme Court. Please see Little Legalities (below).

Demography

The *Economist* this week notes that Japan has changed over the last two decades: Demography is the main reason: “Like telltale grey hairs, the signs of ageing are everywhere. A think-tank has just predicted that some 900 municipalities, or half of the total, will have disappeared by 2040, as women of childbearing age migrate to big cities. Centenarians are the fastest-growing segment of the population, and over one-tenth of houses are already vacant, chiefly because of ageing. The workforce is shrinking so fast that even Japan’s often sexist and xenophobic elite is discussing subjects such as higher immigration and encouraging women to get a job. Among farmers, whose average age is a staggering 70, resistance to reform from those who wish to keep agriculture small-scale and inefficient is dying along with the resisters.”

State or Local Leader of the Week

Mayor James Brainard of Carmel, Indiana is our State & Local Leader of the week for his two decades of elected leadership in transforming his city—which, over that period of time has nearly tripled in size from 31,000 when the city invited its 31,000 Carmel’s downtown, parts of Brainard, elected the following development plan for the original Design District, into effect. 85,000 transformed by a strategy recruitment for high-wage jobs in



buildings along Meridian Street on the city’s west side that houses over 40 corporate headquarters and construction of office, residential, and entertainment venues in two central city districts that invite sidewalk dining and strolling. Since 2005, just over \$70 million has been invested by the city and private developers in nearly 300 new residences and dozens of new businesses that encompass almost 900,000 square feet of renovations and new construction, according to city records. The once sleepy suburb today is a center of retailing and dining reachable on foot and bicycle that teems with visitors, especially on weekends. Subsequent to the success with the arts district, Carmel pursued a second, 80-acre central city redevelopment area, City Center, which is being constructed in phases. The new center is intended to mix residential, office, retail, and entertainment spaces in close enough proximity to encourage walking. Parking is beneath, or in decks hidden by office and residential buildings—anchored by two publicly financed buildings of the Center for the Performing Arts. In fact, nearly 800,000 square feet of new construction has been done in City Center, or roughly half of what is planned for development by the end of the decade, according to the Mayor Brainard—featuring narrow streets, wide sidewalks, enclosed walkways, five-story apartments, and street-level shops — all design-coordinated in a continental European style. This spring, the Mayor turned to the third element of the city’s redevelopment plan — the roundabouts that replaced intersections with traffic signals and stop signs. Carmel has built over 80 roundabouts—infrastructure which he, one of four Republican members of President Obama’s [Task Force on Climate Preparedness and](#)

[Resilience](#)—believes will save 500,000 gallons of fuel and prevent 50,000 pounds of climate-changing emissions annually.

Public Trust & Ethics



One of the most important leaders in local government ethics passed away last week at the young age of 61, after a relapse of ovarian cancer. Virginia “Ginny” Looney was the City of Atlanta’s first Ethics Officer—appointed by former Mayor Shirley Franklin, who conceived and pushed through the ethics program in 2002. After winning the election and City Council approval of a law setting higher standards and mandating greater compliance, Mayor Franklin had turned to Ms. Looney, who had served as law clerk to the chief justice of the Supreme Court of Georgia, Norman Fletcher, to make the program work, describing Ms. Looney as someone who immediately struck with her “sincerity, her interest in transparency, and her belief in fairness and in finding ways to reinvigorate the public’s trust in the city.” Ms. Looney set in motion new policies and procedures that helped curb corruption; she held the line against efforts to dilute the standards; established a Web-based method for city officials to file disclosure forms; and initiated a 24-hour hotline so city employees could report ethical breaches. She led training workshops for about 5,000 city employees. During her eight years as ethics officer, Ms. Looney issued hundreds of formal and informal legal advisories and responses to requests for advice, prosecuted more than 75 violations, and negotiated a dozen settlements. The ethics office reported that the financial disclosure-filing rate among city officials increased during her tenure from 77 percent to 98 percent—and she did all that while battling the ovarian cancer that, five years after diagnosis, finally ended her life. She held the ground against attempts to weaken the program, used the internet to provide both transparency and ease of disclosure, and prepared a variety of reports and advisory opinions that are examples for other ethics programs to follow. She did a great deal with limited resources.

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

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.

“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

Union Fees. The Supreme Court ruled narrowly on Monday that some government employees do not have to pay any fees to labor unions representing them, but the court decision declined to strike down a decades-old precedent that required many public-sector workers to pay union fees. Writing the [majority 5-4 opinion](#), Justice Samuel A. Alito Jr. concluded that there was a category of government employee — a partial public employee — who can opt out of joining a union and not be required to contribute dues to that labor group. Justice Alito wrote that home-care aides who are typically employed by an ill or disabled person with Medicaid’s paying their wages would be classified as partial public employees, which would not be the same as public-school teachers or police officers who work directly for the government. Because states often set wages for partial public employees like home-care aides and because unions often do not conduct collective bargaining for them, these aides cannot be required to pay union fees, Justice Alito wrote. He wrote that requiring these home-care aides to pay would be a violation of their First Amendment rights. The case, *Harris v. Quinn*, was brought by eight Illinois workers who provided home health care to Medicaid recipients. They asked the court to overrule a 1977 decision that declared that government employees can be required to pay fees to unions for representing them and administering their contracts even if they disagree with the union’s positions. The majority declined to overrule that foundational decision, [Abood v. Detroit Board of Education](#) — a move that could have significantly cut into the membership and treasuries of public-sector unions. Illinois and numerous other states require government workers, whether or not they opt to join a union, to pay “fair share” fees to finance a union’s collective bargaining efforts to prevent freeloading and to ensure “labor peace.” But the court in *Abood* held that workers could not be required to help pay for activities that were purely political, like a union’s lobbying the legislature or campaigning for particular candidates. *Harris v. Quinn*, U.S. Supreme Court, No. 11-681, June 30, 2014. During the proceedings, the National Right to Work Legal Defense Foundation represented the Illinois workers, arguing that the State of Illinois was violating the First Amendment by requiring that government workers pay compulsory fees to unions even when they disagreed with the unions’ positions. The foundation argued that most of what public-sector unions did was inherently political, partly because they rely on the government to pay their members’ wages, pensions and other benefits. The Service Employees International Union and the Obama administration urged the court to uphold the legality of “fair-share fees.” Ever since the Supreme Court agreed to hear this case, labor leaders have voiced fears that a decision banning such dues could badly weaken public-

sector unions and their treasuries by causing a million or more government workers nationwide to opt out of paying any representation fees to the unions at their workplaces. Justice Kagan, during the oral arguments, said the position taken by the National Right to Work Legal Defense Foundation “would radically restructure the way workplaces across this country are run.” But Justice Anthony Kennedy asked whether it would be constitutional for a union to “take money from an employee who objects to the union’s position on fundamental political grounds.” *Harris v. Quinn, Gov. of Illinois*, U.S. Supreme Court, No. 61-681, June 30, 2014.

Fracturing State-Local Relations over Fracking. In New York, where the state has had a fracking moratorium in place since 2008, and where the Assembly voted last month to extend the moratorium, but the Senate adjourned before it could act; the fracking relationship between the state and local governments arose in the wake of the State Legislature’s elimination of home rule authority for municipalities to pass zoning laws that exclude oil, gas and hydrofracking activities in order to preserve the existing character of their communities. The battle began in earnest when two towns, Dreyden and Middlefield, both of which imposed fracking bans, were challenged by the industry. In 2011, an oil-and-gas company, Anschutz Exploration, first challenged the Town of Dreyden’s ban on fracking; shortly thereafter, landowner Cooperstown Holstein Corp challenged the Town of Middlefield’s ban. Thus the issue came to a head when, on June 30th, New York’s Court of Appeals held that the Empire State’s cities and towns can block hydraulic fracturing within their borders—a decision that has the effect of preempting the industry’s hopes that Governor Andrew Cuomo would issue a decision to uphold a six-year-old statewide moratorium. The court ruled, 5-2, to uphold the dismissal of lawsuits challenging the bans in the respective upstate towns of Dryden and Middlefield, finding that the towns had engaged in a “reasonable exercise” of their zoning authority when they banned oil and gas extraction and production. The ruling means that a patchwork of rules may eventually govern whether fracking may take place in municipalities or counties across New York—with the court finding that New York local governments have the authority to decide how land is used, which includes deciding whether or not fracking and drilling should be allowed on that land. The plaintiffs had charged that New York’s oil, gas and mining law takes precedence over local zoning laws, but in rulings both by a lower court just affirmed by the Court of Appeals, that claim was overturned. In effect, the court determined that now other municipalities in New York can pass laws that ban fracking and drilling—a key holding, as 170 cities and towns have adopted fracking bans or moratoria. In the majority opinion, Associate Judge Victoria Graffeo wrote that the ruling was not about whether or not fracking was good for New York — it was about the balance of power between state and local government: “These appeals are not about whether hydrofracking is beneficial or detrimental to the economy, environment or energy needs of New York, and we pass no judgment on its merits...These are major policy questions for the coordinate branches of government to resolve. The discrete issue before us, and the only one we resolve today, whether the State Legislature eliminated the home rule capacity of municipalities to pass zoning laws that exclude oil, gas and hydrofracking activities in order to preserve the existing character of their communities.” *Anschutz Exploration Corp. v. Dryden*, 902/2011, New York Civil Supreme Court, Tompkins County (Ithaca); and *Cooperstown Holstein Corp. v. Town of Middlefield*, 1700930/2011, New York Civil Supreme Court, Otsego County (Cooperstown), June 30, 2014.

UnCola. Judge Stahl, writing for the First U.S. Circuit Court of Appeals, has upheld the Pine Tree state legislature’s right to suspend cost-of-living adjustments to beneficiaries of the Maine state public pension system. His decision marked the most recent amongst a series since the state enacted pension reforms in 2011 that have reduced the state’s unfunded obligations by about 40 percent. The key issue before the court was whether the state had a contractual obligation to provide annual COLA adjustments to pension recipients. The federal court acknowledged that “in general, retirees stand to be paid significantly less as a result of the amendments [to the state pension program],” but held that the state had no contractual obligation to provide those COLA’s to state retirees prior to 2011, and, ergo, did not break a contract in suspending those adjustments for three years and limiting the increase to the first \$20,000 of pension

benefits in subsequent years. The Maine legislation provides for the reinstatement of the COLA adjustments later this year. Richard Rosen, a former Republican lawmaker recently named the state's acting finance commissioner, said earlier this month that the law reduced the state's unfunded pension liability by 41 percent, to \$2.4 billion from \$4.1 billion—in effect, it appears that the intent of the 2011 law, as upheld, to help secure the retirement system for the long haul, has achieved its goal: S&P cited the case—were it decided the other way—as a potential threat to the state's finances. *Maine Assoc. of Retirees et al v. Maine Education Assoc.*, U.S. First Circuit Court of Appeals, #13-1933, June 27, 2014.



Cola. In contrast, a Garden State superior court ruled that New Jersey's nearly 300,000 retired public workers have a contract right to yearly increases or cola's in their pension benefits, and those cost-of-living adjustments are part of the state's benefits package, in effect reaffirming that public workers' retirement benefits are protected by the New Jersey constitution, which generally forbids state officials from breaking any contracts, similar to Michigan, California, and other states. A large group of plaintiffs including New Jersey's largest public-worker unions, dozens of retirees, and former law enforcement officers who were wounded on the line of duty and retired with disability pensions, argued that freezing the COLAs was unconstitutional and that Gov. Christie and lawmakers had no authority to even touch the money, which is paid out from the pension funds and not subject to yearly appropriations in the budget. The decision determined that the New Jersey Legislature, in 1997, acted to provide retired public workers a contractual right to yearly cost-of-living adjustments in their pensions, or COLAs, to offset inflation, with Judge Susan Reisner writing: "The history of the pension statutes...convincing us that COLAs are such an integral part of the pension system that the Legislature must have intended that they be included as part of the non-forfeitable right guaranteed in 1997." Nevertheless, the three judge panel did not order that the COLAs be paid out from the pension funds; rather the court ordered a new trial at a lower court to determine whether the COLA freeze is onerous enough that it violates retirees' contracts, as well as any new issues. *Berg et al v. Christie*, Superior Court of New Jersey, #A-5973-11T4, June 26, 2014.



State Retiree Health Care Benefits. The Illinois Supreme Court today reversed (6-1) a lower court's dismissal of litigation challenging the state's overhaul of retiree healthcare subsidies and sending the case back to the lower court, concluding that the subsidies are protected by the state constitution: "We conclude that the State's provision of health insurance premium subsidies for retirees is a benefit of membership in a pension or retirement system [under the state constitution] and the General Assembly was precluded from diminishing or impairing that benefit for those employees, annuitants, and survivors whose rights were governed by the version [of the state's Group Insurance Act prior to passage of the new law]. The court wrote that the issue in this appeal centered on the validity of Public Act 97-695 (eff. July 1, 2012), which amended §10 of the State Employees Group Insurance Act of 1971 (Group Insurance Act) (5 ILCS 375/10 (West 2012)) by eliminating the statutory standards for the State's contributions to health insurance premiums for members of three of the State's retirement systems. In place of those standards, Public Act 97-695 requires the Director of the Illinois Department of Central Management Services to determine annually the amount of the health insurance premiums that will be charged to the State and to retired public employees. The Justices found that the circuit court erred in dismissing, for failure to state a cause of action, the plaintiffs' claims that the challenged statute is void and unenforceable under the pension protection clause, writing that the plain language of the constitution supports its conclusion: "When the provisions of the 1970 Constitution were formulated, the group insurance statute then in effect provided health insurance subsidies to members of the state's retirement systems, and the drafters of the Constitution are presumed to have known that. Health care benefits are not referred to in the pension clause, but neither is there any limitation imposed concerning them." In its decision, the court wrote that that it is a well settled principle that pension rights should be liberally construed in favor of the rights of the pensioner. *Kanerva v. Weems*, Illinois Supreme Court, #115811, July 3, 2014.



Tax on Gambling Winnings Constitutional. The Granite State Supreme Court last month found that the New Hampshire’s tax on gambling winnings neither lacked uniformity nor was disproportional and unreasonable, making it a legal tax under the state’s constitution. Effective July 1, 2009, the New Hampshire Legislature imposed a ten percent tax on gambling winnings—with the tax applicable to gambling winnings of New Hampshire residents from anywhere derived, and those of nonresidents derived from New Hampshire entities. The Gambling Winnings Tax was repealed effective May 23, 2011; however, but the repeal was not made retroactive. The petitioners in this case were New Hampshire residents and alleged that the tax violates the uniformity requirement of the State Constitution and is disproportional and unreasonable. The petitioners argue that the Gambling Winnings Tax violated the uniformity requirement of the State Constitution, because it taxed gambling winnings at a ten percent rate, while interest and dividends are taxed at a five percent rate. They argue that gambling winnings and interest and dividends are both part of the broader class of “gross income,” and that in order to achieve constitutional uniformity throughout that class, the taxes had to be assessed at an equal rate. The court rejected that argument, ruling that the in determining whether a tax classification violates the state’s constitution, the question is whether the classes of property at issue are sufficiently distinguishable so as to make it apparent that there is just reason to tax them at different rates. The court held that there were just reasons to classify gambling winnings as a distinct class of income for tax purposes under the state’s constitution. Petitioners also argued that the tax was disproportional and unreasonable because it did not allow taxpayers to offset gambling losses against their winnings. Citing several opinions in which the court had previously ruled that taxes on gross income are proper under the New Hampshire constitution, and ruled against the petitioners that a tax on gross gambling winnings is inherently “unfair, unreasonable, and disproportional” under New Hampshire’s constitution. Finally, the Court held that the petitioners did not have standing to pursue their other arguments. *Eby, et al. v. New Hampshire*, New Hampshire Supreme Court, No. 2013-035, 6/13/14.

Cases of State & Local Interest Coming Up

Petitions Granted

- *Comptroller of the Treasury of Maryland v. Wynne*, U.S. Supreme Court, Docket No. 13-485, petition for certiorari granted 5/27/2014 (see summary of the ruling of the state high court in the January 28, 2013 edition of STH). Issue: Whether failure to grant a credit against local tax for tax paid in another state on income from an S corporation violates the dormant commerce clause doctrine (or some other federal constitutional requirement).
- *Alabama Dep’t of Revenue v. CSX Transportation, Inc.*, U.S. Supreme Court, Docket No. 13-553, petition for certiorari filed 10/30/2013 (below: *CSX Transportation Inc. v. Dep’t of Revenue*, U.S. Court of Appeals, 11th Cir., No. 12-14611, 7/1/2013, summarized in the July 26, 2013 edition). Issue: Whether it violates the 4-R Act’s prohibition against other taxes that “discriminate” to exempt fuel used by trucking companies, but not rail carriers, from sales taxes, while imposing fuel (road) taxes on trucking companies, but not rail carriers. Status: Solicitor General filed a brief recommending against granting certiorari. Distributed for conference of 6/26/2014.
- *Direct Marketing Association v. Brohl*, U.S. Supreme Court, Docket No. 13-1032, petition for certiorari filed 2/27/2014 (decision of the 10th Cir. below summarized in the August 23, 2013 edition). Issue: Whether the federal Tax Injunction Act bars a suit challenging information reporting requirements designed to aid in the enforcement of state use tax. Status: Distributed for conference of 6/26/2014.

Petitions Denied

- *Slater v. Director, Division of Taxation*, U.S. Supreme Court Docket No. 13-925, petition for certiorari denied 4/21/2014. The decision that the state tax division may make a claim for unpaid sales and use taxes, where the taxpayer’s Chapter 11 bankruptcy petition was dismissed and the tax claims were not discharged, will stand.

- *Tesoro Corporation v. Alaska Department of Revenue*, U.S. Supreme Court, Docket No. 13-1023, petition for certiorari filed 6/2/2014 (case below summarized in the November 15, 2013 edition). The holding of the state supreme court that two groups of affiliated corporations are unitary and that the apportionment method does not violate internal-consistency will stand.
- *Idaho v. Native Wholesale Supply Co.*, U.S. Supreme Court, Docket No. 13-838, petition for certiorari denied 6/23/2014 (below, 155 Idaho 227, 312 P3d 1257, summarized in the September 20, 2013 edition of State Tax Highlights). The decision that Idaho can exercise jurisdiction over a tribal retailer operating on the reservation in New York, and selling cigarettes to a tribal-owned corporation on a reservation in Idaho, will stand.
- *Village of Hobart, Wisconsin v. Oneida Tribe of Indians of Wisconsin*, U.S. Supreme Court, Docket No. 13-847, petition for certiorari denied 5/27/2014 (below, *Oneida Tribe of Indians of Wisconsin v. Village of Hobart*, U.S. Court of Appeals, 7th Circuit, 12-3419, 10/18/2013, summarized in the November 15, 2013 edition of State Tax Highlights). The decision that a local stormwater management fee is a tax and cannot be imposed on tribal trust land or on the federal government under the Clean Water Act will stand.
- *WFC Holdings Corporation v. United States*, U.S. Supreme Court, Docket No. 13-1037, petition for certiorari denied 6/19/2014. The decision that a loss generated from low-basis stock created in tax-free transfer lacked economic substance will stand.
- *Equifax, Inc. v. Mississippi Department of Revenue*, U.S. Supreme Court, Docket No. 13-1006, petition for certiorari denied 6/30/14. Issue: Whether taxpayer was denied due process because the review of the tax commission's ruling was performed under a deferential standard.

Sales, Internet, Telcom, and Use Tax Decisions

Use Tax Exemption Invalid When Sales Tax Not Paid. The Michigan Supreme Court held that taxpayers are not entitled to a presumption that sales tax is included in the retail price of fuel when the receipts do not list sales tax as a separate item. Because a shipping corporation did not show it paid sales tax on its fuel purchases, it is not entitled to a use tax exemption. Michigan's Use Tax Act (UTA) imposes a 6% tax on a consumer's use, storage, and consumption of all tangible personal property in Michigan. The UTA exempts the use of property from imposition of the use tax when the sales tax was due and paid on the retail sale to a consumer. Concurrently, Michigan's General Sales Tax Act (GSTA) imposes a 6% tax on a retailer's gross proceeds, to be remitted by the retailer to the Department of Treasury. At issue before the Court was whether a purchaser and user of tangible personal property could avail itself of the use tax exemption when it is unable to prove payment of sales tax, either by itself to the retail seller at the point of sale or by the retail seller to the Department of Treasury (Department). The taxpayer is a Michigan corporation engaged in marine construction and transportation. Its marine transportation division transports asphalt and other products throughout the Great Lakes to customers in the Midwest and Canada using tugboats and barges. The company purchases fuel and other supplies for its business, some of which are purchased in Michigan from Michigan sellers. The department determined that the taxpayer understated its use tax obligation. The taxpayer argued that it was entitled to rely on an alleged requirement of the GSTA that the sales tax be included in the price of the goods purchased regardless of whether the sales tax was separately stated. The Supreme Court noted as a preliminary matter, that the use and sales taxes are complementary and supplementary and that, contrary to the lower court's conclusion, their potential applications are not mutually exclusive. The court further stated that the two taxing statutes relate to entirely separate taxable events: the use and the sale of tangible personal property and, absent an exception, tangible personal property sold and used in Michigan is subject to *both* use and sales tax. The court discussed the legal responsibility for each tax, concluding that the legal responsibility for the use tax falls solely on the consumer and the legal responsibility for the sales tax falls on the retail seller, with the tax being levied for the privilege of making sales at retail. The retail seller is authorized—but not obligated—to pass the economic burden of the sales tax by collecting the tax at the point of sale from the consumer but whether the consumer remits sales tax to the retail seller or the seller pays the sales tax from another source, the seller is responsible for remitting the sales tax to the department. The court pointed

out that although the use and sales taxes potentially apply to the same tangible personal property, a taxpayer otherwise subject to use tax is entitled to an exemption if the sales tax is paid on the transaction. The court concluded that the exemption statute unambiguously requires payment of the sales tax before it exempts the taxpayer from the use tax. It is not enough that the sales tax was due on the retail sale of the property; rather, sales tax must be both “due *and* paid” before the exemption applies. Because the taxpayer had not demonstrated that the sales tax had been paid on the sales at issue here, it had not carried its burden and was not entitled to the exemption. *Andrie v. Department of Treasury*, Michigan Supreme Court, Docket No. 145557, 6/24/14.

Sales of disposable cutlery and tablewares. The Alabama Court of Appeals has ruled that a seller's sales of disposable cutlery and tableware to fast-food restaurants are nontaxable wholesale sales because the one-time-use items are critical to the taxable retail sale of food and drink items by the restaurants to their customers. At issue in this appeal was whether the sale by the taxpayer to fast-food restaurants of the disposable cutlery and tableware constitutes a nontaxable wholesale-sale transaction or a taxable retail-sale transaction. The Alabama statute imposes a sales tax on the sale at retail of any tangible personal property. It further defines retail sale to exclude wholesale sales. The code further defines wholesale sale to include a sale of tangible personal property by wholesalers to licensed retail merchants for resale. The court noted that the fast-food restaurants were licensed retail merchants that sold food and drink at retail to their customers and collect the sales tax from their customers at the time of sale. The court found that the evidence indicated that the fast-food restaurants provide the disposable cutlery and tableware to their customers either by placing those items with, or making them available with, each order for the menu price of the food or drink items. The court held that the disposable cutlery and tableware at issue in the case—namely, straws, stirrers, napkins, moist toiles, wood skewers, and plastic utensils—are critical elements of the food and drink items sold by the fast-food restaurants to their customers, and, thus, the taxpayer, as a wholesaler, is neither liable for nor required to collect sales tax from the fast food restaurants at the time it sells the disposable cutlery and tableware to the fast-food restaurants because such a transaction is a sale for resale. *Department of Revenue v. Kelly's Food Concepts of Alabama LLP*, Alabama Court of Appeals, No. 2130009, 6/20/14.

Taxpayers failed to file timely appeal to assessment. The New Jersey Superior Court upheld the Tax Court's decision dismissing the taxpayers' appeal of their sales and use tax assessment because they had failed to appeal the assessment, either in the Tax Court or administratively before the Division within the ninety-day period prescribed by the applicable statutes and rules of the court. Taxpayers raised a variety of arguments in an effort to excuse the tardy filing of their complaint. The taxpayer was the owner of a company that operated an Italian specialty goods market that was eventually put the business up for sale. The sale of the business included a bulk transfer to the purchaser of the remaining inventory on the premises. A notice of the sale of the business was provided to the State and the Division subsequently issued a tax clearance letter. The Division subsequently determined that the taxpayer had underreported its sales and use tax liability and issued an assessment against the business and its owner, individually. In the interim the new owner filed a Chapter 7 bankruptcy petition. The taxpayers argued that they had been prevented by various circumstances from filing the complaint within ninety days of the Division's final determination. They allege that the new owner was a necessary party to the lawsuit, and that they were precluded from naming him as a codefendant because of the stay issued by the bankruptcy court. The taxpayers further argued that they would have violated the entire controversy doctrine by suing the Division and not including the new owner and his company in that lawsuit as codefendants. Appellants also claim that they could not have obtained discovery from the new owner and his company until the bankruptcy stay was lifted. The court found that the ninety-day filing deadline for an appeal is plainly and unconditionally set forth in the governing statutes and the code further provides that the appeal provided in the statute is the exclusive remedy available to any taxpayer for a review of the director's decision. The court noted that courts have consistently held that strict compliance with statutory deadlines and tax statutes is an unqualified jurisdictional imperative. The court reiterated that the facts in this matter

indicated that when the Division had issued its Final Determination of the tax liability the notice clearly stated the ninety-day period for filing an appeal. The taxpayers did not file their appeal for more than a year and a half. The court found that the taxpayers' to comply with the ninety-day filing requirement constituted a fatal jurisdictional defect. The court also found that the taxpayers' reliance on the principle of entire controversy and their attempt to characterize the inclusion of the new owner of the business as a necessary party to the case as misplaced, citing a 1998 change to the Rules of Court abolishing the mandatory party joinder. *Tutta Italia Inc. et al. v. Director, Division of Taxation et al.*, New Jersey Superior Court, Docket No. A-0460-12T1, 6/9/14.

Property Tax Decisions

Property Taxes & Leased Cars. After Plaintiff agreed to lease a motor vehicle, he learned that he had been charged separately for property tax on the leased vehicle and an additional seven percent sales tax paid on that amount. Plaintiff filed a claim for a refund in the amount of sales tax he had paid on the property tax. The Division of Taxation denied Plaintiff's claim. Plaintiff filed an appeal to the district court. Contemporaneously, Plaintiff filed a complaint in the superior court, seeking various forms of relief and seeking to certify his complaint as a class action. The superior court granted Defendants' motion to dismiss the complaint for lack of jurisdiction. The Supreme Court affirmed, holding that the superior court lacked subject matter jurisdiction because the district court has exclusive jurisdiction over "tax matters." *Barone v. State of Rhode Island*, Rhode Island Supreme Court, No. 2013-200, June 27, 2014.

Exemptions Involving terminally ill children. The New Jersey Tax Court ruled that a nonprofit organization that exclusively provides moral and financial support to families of terminally ill children is entitled to a property tax exemption because the organization's use of gifted property as a retreat was reasonably necessary to further its goal of moral and mental improvement. Plaintiff is a non-profit organization whose stated mission is to restore normalcy to family life, and better enable families to withstand the crises and challenges of serious pediatric illness. Plaintiff offers programs in furtherance of its mission in all 50 states and in a number of foreign countries. The property in question was donated to the plaintiff in 2007. The property is improved with a single-family five-bedroom home, an in-ground swimming pool, and a historic mill. In September 2007, a caretaker was hired to prepare the property to be used as a retreat. It was then used as a retreat on multiple occasions in both 2011 and 2012, providing respite for the parents and siblings of terminally ill children. Using a three-prong test set forth in prior case law in the state, the Court determined that the Plaintiff was entitled to the charitable exemption for tax years 2008 and 2011. *Chai Lifeline Inc. v. Township of Mahwah*, New Jersey Tax Court, Docket Nos. 010009-2008; 017491-2011, 6/18/14.

Receiver's Motion to Recover Delinquent Taxpayer's Penalties Denied. The Michigan Court of Appeals found that a circuit court properly denied a motion to recover interest and penalties for unpaid property taxes, finding that the delinquent taxpayer's receiver took the property subject to the liens, and that the state's tax commission's retroactive revocation of the business's exemption certificate was in error but not subject to collateral attack. The delinquent taxpayer was an automotive parts supplier. In 1999, the State Tax Commission (the Commission) issued the taxpayer an industrial facilities exemption certificate for a facility exempting it from certain real and personal property taxes from December 30, 1999, to December 30, 2007, and permitted it to instead pay a lower tax known as the Industrial Facilities Tax.¹ The Commission conditioned the exemption certificate on MacDonald's creating and retaining jobs at its facility, and the certificate was subject to revocation if the jobs were not created or maintained. In 2004, the Commission issued the taxpayer a second certificate, under substantially similar conditions, that was to run from December 31 2004, to December 30, 2005. The taxpayer ceased operations in 2006 and its exemption certificates were revoked effective December 30, 2006. A Receiver was appointed on August 22, 2007 and was subsequently given authority to sell the property in question, but was required to pay all the property's real property taxes and escrow the statutory interest, fees and penalties. Woods sold the property in compliance with the order. The Receiver contended that the statute in question creates a lien for property taxes but does not create a lien for penalties and interest. The Court concluded that the plain

meaning of the statute was that the amount assessed, including interest and charges, is part of the lien against a property on which taxes remain unpaid. The Receiver also argued that he should not have been required to pay the taxes assessed for years before he was appointed as the receiver. The court concluded that he took the property subject to the liens that had attached when he was appointed receiver. Additionally, the Receiver contended that the exemption certificates were improperly revoked retroactive to December 2006 because the signed revocation order was not issued until February 5, 2007, making the revocation void as to tax years 2006 and 2007. The City argued that even if the retroactive revocation was improper, the Receiver couldn't challenge the action because the taxpayer did not appeal the revocation with the statutory appeal period. The court determined that the Receiver's appeal of the revocation was a collateral attack. It held, however, that the Commission's decision on the revocation was subject to direct attack on appeal, but was not properly the subject of a collateral attack because the Commission had subject matter jurisdiction. *Woods v City of Kentwood*, Michigan Court of Appeals, LC No. 07-001035-CZ; No. 311184, 5/29/14.

Sale of LLC's Interests Is Not a Proposition 13 Change in Ownership. The California Court of Appeal held that an assessor should not have reassessed an LLC's property after all of its membership interests were sold but no one entity obtained more than 50 percent interest in the capital and profits, rejecting the county's unsupported arguments that a Proposition 13 change in ownership was triggered. Proposition 13, adopted by California voters in 1978, limited the rate at which real property in the state could be taxed and the extent to which the assessed value of real property may be increased. In general, property is taxed based on its value at the time of acquisition, not its current value. The Legislature has been left with the task of defining when a change of ownership occurs. Owners of the property in question here, a hotel, offered the hotel for sale in 2006 and had a contract of sale in place. That contract was later terminated and the owners, instead, sold 100 percent of its membership/ownership interest in the hotel in 2006. The assessor reassessed the hotel although one of the new owners held about 48 percent of the interest and none of the new owners had an interest that exceeded 50 percent. The reassessment was upheld by the Los Angeles County Assessment Appeals Board, which held that the revision of the original sales transaction was only for the purpose of avoiding property tax reassessment and that the real objective of the transaction was to transfer the hotel's ownership in its entirety. The Court rejected the county's arguments that there was a change in ownership, citing the assessor's calculations demonstrating that no one owner had a 50 percent ownership interest, pursuant to the state's regulations on change of ownership. The court also rejected the county's argument that it should apply the substance over form doctrine and conclude that the economic reality of the transaction was a sale of the hotel. Finally, the court dismissed the county's argument that the hotel changed ownership the day the initial sales contract was signed, based on the equitable conversion theory, holding that there was no equitable conversion because the contractual terms were never satisfied and the parties demonstrated an intention contrary to equitable conversion when they terminated the initial contract. *Ocean Avenue LLC v. County of Los Angeles*, California Court of Appeal, No. B246499, 6/3/14.

Grants						
CFD	Opportunity Title	Federal Agency	Opportunity Number	Eligibility	Due Date	Match
10.500	1890 Facilities Grant Program (Central State University)	Department of Agriculture-National Institute of Food and Agriculture	USDA-NIFA-EF47-004554	Central State University	8/1/2014	
10.857	State Bulk Fuel Revolving Fund Grant Program	Utilities Programs	RD-RUS-HECG2014BF	State governments	8/1/2014	
N/A	FY14 SNAP Recipient Trafficking Prevention Grant	Food and Nutrition Service	USDA-FNS-SNAP-RECIPIENT-	State governments	8/15/2014	

			TRAFFICKING-PREV			
10.859	Assistance to High Energy Cost Rural Communities	Utilities Programs	RD-RUS-HECG2014	State and local governments, Institutions of higher education (IHEs)	8/1/2014	
11.431	NOAA Climate Program Office - Understanding Climate Impacts on Fish Stocks and Fisheries to Inform Sustainable Management	Department of Commerce	NOAA-OAR-CPO-2014-2004106	State and local governments, IHEs		
12.800	AFRL/RXM Manufacturing Technology Open BAA	Department of Defense-Air Force Research Lab	BAA-RQKM-2014-0020	Unrestricted	6/24/2019	
N/A	Management of Undesirable Plants on Federal Land in the Willamette Valley, Oregon	Dept. of the Army -- Corps of Engineers	NWP-14-0013	State governments	7/30/2014	
15.225	BLM WY Conservation Outdoor Rec and Education	Department of the Interior-Bureau of Land Management	L14AS00171	Unrestricted	7/14/2014	
15.225	BLM- AZ Phoenix District Office (PDO) Recreation and Public Lands Restoration and Maintenance	Bureau of Land Management	L14AS00173	Unrestricted	7/30/2014	X
15.228	Smoke Management Program	Bureau of Land Management	L14AS00170	Unrestricted	7/7/2014	
15.231	BLM-CA CESU University of California Riverside UCR Natural Resources	Bureau of Land Management	L14AS00167	IHEs	7/23/2018	
15.231	CESU BLM AZ Yuma Field Office (YFO) Mitty Soils Project	Bureau of Land Management	L14AS00175	Unrestricted	7/28/2014	
15.231	FA BLM AZ GDO Las Cienegas NCA Healthy Landscapes, Science and Engagement	Bureau of Land Management	L14AS00180	Unrestricted	7/28/2014	
15.234	BLM OR/WA Wild Rivers Coast Forest Collaborative	Bureau of Land Management	L14AS00172	County governments	7/24/2014	
15.236	FA BLM AZ Lake Havasu Watershed/Water Quality Assessment	Bureau of Land Management	L14AS00176	Unrestricted	7/28/2014	
15.236	FA BLM AZ Environmental Quality Website Enhancements and Modification	Bureau of Land Management	L14AS00182	Unrestricted	7/28/2014	
15.660	Endangered Species-Candidate Conservation	Fish and Wildlife Service	F14AS00267	Unrestricted	7/7/2014	
15.671	Yukon River Salmon Research and Management Assistance 2014	Fish and Wildlife Service	F14AS00257	Unrestricted	10/3/2014	
15.808	Cooperative Ecosystem Studies Unit, North and West Alaska CESU	Geological Survey	G14AS00081	Participating partners of the North and West	7/8/2014	

				Alaska Cooperative Ecosystem Studies Unit (CESU)		
15.808	Cooperative Ecosystem Studies Unit, Rocky Mountain CESU	Geological Survey	G14AS00086	Participating partners of the Rocky Mountain CESU	7/18/2014	
15.808	Cooperative Ecosystem Studies Unit, Chesapeake Watershed CESU	Geological Survey	G14AS00098	Participating partners of the Chesapeake Watershed CESU	7/8/2014	
15.808	Cooperative Ecosystem Studies Unit, Pacific Northwest CESU	Geological Survey	G14AS00099	Participating partners of the Pacific Northwest CESU	7/18/2014	
15.808	Cooperative Ecosystem Studies Unit, Rocky Mountain CESU	Geological Survey	G14AS00100	Participating partners of the Rocky Mountain CESU	7/18/2014	
15.808	Cooperative Ecosystem Studies Unit, Rocky Mountain CESU	Geological Survey	G14AS00101	Participating partners of the Rocky Mountain CESU	7/18/2014	
15.808	Cooperative Ecosystem Studies Unit, Colorado Plateau	Geological Survey	G14AS00103	Participating partners of the Colorado Plateau CESU	7/8/2014	
15.808	Cooperative Ecosystem Studies Unit, Pacific Northwest CESU	Geological Survey	G14AS00104	Participating partners of the Pacific Northwest CESU	7/8/2014	
15.808	Cooperative Ecosystem Studies Unit, Rocky Mountain CESU	Geological Survey	G14AS00105	Participating partners of the Rocky Mountains CESU	7/18/2014	
15.808	Cooperative Ecosystem Studies Unit, Great Lakes Northern Forest CESU	Geological Survey	G14AS00106	Participating partners of the Great Lakes Northern Forest CESU	7/8/2014	
15.808	Cooperative Ecosystem Studies Unit, South Florida/Caribbean CESU	Geological Survey	G14AS00107	Participating partners of the South Florida/Caribbean CESU	7/19/2014	
15.808	Cooperative Ecosystem Studies Unit, Rocky Mountain CESU	Geological Survey	G14AS00108	Participating partners of a western CESU	7/8/2014	
15.808	Cooperative Ecosystem Studies Unit, Great Lakes Northern Forest CESU	Geological Survey	G14AS00109	Participating partners of the Great Lakes Northern Forest CESU	7/8/2014	
15.808	Cooperative Ecosystem Studies Unit, Great Rivers CESU	Geological Survey	G14AS00110	Participating partners of the Great Rivers	7/8/2014	

				CESU		
15.808	Cooperative Ecosystem Studies Unit, Desert Southwest CESU	Geological Survey	G14AS00111	Participating partners of the Desert Southwest CESU	7/8/2014	
15.808	Cooperative Ecosystem Studies Unit, Great Lakes Northern Forest CESU	Geological Survey	G14AS00112	Participating partners of the Great Lakes Northern Forest CESU	7/8/2014	
15.808	Cooperative Ecosystem Studies Unit, Chesapeake Watershed CESU	Geological Survey	G14AS00113	Participating partners of the Chesapeake Watershed CESU	7/25/2014	
15.808	Cooperative Ecosystem Studies Unit, Piedmont South Atlantic CESU	Geological Survey	G14AS00114	Participating partners of the Piedmont South Atlantic Coast CESU	7/8/2014	
15.808	Cooperative Ecosystem Studies Unit, North Atlantic Coast CESU	Geological Survey	G14AS00115	Participating partners of the North Atlantic Coast CESU	7/8/2014	
15.808	Cooperative Ecosystem Studies Unit, Rocky Mountain CESU	Geological Survey	G14AS00116	Participating partners of the Rocky Mountain CESU	7/25/2014	
15.808	National Vegetation Plat Data Harvest	Geological Survey	G14AS00118	State governments, IHEs	7/25/2014	
15.808	Cooperative Ecosystem Studies Unit, North Atlantic Coast CESU	Geological Survey	G14AS00119	Participating partners of the North Atlantic Coast CESU	7/18/2014	
15.808	Cooperative Ecosystem Studies Unit, Colorado Plateau CESU	Geological Survey	G14AS00120	Participating partners of the Colorado Plateau CESU	7/18/2014	
15.808	Cooperative Ecosystem Studies Unit, Desert Southwest CESU	Geological Survey	G14AS00121	Participating partners of the Desert Southwest CESU	7/21/2014	
15.808	Cooperative Ecosystem Studies Unit, Great Plains CESU	Geological Survey	G14AS00122	Participating partners of the Great Basin CESU	7/8/2014	
15.931	Burned Area Restoration, Exotic Vegetation Control and Habitat Restoration	National Park Service	P14AS00139	Unrestricted	7/14/2014	X
15.931	Initial Field Implementation of the Integrated Upland Protocol of the Mojave Desert Network at the Seven Network Parks	National Park Service	P14AS00153	Unrestricted	7/16/2014	X
15.944	Outdoor Lighting Assessment Protocols	National Park Service	P14AS00151	IHEs		
15.944	Accelerating the Incorporation of Climate Change Knowledge into Adaptation Planning for National Park Service Assets in the Great Lakes Region	National Park Service	P14AS00154	IHEs		

16.585	OJJDP FY 2014 Enhancements to Juvenile Drug Courts	Department of Justice-Office of Juvenile Justice Delinquency Prevention	OJJDP-2014-3951	State and local governments	7/23/2014	X
16.585	OJJDP FY 2014 Family Drug Court Statewide System Reform	Office of Juvenile Justice Delinquency Prevention	OJJDP-2014-3926	State Administrative Office of the Court	7/23/2014	X
16.741	FY 2014 NIJ DNA Arrestee Collection Process Implementation Grants Program	National Institute of Justice	NIJ-2014-3737	State governments	8/7/2014	
17.720	Pathways to Careers: Community Colleges for Youth and Young Adults with Disabilities Demonstration Project	Department of Labor-OASAM	SCA-14-03	IHEs	8/11/2014	
17.720	National Employer Policy, Research, and Technical Assistance Center on the Employment of People with Disabilities	OASAM	SCA-14-06	Employment service providers, IHEs	8/11/2014	
19.017	Logistics, Meeting Coordination and Web-Based Communications, Digital Media Support for Environmental Cooperation	Department of State-Ocean and International Environmental Scientific	OES-OTE-14-002	IHEs	7/18/2014	
19.017	U.S.-Chile Trade-Related Environmental Cooperation: Energy Efficiency in Chile	Ocean and International Environmental Scientific	OES-OTE-14-004	IHEs	7/25/2014	
19.022	All India Access Summer Camp	U.S. Mission to India	NDRFP14-06	IHEs	7/24/2014	
19.022	Regional English Language Office Small Grants	U.S. Mission to India	NDRFP14-07	IHEs	7/28/2014	
19.022	TESOL International Academy and ELT Conference Logistics Program for India	U.S. Mission to India	NDRFP14-08	IHEs	7/25/2014	
19.040	U.S. Consulate Hyderabad Workshop for Bloggers on Global Issues and Challenges	U.S. Mission to India	HRFP14-02	IHEs	7/23/2014	
19.800	14.PMWRA.Afghanistan.PanjsherProject8.RFA	PM Weapons Removal and Abatement	PM-PMWRA-14-023	IHEs	7/15/2014	
19.124	TIGERS@Mekong - Promoting Technology Entrepreneurship in the Lower Mekong	Bureau of East Asian & Pacific Affairs	EAP-EAPAQM-14-012	IHEs	7/25/2014	
19.501	Establishment of a University Partnership with National College of Arts - Lahore	U.S. Mission to Pakistan	SCAISB-14-AW-007-062314	IHEs	7/24/2014	X
19.501	Establishment of a University Partnership with International Islamic University Islamabad	U.S. Mission to Pakistan	SCAISB-14-AW-008-062314	IHEs	7/25/2014	X
N/A	Justice Interventions for Wildlife Crime in Kenya	International Narcotics and Law Enforcement Affairs	INL-14-GR-0024-INL-AME-06252014	Parastatal entities, IHEs	7/25/2014	
N/A	Kenya Transnational Organized Crime Investigations, Wildlife Crime	International Narcotics and Law Enforcement	INL-14-GR-0026-INL-AME-06252014	Parastatal entities, IHEs	7/25/2014	

		Affair				
N/A	Maritime Energy Conservation or Efficiency Pilot/Demonstration Project	Department of Transportation-Maritime Administration	DTMA91Q140021	Vessel owners, operators or public sponsors	7/25/2014	
43.001	ROSES 2014: Planetary Science and Technology Through Analog Research	NASA-Headquarters	NNH14ZDA001N-PSTAR	IHEs	7/25/2014	
47.041	Sensors, Dynamics, and Control	National Science Foundation	PD-14-7569	Unrestricted	9/15/2014	
47.049	Experimental Elementary Particle Physics	National Science Foundation	PD-14-1221	Unrestricted	10/29/2014	
47.049	Experimental Nuclear Physics	National Science Foundation	PD-14-1232	Unrestricted	10/29/2014	
47.049	Experimental Atomic Molecular and Optical Physics	National Science Foundation	PD-14-1241	Unrestricted	10/29/2014	
47.049	Experimental Gravitational Physics	National Science Foundation	PD-14-1243	Unrestricted	10/29/2014	
47.049	Theoretical Elementary Particle Physics	National Science Foundation	PD-14-1286	Unrestricted	12/4/2014	
47.049	Particle Astrophysics	National Science Foundation	PD-14-1643	Unrestricted	10/29/2014	
47.049	Accelerator Science	National Science Foundation	PD-14-7243	Unrestricted	2/4/2015	
47.049	Physics at the Information Frontier	National Science Foundation	PD-14-7553	Unrestricted	12/4/2014	
47.075	Science of Science and Innovation Policy Doctoral Dissertation Research Improvement Grants	National Science Foundation	14-578	IHEs	9/22/2014	
66.511	National Priorities: Systems-Based Strategies to Improve The Nation's Ability to Plan And Respond to Water Scarcity and Drought Due to Climate Change	Environmental Protection Agency	EPA-G2014-ORD-L1	State and local governments, IHEs	8/5/2014	X
81.087	RFI Wind Energy Bat and Eagle Impact Minimization Technologies and Field Testing Opportunities	Department of Energy-Golden Field Office	DE-FOA-0001157	Unrestricted		
81.089	Promoting Domestic And International Consensus on Fossil Energy Technologies	Headquarters	DE-FOA-0001111	Unrestricted	7/23/2014	
84.133	Office of Special Education and Rehabilitative Services (OSERS): National Institute on Disability Rehabilitation Research:(NIDRR) Rehabilitation Research and Training Centers	Department of Education	ED-GRANTS-062514-002	State and local governments, IHEs	8/25/2014	
84.133	Office of Special Education and Rehabilitative Services (OSERS): National Institute on Disability and Rehabilitation Research (NIDRR) Rehabilitation Research and Training Centers	Department of Education	ED-GRANTS-062514-003	State and local governments, IHEs	8/25/2014	
93.06	Competitive Abstinence Education Grant Program	Department of Health and	HHS-2014-ACF-ACYF-AR-0827	State and local governments,	8/7/2014	

		Human Services- Administration for Children & Families - ACYF/FYSB		IHEs		
93.110	Alliance for Innovation on Maternal and Child Health: Cooperative Agreement Expanding Access to Care for the Maternal and Child Health Population (Category 1: Collaborative Engagement)	Health Resources & Services Administration	HRSA-14-011	Public entities	7/28/2014	
93.110	Alliance for Innovation on Maternal and Child Health: Cooperative Agreement Expanding Access to Care for the Maternal and Child Health Population(Category 2: Measuring Collaborative Engagement Awardee Activity)	Health Resources & Services Administration	HRSA-14-141	Public entities	7/28/2014	
93.121	Multidisciplinary and Collaborative Research Consortium to Reduce Oral Health Disparities in Children: A Multilevel Approach (UH2/UH3)	National Institutes of Health	RFA-DE-15-006	State and local governments, IHEs	2/27/2015	
93.121	Multidisciplinary and Collaborative Research Consortium to Reduce Oral Health Disparities in Children: Data Coordinating Center (U01)	National Institutes of Health	RFA-DE-15-007	State and local governments, IHEs	2/27/2015	
93.213	Center of Excellence for Natural Product Drug Interaction Research (U54)	National Institutes of Health	RFA-AT-15-001	State and local governments, IHEs	12/4/2014	
93.224	Service Area Competition	Health Resources & Services Administration	HRSA-15-010	State and local governments, IHEs	8/13/2014	
93.224	Service Area Competition	Health Resources & Services Administration	HRSA-15-011	State and local governments, IHEs	8/27/2014	
93.226	Comparative Health System Performance in Accelerating PCOR Dissemination (U19)	Agency for Health Care Research and Quality	RFA-HS-14-011	State and local governments, IHEs	10/17/2014	
93.327	Demonstration Grants for Domestic Victims of Severe Forms of Human Trafficking	Administration for Children & Families - ACYF/FYSB	HHS-2014-ACF-ACYF-TV-0839	State and local governments	8/11/2014	X
93.761	PPHF- 2014 - National Falls Prevention Resource Center Financed Solely by 2014 Prevention and Public Health Funds (PPHF-2014)	Administration for Community Living	<			