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Municipal Law News

Foster Swift Administrative & Municipal Group

UPCOMING WEBINAR

OPEN MEETINGS ACT: WHAT EVERY MUNICIPALITY SHOULD KNOW

This free webinar will focus on the basic requirements of the Open Meetings Act, common pitfalls, and ways to avoid those pitfalls.

DATE/TIME:
November 17, 2011
12:00 - 1:00 PM

REGISTER:
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Senate Bill 34 Proposed Eliminating Personal Property Taxes

by: Ronald D. Richards Jr.

This one-sentence bill would exempt all personal property (generally speaking, property not affixed to a structure, like machinery, equipment, and furniture) from tax collection under the General Property Tax Act. Senate Bill (SB) 34 was introduced on 1-19-11, and on the same day referred to the Senate Finance Committee. The Committee has held hearings on the SB, but no further action has been taken. We are advised that the Committee plans multiple hearings, and that the SB's sponsor would like to find a replacement for local municipalities and schools, who will lose about $1B in revenue under SB 34.

Many municipalities rely heavily on personal property taxes for operating purposes. The Senate Fiscal Agency has estimated that personal property taxes totaled $1.3 billion in 2010. There is no replacement revenue in SB 34 at this time. The Michigan Chamber of Commerce has testified in favor of SB 34. The Michigan Municipal League and Michigan Township Association have both opposed SB 34 as is - noting deleting personal property taxes without replacement revenue would have a devastating impact on communities and residents.

If you have questions about SB 34, please contact Ronald Richards at 517-371-8154 or rrichards@fosterswift.com.

BOND COUNSEL CORNER
Potential Limitation of Tax-Exempt Interest

by: John M. Kamins

Bond issuers should be aware that activities in the U.S. Congress may limit the value of tax-exempt interest to bondholders, with significant ramifications for municipal issuers. This article is intended to alert you to that threat.

Legislation that raised the U.S. debt ceiling on August 2, 2011 required a Supercommittee to propose legislation to reduce the federal deficit by $1.2 trillion or more over ten years. The 12-member Supercommittee has equal numbers of Republican and Democratic U.S. Senators and Representatives, including Michigan's Dave Camp and Fred Upton. Ways to reduce the deficit that are under consideration include limiting or eliminating the tax-exempt status of municipal bond interest.

The tax-exempt status of interest is on the table for the Supercommittee as a possible "spending cut" (reduced federal tax expenditure). This is getting attention because among the top ten federal income tax expenditures in 2010-2014, tax exemption on bonds is 9th at over $200 billion (deductions for charitable contributions are 8th at about $250 billion). *Source*: Joint Committee on Taxation, 12/15/10.

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The time is fast approaching for the Supercommittee to decide its recommendations, since its legislation must be drafted and introduced in Congress by November 23. December 23 is the deadline for an up or down final vote on that legislation in Congress, with no amendments allowed. If it is not passed, mandatory spending cuts in major areas of federal expenditures must occur, deliberately a strong incentive for Congress to pass the Supercommittee's legislation.

The tax-exempt status of bond interest is extremely unlikely to be eliminated, if ever, except in sweeping federal tax reform legislation. The Supercommittee could not feasibly propose those types of reform by its November deadline. However, two proposals for limiting the value of tax-exempt bond interest have been proposed (Examples A and B below), and others are conceivable. If that were to become the law, the adverse effects on municipal bond issuers would include:

- New bonds more difficult to market, with investors requiring higher interest rates
- Greater interest costs and costs of issuance to bond issuers
- Greater debt service burdens on issuers over the lives of their bonds
- Concerns for issuers and investors that a limitation might begin a "slippery slope" toward greater limits or elimination of tax-exempt interest.

EXAMPLE A: In September, President Obama proposed a $447 billion American Jobs Act of 2011 which, if enacted, would be funded in part by a 28% cap on tax-exempt interest for individuals with taxable income over $200,000 and couples over $250,000 -- for tax years beginning on or after Jan. 1, 2013, and for outstanding as well as new bonds. Since the current highest income tax rate is 35%, the 28% cap would amount to a 7% tax on bond interest; and if the Bush tax cuts expire (end of 2012), 35% would become 39.6%, and the 28% cap would amount to an 11.6% tax on bond interest.

An article in *The Bond Buyer* on September 14, 2011 stated: "While most market participants don't think the American Jobs Act stands a chance of approval by Congress, several tax experts warned that the cap on tax-exempt interest is an ominous sign for future debates on deficit reduction and tax reform because it's now on the table for discussion and would have to be part of any proposal to cut income tax rates."

EXAMPLE B: Later in September, President Obama sent his 284-page deficit reduction legislation to the Subcommittee which, if enacted, could limit the value of tax-exempt interest for higher-income taxpayers below the 28% cap proposed in his jobs act; and the cap could fluctuate annually and unpredictably.

Of course, it cannot be predicted whether, when or how any federal legislation will be enacted into law, if ever, limiting or eliminating tax-exempt bond interest.

If you have questions, please contact John Kamins at 248.785.4727 or jkamins@fosterswift.com.