George Mason University

State & Local Government Leadership Center

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Getting Ready to Rumble. When Congress returns next week, with its inability to address the sequester or schedule negotiations between the House and Senate over a budget resolution, the shoes will fall on the House Appropriations Committee, which, under the House version of the budget resolution, will have to begin allocating funds among its subcommittees that assume an additional 12% cut in nondefense spending beginning on October 1st—or $91 billion less than the President's FY2014 budget request. Those cuts would be significantly steeper than the sequester; they add significant uncertainties for state and local leaders as they seek to finalize state and local FY2014 budgets.

Marketplace Fairness for State & Local Leaders. A bipartisan coalition in the Senate easily passed legislation on Monday to force Internet retailers to collect sales taxes for state and local governments, sending the issue to the House, where anti-tax forces have vowed to kill it. The U.S. Senate voted 69-27 to pass and send to the House the Marketplace Fairness Act, S. 743. The first vote, to accept the amendment that represented sponsor-desired updates, passed 70-24. The final vote to clear the chamber was 69-27. Updates include language that would grant authority to tribes as well as state and local jurisdictions, a provision under which a state would be prohibited from placing collection responsibilities on remote sellers that are more onerous than those faced by in-state sellers. The effective date would be 180 days from when a state becomes eligible by fulfilling the simplification requirements in the bill. No other amendments were considered. The broad, bipartisan support by the Senate could give the measure significant momentum. Hundreds of retailers flew into Washington this week to pressure House lawmakers and counter the arguments of small-government groups, including Grover Norquist's Americans for Tax Reform: "After 20 years, there is finally light at the end of the tunnel for our brick-and-mortar businesses," said Rep. Steve Womack (R-Ark.): "Saving local retail business depends on it, and it's now up to the House to act." The legislation would allow states to force online retailers with more than $1 million in annual out-of-state sales to collect sales taxes from all customers and remit those taxes back to state and local governments. States would have to provide software to help calculate the taxes for thousands of jurisdictions. Its sponsors intentionally kept the bill simple — just 11 pages in length — to ease passage. In contrast, the Congressional Joint Committee on Taxation on Monday released a 568-page report to the House Ways and Means Committee on options for overhauling the tax code compiled by 11 bipartisan House working groups tackling that issue. The release was intended to push forward comprehensive tax reform, but it only underscored how difficult a task that will be in a divided Congress.

With conservatives in Washington organizing against it, the legislation confronts a greater challenge in the House, but the House bill already has 65 co-sponsors, almost half of them Republican, and those Republicans include veteran conservatives like Reps. Joe Barton of Texas and Spencer Bachus of Alabama. Proponents point to their own conservative supporters, including Al Cardenas, chairman of the American Conservative Union, and Arthur Laffer, a conservative economist. House Judiciary subcommittee chairman, Bob Goodlatte (R-Va.), has said he will at least consider the measure. After the Senate's passage, Rep. Goodlatte made it clear he would take his time with the legislation and would insist on significant changes. He suggested he may force more uniformity in sales tax rates and add legal recourse for Internet retailers facing multiple audits. But he did not indicate he planned to delay the issue in his committee.

DebtBusting. The House yesterday passed legislation, the Full Faith and Credit Act, to allow the federal government to borrow money above the debt ceiling, but only to service U.S. bondholders and make payments related to the Social Security Trust Fund. The legislation would require the Secretary of the

Treasury, in addition to any other authority provided by law, to issue obligations to pay with legal tender, and solely for the purpose of paying, the principal and interest on U.S. obligations held by the public, or held by the Old-Age and Survivors Insurance Trust Fund and Disability Insurance Trust Fund, in the event that the federal debt reaches the statutory limit after enactment of this Act. It would prohibit the issued obligations from being taken into account in applying the current $16.394 trillion public debt limit to the extent that they would otherwise cause such limit to be exceeded, and it would require the Secretary, if such authority is exercised after enactment of this Act, to report weekly to specified congressional committees an accounting of: (1) the principal on mature obligations and interest due or accrued by the United States, and (2) any obligations issued pursuant to this Act. Rep. Tom McClintock (R-Ca.), the sponsor of the bill, said during the debate that Republicans are not looking to cause a debt-ceiling crisis, but instead want to guarantee some additional borrowing authority if the nation hits its limit: "The President and his followers argue that this is somehow an excuse for not paying our other obligations…What absolute nonsense. I challenge them to name one member of Congress who has ever suggested that this measure is an acceptable alternative to not paying our other bills." Rep. McClintock also pointed out that many states have similar provisions allowing emergency borrowing to keep current on their debt, and that Federal Reserve Board Chairman Ben Bernanke has supported a similar federal mechanism. Democrats also opposed the bill by arguing that it would allow ongoing payments to foreign bondholders, but would not allow more borrowing to fund federal programs. Ways and Means ranking member Sandy Levin (D-Mich.) was one of many who mockingly dubbed the bill the Pay China First Act. Speaker Boehner, in an interview, said he agreed that the bill would essentially pay bondholders before other creditors, much like in a corporate bankruptcy proceeding. Republicans argue that the debt ceiling should not be raised until President Obama agrees to reign in long-term spending. If an impasse with Congress results, they argue the new bill would reassure bondholders that they will be made whole. The Treasury Department says it could begin decreasing the size of some of its debt auctions in coming months based on an improving deficit situation that will allow it to pay back some of the national debt this quarter. Treasury said Wednesday that any decrease in the size of the Treasury securities it sells to raise money to finance government operations will be gradual and investors will be alerted to the changes. Treasury said for the current April-June quarter it plans to pay down $35 billion of the national debt, the first time it has reduced the debt in six years. That pay down will be only temporary and reflects in part higher tax revenues in April. Treasury projected that borrowing will increase by $223 billion in the July-September quarter. The $35 billion temporary pay down in the national debt marks an improvement in an estimate Treasury had made three months ago that it would be increasing borrowing by $103 billion during the April-June quarter. Since the recession and financial crisis hit, the federal government has run up $1 trillion-plus deficits for four straight years. Congress in January postponed a fight over raising the debt ceiling, temporarily suspending it until May 19 when it will revert to whatever debt level exists at that time. Treasury officials said Wednesday that if Congress has not raised the debt ceiling to a higher level at that time, they would begin employing the measures they normally use such as tapping government employee pension funds to clear room to avoid what would be a first-ever default by the U.S. Treasury on its debt obligations. Matthew Rutherford, Treasury's assistant secretary for financial markets, said these "extraordinary measures" would allow the government to keep operating for a period of time after May 19, but he said at the present time Treasury could not be more specific on when it would run out of maneuvering room. However, the Bipartisan Policy Center, a Washington think tank, issued a report last week that said the date of a potential default would occur later than the July or August that many experts had previously thought. The BPC's report said the government might be able to keep borrowing into September or possibly October.

Federal Tax Reform. The Joint Committee on Taxation tax reform this week issued its report [**JCS-3-13** (May 06, 2013) to the House Committee On Ways And Means on "Present Law And Suggestions For Reform Submitted To The Tax Reform Working Groups"], which, among other recommendations, recommends repealing tax exemption for municipal bonds as one option for overhauling the tax code. The 568-page "Report to the House Committee on Ways and Means on Present Law and Suggestions for

Reform Submitted to the Tax Reform Working Groups" summarizes various suggestions and comments received for each of the 11 House Ways and Means Committee tax reform working group topic areas. Chairman Dave Camp (R-Mi.) and Ranking Member Sandy Levin (D-Mi.) created the 11 tax reform working groups that reviewed current tax law in its designated areas, researched relevant issues and compiled feedback from stakeholders last February, and Monday noted: "The release of today's report reflects the hard work of Members and staff…This document provides an important and comprehensive overview of the tax code, an overview of some of the most commonly referenced previous tax reform proposals and summarizes the views of more than 1,300 submissions offered to the Ways and Means Committee by key stakeholders. The Committee will dig into its details over the coming weeks." The report provides an overview of the Internal Revenue Code as in effect for 2013 and provides a more detailed description of the tax code's provisions relevant to the topic area of each working group. It comes two days before the 11 working groups, each with a Republican chair and a Democratic vice-chair, will present their findings to the full committee. While completely repealing the tax exemption for muni bonds is suggested, retaining all of the present-law rules for tax-exempt bonds is also listed. A Hill source noted that the summary of all the comments received are not recommendations, suggestions or support from the JCT or the working groups. The comments also suggest rejecting proposals that would convert tax-exempt bonds into tax credit or direct-pay tax credit bonds, the report found. In general, outside groups suggested expanding and/or permanently extending Qualified Zone Academy Bonds, New Clean Renewable Energy Bonds and Build America Bonds. The groups also received comments to retain the present-law rules for tax-exempt financing for non-profit hospitals and repealing the alternative minimum tax preference for interest on tax-exempt bonds.

Distressed Municipalities. HUD has announced its selection of a group of financial advisors, researchers, and consultants to provide technical assistance and advice to distressed municipalities under the federal Strong Cities, Strong Communities initiative Mark Linton, the executive director for the initiative, reported: "I am pleased to announce that HUD has selected a consortium that includes Enterprise Community Partners, Public Financial Management, HR&A Advisors, Inc., the NYU Wagner Graduate School of Public Service, and the International City/County Management Association, Inc., to run and operate the Strong Cities, Strong Communities National Resource Network." The team, selected after evaluating requests for proposal HUD requested in late January, will offer technical assistance to distressed municipalities to help them achieve job creation and economic growth, applying the experiences gained during a one-year, seven-city pilot program launched after the White House Announced the SC2 initiative in 2011. Chester, Pa., Cleveland, Youngstown, Ohio, Detroit, Fresno, Calif., Memphis, Tenn., and New Orleans all participated in that pilot program. It helped Detroit drum up light-rail investment, and helped Fresno with details surrounding its proposed station in the planned California high-speed rail project. The network, which will offer nationwide assistance, is funded by HUD dollars and comes at no cost to participating municipalities, according to HUD. Mr. Linton said the network partners will provide distressed municipalities with a "one stop shop" for financial and policy advice, including how to leverage assets through the use of public-private partnerships and how to improve their credit ratings to achieve lower-cost borrowing. He also said he hopes the program creates a wide-ranging benefit for cities at a time of continued economic hardship.

Distressed Municipality. The SEC this week announced it has charged the city of Harrisburg, Pa., with securities fraud for releasing misleading public information as the city's financial condition deteriorated, marking the first time that the SEC has charged a municipality for misleading statements made outside of its securities disclosure documents, noting that the city failed to properly disclose required information to the MSRB's EMMA system, and also made misleading statements about its credit rating and debt payments, according to a cease-and-desist order filed by the SEC. Elaine Greenberg, chief of the SEC's enforcement division's municipal securities and public pensions unit, said: "A municipal issuer's obligation to provide accurate and timely material information to investors is an ongoing one…Because of Harrisburg's misrepresentations, secondary market investors made trading decisions based on

inaccurate and stale information." Harrisburg has agreed to settle by greatly enhancing its disclosure process, the SEC said.

Immigration. The Senate's Gang of Eight fended off a slew of poison-pill amendments aimed at the immigration reform bill, building momentum for the legislation. The Senate Judiciary Committee voted down GOP-sponsored amendments to delay putting 11 million illegal immigrants on a path to citizenship and to dramatically increase the number of Border Patrol agents and surveillance vehicles. The members of the Gang of Eight on the Judiciary panel, Sens. Chuck Schumer, Dick Durbin (D-Ill.), Lindsey Graham (R-S.C.) and Jeff Flake (R-Ariz.), hung together to knock down amendments that could undermine bipartisan support for the bill. They also picked up support at times from two other Republicans on the panel, Sens. Orrin Hatch (R-Utah) and John Cornyn (R-Texas). Cornyn and Hatch joined Flake and Graham in voting for a substitute amendment that made a variety of technical fixes to the comprehensive bill, lengthening it to 867 pages. Yesterday's consideration was focused on border security issues addressed in Title I, where the committee passed an amendment sponsored by Chairman Patrick Leahy (D-Vt.) and Cornyn to give the Department of Homeland Security more flexibility to spend $1.5 billion for fence building along the southern border and agreed to eight GOP-sponsored amendments to improve border security and congressional oversight.

State & Local Finance

Ratings. There were 207 rating changes in the first quarter of 2013, of which 83% were downgrades, Moody's Investors Service found in a new report. The total par amount of debt downgraded dropped to $27 billion — the lowest since the end of 2011 — during the first quarter of 2013, from $95 billion the previous quarter, the 15-page report said. Similar to previous quarters, the local government sector accounted for the bulk of rating actions, with 26 upgrades on $7.4 billion of debt and 144 downgrades in the first quarter. There were no state rating changes during the first quarter. However, Moody's did change the outlook for Missouri to stable from negative affecting $1.1 billion of debt. As states remain pressured by slow revenue and employment growth, many states have taken proactive budget-balancing actions as well as pension reform measures, the report said. "We expect rating activity to continue to be skewed toward downgrades over 2013 as local governments continue to struggle with increasing pension and health care costs and constraints on key property tax and state aid revenue sources," said Moody's assistant vice president and analyst Eileen Hawes. "Sluggish economic and revenue growth persist in other sectors, including state governments, infrastructure enterprises, and not-for-profit organizations." However, as the housing market continues to recover with assessed valuations leveling off in many areas and growing in some areas, a housing recovery could begin to relive significant pressures that hampered local governments for several years, Moody's said. California cities and counties took the lion's share of the rating activity in the first quarter with approximately $19 billion in downgrades and over $7 billion in upgrades. Much of the California rating activity was negative with downgrades of pension obligation bonds and lease revenue securities comprising of most of the actions. There were two notable upgrades in California. Approximately 55% of the first quarter upgrades affected two issuers in California — Los Angeles and the city and county of San Francisco. Los Angeles was upgraded to Aa2/stable from Aa3/stable affecting $3.3 billion and San Francisco was upgraded to Aa1/stable from Aa2/stable affecting $2.2 billion. The key area of focus for Moody's when reviewing California was evaluating the consequences of the stressed credit environment in the state that led to bankruptcy filings by Stockton and San Bernardino, the report said. The review also considered the relative strength of various security pledges in the state such as general obligations relative to lease-backed securities. Moody's reported it will maintain a negative outlook for most public finance sectors despite continuing positive gross domestic product growth and a recovering housing market. "The economy has not experienced enough sustained growth to reverse the negative trend across the U.S. public finance sector," Moody's said.

Shedding New Light on Motor City. Emergency Manager Kevyn Orr has issued an executive order authorizing about $1.8 million for start-up costs for a new public lighting authority as part of an effort to address the city's longstanding street lighting problem, and to implement new state legislation. Gov. Rick Snyder last December signed legislation approving the authority, which calls for the use of $12.5 million in utility taxes to finance streetlight repairs. The legislation also dedicates a portion of Detroit's income tax to the police to make up for $15 million to $20 million in revenue the police department gets from utility taxes. The joint state-local effort is intended to fix the tens of thousands of streetlights that are dark in Detroit. The city has about 88,000 lights. About 55,000 are on Detroit Edison's grid and about 33,000 are on the city's. The legislation calls for 40,000 lights to be taken offline. The authority will determine the number of streetlights and placement. Mr. Orr's order will allocate $600,000 to the lighting authority on May 15, June 15, and August 1. In 2014, $1.04 million will be deposited. The funds will be held in a trust.

II. In a separate effort to shed light, Michigan Circuit Court Judge William Collette has ordered that Mr. Orr be deposed in a case claiming that the corporate attorney's hiring violated the Michigan Open Meetings Act. The order also calls for all emails, memos and correspondence related to the state's search for a new Detroit emergency manager be turned over to the plaintiff in the case. Mr. Orr worked for the Jones Day law firm until he was named emergency manager in March (March 14th); Jones Day had been selected to represent the city as its restructuring counsel on March 11th. Although Mr. Orr was affirmed and technically selected for the position by the three-member Emergency Loan Board, Gov. Rick Snyder was heavily involved in the search, and a local news station reports that Gov. Snyder has declined to reveal how many applicants were considered for the position.

Pensionary Challenge. As San Bernardino and CalPERS prepare to face off, the agency claims that San Bernardino, which in filing for chapter 9 has not paid monies it owes to CalPERS, has enough money to pay what it owes the pension fund. Michael Lubic, an attorney for CalPERS, told a judge in U.S. Bankruptcy Court this week that the city had $26.8 million in cash as of January, not the $4.2 million it previously claimed. The city had halted payments to CalPERS and certain other creditors shortly after filing for bankruptcy last summer, stating it will resume its CalPERS payments starting with the new fiscal year, July 1, although it still owes the pension fund about $12 million for the missed payments; however a city financial consultant said in court papers that San Bernardino's cash position remains tenuous. In a court filing at the end of last month, consultant Michael Busch acknowledged the city had $26.8 million in January and expects to end the current fiscal year with $33.1 million, but he added that the city's "deferred obligations" total $33.3 million, so that "[T]here would not be enough cash available if the city was required to pay all of the city's deferred obligations during the budget period."

Federal Sequestration. Moody's this week issued a report on its examination of local governments and school districts that rely on federal employment, procurement, Medicare reimbursement and education grants that would be most affected by sequestration, finding that while the cuts will "strain the U.S. economy to some extent…relatively few local governments will experience significant financial pressures" except those in "areas with substantial dependence on defense spending or health care….: "In those regions, local governments that rely on revenue from income taxes and sales taxes may face budget pressures as layoffs, furloughs, and hiring freezes by area employers weaken economic activity…Additionally, a small number of school districts that rely heavily on federal funding may face material budgetary challenges." The report did not examine the indirect impacts on state and local finances, such as the ongoing disruption in air travel in the U.S., but did note that about $42 billion of the $85 billion of spending reductions for this fiscal year are to be extracted by October 1st through a 7.8%

cut in discretionary defense spending, in addition to the domestic discretionary cuts—all of which are to continue with deeper cuts in each of the ensuing nine years. Moody's also found that about $11 billion or 13% of the $85 billion of sequestration cuts for the fiscal year will come from a 2% reduction in Medicare reimbursements to hospitals and other health care providers. Such health care cuts, the report notes, could have significant consequences for a city like Rochester, Minn., which has one of the biggest health care-driven economies — with health care employment 39.2% of all county employment — because the Mayo Clinic is the largest employer in the area with more than 30,000 employees. The 2% reduction in Medicare reimbursements is projected to lower the clinic's annual revenues by about $47 million. It would certainly be expected to exacerbate the situation in Jefferson County, Alabama, where the hospital—with a high level of Medicare patients—has already been an issue of litigation in the U.S. Bankruptcy Court between Birmingham and Jefferson County. Moody's also determined that nearly $26 billion or 30% of the $85 billion of cuts for the fiscal year will be made through a 5% reduction in discretionary non-defense spending, including several Department of Education programs, such as Title I funding for high poverty school districts and Individuals with Disabilities Education Act grants for special education. Finally, Moody's warned that some local governments will be effected by funding cuts from FEMA: about $928 million in disaster relief funding is to be sequestered, as well as $113 million in emergency preparedness grants for state and local governments. Note: OMB is required to issue a sequestration report to determine whether final discretionary appropriations abide by the discretionary spending limits included in the Budget Control Act of 2011 (BCA). The latest report finds that no sequestration is required in FY 2013, because the final spending package (P.L. 113-6) preemptively required a rescission that would eliminate any discrepancy based on OMB's calculations. According to the report, an additional across-the-board rescission of 0.032% will be required for discretionary security programs and 0.2% for discretionary non-security programs. The full report is available at: http://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/sequestration/sequestration_final_april2013.pdf

Innovation

This past week, *The Economist* reported on the successful flight of what are probably the smallest hovering robots yet was reported in *Science* by Robert Wood and his colleagues at the Wyss Institute for Biologically Inspired Engineering at Harvard. These robots are the size of a Lincoln penny. Most small flying robots are helicopters—kept aloft by one or more rotating wings. These, though, are ornithopters, meaning their wings flap. Wingtip to wingtip they measure 3cm and they weigh just 80 milligrams. Like true flies (those known to entomologists as Diptera), and unlike dragonflies or butterflies, they have but a single pair of wings. Amazing.

Demographics

Budgeting for Demography. A key issue confronting every country—and every level of government in every country is aging. That forces state and local leaders to think about cutting spending wherever possible, so that we actually pay the burden an aging global population imposes. But, in contrast to say, the federal sequester, it means we have to increase spending wherever it would lift future productivity. In other words, state and local leaders have to confront the dilemma of financing retirement for a generation that is projected to live far longer than any previous generation—but which appears not to have nearly enough funds set aside to meet those needs, in order to achieve savings so we can invest in future growth. There appears to be absolutely no evidence that any developed country is doing this, including the U.S. It appears that a growing number of states are. Bravo. Some countries are raising the retirement age or tinkering at the edges of retirement benefits, but the savings from those efforts are being used to pay down debt, not to finance future growth.

At the local level, a different sort of trend seems to be occurring. If you look at the chart below, it appears that a growing number of local governments are spinning off authorities—or special districts. Such actions—whether it be for garbage, water, sewer, airport, etc.—can mean that the new entity gets to start from scratch, including working out what kind of retirement benefits will be made available. There is insufficient data, and, as you can see, old data, but the direction is unmistakable. Readers with comments or experience: please give us feedback.

Types and numbers of Governments

- US Bureau of Census has identified 87,525 governments in the US as of 2002

	1952	2002	% growth
Counties	3,052	3,034	- 1%
Municipalities (cities and most towns except New England)	16,807	19,429	+ 16%
Townships	17,202	16,656	- 3%
School Districts	67,355	13,506	- 80%
Special Districts(SPGs) (independents only)	12,340	35,052	+ 202%

Quotes of the Week

Senator Mike Enzi (R-Wyo.), in support of the bill just before the first vote: "When we passed those [sales tax laws] we didn't say "we want to discriminate against our local businesses."

"*...is it the law that -- that the State of Virginia cannot do anything that's pointless? Only – only the Federal Government can do stuff that's pointless? [Laughter]* Justice Scalia – Oral Argument - ***McBurney v. Young***, U.S. Supreme Court, Docket No. 12-17, Opinion Issued 4/29/2013.

Ethics & Public Trust

On April 30, the D.C. ethics board reached a settlement with a council member. The member was admonished for having "used the prestige of his office or his public position for the private gain" of a company by influencing health department personnel to leave the site of the business without issuing a notice of closure, allowing the business to continue to operate for several more hours.

Some important issues are raised in this matter, including (1) the line between constituent services and preferential treatment, (2) the appropriateness of a preferential treatment provision, (3) interventions of legislators and their staff in administrative matters; and (4) an ethics board's role in limiting or prohibiting constituent services.

Further south, *The Daily Progress* in Virginia, this week opined: (**Ethics law reform could help Virginia**)¨Here's a thought: Maybe tighter ethics rules actually would *help* Virginia politicians….Virginia's ethics rules are so broad that activities the public might find objectionable are perfectly permissible under the law. Currently, politicians face two standards: the lenient limits imposed by law and the more exacting expectations held by the public."

Little Legalities

Bankruptcy, Constitutional, Preemption, Procedural & Other Key Decisions or Cases

Justice John Weimer, writing for a 6-1 Louisiana Supreme Court, wrote that the funding method for a private school tuition voucher program pushed through the legislature last year by Gov. Bobby Jindal is unconstitutional, upholding a state district court ruling that the Louisiana Constitution forbids using money earmarked for public schools in the state's Minimum Foundation Program to pay for private school tuition: "After reviewing the record, the legislative instruments, and the constitutional provisions at issue, we agree with the district court that once funds are dedicated to the state's Minimum Foundation Program (MFP) for public education, the constitution prohibits those funds from being expended on the tuition costs of nonpublic schools and nonpublic entities….We hold that by their express terms, SCR 99 and Act 2 unconstitutionally divert MFP funds to nonpublic entities in violation of La. Const. art. VIII, § 13(B), which requires state MFP funds to be allocated equitably to 'parish and city school systems.' We also hold that, although SCR 99 was a new matter intended to have the effect of law, SCR 99 did not satisfy all that the constitution requires of a matter intended to have the effect of law. SCR 99 was not timely introduced or considered in the legislative session and the final vote on SCR 99 was insufficient to enact a matter intended to have the effect of law. Because our holding differs from that of the district court regarding the effect of law intended by SCR 99, we reverse the contrary holding of the district court. Accordingly, we render judgment declaring SCR 99 was void from the outset. On a related topic, we note that because we have found SCR 99 was intended to have the effect of law, SCR 99 was not validly enacted. Finally, once the unconstitutional provisions of Act 2 are analytically severed, we hold that the legislature did not violate the constitution's one-object rule. That portion of the district court's judgment is affirmed." The finding that the law was itself invalid came because the court ruled that the MFP formula was not legally approved last year - in part because it received only 51 votes in the House when 53 were needed. Justice Weimer emphasized in his opinion that the court was not ruling on the effectiveness or value of the voucher program, which makes available state-funded private school tuition to students from low-to moderate-income families who might otherwise be forced to attend a poorly performing public school. *LOUISIANA FEDERATION OF TEACHERS, EAST BATON ROUGE FEDERATION OF TEACHERS, JEFFERSON FEDERATION OF TEACHERS, JILLIAN E. ALEXANDER & BILLIE J. SMITH v. STATE OF LOUISIANA & THE BOARD OF ELEMENTARY AND SECONDARY EDUCATION C/W LOUISIANA ASSOCIATION OF EDUCATORS, ET AL. v. STATE OF LOUISIANA, THE LOUISIANA STATE BOARD OF ELEMENTARY AND SECONDARY EDUCATION & THE STATE OF LOUISIANA THROUGH THE DEPARTMENT OF EDUCATION C/W LOUISIANA SCHOOL BOARDS*

ASSOCIATION, ET AL. v. STATE OF LOUISIANA, LOUISIANA STATE BOARD OF ELEMENTARY & SECONDARY EDUCATION & LOUISIANA DEPARTMENT OF EDUCATION, Louisiana Supreme Court, 2013-CA-0120 C/W 2013-CA-0232 2013-CA-0350, May 7, 2013.

California Cities Get High. California Supreme Court Justice Marvin Baxter, writing for a unanimous court, wrote: "The issue in this case is whether California's medical marijuana statutes preempt a local ban on facilities that distribute medical marijuana. We conclude they do not." Thus, in its 7-0 decision, the Golden State high court rejected medical marijuana advocates who maintain local governments cannot bar activity that is legal. The ruling could be used to bolster cities that want stricter rules on pot dispensaries, particularly in San Jose, which during the court showdown put on hold its drive to reduce the number of pot clubs in the city, or, as Justice Baxter wrote: "While some counties and cities might consider themselves well suited to accommodating medical marijuana dispensaries, conditions in other communities might lead to the reasonable decision that such facilities within their borders ... would present unacceptable local risks and burdens." At least 180 cities across the state and Bay Area have bans, from Hollister to Petaluma to Moraga. But the region's largest cities, San Jose, San Francisco, and Oakland, have permitted the dispensaries, taxing the revenues while communities in between increasingly become dispensary-free zones. In its holding the court found that although California's Proposition 215 permitted legal possession of medical pot, it did not address local regulation, permitting, as Justice Baxter wrote, local governments to use nuisance laws and other regulations to ban activities and land uses such as the dispensaries. The decision was a key victory for the California League of Cities, which had argued that local governments have strong rights to regulate land use, particularly an unusual one such as a medical pot dispensary. *City of Riverside v. Inland Empire Patients & Wellness Center*, California Supreme Court, S198638, May 6, 2013.

Local Preemption Rejection. The Illinois appellate court has upheld the grant of a preliminary injunction against the state revenue department in a matter involving contested adjustments to distributions of local revenues. The city's mayor had averred that if the adjustments were made (moving revenue from the city to another jurisdiction), the city would have to severely cut essential services. The department argued that the adjustment in this case was a recoupment of improperly distributed funds based on a taxpayer audit and the city had no right to contest it. In response, the city argued that the adjustment was statutorily limited to the most recent six months and that, in this case, the audit period was outside the limited period for adjustment. The department also contested whether the trial court had jurisdiction. While the trial court clearly had no special statutory jurisdiction, said the appellate court, it retained original jurisdiction to review the city's complaint under common law certiorari. The court also determined that the trial court could issue a writ of prohibition in such cases. The determination to make an adjustment was conveyed to the city in a letter that provided no information supporting the adjustment. The letter informed that city that the department could not disclose additional information because of confidentiality requirements (unless there was a court order). This was a quasi-judicial act, the court concluded. Also, given that the trial court has the ability to issue an order releasing taxpayer information, it was natural that the trial court would have jurisdiction to review the matter. Nor did the city have any other means to contest the adjustment. As to the merits, the department argued that the city's claim was a monetary claim against the state and therefore barred by sovereign immunity (with possible statutory jurisdiction residing only in the court of claims). The court disagreed. Instead, the issue was whether a state agency properly disbursed funds to the right local jurisdiction and the city was merely attempting to maintain the status quo pending a verification of the calculations. The city met the other requirements for a preliminary injunction including irreparable harm, no remedy at law and likelihood of success on the merits. *The City of Kankakee v. Department of Revenue*, Appellate Court of Illinois Third District, 3-12-0599, 4/15/2013.

Filing wrong form of return triggers statute of limitations. The District of Columbia appeals court has ruled that the good faith filing of a business franchise tax return, albeit the wrong type of return for the

particular business, was sufficient to trigger a three-year statute of limitations (rather than leaving the business subject to an unlimited assessment period). The business was a pass-through entity. It was required to file a return which would have subjected it directly to tax and necessitated, therefore, the reporting of an apportionment factor. Instead, it filed a return intended to be used only by certain small pass through entities, which did not require the reporting of an apportionment factor. Otherwise, however, it identified itself and its corporate parent, provided information on income and deductions and claimed that all the tax due had been paid. The office of tax and revenue argued that, because the return filed lacked information necessary to compute the tax, the return was a nullity for purposes of the statute of limitations. While recognizing that the tax office needed to receive accurate and complete information from taxpayers in order to properly assess and collect taxes, the court declined to rule that the statute of limitations should be so narrowly interpreted. Unlike the federal government, certain pass-through entities are taxable as entities in D.C. Here, the entity in question was part of a larger group and the accountants apparently assumed that filing and including the information for the entity in the parent's return was proper. So on the one hand, while filing *any* return would not suffice, neither could the court say that a return had to be entirely accurate and complete. The purpose of a statute of limitations on assessment is to balance the time needed to assess potential deficiencies against the need to have repose. This idea of balance had to therefore inform the interpretation of the word "return" as used in the statute. If it were to be interpreted to mean *perfectly* accurate and complete, this would obviously shift the balance to far in the tax agency's direction. Nor would this be consistent with the fact that some errors trigger different limitation periods (longer, if in excess of 25%, and shorter if not). Therefore, the court found it could not accept the tax office's argument that the return must have sufficient information for the correct calculation of tax. First, the tax office had the responsibility and authority to verify taxpayer reporting, so as to correct mistakes. Second, while the general rule is that a statute of limitations is read in favor of the government, this was not a close enough case for that rule to apply. Third, U.S. Supreme Court case law supported the conclusion that perfect accuracy or completeness is not necessary. And in this case, the taxpayer also met the Court's "one-tax-one-return rule" which ensures that the filing of a return for one tax will not trigger the limitations period for another tax. Nor did the return instructions provide enough information to be certain that the entity here simply ignored the rules or lacked good faith. In particular, the requirement that the taxpayer explain why it was filing the return it filed rather than the one it should have might not have alerted the taxpayer to the fact that it was filing the wrong form. Nor did the entity's failure to include the explanation required mean there was a lack of good faith. *District of Columbia Office of Tax and Revenue v. Sunbelt Beverage, LLC*, District of Columbia Court of Appeals, 10-AA-1331, 4/11/2013.

P.L. 86-272 standard applied to throwback of sales to foreign jurisdictions. The Indiana revenue department has issued a letter of findings to a taxpayer determining that the state's throwback rule applied to sales to foreign countries where the taxpayer did not exceed the protection of P.L. 86-272 and did not pay taxes on the income earned from those sales to those countries. Under state statutes and regulations, throwback applies to jurisdictions where the taxpayer is "not taxable." "Not taxable," means not subject to an income-type tax or not being subject to jurisdiction for such a tax applying the Constitution and statutes of the United States. Here, the taxpayer's activities included trips by employees where their purpose was primarily to attend fairs and sales conferences or meetings to promote the taxpayer's products or to test (or to replace or repair) its prototypes (or demo equipment). Because these activities did not exceed the protection of P.L. 86-272, the taxpayer would be considered not taxable in those jurisdictions. Letter of Findings No. 02-20120352, Indiana Department of State Revenue, 3/27/2013.

Property Tax Decisions

"Illegal or improper" valuation methods. The Montana Supreme court has ruled that a taxpayer could not use a declaratory judgment procedure for challenging "illegal or improper" assessment methods, in order to challenge the valuation of its property. For one thing, the language of the statute granting the

declaratory judgment remedy specifically provides that it cannot be used "to challenge the…market value of property under a property tax unless the challenge is to the legality of a particular methodology that is being applied to similarly situated taxpayers." The term "method" had long been interpreted to refer to a consistent process, the details of which may vary from place to place, depending on available data, and which will necessarily include a number of different approaches. The court, therefore, was not willing to accept the taxpayer's argument that it was illegal or improper to use a single valuation methodology (in this case, the cost approach) to value a specific property. The revenue department's appraiser had apparently asked the taxpayer for information to complete the income method but that the taxpayer had failed to provide it. And there were insufficient comparable sales to use the comparable value method. Moreover, the appraiser had also stated that similar approaches to valuation had been used for other similar properties and there was apparently no evidence to contradict this. *CHS, Inc. v. Department of Revenue*, Supreme Court of the State of Montana, DA 12-0378, 4/16/2013.

"Encumbrance." The New Hampshire Supreme court has ruled that a home owner was not entitled to an "elderly exemption" from property tax because excluding her mortgage, her net assets exceeded the statutory threshold. "Net assets" is defined to exclude the value of the residence and otherwise means "the value of all assets…minus the value of any good faith encumbrances." The court determined that the term "encumbrance" generally means claims or liabilities that are attached to property and that may lessen the property's value. Therefore, the court concluded that the language at issue should be read as – the value of all includable assets net of any good faith encumbrances *on those assets*. Nor was the court persuaded that this interpretation might lead to patently unfair and unequal results, noting that such results could arise from either interpretation advocated. *Appeal of City of Nashua*, Supreme Court of New Hampshire, 2012-252, 4/12/2013.

No equal protection violation in taxing telecom providers differently. The Iowa Supreme court has ruled that imposing a property tax on personal property of incumbent local exchange carriers, but not on that of competitive long distance and wireless service providers, did not violate equal protection. (The Iowa constitution does not contain a uniformity requirement.) Rather, said the court, differential tax treatment of these enterprises was rationally related to legitimate state interests in encouraging the development of new competitive telecommunications infrastructure, while raising revenue from those providers that historically had a regulated monopoly and continue to enjoy some advantages of that monopoly. Historically, Iowa centrally assessed both the real and the personal property. It continues to tax the personal property of traditional telephone companies. Most other personal property has been excluded from tax. On the other hand, so long a telephone company remained subject to rate-base/rate-of-return regulation, it was allowed to include these taxes in its rate. Wireless companies have never been subject to the personal property taxation scheme. Applying rational basis and assuming that the traditional and other competitive and wireless providers were similarly situated, the court concluded that there was no question that ample justification exited for the state legislature to distinguish regulated and unregulated providers. Considering that the traditional providers had sanctioned monopoly status for decades, they were unlikely to reduce their presence in the state. That presence could serve to impede competitors. Nor had the growth of competitive forces within the telecommunications industry negated the need to provide incentives to encourage competitors. It was improper to compare wireline and wireless connections since they are not strictly substitutes but serve different purposes (evidenced by the fact that 85% of wireless customers continue to pay for wireline service). The state also had ample reason to treat wireless service providers differently, since their infrastructure was different. Therefore, it was not possible to refute the rational basis that originally existed based on any change in circumstances. The court stressed that it was merely ruling that if the legislature could conclude that some vestiges of former monopoly status continued to make it appropriate to tax traditional providers differently, then this was a rational choice. And given this structure had been in place for years, the reliance interests favored keeping it in place, rather than overturning it. *Qwest Corporation v. Iowa State Board of Tax Review*, Supreme Court of Iowa, 11-1543, 4/12/2013.

County reclassification to avoid exemption prohibited. The Kansas appeals court has ruled that wireline equipment used to monitor oil wells is properly classified as commercial and industrial machinery and equipment, rather than mineral interest property. (The issue here took on significance when the legislature exempted certain property classified as commercial and industrial equipment. The county argued that the legislature had not intended to exempt property related to the oil and gas industry.) The court noted that the commercial and industrial property classification was broadly defined and therefore should be broadly interpreted. There was no doubt from the record that the property had the necessary attributes to fit the classification. On the other hand, the definition of mineral interests was much more specific and included "oil and gas leases, oil and gas wells, all casing, tubing and other equipment and materials used in operating oil and gas wells…" The wireline equipment at issue was not used in the wells and did not serve directly to operate the wells. The county's argument that the wireline equipment was inextricably related to the oil and gas industry was "a vague standard at best," the court concluded. And even so, it was not clear that the wireline equipment would satisfy the test. *Moreover*, the court noted that state statutes expressly prohibit the reclassification of property out of the commercial and industrial equipment classification in order to avoid the related the tax exemption provided by the state statute. Since the property here had previously been classified as commercial and industrial equipment, simply put, said the court, the legislature had explicitly prohibited the county from doing what it was trying to do. *In the Matter of the Equalization Appeal of Wedge Log-Tech, L.L.C.*, Court of Appeals of Kansas, 108,119, 4/12/2013.

State law exemption from "any" tax applies to local recordation tax. The Maryland high court (Court of Appeals) has ruled that an exemption granted to a state economic development corporation "from any requirement to pay taxes or assessments on its properties or activities" applied to a county recordation tax on a deed of trust filed by the corporation. The corporation was a public company formed by lawmakers with broad powers to carry out its mission. Here, the contract for which the deed was filed required that all costs, including any recordation tax, be paid by the corporation. The court rejected the county's premise that it made a difference whether the exemption was codified in state law or county ordinance. The county also parsed the language of the exemption in a way the court found improper. First of all, the court wrote: "any" tax must both direct and indirect taxes, like the recordation tax. (The county relied on the U.S. Supreme Court decision in *United States v. Wells Fargo Bank*, but the court found *Wells Fargo* involved an exemption of *property* tax, rather than exemption of an entity itself.) Nor would the court read the term "activity" so narrowly as to exclude the recording of a deed. Finally, it could not be said that the corporation did not have a "requirement" to pay the tax under law simply because the law did not specify who must pay the tax, but only that it must be paid by the party wishing to record the deed. The court also rejected the county's argument that the state law exemption and the county tax code were in conflict and that this necessitated a much stricter reading of the exemption. In addition to the fact that this was not a typical exemption, the court noted that the legislature specifically instructed that it be liberally construed. Even if this created a conflict, said the court, it is well established that the more specific statute will override the more general one. Finally, the court rejected the argument that the corporation waived exemption by entering into a contract and agreeing to pay the tax. Here the corporation merely agreed to pay any potential costs, including taxes, which it is permitted to do. Moreover, this was a condition for obtaining the loan. Acceptance of such terms therefore did not act as a waiver of the corporation's exemption. *Maryland Economic Development Corporation v. Montgomery County*, Court of Appeals of Maryland, 44, 4/9/2013.

"Ownership" not proven under lot lease arrangement. The Michigan court of appeals has ruled that an applicant for a principle residence tax exemption failed to prove he was the owner of the property at issue. The property was held in the name of a corporation (a resort company). The residence in this case was located on property subject to a lot lease with the corporation. The corporation received bills for taxes on the lots and invoiced residents for those taxes. The corporation had been denied a residential exemption

on the grounds that, as a corporation, it was not a "person." The occupant of the residence then applied for the exemption and was denied, having failed to show that he had any ownership interest in the property or the corporation. The court found that the lot lease did not convey any ownership interest and there was no other evidence in the record to support the applicant's claim. *Power v. Dep't of Treasury*, Michigan Court of Appeals, No. 309773, 4/9/2013.

TIF argument not raised at trial. The Missouri Supreme court has overturned a declaratory judgment voiding ordinances that authorized a tax increment financing (TIF) plan to redevelop approximately 1500 acres in the City of St. Louis. The judgment had declared that the ordinances were void because they did not include, as required, "defined redevelopment projects and cost-benefit analysis of such projects." The court here determined that this "specific project" argument was not properly raised at trial. The issue was not included in the petitions of plaintiffs or intervenors. Rather, the issue was first raised in a motion *in limine* filed on the first day of trial. Nor was the issue tried by implied consent, said the court, since there was no evidence given specifically for the purpose of supporting the related arguments. Instead, testimony on the matter focused on eliciting bare opinions on the legal issue, not on whether or not there was sufficient evidence of the purported project to meet the legal standard. *Smith v. City of St. Louis*, Supreme Court of Missouri, SC92646, 4/9/2013.

Charitable and religious use exemptions. The Colorado appeals court had ruled that camps owned and operated by the YMCA may have been entitled to religious or charitable use exemptions (in whole or in part) and remanded the case to the board for further proceedings. In Colorado, because religious worship has different meanings to different religious organizations and because the constitution guarantees free exercise of religion, state lawmakers had determined that activities of religious organizations that are in furtherance of their religious purposes should be deemed to constitute religious worship. The property owner must make a declaration of its religious purpose and that declaration will be presumptive as to the religious purposes for which the property is used. Such purposes can only be challenged on the grounds that they are pretext or the property is actually used for profit. The YMCA's articles of incorporation state that its primary purpose is to provide a Christian environment. The articles also provide that the YMCA "is organized exclusively for charitable, religious and educational purposes" and "shall not be operated for profit." The board, however, found that most of the property located at the camps, with the exception of the chapels and religious activities center, were not used "solely and exclusively" for religious purposes. The fact that the facilities were open to the general public "regardless of faith or lack of faith," and that the YMCA is "strictly forbidden" from indoctrination of visiting public school children meant that the facilities could not be used for religious purposes, the board concluded. The board's ruling, said the court, contravened the requirement that the declaration of religious purposes contained in the YMCA's application be presumed valid. The board failed to discuss the YMCA's declared purpose or whether the activities were an integral part of that religious purpose. The board's approach instead would foster "an excessive government entanglement with religion," thus violating the Establishment Clause, the court concluded. Similarly, the court found that the board had misconstrued the charitable use exemption when it held that the YMCA failed to provide sufficient evidence of charitable use. The board, by repeatedly stating that it was applying a statutory presumption against exemption, had placed the bar too high, the court concluded. It was true that what constitutes a charitable purpose is to be strictly construed, but courts are to liberally construe the means used to achieve a charitable purpose. In particular, the YMCA was not required to prove that everyone who stayed at the camps also engaged in the charity related activities, especially given that the evidence showed that the vast majority of guests did so. Overall, said the court, the board focused on the minority of facts that tended to show that there may have been other incidental uses. Instead, the board was obligated to weigh all the evidence and to determine whether portions of the camps might be entitled to charitable use, even if other portions were not. *Larimer County Board of Commissioners v. Colorado Property Tax Administrator*, Colorado Court of Appeals Division V, 07CA0422; 11CA0725, 4/11/2013.

State constitution allows exemption for charitable business association. The Texas appeals court has ruled that a business association was entitled to take advantage of a newly enacted property tax exemption, rejecting claims by the tax district that the statute was unconstitutional. The state constitution previously provided that exemptions could be granted to organizations engaged in "*purely public charity*." It was amended to authorize exemptions for organizations "engaged primarily in public *charitable functions*." Under this provision as amended, the legislature exempted nonprofit community business organizations that provide economic development services to local communities so long as they promote common economic interests, improve business conditions, or otherwise aid economic development. Years earlier, the state supreme court interpreted the phrase "charitable purposes" to include relief of poverty, advancement of education, advancement of religion, promotion of health, governmental or municipal purposes and *other purposes the accomplishment of which is beneficial to the community*. A "charitable purpose," the court here reasoned, must be a subset of the broader "charitable function." Therefore, the idea of accomplishing a benefit to the community must be contained within that phrase as well. *Brazos County Appraisal District v. Bryan-College Station Regional Association Of Realtors, Inc.*, Court of Appeals of Texas, 10-11-00438-CV, 4/18/2013.

Sales and Use Tax Decisions

OTCs win final, final judgment in New Mexico. A federal district court in New Mexico has rejected additional claims by local governments that online travel companies should have paid lodging tax on the mark-up they charge on hotel rooms reserved by customers through their web sites, and has instead issued summary judgment to the OTCs. At issue was the practice referred to as the "merchant model." Although the OTCs collected tax on the "wholesale" price charged by the hotels, they did not collect on their mark-up. The court had previously ("thrice") ruled that the OTCs are not "vendors" as that term is used under the lodging tax ordinances and therefore were therefore not liable for tax on their receipts. In response to the OTCs motion for summary judgment, the local governments argued that the OTCs were collecting additional tax that had not been remitted and advanced other theories of liability. In addition to moving for final summary judgment, one of the OTCs also objected to privileged documents filed as part of the public record by the plaintiffs, moving to strike. Addressing the motion to strike first, the court found that privilege clearly attached to the documents in question. The plaintiffs contended that a special master's report from a Georgia court concluded that a crime-fraud exception applied to the document and further, that since the document was accessed from the court's docket, any privilege had been waived. The court here, however, disagreed. There was no question that the OTC was entitled to protection against improper dissemination. Moreover, the documents were labeled as privileged and confidential so there could be no mistaking whether privilege was asserted. Nor was the court willing to find a crime-fraud exception since the party asserting such an exception has the obligation to obtain an in camera review first, which the plaintiffs here did not do. Nor was there anything in the documents themselves to support such an exception. As for the merits, according to the court, to date, judgments in other jurisdictions have been rendered in approximately 32 OTC cases involving the same challenged practices and, of those, the OTCs have prevailed in 22 with several having been affirmed on appeal. But the court was not persuaded that these rulings necessarily shed any light on the legal issues in this case. The claims raised this round, said the court, were just another attempt at re-litigating the question. The court had previously ruled that the OTCs were not "trustees" of the occupancy tax proceeds and had denied the plaintiffs' motion for summary judgment, finding that there was no evidence that OTCs collected taxes over and above what they remitted. Now, in response to the OTCs motion for summary judgment, the plaintiffs had raised "a never before pled or asserted -- and factually unsupported – theory" that the OTCs should have provided an accounting of amounts to consumers. Even if the OTCs had been agents of the hotels (which the court found they were not) and had collected tax that they did not remit (which the court found they had not) there would still be no claim under agency since the tax asserted to be due was on the receipts of the OTCs, not of the hotels.

The plaintiffs raised a related "second [and never pled] grounds for liability," – that OTCs owed a under a provision in the ordinance that penalizes "any *person* who violates the provisions of this article…" The problem, said the court, was that while the OTCs might be persons, they could not be in violation of the "provisions of this article" unless they were also *vendors*. *City of Gallup v. Hotels.com LP et al.*, U.S. District Court D.N.M., No. 07-CV-644 JEC/CG, 3/29/2013.

Use tax on hotel shampoos. The Texas appeals court has ruled that items such as soap, shampoo, conditioner, mouthwash, shower caps, pens, and notepads provided by a hotel in its rooms were exempt from sales tax as sales for resale. Under state law, the "sale for resale" exemption applies if property is resold "in the normal course of business in the form or condition in which it is acquired." "Sale" includes "a transfer of title or possession" when "done or performed for consideration."
Under the plain meaning of this statutory language, the court found that the exemption applied, rejecting four arguments by the comptroller. First, said the court, it was not relevant that the hotel's receipts from room rentals were not subject to the sales tax. Second, since the comptroller stipulated that the hotel charged one "all-encompassing" fee, lodgers were paying consideration for everything, including the consumables that they were allowed to use or take with them. Third, it was in the normal course of business for the hotel to provide the consumables. The exemption in this case did not require that the purchaser of the items be in the business of selling those items; rather, it simply required that the purchase and resale be in the *normal course* of the purchaser's business. Fourth, the court did not agree that the items were also used, in part, as marketing tools, noting that they were only provided to hotel guests in their rooms. *DTWC Corporation v. Combs*, Court of Appeals of Texas, 03-10-00801-CV, 4/11/2013.

"Paid" means incurred. Wisconsin provides a corporate income tax credit for sales and use tax "paid" on fuel or electricity used in manufacturing. A taxpayer was audited and assessed by the state revenue department for both. The sales tax assessment included taxes on the purchase of natural gas used in the taxpayer's manufacturing activities. The taxpayer filed amended income tax returns claiming credits for this additional sales tax, and also made deposits in order to contest the assessments. The taxpayer conceded that tax was due on natural gas purchased, but the department nevertheless denied the income tax credits. The state appeals commission has now held that the credits claimed should have been granted.
The question was how to interpret the word "paid," under the credit provision. The commission found it could not be interpreted to exclude the deposits made by the taxpayer. First, there was a long line of cases holding that when a tax statute says "paid," it means "incurred." Second, there was no authority to interpret the word "paid" to refer only to a simultaneous exchange. Third, the common definition of the word "pay" includes the general term "settle." Fourth, this broader meaning is consistent with the legislature's intent, which was to effectively offset one tax liability against another. Fifth, it would have been easy enough for the legislature to use another term, like "actually paid," if it meant something narrower. Nor was the commission persuaded that the tax in this case had not been paid simply because the taxpayer deposited the amount owed and contested the assessment. The taxpayer had conceded the tax was owed, but the only way for the taxpayer to effectively raise the issue and protect its interests was to contest both assessments. This, in turn, required making deposits of the amounts due. *Primera Foods Corporation v. Wisconsin Department of Revenue*, Wisconsin Tax Appeals Commission, 10-I-277; 10-S-278, 3/14/2013.

Use tax owed on items given away. An Alabama administrative law judge has determined that a franchisor owed use tax on withdrawals of items purchased tax-free and given to certain franchisees free of charge. The franchisor's standard agreements with franchisees required them to purchase the items. But because of the downturn in the economy, some franchisees were unable to afford them. The franchisor therefore amended agreements with some franchisees to provide the items free of charge. If the franchisee went out of business within five years, it would owe a prorated amount for cost of the items. The franchisor contended that it was reselling the items for consideration (that is, the agreement to remain in business or pay a prorated amount), and would recover the cost of the items over time. The ALJ, however,

noted that if the franchisee met the requirement to stay in business, there would never be any charge for the items. Therefore, this was not the same as an installment sale. Rather, the prorated payment was in the nature of a penalty intended to compensate the franchisor for its loss related to the inability to sell *other* items (profitably) to the franchisees. In other words, said the ALJ, giving some items away was meant to entice franchisees to agree to continue buying and reselling other items. Moreover, the standard agreement already required franchisees to agree to operate for five years. So this could not be consideration for the items provided without charge. The ALJ also discussed prior cases involving cell phone contracts where the phone is provided for free or for a nominal amount. Initially, it was ruled that if a retailer provides tangible personal property below cost (or for free) with the condition that the customer buy some form of service for which the retailer receives compensation, then the retailer owes sales tax on its wholesale cost of the property. The legislature subsequently amended the law to specify that the sale of equipment at below cost in connection with the sale of mobile telephone services constituted a "sale at retail." Thereafter, in a case involving phones provided for *free* with phone service, it was ruled that the phones were taxable withdrawals since they were not sold *below cost*. The upshot, said the ALJ, is that the general legal framework was still in place and had been modified only as it applied to certain specific facts. *Chester's International, LLC v. State of Alabama Department of Revenue*, Alabama Department of Revenue, Administrative Law Division, S. 12-364, 4/10/2013.

Supplements versus food, importance of label. The Minnesota tax court has ruled that a product labeled as a dietary supplement is not entitled to exemption from sales tax as food. The product in this case was a powder to be mixed with water. It was labeled as a "scientifically formulated supplement beverage" that combined "some of nature's most powerful flavonoid antioxidants with key vitamins and metabolic enhancers." The phrases "Thermogenic Antioxidant," "Energy Drink Mix," and "dietary supplement" also appeared on the label, along with a "Supplement Facts" section. The FDA told the company that the product appeared to be a conventional food, but the company responded that it was, in fact, a dietary supplement. But when it came to its sales tax audit, the company contended that the product was not a (taxable) "dietary supplement" but (exempt) "conventional food." Under state tax law, a "dietary supplement" means any product, other than tobacco, that, among other things, "is required to be labeled as a dietary supplement, identifiable by the supplement facts box found on the label and as required pursuant to [federal regulations]." The tax court concluded that this language was unambiguous and requires that the determination at issue be made on the basis of the product's label alone. To construe the language as applying only to products *required* by federal regulations to carry the supplement facts box would, in effect, render superfluous the words "*identifiable* by the supplement facts box *found on the label . . .." SlimGenics Minnesota, Inc. v. Commissioner of Revenue*, Minnesota Tax Court County of Ramsey, Regular Division, 8422-R, 4/12/2013.

Charitable exemption. An Illinois hearing officer has determined that a non-profit organization that provides funding to qualifying residents to buy fresh, locally-grown food should be entitled to purchase tangible personal property free of use tax on the grounds that it qualifies as an exempt charitable entity. The organization worked within a local government program providing matching funds for amounts spent by the qualifying residents at local farmers' markets. The organization's funding, in turn, came from donations. Individuals were qualified under the matching-funds program based on financial need and there was no requirement that the individuals live within the local community. The organization spent minimal amounts on administrative costs. The hearing officer found that the legislature had intended to promote the use of food subsidies at farmers' markets and that this program supported that goal. While it did not reduce the amount spent by the state on subsidies, the program did provide more benefits to the qualifying individuals and served to promote outreach for the governmental subsidy program generally. *Department of Revenue of the State of Illinois v. ABC Business*, Illinois Decisions in Department of Revenue Hearings, ST 13-04, 3/25/2013.

Grants

Department of Agriculture
10.912 Conservation Innovative Grant 2013
http://www.grants.gov/search/search.do;jsessionid=hGdbRH6TyxgYHTR2VY47S5TWpThGXR3c7vzkn1JMfhnlF8nbp4x8!620082684?oppId=231975&mode=VIEW; Eligibility: State and local governments, Institutions of Higher Education (IHEs); Due date: 6/3/13; Matching requirement

10.912 Rhode Island NRCS Conservation Innovation Grants
http://www.grants.gov/search/search.do;jsessionid=hGdbRH6TyxgYHTR2VY47S5TWpThGXR3c7vzkn1JMfhnlF8nbp4x8!620082684?oppId=232574&mode=VIEW; Eligibility: Local governments; Due date: 5/24/13; Matching requirement

Department of Commerce
11.463 NOAA Restoration Center Great Lakes Restoration in the Manistique River Area of Concern
http://www.grants.gov/search/search.do;jsessionid=hGdbRH6TyxgYHTR2VY47S5TWpThGXR3c7vzkn1JMfhnlF8nbp4x8!620082684?oppId=232455&mode=VIEW; Eligibility: State and local governments, IHEs; Due date: 5/30/13

Department of Education
84.411 Office of Innovation and Improvement (OII): Investing in Innovation Fund, Scale-up Grants
http://www.grants.gov/search/search.do;jsessionid=hGdbRH6TyxgYHTR2VY47S5TWpThGXR3c7vzkn1JMfhnlF8nbp4x8!620082684?oppId=233135&mode=VIEW; Eligibility: Local Education Agencies (LEAs); Due date: 7/2/13

Department of Health and Human Services
93.557 Street Outreach Program
http://www.grants.gov/search/search.do;jsessionid=hGdbRH6TyxgYHTR2VY47S5TWpThGXR3c7vzkn1JMfhnlF8nbp4x8!620082684?oppId=232193&mode=VIEW; Eligibility: State and local governments, IHEs; Due date: 6/28/13 Matching requirement

93.085 Announcement of the Availability of Funds for Office of Research Integrity (ORI) Extramural Research Grants
http://www.grants.gov/search/search.do;jsessionid=hGdbRH6TyxgYHTR2VY47S5TWpThGXR3c7vzkn1JMfhnlF8nbp4x8!620082684?oppId=232333&mode=VIEW; Eligibility: State and local governments, IHEs; Due date: 6/10/13

93.068 Collaboration for Improving and Promoting Standardized Cancer Staging Using the Collaborative Stage Data Collection System
http://www.grants.gov/search/search.do;jsessionid=hGdbRH6TyxgYHTR2VY47S5TWpThGXR3c7vzkn1JMfhnlF8nbp4x8!620082684?oppId=232293&mode=VIEW; Eligibility: State and local governments, IHEs; Due date: 6/10/13

93.283 Cancer Surveillance Data Standards and Best Practices
http://www.grants.gov/search/search.do;jsessionid=hGdbRH6TyxgYHTR2VY47S5TWpThGXR3c7vzkn1JMfhnlF8nbp4x8!620082684?oppId=232493&mode=VIEW; Eligibility: State and local governments, IHEs; Due date: 6/10/13

93.048 National Resource Center on Women and Retirement Planning
http://www.grants.gov/search/search.do;jsessionid=hGdbRH6TyxgYHTR2VY47S5TWpThGXR3c7vzkn1JMfhnlF8nbp4x8!620082684?oppId=232495&mode=VIEW; Eligibility State and local governments, IHEs; Due date: 5/30/13 Matching requirement

93.113, 93.173, 93.242, 93.853, 93.865 Research on Autism Spectrum Disorders (R01)
http://www.grants.gov/search/search.do;jsessionid=hGdbRH6TyxgYHTR2VY47S5TWpThGXR3c7vzkn1JMfhnlF8nbp4x8!620082684?oppId=232615&mode=VIEW; Eligibility: State and local governments, IHEs; Due date: 5/7/16

93.113, 93.173, 93.242, 93.853, 93.865 Research on Autism Spectrum Disorders (R21)
http://www.grants.gov/search/search.do;jsessionid=hGdbRH6TyxgYHTR2VY47S5TWpThGXR3c7vzkn1JMfhnlF8nbp4x8!620082684?oppId=232616&mode=VIEW; Eligibility: State and local governments, IHEs; Due date: 5/7/16

93.113, 93.173, 93.242, 93.865 Research on Autism Spectrum Disorders (R03)
http://www.grants.gov/search/search.do;jsessionid=hGdbRH6TyxgYHTR2VY47S5TWpThGXR3c7vzkn1JMfhnlF8nbp4x8!620082684?oppId=232617&mode=VIEW; Eligibility: State and local governments, IHEs; Due date: 5/7/16

93.283 National Organizations Support for State Oral Health Programs
http://www.grants.gov/search/search.do;jsessionid=hGdbRH6TyxgYHTR2VY47S5TWpThGXR3c7vzkn1JMfhnlF8nbp4x8!620082684?oppId=232653&mode=VIEW; Eligibility: State and local governments, IHEs; Due date: 6/17/13

93.226 Closing the Gap in Healthcare Disparities through Dissemination and Implementation of Patient Centered Outcomes Research (U18)
http://www.grants.gov/search/search.do;jsessionid=hGdbRH6TyxgYHTR2VY47S5TWpThGXR3c7vzkn1JMfhnlF8nbp4x8!620082684?oppId=232573&mode=VIEW; Eligibility: Local governments; Due date: 7/31/13

93.213 Center of Excellence for Research on CAM (P01)
http://www.grants.gov/search/search.do;jsessionid=hGdbRH6TyxgYHTR2VY47S5TWpThGXR3c7vzkn1JMfhnlF8nbp4x8!620082684?oppId=232814&mode=VIEW; Eligibility: State and local governments, IHEs; Due date: 1/7/15

93.161 Biomonitoring of Great Lakes Populations
http://www.grants.gov/search/search.do;jsessionid=hGdbRH6TyxgYHTR2VY47S5TWpThGXR3c7vzkn1JMfhnlF8nbp4x8!620082684?oppId=232936&mode=VIEW; Eligibility: State and local governments; Due date: 7/1/13

93.242, 93.855, 93.856 Methodologies and Formative Work for Combination HIV Prevention Approaches (R21)
http://www.grants.gov/search/search.do;jsessionid=hGdbRH6TyxgYHTR2VY47S5TWpThGXR3c7vzkn1JMfhnlF8nbp4x8!620082684?oppId=232857&mode=VIEW; Eligibility: State and local governments, IHEs; Due date: 9/3/13

93.242 Methodologies and Formative Work for Combination HIV Prevention Approaches (R34)
http://www.grants.gov/search/search.do;jsessionid=hGdbRH6TyxgYHTR2VY47S5TWpThGXR3c7vzkn1JMfhnlF8nbp4x8!620082684?oppId=232858&mode=VIEW; Eligibility: State and local governments, IHEs; Due date: 9/3/13

93.242, 93.855, 93.856 Methodologies and Formative Work for Combination HIV Prevention Approaches (R01)
http://www.grants.gov/search/search.do;jsessionid=hGdbRH6TyxgYHTR2VY47S5TWpThGXR3c7vzkn1JMfhnlF8nbp4x8!620082684?oppId=232855&mode=VIEW; Eligibility: State and local governments, IHEs; Due date: 9/3/13

93.576 Refugee Agricultural Partnership Program
http://www.grants.gov/search/search.do;jsessionid=hGdbRH6TyxgYHTR2VY47S5TWpThGXR3c7vzkn1JMfhnlF8nbp4x8!620082684?oppId=233033&mode=VIEW; Eligibility: State and local governments, IHEs; Due date: 7/2/13

93.121, 93.173, 93.213, 93.233, 93.242, 93.273, 93.279, 93.286, 93.398, 93.837, 93.839, 93.859, 93.865, 93.866, 93.867, 93.939 Short Courses on Innovative Methodologies in the Behavioral and Social Sciences (R25)
http://www.grants.gov/search/search.do;jsessionid=hGdbRH6TyxgYHTR2VY47S5TWpThGXR3c7vzkn1JMfhnlF8nbp4x8!620082684?oppId=233118&mode=VIEW; Eligibility: State and local governments, IHEs; Due date: 7/3/13

93.082 Sodium Reduction in Communities
http://www.grants.gov/search/search.do;jsessionid=hGdbRH6TyxgYHTR2VY47S5TWpThGXR3c7vzkn1JMfhnlF8nbp4x8!620082684?oppId=233173&mode=VIEW; Eligibility: State and local governments; Due date: 6/18/13

93.279 Substance Use Disorders and Molecular Regulation of Brain Energy Utilization (R21)
http://www.grants.gov/search/search.do;jsessionid=hGdbRH6TyxgYHTR2VY47S5TWpThGXR3c7vzkn1JMfhnlF8nbp4x8!620082684?oppId=233075&mode=VIEW; Eligibility: State and local governments, IHEs; Due date: 8/15/13

93.866 The Effects of Modulating Chronic Low Grade Inflammation on Geriatric Conditions: Secondary Data and/or Biospecimen Analyses and Ancillary Studies in Ongoing or Completed Clinical Trials (R01)
http://www.grants.gov/search/search.do;jsessionid=hGdbRH6TyxgYHTR2VY47S5TWpThGXR3c7vzkn1JMfhnlF8nbp4x8!620082684?oppId=233094&mode=VIEW; Eligibility: State and local governments, IHEs; Due date: 9/7/16

Department of the Interior
15.808 Cooperative Ecosystem Studies Unit, Colorado Plateau CESU
http://www.grants.gov/search/search.do;jsessionid=hGdbRH6TyxgYHTR2VY47S5TWpThGXR3c7vzkn1JMfhnlF8nbp4x8!620082684?oppId=232473&mode=VIEW; Eligibility: Participating partners of the Colorado Plateau CESU
Due date: 5/10/13

15.554 WaterSMART: Cooperative Watershed Management Program Grants for FY 2013
http://www.grants.gov/search/search.do;jsessionid=hGdbRH6TyxgYHTR2VY47S5TWpThGXR3c7vzkn1JMfhnlF8nbp4x8!620082684?oppId=232693&mode=VIEW; Eligibility: State and local governments; Due date: 6/11/13

15.517 Aquatic Invertebrate Monitoring Below Flaming Gorge Dam
http://www.grants.gov/search/search.do;jsessionid=hGdbRH6TyxgYHTR2VY47S5TWpThGXR3c7vzkn1JMfhnlF8nbp4x8!620082684?oppId=232955&mode=VIEW; Eligibility: State and local governments, IHEs; Due date: 5/15/13

Department of Justice

16.812 OJJDP FY 2013 Second Chance Act Juvenile Reentry Program
http://www.grants.gov/search/search.do;jsessionid=hGdbRH6TyxgYHTR2VY47S5TWpThGXR3c7vzkn1JMfhnlF8nbp4x8!620082684?oppId=233174&mode=VIEW; Eligibility: State and local governments; Due date: 6/17/13; Matching requirement

Department of Transportation
20.933 FY 2013 National Infrastructure Investments
http://www.grants.gov/search/search.do;jsessionid=hGdbRH6TyxgYHTR2VY47S5TWpThGXR3c7vzkn1JMfhnlF8nbp4x8!620082684?oppId=232275&mode=VIEW; Eligibility: State and local governments; Due date: 6/3/13; Matching requirement

Department of the Treasury
21.009 Volunteer Income Tax Assistance (VITA) Matching Grant 2014
http://www.grants.gov/search/search.do;jsessionid=hGdbRH6TyxgYHTR2VY47S5TWpThGXR3c7vzkn1JMfhnlF8nbp4x8!620082684?oppId=232233&mode=VIEW; Eligibility: State and local governments, IHEs; Due date: 5/31/13
Matching requirement