POLICY UPDATE

March 4, 2016

FEDERAL POLICY REVIEW

A. **FAA RULE ON THE USE OF AIRPORT REVENUE:** The FAA ruling (Proceeds from Taxes on Aviation Fuel 79, Fed. Reg 66282, November 7, 2014) affects jurisdictions that a) have an airport and b) have a sales tax that was in effect after December 31, 1987 where revenue is derived from aviation fuel. States and locals must target jet fuel revenue for the benefit of airports, or lose federal revenues. **Local Voter-Approved Revenues are Pre-Empted:** This ruling means local voter-approved and several transportation authorities' district tax effective following December 31, 1987 will apply. The rule impacts local voter-approved revenue measures that are subjected to California's Proposition 218 Constitutional provisions requiring the respective taxes to be approved by voters. The California Department of Finance (DOF) indicated its understanding that "the FAA's opinion is that any tax, regardless of whether it was intended by voters for a specific non-aviation purpose, if the tax is levied on aviation fuel, that aviation-fuel-related revenue must be dedicated to aviation purposes." The rule does not apply to sales taxes in effect on December 31, 1987 including the California local (Bradley Burns) 1.25% rate or the 4.75% state general fund rate in effect at the time. Several other state rates may be affected, as well as most local transactions and use tax rates. **Recommendation:** Adopt an (exception) amendment that excludes or does not subject all general and specific local voter-approved revenue measures to the ruling.

B. **SALES TAXES ON ONLINE SALES:** Under California law, online sales are theoretically subject to the state use tax, but as a practical matter go unenforced. HR 2775, The Remote Transactions Parity Act, is bipartisan legislation that would not impose a new tax, but would enable state and local governments to compel retailers to collect and remit sales taxes on online sales, which are already owed to them under current law. HR 2775 is similar to the proposed Federal Marketplace Fairness Act of 2015 (S. 698) that would permit states to require vendors with more than $1 million in gross receipts from remote sales to collect sales tax on purchases made by state residents if the state adopts and implements specified simplification requirements. **Recommendation:** Pursue a federal law that would assure equal treatment on sales taxes, and restore millions of lost sales tax dollars due to archaic nexus laws. MuniServices prepared an impact analysis if some form of HR 2775 were enacted.

C. **TELECOMMUNICATIONS**. A permanent ITFA ban in the Trade bill was signed by the President. On October 22, 2015 Senator Feinstein sent a letter to ranking members in the Senate with concerns that a permanent prohibition would hurt local governments, especially in California; the Senator asked for consideration to protect existing voter-approved taxes on telecommunication networks. All forms of telecommunications should be treated the same, whether using broadband, wireless, or traditional telephone networks. California cities with voter-approved local taxes on telecommunications ($750 million a year) sought a limited exception for "voter approved local taxes pursuant to state law." **Future impact:** The actual impact of ITFA (which has been in effect as a moratorium for 18 years) on California's Utility User Tax remains to be seen, as traditional local exchange is gradually being replaced by broadband networks. By the end of 2016, MuniServices should have more real data to indicate: whether prepaid wireless revenues (AB 1717 from 2014) are likely to off-set any losses due to ITFA; whether reductions in local exchange will continue; and any other trends in the broadband area that could affect local UUT.

D. **WIRELESS TAX FAIRNESS WITH A CALIFORNIA EXCEPTION.** H.R. 4287 would bar states and localities from imposing new discriminatory taxes on cell phone services, providers, or property. As drafted the measure includes an exclusion to protect local governments with local voter-approved measures. For several years, the wireless industry has sought a moratorium on new wireless taxes. This law, as originally written, would affect cities that have not yet obtained voter approval of a modern telecom ordinance, and it would also affect a city with a modern ordinance that wished to go to the voters for a tax increase. Three years ago, MuniServices worked extensively with the California League of Cities and their D.C. lobbyists to obtain an amendment (H.R. 4287) that would exclude voter approved local taxes from the moratorium (California exception).

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E. **FEDERAL EXCISE TAX ON LOCAL LAWS:** In 2006, the IRS, through an interpretation following adverse lawsuits against the IRS, dramatically reduced the application of this old federal tax to local landline telephone service. As a result, the federal law discriminates against persons who cannot afford new technologies, affecting primarily older and poorer persons. **Recommendation**: This law should either be repealed or be amended to apply to all technologies, without discrimination; a repeal of the 2006 law has no impact on local taxes, but would benefit local low income taxpayers who are discriminated against by this old federal law.

F. **DIRECT BROADCAST SATELLITE TV:** In 1996, Congress responded to the request of a special interest segment of the video broadcasting industry, direct broadcast satellite (DBS), to prohibit local taxes on video programming delivered by DBS. Rather than adopting a moratorium to allow for a new industry to grow, Congress imposed a permanent ban on local taxation of DBS. In response, a number of state laws were enacted, with resulting litigation, to "level the playing field" caused by the discriminatory federal law. Recently, the US Supreme Court declined to review two of these state laws. \The federal prohibition on local taxation of DBS in 1996 was intended to spur growth of DBS services and increase competition for incumbent cable service providers. Today, the two predominate providers of DBS services serve more than 30 million subscribers and earn $25 billion in annual revenue. Furthermore, AT&T recently received FCC approval to purchase one of those companies, DirecTV, for $48.5 billion, making AT&T the largest pay TV provider in the United States and the world. Today (20 years later), it can hardly be argued that the original purpose of the federal ban to encourage competition is still needed. Even more egregious is the fact that AT&T now offers its video programming over both the internet (U-verse TV) and satellite (DirecTV). It's the same video programming, but only one is subject to the local tax because of the federal ban. **Recommendation:** Repeal the federal ban on local taxation of DBS (Section 602(a) of the Federal Telecommunications Act of 1996) so that existing local voter approved taxes on video programming by California cities can be applied in a uniform manner, without discrimination based on technology.

G. **OVER THE TOP TV (OTT):** Some forms of over the top TV (OTT) are identical to the video programming provided by CATV providers, IP-TV providers, and Direct Broadcast Satellite providers. To achieve tax equity and competitive fairness, all should be treated the same for taxation purposes. A proposed Digital Goods Tax Fairness bill would create fair "sourcing" rules for digital goods. **Recommendation:** Provision of a bill should be amended to include all forms of "video programming" regardless of technology, so that OTT, CATV, IP-TV and Direct Broadcast Satellite can all be treated the same, assuring tax equity and competitive fairness. The current language has an exception for video programming, primarily benefitting OTT.