



WASHINGTON UPDATE

444 N. Capitol Street NW, Suite 234 ♦ Washington, DC 20001 February 16, 2010

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Federal Budget Proposal Released: BAB's Made Permanent?

President Obama released his budget blueprint with a stimulus-related caveat: a proposal to make the Build America Bonds (BABs) permanent. Although the President's plan requests to make them permanent, it also reduces the federal subsidy on those bonds from 35 percent of the interest to 28 percent. BABs are a financing tool for state and local governments introduced in the American Recovery and Reinvestment Act last February. The bonds, which allow a direct federal payment subsidy, are taxable bonds issued by state and local governments that give them access to the conventional corporate debt markets. As a result of this federal subsidy payment, BABs have become increasingly popular with state and local governments, as they offer lower net borrowing costs and more sources of borrowing than traditional tax-exempt or tax credit bonds.

Judiciary Hearing Looks at Tax Nexus Between States and Federal Government

On February 4th, the House Judiciary Committee held a hearing entitled "State Taxation—The Role of Congress in Defining Nexus." The hearing examined the general issue of "nexus"—the connection that must exist between a taxing jurisdiction and the taxpayer it may seek to tax—in the context of state taxation. R. Bruce Johnson, chairman of the Utah State Tax Commission, pointed out that to the committee that:

"The economy of the 21st Century is

electronic and borderless. Most multi-state businesses can and do operate anywhere and anytime without the encumbrance of physical presence... That is why the current nexus standard for sales tax collection, requiring a physical presence to justify taxation, is not appropriate in the new millennium for either sales taxes or income taxes. Economic presence, taking into account appropriate apportionment formulae, is the fair way to establish basis for collection and payment of tax."

He also supplied the committee with a list of bills that he deems important for Congress to consider in the current Congress, some of which negatively affect the way states handle their taxation issues, notably:

- *Expanding Federal Refund Offset for State Tax Debts*
The State Tax Administration Assistance Act of 2009 (H.R. 2303) would expand the Federal Refund Offset Program to include the debts of nonresident state taxpayers. The bill follows the preparation of a report recommending the expansion of the Program by the Government Accountability Office (GAO-09-571R Tax Refunds Offsets)
- *Cell Phone Tax Preemption*
The Cell Tax Fairness Act (H.R. 1521 and S 1192) provides that "No state or political subdivision thereof shall impose a new discriminatory tax on or with respect to mobile services, mobile service providers, or mobile services property, during the five-year period beginning on the date of enactment of this act."

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- *Mobil Workforce Withholding and Taxation*

The Mobile Workforce State Income Tax and Fairness Simplification Act of 2009 (H.R. 2110) would prohibit states from imposing an income tax on an employee (or a withholding obligation on the employer) unless the employee is a resident of the state or is present performing services in the state for 30 days or more in a calendar year.

- *Business Activity Taxes*

The Business Activity Simplification Act (H.R. 1083) would require that a business have certain types of physical presence in a state before being subject to a state's business activity tax.

- *Automobile Rental Taxation*

H.R. 4175 would prohibit states or local governments from levying or collecting taxes on automobile rentals if the tax is not the same as that on a majority of other items of tangible personal property rented in a state.

A full legislative list, as well as testimony from the hearing, can be found at

http://judiciary.house.gov/hearings/hear_100204.html.