Federal Tax Reform Adds to State and Local Fiscal Challenges and Uncertainties

by Don Boyd and Lucy Dadayan

State and local governments have experienced very slow tax revenue growth recently. In the third quarter of 2016, tax revenue grew more slowly for both state governments and local governments than it had in the previous four quarters, on average (Table 1). The challenges of slow growth in tax revenue are compounded by new budgetary uncertainties under the new federal administration: Potential federal tax reform, budget cuts, efforts to revive health care reform, and other potential fiscal policy changes undoubtedly would have a direct impact on state budgets, as well as impacts on state economies. These

(continued on page 3)

Table 1: State and local government tax revenue has slowed

<table>
<thead>
<tr>
<th>State and Local Government Tax Revenue Growth</th>
<th>Year-Over-Year Change</th>
<th>(Dollar amounts in millions)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015 Q3</td>
<td>2016 Q3</td>
</tr>
<tr>
<td>State and Local Government</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total, major taxes</td>
<td>$287,327</td>
<td>$293,297</td>
</tr>
<tr>
<td>State Government</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total state taxes</td>
<td>$213,275</td>
<td>$160,974</td>
</tr>
<tr>
<td>Total major taxes</td>
<td>$158,249</td>
<td>$160,974</td>
</tr>
<tr>
<td>Sales Tax</td>
<td>69,167</td>
<td>70,560</td>
</tr>
<tr>
<td>Personal income tax</td>
<td>75,958</td>
<td>78,013</td>
</tr>
<tr>
<td>Corporate income tax</td>
<td>9,664</td>
<td>8,659</td>
</tr>
<tr>
<td>Property tax</td>
<td>3,461</td>
<td>3,743</td>
</tr>
<tr>
<td>Total, other state taxes</td>
<td>$55,026</td>
<td>$54,812</td>
</tr>
<tr>
<td>Local Government</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total major taxes</td>
<td>$129,078</td>
<td>$132,323</td>
</tr>
<tr>
<td>Sales Tax</td>
<td>20,383</td>
<td>20,717</td>
</tr>
<tr>
<td>Personal income tax</td>
<td>7,899</td>
<td>7,860</td>
</tr>
<tr>
<td>Corporate income tax</td>
<td>1,821</td>
<td>1,799</td>
</tr>
<tr>
<td>Property tax</td>
<td>98,975</td>
<td>101,947</td>
</tr>
</tbody>
</table>

Source: U.S. Census Bureau (tax revenue).
Notes: 1 The Census Bureau only reports on major taxes of local government (sales, personal income, corporate income, and property tax).
2 Average of four prior year-over-year percent change.
In this issue of the *Journal*, I would like to focus on NACA’s exciting membership developments and continued involvement in professional development events. Whether we are engaging the next generation of local government professionals or contributing to conference events, we are always at the task of developing best practices in professional county management.

Current NACA membership is the highest it has been in the association’s history and continues to grow! We now have over 640 members from across the country and are anticipating the inclusion of the great state of Virginia as a block member state. We owe a great deal of gratitude to NACA member, Bob Middaugh, Assistant County Administrator, Loudoun County, for working with the Virginia Local Government Management Association (VLGMA) to facilitate this process. We are thrilled to welcome local government professionals from Virginia to join our growing association and contribute to our shared effort to advance the profession.

In February, NACA members were leading the conversation and engaging the profession at this year’s NACo Legislative Conference in Washington, D.C. The article, “NACA Members at the 2017 NACo Legislative Conference,” captures some of the many moments featuring NACA members in pictures. Also, the sessions featuring Tim Hemstreet, NACA President-Elect and County Administrator, Loudoun County, Virginia, and Ian Coyle, NACA Vice President and County Administrator, Livingston County, New York, are available through NACo’s Conference Learning Center. A summary of the always engaging NACA Idea Exchange, which covered a wide variety of issues currently facing local governments, is also available on the NACA website.

With the generous support of ICMA-RC, we were pleased to have offered scholarships to the ICMA Emerging Professionals Leadership Institute (EPLI) in three regions to the following individuals:

- Midwest: Justyn Miller, Assistant to the County Administrator, Boone County, Illinois
- Southeast: Marsheka Dunn, Student, Tennessee State University
- Mountain Plains: Meghan Pierce, MPA Candidate, Fels Institute of Government, University of Pennsylvania

We congratulate them on receiving scholarships to attend these professional development opportunities held annually in the spring and look forward to seeing them advance in the profession.

Continuing with the topic of professional development events, the 2017 NACo Annual Conference & Exposition is being held in Columbus/Franklin County, Ohio, from July 21-24. In addition to our traditional Idea Exchange, NACA will be a major contributor to educational sessions throughout the conference. If your plans will take you to the NACo Conference, be sure to check the NACA website for further details as the events take shape. Remember to register and stay up to date with conference developments through the NACo Annual Conference site. Also, it’s never too early to submit your discussion topics for the NACA Idea Exchange to naca@icma.org. I hope to see many of you there.

Finally, remember to mark your calendars for the 2017 ICMA Annual Conference being held in San Antonio/Bexar County, Texas, from October 22-25. With generous support from ICMA-RC, NACA will offer the Tom Lundy Scholarship to a first-time attendee from a county. If you or someone you know is a suitable candidate, email us at naca@icma.org for more information.

*Peter B. Austin, NACA President*
*County Administrator, McHenry County, Illinois*
uncertainties put state forecasters in a tough position and make it harder to forecast state revenues with any precision. Tax reform, which appears to be up next on the federal agenda, could have especially large impacts.

States will need to worry about at least three kinds of effects from federal tax reform, all of which are highly uncertain at this point: (1) the impact of tax reform on the economy; (2) the direct impact of tax reform on state government tax bases in cases where states conform to federal tax law; and (3) indirect impacts on state tax revenue as taxpayers change their behavior in anticipation of, and in response to, federal tax reform. The first two effects are not likely to occur until state fiscal year 2018, even if a bill is enacted before the start of the fiscal year. But the third can and probably will affect tax revenue long before a bill is enacted, and may have already done so, as we discuss below.

As a candidate, President Trump proposed significant cuts in top income tax rates, elimination of the Affordable Care Act’s 3.8 percent net investment income tax imposed on higher-income taxpayers, and substantial increases in the standard deduction, among other things. The likelihood of lower tax rates in 2017 created a large incentive for high-income taxpayers to push income from wages, interest, and other sources out of 2016 into 2017, and to accelerate deductions into 2016, depressing taxable income in 2016. The proposed elimination of the Affordable Care Act net investment income tax provision created an incentive for high-income taxpayers to push capital gains out of 2016 into 2017, when the provision would not be in effect, and the proposed increase in the standard deduction created a modest incentive for middle-income taxpayers to accelerate itemized deductions into 2016, when these deductions will be most useful.

If these were the only effects, state taxable income clearly would be depressed in 2016, and pushed up in 2017, although the magnitude would be devilishly hard to predict. They would have depressed payments of estimated income tax this past December and January, consistent with evidence of weakness that we reported on in our latest State Revenue Report, and would lower payments of final returns in April and May of 2017, relative to what otherwise would occur. These effects are likely but could be camouflaged in part by another effect: Very high-income taxpayers had an incentive to accelerate payments of state and local government taxes into 2016, to the extent that these taxes are deductible on federal income tax returns, so that they could be used against 2016’s higher tax rates. Thus, these taxpayers would prefer to have paid state income taxes in December rather than in January or in April when returns are filed, and they also might have preferred to pay local property taxes in 2016.

Thus, taxpayers had incentives to reduce taxable income in 2016, but to increase payments of state and local government taxes in 2016 despite lower income. It will be very difficult for state revenue forecasters to sort this out. Behavioral incentives can have powerful effects on state tax revenue even if federal tax reform is not enacted or is substantially different than expected. The possibility and likelihood of reform is enough to change behavior. States will need to do their best to understand and estimate these potential impacts, and then buck up for the ride.

**Potential Federal Tax Changes and the Personal Income Tax**

Estimated payments of income tax are particularly difficult to interpret now. The stock market was up more than 9 percent in 2016, as measured by the S&P 500 index. All else equal, this would suggest relatively strong capital gains in 2016, which in turn could boost estimated payments of income tax. However, the picture is muddied by three factors.

First, estimated payments on 2015 income were strong, but perhaps stronger than underlying tax liability required, resulting in weak final returns the following April. Taxpayers may have had the ability to reduce their estimated payments in 2016 to make them more compatible with underlying liability and with safe harbors allowed in the tax law.

Second, late in 2016 taxpayers may have expected income tax cuts in 2017 under President Trump. Candidate Trump’s proposed top-rate cuts would affect some forms of income upon which taxpayers make estimated payments, such as interest and dividends, and his proposed elimination of the ACA net investment income tax would have affected capital gains. And, of course, investors might have expected further cuts for investment income as a result of congressional negotiations. These potential changes created incentives for taxpayers to push income out of 2016, into 2017, when rates might be lower. Capital gains are the easiest form of income to defer — it is easier to delay selling stocks than it is, say, to postpone working and receiving wages (if you need the money), and it is easier than convincing a corporation to defer paying dividends, although some of that could occur with closely held corporations. Other kinds of income could be affected, too. For example, retirees could choose to delay withdrawals from IRA and 401(k) accounts. But capital gains deferrals are likely to be the largest sort of deferral because deferring them is easy and because they are taken largely by very high-income taxpayers for whom tax-rate reductions provide the greatest bang for the buck.

How big could the deferral be? We estimate, based on our analysis of the

(continued on page 8)
Be prepared- you will be hacked!!

I remember attending a cybersecurity conference a few years ago, and a wise speaker offered the following sage advice: “If your Chief Information Officer tells you that you are safe from hacking, fire that CIO!” This tells, perhaps in chilling fashion, the truth that is even more so today- there is no guarantee of cyber-safe operations, even if we spend bundles on it, hire expert staff and get the latest technology shields and consultants. As recent newspaper headline events will attest, whether they describe the OPM hack, the release of Target customer data or the other governments’ shenanigans, there is no such thing as complete security.

If that is the case, what should a manager do to be prepared for the eventuality of a successful attack? Within the storm of products and services which focus on preparing and defending, little is said or advice offered for what to do after an attack has hit. So, let me offer a few strategies for your consideration:

1) Have policies in place for ransomware- when to pay, what limits to observe, who to involve in the final decision. If an employee downloads a virus that locks up all machines in your organization with screens flashing “Pay $x or you will not see your data again,” sometimes the x is sufficiently small (in a recent incident, a hospital was asked for $17,000) that it may be easier to pay rather than incur the inconvenience of a shutdown of services and protracted restoration activities. If you are not prepared to pay, there is an alternative- erase all the “bad” data (hackers usually encode everything in the system and hold the cipher key until they are paid) and start all over again with a secure copy- which brings us to the second strategy…

2) Make sure backups of your data are routinely done and safely stored- so that if a hacker “destroys” all your data, you can have them restored in a jiffy (at least back to the point in time when the backup was done). It’s a bit like the magic done when you buy a new smart phone and within seconds, all the data that was on your old phone appears on the new device. Same principle, only this restoration could involve tax rolls, employee files and payroll instructions. Do you know how often these backups are done? And where they are stored? Which brings us to the third strategy, mainly…

3) Consider using a shared data centers strategy with neighboring jurisdictions for alternate depositories of data. In this way, data is stored not only in your computer center, but also in a physically different location, by a trusted party; such a strategy also opens the door for other collaborations in the cyber security space.

4) Develop and practice Continuity of Operations plans which do not involve computers or the internet. Yes, paper and pencil is what I am talking about. Public safety agencies routinely drill for dispatching and documenting incidents should there be a catastrophic failure of their automated dispatch and other systems — a sort of “work around” to ensure continuous service. Why should we not expand this notion to other departments and agencies? Such drills routinely bring up issues that we need to face sooner or later- for example, the preservation of paper records and their retention.

5) Alternate pathways for mission-critical services should be explored before catastrophic failures occur. For example, if you have your payroll system running on premises, you may want to explore the benefit of a standby agreement with a cloud provider or local bank to take over that service for a defined period of time. New operational pathways will need to be established and reviewed from a legal and policy perspective and then kept at the ready. If you wait to develop a payroll capability when there are no files available to you, it will be too late!

6) Finally, many insurance firms are beginning to offer cyber insurance that explicitly covers a variety of cyber incidents; the trick is to define the specific incidents that might keep you up at night, and secure your organization (at least financially) by purchasing insurance around that incident and its subordinated risks. These ideas may not exactly match your local conditions. But if one or more rings a distant or nearby bell in your mind, get a group of trusted collaborators together (finance, IT, legal, risk management, public safety and homeland security are a good start at a departmental roster) and explore ways that you, too, can “be prepared” if the bad guys break through! Challenge them to come up with a preparedness plan, and then find the resources to implement it as if your future depends on it- because it does!
The WIR (Western Interstate Region Conference) is upon us! Scheduled for May 24-26 in Deschutes County (Sun River), Oregon. The NACo Western Interstate Region (WIR) Conference is hosted each year by a county within the fifteen Western states — Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming.

The WIR brings together county officials not only from these states, but nationally, to focus on pressing issues facing counties and our residents. It provides attendees with the opportunity to interact with federal, state, and regional policymakers and participate in educational sessions and take home tools to address challenges. Don’t miss this valuable chance to join your peers and learn new ways to help lead America’s counties.

The NACo Board of Directors will be meeting at the Annual Conference in Franklin County/Columbus, Ohio, this coming July 21–24. This is one of the four Board meetings scheduled each year. Once the agenda packet for that meeting is available, I will provide information on specific issues which might be of interest to our members.

The NACo Board did elect me to fill a vacant seat on its Audit Committee. As a result your NACA representative now has a seat on both the Finance and Audit Committees.

Most recently the Finance Committee met via telephone conference and approved a budget amendment providing additional funding for legislative support concerning healthcare. There is considerable speculation that, surprise, surprise, the beaten horse may not yet have succumbed. I think we all know that at some point the issue will continue to be considered.

After WIR it’s on to Franklin County, Ohio for the Annual Conference. Hope to see many of you there.

---

Two-Way Communication is Key in Pension Reporting and Disclosure

by Amber Snowden

Comprehensive and timely reporting and communication has become increasingly important as employees, policy makers, and other stakeholder groups attempt to navigate the changing public pension landscape. The latest report from the Center for State and Local Government Excellence (SLGE), “Public Pension Reporting and Disclosure: The Current State of Practice and Examples of What Works Well,” examines the reporting practices of eighty-three of the largest statewide pension plans and offers case studies of five pension systems that provide lessons learned for how to effectively communicate relevant information.

Key findings include:

- A majority of systems follow GFOA reporting standards in producing their Comprehensive Annual Financial Reports, with nearly half of the sample also developing a plain language annual financial report;
- Virtually all of the systems develop an actuarial valuation (annually), an experience study (at an average of every five years), and have a funding policy produced by the system and/or established in state statute;
- Active engagement with key stakeholders is a hallmark of systems with robust communications and reporting initiatives;
- Leveraging social media and/or establishing advisory committees has helped systems garner detailed feedback from their stakeholders.

Read the report online here.
The start of the Trump Administration has been a time of considerable change in outlook and goals, as is typical during a transition to a new Presidential administration and party. Both legislative action and regulatory activity may bring significant changes to public retirement plans through tax reform and other legislation as well as through substantial modification or rescinding of regulations promulgated by the Obama Administration.

**Tax Reform Legislation.** Significant reform of the tax code has been under discussion for a number of years, where rates would be substantially decreased and funded through substantial reductions in tax deductions and exclusions. Both the Trump Administration and Congress have stated that tax reform is a priority for 2017.

The Administration and Congress started the year with an attempt to replace the Affordable Care Act, and the difficulty of meeting that goal highlights the effort required to achieve consensus among Republicans, even on issues of apparent consensus like tax reform. With the start of the 115th Congress, House Ways and Means Committee Chairman Kevin Brady (R-TX) signaled his intent to push ahead on tax reform. Using the tax reform blueprint released by House Republicans in June 2016 as a starting point, Chairman Brady met in mid-December with his Republican committee members to discuss the path forward. That meeting was followed with the convening of informal Ways and Means Committee Republican working groups, including one on retirement savings, to consider and address tax reform issues. The blueprint would eliminate most itemized deductions but pledges to retain retirement savings incentives, without providing much detail. The blueprint also suggests a need to consolidate the various retirement savings programs. House Republicans would like to introduce tax reform legislation in the Ways and Means Committee this spring.

During tax reform discussions over the past seven years, a number of proposals have been made that would affect public retirement plans, including consolidation of Sections, 401(k), 457(b) and 403(b) of the tax code, mandated participation in Social Security by new public sector employees, freezing of contribution limits for ten years, and bifurcation of contribution limits, limiting pre-tax contributions to one half of the total, with the remainder being limited to post-tax Roth contributions. Consideration also is being given to mandating that all elective employee contributions be made on a Roth basis, eliminating the immediate tax benefit of pre-tax employee contributions.

**State and City Retirement Plans for the Private Sector.** In February, the House passed two Congressional Review Act (CRA) resolutions to overturn the Employee Retirement Income Security Act (ERISA) safe harbor regulations for states and cities that were issued by the Department of Labor (DOL) under the Obama Administration. In late March, the Senate passed a companion bill to negate the ERISA safe harbor for city-run plans, which is now on President Trump’s desk for signature. We anticipate that the CRA for state-run plans will be taken up by the Senate after the April congressional recess. These safe harbors would permit states and certain large cities to require private employers that do not otherwise offer a retirement plan to participate in a state- or city-run payroll deduction IRA without the IRA being subject to ERISA, as long as certain conditions were met.

The CRA empowers Congress to overrule regulations through an expedited legislative process, and also prohibits the reissuing of the rule in substantially the same form. Congress has a window of 60 legislative days in which to negate regulations under this process. Prior to 2017, the CRA was successfully employed only once to overturn a regulation, but the 115th Congress has already sent more than a dozen CRA bills to President Trump for signature.

While successful passage of both CRAs would not preclude states and qualifying cities from implementing programs, they would not receive an automatic exemption from ERISA, which may require additional legislative action, and also may make judicial challenges more likely to occur. Despite the CRA challenges, the boards tasked with implementing the California and Oregon state-run programs have indicated that they intend to find a way to move forward with their programs.
regardless of the outcome of the CRA resolution on the state-run mandatory IRA safe harbor regulation.

**Fiduciary Rule Deferred.** The DOL adopted a regulation in April 2016 that defines who is a fiduciary investment adviser and the responsibilities of entities and individuals who serve in that capacity. The DOL has issued a regulation deferring the applicability date by 60 days from April 10, 2017 to June 9, 2017.

DOL’s delay facilitates a review ordered by President Trump in a memorandum he signed on February 3, which directed DOL to “prepare an updated economic and legal analysis concerning the likely impact” of the fiduciary rule, including the likelihood of harm to investors. If DOL comes to a negative conclusion on the rule, DOL is instructed to propose a modification to or rescission of the rule. On March 2, DOL published a proposal to delay the applicability date of the fiduciary rule by 60 days. Within a 15-day comment period, DOL received more than 1,000 comments on the proposed delay along with many more thousands of signed petitions, both in support of and in opposition to the delay. A second 45-day period for comments on the issues the President raised in his memorandum will have concluded on April 17.

This activity establishes the basis for consideration of significant change to or rescission of the fiduciary rule. President Trump’s appointment for Secretary of Labor, Alexander Acosta, testifying before the Senate Health, Education, Labor, and Pensions Committee on March 22, 2017, emphasized that he would follow President Trump’s mandate to review the fiduciary rule and repeal or revise the rule if any of the criteria laid out in the executive order are not met. We will report on changes made to the fiduciary rule in a future column.

---

**2017 NACo Achievement Awards Announced**

For this year’s awards, the National Association of Counties (NACo) recognized 605 entries from 108 counties in 29 states. Eighteen counties and organizations won 2017 NACo Best in Category Achievement Awards and thirteen of these Best in Category Awards went to counties with NACA members! Congratulations to the following counties and NACA members for their organizations’ achievements:

**County of Coconino, Arizona**
*Best in Category: Criminal Justice and Public Safety – Adult Probation Distance Learning*
- Cynthia Seelhammer, County Manager
- Richard Baron, Process & Project Coordinator

**County of San Bernardino, California**
*Best in Category: Health – Everyone SWIMS Self (Sufficient, Well-being, In House, Mental Health, Services) Program*
- Gregory Devereaux, Chief Executive Officer

**County of Los Angeles, California**
*Best in Category: Information Technology – LEADER Replacement System (LRS)*
- Sachi Hamai, Chief Executive Officer

**County of Orange, California**
*Best in Category: County Administration and Management – Implementing a Shared Services Strategy for Information Technology*
- Frank Kim, County Executive Officer

**County of Adams, Colorado**
*Best in Category: Planning – The District Plan*
- Todd Leopold, County Manager

**County of Camden, Georgia**
*Best in Category: Risk and Emergency Management – Brush Truck and Tanker Retrofit Program through a Public-Public Partnership*
- Steve Howard, County Administrator

**County of Oakland, Michigan**
*Best in Category: Community and Economic Development – Realtor to the Rescue*  
*Best in Category: Parks and Recreation – OUCARES Day Camp and Staff Training*
- Robert Daddow, Deputy County Executive

**County of Hennepin, Minnesota**
*Best in Category: Libraries – Cedar-Riverside Community Outreach Program*
- David Hough, County Administrator
- Kareem Murphy, Deputy Director of Intergovernmental Relations

**County of Dakota, Minnesota**
*Best in Category: Children and Youth – Birth to Age Eight Collaborative Initiative*
- Matt Smith, County Manager

(continued on page 9)
last time major changes in federal tax rates on capital gains were anticipated, that taxpayers might defer as much as 10 to 20 percent of capital gains from 2016 to 2017 or later, although this is an educated guess (backed by data analysis). This seems reasonably consistent with the latest analysis from the Congressional Budget Office, which estimated a 10.4 percent decline in capital gains in 2016, despite the strong stock market, followed by an 11 percent bounce-back in 2017. Whether states are expecting such a decline and bounce-back will vary from state to state. California’s Department of Finance estimates that capital gains declined by 3 percent in 2016 and will decline by an additional 4 percent in 2017. The Legislative Analyst’s Office in California commented that the governor’s income tax estimate appears too low, and noted that the capital gains decline projected for 2017 seemed at odds with the governor’s forecast of stock market growth. New York anticipates a capital gains decline of 3 percent in 2016 followed by 7 percent growth in 2017. Other states also may have greatly varying views.

The third factor that could influence the income tax in the short term is that despite the incentive to push income out of 2016 and into 2017, taxpayers also had an incentive to pull

Editor’s Note: An Important Request from your Managing Editor

As Congress works on Tax Reform, please remind your Federal Representatives, now, that reducing or eliminating the Federal tax deductibility for municipal bond interest means much less infrastructure renewal than we are doing now and the loss of jobs. Also lost will be the new construction of schools and hospitals and libraries and the associated jobs.

NACo and ICMA have done excellent policy analysis work, and overwhelmingly agree that it would be a major regression for everyone. All of us need to help get this message of urgency to our Members of Congress as they are currently considering tax reform.

Thank you.

— Bob McEvoy, Managing Editor, The Journal of County Administration
had significant declines in overall state tax revenues collections in fiscal year 2016. In addition, the oil- and mineral-dependent states have seen declines or weakening in employment. These states will continue facing fiscal challenges in the absence of significant policy changes.

WITH SINCERE APPRECIATION TO OUR CORPORATE SPONSORS
The National Association of County Administrators

PROGRAMMATIC SPONSOR

ICMA-RC
BUILDING PUBLIC SECTOR RETIREMENT SECURITY

FRIENDS OF NACA

George K. Baum & Company
INVESTMENT BANKERS SINCE 1928
eCIVIS
Kutak Rock LLP
The Ferguson Group LLC
Quintel Management Consulting
Republic Services
TechSolve