

Builders and Developers Win Huge Legislative Victory for Affordable Housing

On July 2nd, Pennsylvania Governor Tom Wolf signed House Bill 751 (Act 53 of 2019) reforming the way private water and sewer utilities' income tax liability is calculated. The tax change specifically relates to a federal tax provision affecting private water and sewer utilities when they extend service to a new area. With more than 3,800 member companies, Pennsylvania Builders Association Members annually invest millions of dollars in water and wastewater infrastructure that is donated to private water/sewer companies after development is complete. Act 53 becomes effective August 31, 2019.

Investor-owned water companies previously enjoyed a federal tax exemption for such infrastructure known as contributions in aid of construction (CIAC), but a little-advertised change in the Federal Tax Cut and Jobs Act (TCJA) eliminated this exemption in 2018. Prior to the passage of Act 53 this tax impacted developers, increasing the cost of every new home by thousands of dollars.

PA Builders Association Fixes Federal Tax Issue in Extraordinary Four Month State Legislative Win

In 2018, PBA engaged in litigation before the Pennsylvania Public Utility Commission (PUC) to change private water company tariffs to mitigate the effect of the TCJA. When the PUC ruled against PBA's interests in a tariff rate change case, along a party line vote in February of 2019, attention immediately turned to Pennsylvania's General Assembly to change the underlying Pennsylvania law relating to taxable contributions.

The "no gross up" method (also called the "utility finance" or "socialization" method) adopted in Act 53 requires the utility to pay the tax and then adds that amount to the utility's rate base for all customers. Essentially, the utility finances the payment of the tax expense and the utility gets reimbursed from rates over the life of the depreciating CIAC asset. Eliminating the requirement that developers fund the utilities tax obligation up front.

Act 53 of 2019 provides significant savings for developers, homebuilders, and homebuyers. Pennsylvania Home Builders and Developers are the only advocates that consumers can trust to safeguard the integrity of affordable housing.

Background

Effective January 1, 2018 the TCJA required that water companies include advances for construction and Contributions in Aid of Construction in taxable income. Private water companies in turn passed the tax burden on to developers thereby making their cost to install water and wastewater infrastructure even higher. Additionally, because Pennsylvania Corporate Net Income Tax is based on federal taxable income, CAC and CIAC are also state taxable income to water and wastewater utilities. Pennsylvania Developers were required to furnish either a cashier's check or letter of credit in the amount of 40% of the total project cost (including engineering and inspections fees) to reflect the gross-up for the private water/sewer companies state and federal tax liability on the contributed property.

