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State Private Activity Bond Volume Caps Boosted 5.2%.

WASHINGTON – States can issue up to $37.55 billion in new tax-exempt private activity bonds in 2018, 5.2% more than last year, after these bonds barely escaped termination in the recently enacted tax overhaul legislation.

The increase is $1.86 billion from the $35.69 billion national PAB volume cap for 2017 for 50 states, the District of Columbia and Puerto Rico.

This year's formula allows each state $105 per capita with a guarantee of at least $311.38 million for states with smaller populations.

That's an increase from the formula for 2017, which was $100 per capital or a minimum of $305.32 million for lower population states.

PAB volume caps increased at least 6% or more for a dozen states.

Fast growing Florida leads the nation with the largest percentage increase of 6.9% to just over $2.2 billion in new PAB issuing authority, up from $2.06 billion last year.

The nation's most populous state, California, has the largest dollar amount of volume cap — $4.15 billion – up 5.8% from roughly $3.93 billion in 2017.

In addition to California and Florida, eight other states also have more than $1 billion in PAB issuing capacity: Texas with $2.97 billion, New York with $2.08 billion, Illinois and Pennsylvania, with $1.34 billion each, Ohio with $1.22 billion, Georgia with $1.09 billion, North Carolina with $1.08 billion, and Michigan with $1.05 billion.

Seventeen states and the District of Columbia have the minimum caps of $311.38 million.

Annual population estimates for the states, published by the U.S. Census Bureau in late December, are used in determining the caps. The Internal Revenue Service published the formula for the 2018 volume caps in October in Revenue Procedure 2017-58.

The fate of new tax-exempt PABs was in limbo until the end of the year because of congressional debates over federal tax reform legislation.

Congress was divided on whether to terminate new tax-exempt PABs after Dec. 31, 2017. The House version of the bill would have terminated new PABs while the Senate bill, which prevailed on this issue, would leave them untouched.

The final bill signed by President Trump on Dec. 22 terminated advance refundings after Dec. 31 and made tax-exempt bonds in general a less attractive investment for corporate purchasers because of the decrease in the corporate tax rate to 21% from 35%.

The Internal Revenue Service doesn't track how much each state uses of its annual volume cap.

“I don’t think that’s generally our function,” Christie J. Jacobs, head of the Indian Tribal Affairs/Tax-Exempt Bond Office, told The Bond Buyer last month. “I know there have been industry concerns about keeping track of those volume caps and I know we’ve looked some at what the states do to keep track of their own volume caps and I don’t think we found those approaches lacking.”

Since the framework for private activity bonds was essentially created in the Revenue and Expenditure Control Act of 1968, the number of eligible purposes or projects for which they can be used has gradually increased from 12 activities to 22, according to the nonpartisan Congressional Research Service.

Thirteen of those 22 activities are subject to annual state volume caps. Among them are multifamily housing bonds, single-family mortgage revenue bonds and qualified student loan bonds.

Others include small issue bonds, redevelopment bonds, exempt facility bonds such as water and sewage facilities, hazardous waste facilities and other utility facilities.

Among the PABs not subject to volume caps are those financing airports, docks, wharves and projects for nonprofit 501(c)(3) organizations such as hospitals and universities.

A bond is a private activity bond if more than 10% of the proceeds are used for private business and more than 10% of the proceeds are secured by or derived from a private business. A PAB is only tax-exempt if it would finance a project that falls into certain categories specified by the tax code.

The tax code also contains a private loan financing test. Under this test, a bond is not tax-exempt if more than the lesser of 5% or $5 million of the proceeds of the issue are to be used directly or indirectly to make or finance loans to persons other than governmental persons.

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