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Ohio Airport Financing May Depend on New Political Subdivision Rule.

WASHINGTON - Four Ohio Congressmen are raising concerns that the Internal Revenue Service and Treasury Department's proposed definition of a political subdivision would jeopardize funding for a \$35 million terminal improvement project planned for Akron-Canton Airport.

The project is in the design phase, and will require bond funding for construction to begin as early as the spring or summer of next year, Rick McQueen, president and CEO of the airport, told The Bond Buyer on Monday. The IRS' new definition of political subdivision could have national implications, he said.

Reps. Jim Renacci, R-Ohio; Bob Gibbs, R-Ohio; Tim Ryan, D-Ohio; and Dave Joyce, R-Ohio, wrote a two-page letter to the IRS during the agency's comment period earlier this year. Should the rules be finalized in their current proposed form, the Congressmen said, Ohio's regional airports - specifically the Akron-Canton Airport - may be hampered in their ability to issue tax-exempt bonds to fund infrastructure improvements.

"If at any time the IRS determines that the issuer is operating in a way that either does not provide a significant public benefit, or that provides more than an incidental benefit to any private party, then the status of all of the issuer's bonds issued after the effective date of the regulations would be in jeopardy," the Congressmen wrote.

McQueen said that the airport wrote to the IRS earlier this year asking the agency to clarify its issues with airport authorities under current regulations. The IRS responded roughly a month and a half ago with a standard letter that they would be reviewing the airport's comments, he said.

"It's not just airport authorities impacted in the state of Ohio, but also other multi-jurisdictional boards throughout the country," McQueen said. "There are a lot of people that could be impacted by this. My concern is the organizations that aren't aware of this potential change."

Whether an entity qualified as a political subdivision has historically been based on whether it had the right to exercise a substantial amount of at least one of three sovereign powers: eminent domain, taxation and policing.

But the now-controversial regulations the IRS and Treasury proposed in February would add two new requirements: political subdivisions must serve a governmental purpose "with no more than an incidental private benefit" and they must be governmentally controlled.

In their two-page letter to the IRS and Treasury, the Congressmen said they were concerned that the Akron-Canton Airport's "critical" \$35 million terminal improvement project could be "negatively impacted" by the new requirements.

The Akron-Canton Airport, located roughly halfway between the two cities with portions in both Summit and Stark counties, is the only commercial airport in Ohio governed by an airport authority.

Its eight-member board includes four members appointed by the Stark County Commissioners and four appointed by the Summit County Executive and approved by council.

In their letter to the IRS, the Congressmen stress that most of Ohio's airport authorities, including that of Akron-Canton Airport, control their own budgets rather than the airport's appointing authorities or the counties they operate in.

It is an independent political subdivision of the state and not a component unit of any other government entity, according to the congressmen. Because both counties the airport lies in appoint an equal number of board members, the authority "does not appear to meet the single entity control requirement," they added.

They said that many Ohio airport authorities issue tax-exempt bonds for purposes that could be construed as private benefit, such as parking garages that could also benefit the private sector. Under current IRS and Treasury regulations as well as Ohio state law, these types of incidental private benefits satisfy the public purpose requirements, making any related private benefit permissible, the congressmen said.

"We are concerned ... with the IRS's future interpretation of this new 'limited private benefit' test, which may also pose a federal question and may not follow state law," the letter read.

McQueen said the situation is urgent for the Akron-Canton Airport project.

"We're dealing with a building that is 54 years old," McQueen said. "We will need to have bond capabilities to fund this. It's very difficult to come up with that money upfront to build the project."

The terminal improvement project is part of a 20-year, \$240 million master plan approved by the Federal Aviation Administration in 2015. The last bonds issued by the Akron-Canton Regional Airport Authority came in 2007, when \$16.2 million in bonds were issued to finance terminal and gate improvements, according to the Municipal Securities Rulemaking Board's EMMA website.

McQueen said he couldn't provide a cost estimate comparing the airport's ability to issue bonds under current regulations versus the proposed rules.

"I can't tell you the difference today if it were to be a tax-exempt versus non tax-exempt funded project, but obviously when you're doing a governmental project you try to be as fiscally responsible as possible," McQueen said. "But it would increase the cost for debt service no doubt."

The proposed rules have largely been met with opposition from groups including the Government Finance Officers Association and the Securities Industry and Financial Markets Association, which have said the rules could potentially upend the muni market. Several port and airport authorities, water and sewer issuers, and utility associations were also among those that submitted written comment to the IRS expressing concerns over what the proposed rules could mean for their tax-exempt status.

The IRS and Treasury received 132 comments during the public input period, which lasted from February through late May. The agencies held a public hearing on June 6, where several market groups called for the withdrawal or re-proposal of what they felt were unnecessary or unfair proposed rules.

During the hearing, Thomas Devine, general counsel for the Airports Council International - North America, said what he called "non-problematic" entities like airport authorities had a "bullseye" on their backs.

John Cross, the Treasury Department's associate legislative tax counsel, has said that the new rules were proposed in response to concerns over who was controlling political subdivisions. Despite IRS audits that found some private entities were wielding significant control over political subdivisions, Cross said that the agency is not targeting airports.

IRS officials could not be reached for comment Monday as to when the proposed regulations could be finalized.

The Bond Buyer

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July 25, 2016

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