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Orrick: To Infinity and Beyond! A New Tax-Exempt Bond to Finance Spaceports

The One Big Beautiful Bill Act, signed into law on July 4, authorizes tax-exempt bond financing for spaceports, treating them similarly to bonds issued by public authorities for airport improvements.

This new category of bond financing offers numerous benefits for private entities and corporations, as well as space agencies involved in space exploration and related activities.

- **Lower Cost of Capital.** Spaceports can utilize tax-exempt private activity bonds (“PABs”) for spaceport development, lowering financing costs.
- **Encouraging Private Investment.** This new bond provision aims to shift the funding burden away from taxpayers by leveraging public-private partnerships for spaceport construction, expansion, and related improvements.
- **No Volume Cap.** Unlike many other types of PABs, bonds issued for spaceports are not subject to volume cap, meaning that there is no statutory limit on the amount of bonds that may be issued.

Under this new provision, a “spaceport” is defined as any facility (including fixed assets and related equipment) located at or in close proximity to a launch site or reentry site used for the following:

- Manufacturing, assembling or repairing spacecraft, space cargo, other facilities described below, or any component of the foregoing,
- Flight control operations,
- Providing launch services and reentry services, or
- Transferring crew, spacecraft participants, or space cargo to or from spacecraft.

Similar to airport improvements financed with PABs, spaceport bonds would be issued by authorized governmental issuers to finance spaceports. Pursuant to the governmental ownership requirements applicable to this category of PABs, the financed spaceport assets must be owned by a State or local government unit, but could be leased to a private entity/operator, where such lease payments (and possibly other amounts) would pay debt service on the bonds.

The statute contains numerous defined terms which are beyond the scope of this summary, however, some of the more critical defined terms are set forth below:

- **Launch Site:** The location on Earth from which a launch takes place and the necessary facilities at that location.
- **Launch:** To place or attempt to place a launch vehicle or reentry vehicle, along with any payload or human being from Earth, into a suborbital trajectory, Earth orbit in outer space, or otherwise in outer space, including activities involved in the preparation of a launch vehicle or payload launch.
- **Reentry Site:** The location on Earth to which a reentry vehicle is intended to return.
- **Reentry Vehicle:** A vehicle designed to return from Earth orbit or outer space to Earth, or a reusable launch vehicle designed to return from Earth orbit or outer space to Earth, substantially intact.

Importantly, given the federal government's interaction with respect to space operations and space flight, the legislation makes helpful accommodations regarding federal use and payments which would otherwise create tax concerns for the bonds.

As a general matter, tax-exempt bonds may not be directly or indirectly guaranteed by the federal government. The statute provides that a spaceport bond will not be treated as federally guaranteed because of the payment of rent, user fees, or other charges by the United States (or agency thereof) in exchange for the use of the spaceport.

For example, assume an authorized issuer issues bonds to finance a spaceport to be leased to Space Co. The bonds are secured and paid with Space Co. lease payments. Space Co. has long-term contracts with NASA and other federal agencies for use of the spaceport, including services provided by Space Co. for satellite operations. The lease payments made by Space Co., which will include payments made by federal agencies, will not cause the bonds to be federally guaranteed.

Effective Date: Bonds may be issued to finance spaceports on or after July 5, 2025.

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