
Bill Aims to Rescue Cost-Saving Tool for Nonprofit Hospitals.

The measure would restore tax exemption for advance refunding bonds, which nonprofit organizations have used to finance major projects and manage debt.

The tax-exempt status for advance refunding bonds ended January 1 as a result of the Tax Cuts and Jobs Act, which President Donald Trump signed into law late last year. But a bipartisan bill introduced in the House this week would undo that, restoring a tool nonprofits have used to keep their costs down.

Reps. Randy Hultgren, R-Ill., and Dutch Ruppersberger, D-Md., who co-chair the Congressional Municipal Finance Caucus, introduced the measure Tuesday, arguing the bill is warranted because hospitals and other public and private entities serving local communities across the country need access to affordable debt.

"In recent years, tax-exempt advance refunding bonds have saved Illinois taxpayers $80 million per year on average," Hultgren said in a statement. "Given that interest rates are expected to increase, this tool is especially important to states and local governments responsibly planning for the future."

Ruppersberger said the tool had been saving nearly $37 million annually in Maryland.

The legislation won support from the American Hospital Association, which published a letter praising Hultgren for the bill.

"Tax-exempt advance refunding bonds were an important financing tool that allowed 501(c)(3) hospitals to respond to credit market conditions to reduce the cost of capital," AHA Executive Vice President Tom Nickels wrote. "They have resulted in billions of dollars of savings for hospitals and the health care system. Loss of the ability to restructure debt with tax-exempt advance refundings will divert resources from patient care and could diminish access to needed health care services."

There was concern among healthcare leaders last fall that Congress would revoke access to tax-exempt private activity bonds (PABs), as earlier drafts of the tax law would have done. But Hultgren and other lawmakers persuaded their colleagues to preserve PABs.

Their efforts to spare the tax-exempt status of advance refunding bonds, however, were unsuccessful, which is why they're circling back now to push for the policy as a standalone measure.

Original cosponsors of the bill, H.R. 50003, include Reps. Luke Messer, R-Ind.; Ed Royce, R-Calif.; Dan Kildee, D-Mich.; and Michael Capuano, D-Mass.

The bill was sent to the House Ways and Means Committee, where it is unlikely to find support from chairman Rep. Kevin Brady, R-Texas, according to The Bond Buyer's Lynne Hume, who reported Wednesday that Brady this week reiterated his opposition to expanding tax-exempt PABs or restoring advance refundings.

Health Leaders Media

by Steven Porter

February 15, 2018

[Bill Aims to Restore U.S. Tax Break for Advance Refunding Muni Bonds.]

CHICAGO — The federal tax exemption for a type of debt refunding used by U.S. states, cities, schools and other issuers to lower borrowing costs would be restored under a new bipartisan bill in Congress, two of its sponsors said on Tuesday.

The sweeping tax bill signed into law by President Donald Trump in December ended the federal tax break for new advance refunding bonds, which are used to refund outstanding debt beyond 90 days of its call date to take advantage of lower interest rates in the municipal market.

Bill sponsors U.S. Representative Randy Hultgren, an Illinois Republican, and U.S. Representative Dutch Ruppersberger, a Maryland Democrat, said the legislation would save state and local governments millions of dollars, allowing them to invest in infrastructure and lower taxes.

“Given that interest rates are expected to increase, this tool is especially important to states and local governments responsibly planning for the future,” Hultgren said in a statement.

The two lawmakers co-chair the Congressional Municipal Finance Caucus, which unsuccessfully pushed to keep advance refunding bonds out of the tax bill.

Advance refunding bond issuance totaled $91 billion in 2017, accounting for 22.2 percent of supply last year, according to Thomson Reuters data. The municipal bond market is roughly $3.8 trillion in size.

The termination of the tax break for interest earned on the debt is expected to generate $17.3 billion for the U.S. government between 2018 and 2027.

Current debt refundings, which are done within the 90-day call date window, remain tax exempt.

By REUTERS

FEB. 13, 2018, 12:51 P.M. E.S.T.

(Reporting By Karen Pierog; Editing by Daniel Bases and Tom Brown)

[Advance Refunding Legislation Announced in the House.]

On February 13, 2018, Representatives Randy Hutgren (R-IL), Dutch Ruppersberger (D-MD) and Luke Messer (R-IN), with full support of the BDA, plan to introduce [bipartisan legislation] that would fully reinstate the advanced refunding of municipal bonds.

Background

Municipal advanced refunding were repealed in the *Tax Cuts and Jobs Act.* Groundwork was laid by the BDA for potential fixes in 2018. Passage of this bill would fully reinstate the ability of state and local governments to advance refund tax-exempt municipal bonds, including private activity bonds and qualified 501 c (3) bonds.

2018 will be pivotal in this effort as Congress is expected to produce multiple technical fix packages in response to the passage of the Tax Cuts and Jobs Act.

Next Steps

Later today, the bill is expected to be formally announced. At that time, the BDA will send a **Call to Action** to membership. The BDA is currently coordinating lobbying efforts with the MBFA and the issuer community and grassroots engagement will be critical in the process of gaining support for this legislation. **Your Member of Congress need to hear from you and any issuer clients.**

On February 14, 2018, with support of the BDA, Representatives Randy Hutgren (R-IL), Dutch Ruppersberger (D-MD) and LukeMesser (R-IN) introduced bipartisan legislation, H.R. 5003, that would fully reinstate municipal advance refundings including private activity bonds and qualified 501c (3) bonds. A copy of the bill can be viewed [here].

2018 will be pivotal in this effort as Congress is expected to produce multiple technical fix packages in response to the passage of the Tax Cuts and Jobs Act and is working towards a robust debate on infrastructure.

Call to Action

Now is the time to reach out to your Members of Congress and urge them to support H.R. 5003!

It is also vital that your issuer clients reach out to their Member of Congress. Their voice is needed for this legislation to advance.

A draft sample letter for you to send can be viewed [here].

You can find your House of Representatives contact information to submit the letter [here].

Please send us a copy your final letter so that we can follow-up with Member of Congress staff members.

We also ask that you call your Members office and ask to discuss co-signing the bill with the tax legislative-aide. Multiple points of contact within the office will be beneficial.

Bond Dealers of America

February 14, 2018

States Must Act Now on Opportunity Zone Tax Incentives That Target Low-Income Communities.

The IRS and the Community Development Financial Institutions Fund (CDFI Fund) simultaneously released guidance yesterday on the procedure for designating population census tracts as Qualified Opportunity Zones (QOZ). States must act quickly if they want to designate any QOZs, which will be eligible for federal tax incentives designed to encourage new capital investment in those areas.

The ability to designate QOZs was provided to States—which in this case also includes the District of Columbia and U.S. possessions—by The Tax Cuts and Jobs Act—enacted on December 22, 2017. In fact, the only formal role of a State in this process would be to submit its nomination of census tracts to be designated as a QOZ to the Secretary of the U.S. Department of the Treasury by March 21, 2018.

IRS Revenue Procedure 2018-13 provides a "safe harbor" for States that rely on the CDFI Fund's Opportunity Zone Information Resource, which identifies more than 41,000 population census tracts that are eligible for designation as QOZs. The Revenue Procedure also promises further information on the nomination process in coming weeks, including how States can access Treasury's online Nomination Tool for QOZs and how to request a 30-day extension of the nomination period, from March 21 to April 20, 2018. In the period before the submission deadline, a State can review the requirements for designation and compile its list for timely submission. (The CDFI Fund's information resource is available here.)

Continue reading.

by the Public Finance Group

January 9, 2018

Ballard Spahr LLP

Six Things a 501(c)(3) Should Know About the Tax Cuts and Jobs Act: Squire Patton Boggs

With the flurry of news regarding how tax-exempt bonds were affected by the Tax Cuts and Jobs Act ("TCJA"), some of you may have missed what else was included in the TCJA. Here are six things a 501(c)(3) organization should know (other than that TCJA did not eliminate tax-exempt qualified 501(c)(3) bonds):

1. Fewer individuals will be claiming itemized deductions, so fewer people will get a tax benefit from making a charitable contribution, which could cause a decline in such contributions.
2. The estate tax exclusion amount is raised through 2025 to $10 million, so fewer people will have an incentive to make charitable bequests. Because of inflation adjustments, the actual dollar amount of the exclusion in 2018 is expected to be about $11 million.
3. There will no longer be a charitable deduction for college athletic seating rights. I suspect that Buckeye ticket sales will be unaffected.
4. Unrelated business taxable income ("UBTI") must now be calculated separately for each unrelated trade or business activity. Because losses from an unprofitable trade or business can't be used to offset income from a profitable one, the result will be more UBTI. Also, organizations will need to determine which unrelated trade or business activities are separate trades or businesses.
5. There is a 21% excise tax imposed on remuneration exceeding $1 million paid by tax-exempt employers to a "covered employee" or on "excess parachute payments." Covered employees are generally individuals who are or were one of the five highest paid employees, and excess parachute payments are certain large severance payments.

6. Colleges and universities with endowments exceeding $500,000 per student will generally owe an excise tax of 1.4% on their net investment income.

For more details, see [this alert](#) from our SPB colleagues.

By Alexios Hadji on February 8, 2018

The Public Finance Tax Blog

Squire Patton Boggs

TAX - PENNSYLVANIA

[Bay Harbor Marina Limited Partnership v. Erie County Board of Assessment Appeals](#)

Commonwealth Court of Pennsylvania - January 10, 2018 - A.3d - 2018 WL 343816

Following board of assessment's denial of tax immunity and exempt status for marina lessees of port authority, lessees appealed and city and school district intervened.

The Court of Common Pleas granted summary judgment in favor of the board, city, and district. Lessees appealed, and appeals were consolidated.

The Commonwealth Court held that:

- Lessees had standing to challenge denial of tax immunity;
- Marina was not immune from taxation;
- Port authority was an indispensable or necessary party;
- Marina's use did not constitute public purpose; and
- Trial court, on remand, was required to determine if marina's public access areas were exempt.

Lessees of port authority had substantial, direct, and immediate interest in litigation regarding board of assessment's denial of lessees' tax immunity and exemption for leased property, and thus lessees had standing to challenge denials, where lessees, under terms of lease, were responsible for taxes imposed on leased property, board's denial triggered lease obligations, and lessees purportedly used leased property to further the port authority's authorized purposes.

Private gated marina leased from port authority operated for pleasure and recreational craft was not immune from taxation, since port authority's statutorily-mandated purpose did not expressly authorize operation of recreational marina.

Port authority was an indispensable or necessary party in action concerning tax immunity or exemption of marina port authority leased to private enterprise, although trial court removed port authority from case caption sua sponte, where port authority had joint interest in the subject matter of the action.

Private gated marina leased from port authority operated for pleasure and recreational craft did not constitute public purpose, and thus marina was not exempt from taxation, although marina had public access walking area and public boat launch, where marina inured to sole benefit of lessees and its subtenants who leased boat slips, public's limited access was mandated by zoning ordinance, and port authority had no control over marina.

Trial court, on remand, was required to examine each parcel and individual part of private gated marina leased from port authority operated for pleasure and recreational craft to determine if public access areas were exempt from taxation, since statute exempted public property used for public purposes.

[Orrick: Tax Issues When Fixing Rate and Fee Adjusters in Tax-Exempt Loans.]

The recently enacted reduction of the maximum federal corporate tax rate may trigger contractual provisions that provide for a significant increase in the interest rate on tax-exempt debt privately placed with a bank lender or require issuers or conduit borrowers to pay a significant fee. In each case, this adjustment is meant to compensate a bank lender for the reduction in after-tax return relative to a comparable taxable investment. We advise you to consult bond counsel before amending or allowing the waiver of any contractual provisions providing for interest rate increases or fees resulting from the change in the maximum federal corporate tax rate.

The recently enacted tax bill reduces the maximum federal corporate tax rate from 35% to 21%. This reduction increases the after-tax return on taxable investments currently held by bank lenders but does not affect the after-tax return on their tax-exempt investments. As a result, the change in law reduces the after-tax return on tax-exempt investments relative to the return on comparable taxable investments.

Most tax-exempt bank loans include “gross up” adjustment provisions crafted to deal with the adverse effect of corporate tax rate reductions on the relative return on such loans. The adjustments can take various forms, including a permanent, automatic, formula-based rate increase or a one-time fee determined by the bank lender to be adequate to compensate it for the reduction in the relative value of its tax-exempt investment. See the chart below for examples of two common “gross up” rate adjustment formulas.

Continue reading.

Public Finance Alert | January.25.2018

Orrick

[Impact on Muni Bonds of New Accounting Guidelines for Local Governments.]

New changes in accounting standards for state and local governments regarding retiree healthcare costs and underfunded pension liabilities could have a significant impact on the prices of municipal bonds issued by these entities.

These dynamics could, in turn, impact the risk-adjusted returns for investors holding municipal bonds as part of their overall portfolios.

Continue reading.

municipalbonds.com

by Justin Kuepper

Feb 08, 2018

Munis Remain Attractive Despite Tax Changes.

Despite passage of the Tax Cuts and Jobs Act at the end of last year, municipal bonds can still be an attractive investment and reliable source of tax-free income.

Over the last seven years or so, we have seen significant increases in the holdings of municipal bonds by both banks and insurance companies.1 Within the insurance industry itself, while bond purchases by property and casualty ("P&C") companies have diminished, those by life insurers have increased. Although, with a reduction in the corporate tax rate to 21%, we may now see some reduction in demand from banks, whether the same holds true for life insurance companies remains to be seen.

When it comes to individual investors, however, the picture in the crystal ball becomes murkier. One thing that hasn't changed, though, is the nature of municipal bonds themselves and the attractiveness of their tax-exempt status. So, for those investors who live in states with high state and local taxes, perhaps there is, now, even more reason to look to munis to help mitigate their tax bills.

If history is anything to go by, tax reforms that have lowered personal taxes have led to no less interest in muni funds on the part of investors. Following the Tax Reform Act of 1986, signed into law by President Reagan on October 22 that year, investment in muni bonds by individuals did anything but fall.

Back then, of course, there were no muni ETFs. Now there are. While it remains to be seen, therefore, just what effect on inflows and outflows the latest tax reforms will have, the nature of neither munis nor muni ETFs have changed. The former still provide attractive tax-free income, and the latter provide diversification, trading flexibility, daily transparency, lower costs, and tax efficiency.

Seeking Alpha

Feb. 8, 2018

Tax-Exempt Bond Update: 2017 Year In Review.

Tax Reform

In by far the biggest tax news of the year, the tax reform bill, commonly known as the Tax Cuts and Jobs Act (Tax Act), was passed by Congress and signed by the President on December 22, 2017. Municipal finance participants, who had expected that all tax-exempt bonds would be "safe" under any tax reform legislation, were thrown by the initial version of the Tax Act released on November 2, 2017, which proposed to eliminate the tax-exemption for all private activity bonds, advance refunding bonds and certain stadium financings. What followed was an intense six weeks of hand-wringing, lobbying and rushing to close transactions at risk of losing their tax-exempt status if issued after December 31. In addition, issuers of tax credit bonds (such as build America bonds) were concerned that the projected increase in the federal deficit caused by the Tax Act could trigger a 100% reduction (beyond the now typical, annually announced sequestration levels that already affect direct pay bonds under the Budget Control Act of 2011) in the federal subsidy payments paid with respect to tax credit bonds under the provisions of the "Pay-As-You-Go Act of 2010" (PAYGO Act). In the end, Congress waived the PAYGO Act with respect to the Tax Act and avoided 100% sequestration.

The final version of the Tax Act:

- Repeals the authority to issue tax-exempt advance refunding bonds after December 31, 2017.
- Repeals the authority to issue tax credit bonds such as Qualified Zone Academy and Clean Renewable Energy Bonds after December 31, 2017.
- Retains the authority to issue private activity bonds (PABs), including 501(c)(3) bonds.
- Retains the authority to issue tax-exempt bonds to finance professional sports stadiums, in certain situations.
- Preserves the Low Income Housing Tax Credit (LIHTC).

In addition, the Tax Act:

- Lowers the corporate tax rate to 21%.
- Repeals the corporate alternative minimum tax (AMT).
- Retains seven individual tax brackets but changes both rates and income thresholds.
- Retains the individual AMT but raises the exemption and phase-out levels.
- Limits the deductibility of state and local taxes for individuals to $10,000.
- Lowers mortgage interest deduction cap to $750,000.

Most market participants expect to see a short term decrease in the issuance of tax-exempt bonds resulting from the rush to market that occurred in December 2017 and the elimination of advance refunding bonds (which have typically accounted for approximately 20% of new bond issues). The Tax Act did not provide transition rules for outstanding bonds that would have been eligible for tax-exempt advance refunding. As a result, market participants are exploring alternatives to tax-exempt advance refundings, such as forward delivery bonds or taxable advance refundings. For newly issued bonds, the market may react to the elimination of tax-exempt advance refunding bonds with new financing structures and revised call features, but these potential fixes may not be without cost to issuers. While the long-term effects of the Tax Act on the public finance market are not known at this time, it is possible that the lower corporate tax rate will reduce the appetite of banks and insurance companies for tax-exempt debt, and the number of bond issues directly placed with banks may decrease.

Proposed TEFRA Regulations

On September 28, 2017, the Internal Revenue Service (IRS) published proposed regulations with respect to the public approval requirements for private activity bonds under Section 147(f) of the Internal Revenue Code, commonly known as TEFRA requirements. A 90-day public comment period followed publication of the proposed regulations, but issuers may elect to apply the proposed regulations in whole (but not in part) to bond issues with a public approval that occurs on or after September 28, 2017.

The proposed regulations retain the 14-day notice requirement for a public hearing, but expand the permitted methods of providing notice to include the issuer's website. The proposed regulations also clarified the information required to be included in the public hearing notice. In addition, the proposed regulations provide additional guidance on what constitutes an "insubstantial deviation" and the ability to cure substantial deviations in limited circumstances. The proposed regulations also address where a hearing may occur, and include special rules for mortgage revenue bonds, qualified student loan bonds, qualified 501(c)(3) bonds issued for working capital expenditures, and pooled financings for 501(c)(3) bonds.

Updated Management Contract Guidelines

Although private business use can occur when a service provider uses bond-financed facilities pursuant to a management contract, the IRS has long provided "safe harbors" for management contracts that meet certain conditions. With the release of Revenue Procedure 2017-13 on January 17, 2017, the IRS made the safe harbor conditions more flexible and less formulaic. In general, management contracts must provide for reasonable compensation and must not give the service provider a share of net profits or impose on the service provider the burden of sharing net losses. The safe harbor conditions also limit the deferral of compensation, the term of the contract, transfer of the risk of loss, control over rates and other provisions. The new safe harbor conditions apply for all management contracts entered into (or modified or extended by mutual option) on or after January 17, 2017.

IRS: Reorganization, Audits and Guidance

In May 2017, the Tax Exempt & Government Entities Division of the IRS underwent a major reorganization. The tax-exempt bond (TEB) office was combined with the office of Indian tribal governments (ITG) to form a new ITG/TEB office within the Tax Exempt & Government Entities Division. As of May 1, 2017, there is no longer a TEB director, and the new ITG/TEB office is chaired by Christie Jacobs, who was previously director of ITG. Prior to taking the position, Jacobs did not have any experience with municipal bonds. Field operations, the unit responsible for bond audits, is now led by Telly J. Meier. Meier is also an ITG specialist without previous municipal bond experience. Allyson Belsome, the previous head of field operations for TEB, is now manager of the group that is responsible for the voluntary closing agreement program, technical support, and the development of ongoing outreach programs.

In recent years, staffing for TEB field operations (i.e. audits) has reduced dramatically (from 60 agents in 2009 down to an expected 19 agents in 2018). As a result, the IRS has adopted a more streamlined and data driven approach to tax-exempt bond audits. The 2018 work plan lists five focus areas for audits this year: arbitrage of tax-advantaged bonds with guaranteed investment contracts and/or qualified hedges as well as bonds with investments beyond a temporary period; acquisition financing involving private activity bonds to determine whether the rehabilitation requirement was satisfied; non-qualified use in the disposition of financed facilities and/or excessive private business use; bonds issued with a deep discount; and private activity bonds with excessive weighted average maturities.

Each year, the IRS issues a work plan setting priorities for guidance (in the form of proposed or final regulations, revenue procedures, etc.). For 2017-18, the work plan for ITB/TEB prioritizes: remedial actions for tax-credit bonds, private activity bonds, rebate overpayment, reissuance and TEFRA (as described above, proposed regulations were released in 2017, but have not yet been adopted in final form). Of course, the work plan was prepared before the Tax Act was proposed or signed into law and does not take into account any potential infrastructure legislation. The IRS may have to adjust its priorities to provide for implementation of the Tax Act or a possible infrastructure bill.

Commentary: Continued Risks to Private Activity Bonds

Conduit issuers, and housing issuers in particular, dodged a bullet at year end that would have come near to killing the affordable housing industry. Earlier in the year, the outlook was rosy: there was strong bipartisan support for increasing the low income housing tax credit, and a proposed bill that would have granted the increase and provided numerous improvements to the program. Then, in November, the House proposed a tax cut bill that eliminated private activity bonds, which include housing bonds subject to the state volume cap limits. The magic of those bonds – commonly referred to as "volume cap bonds" – is that their issuance provides an "automatic" housing tax credit, which attracts private investment in affordable housing. The tax credit program has enjoyed strong bipartisan support because of its ability to provide much needed affordable housing infrastructure through a true partnership between government and the private sector. It is a well-regarded and tested program that has produced millions of affordable housing units in its thirty year existence. The charitable view is that the drafters of the tax proposal were unaware of the role volume cap bonds play in the tax credit program. Any other interpretation is frightening because it demonstrates a disregard for the challenges cities across the nation face to address the housing needs of their residents.

The House version of the tax reform bill also threatened 501(c)(3) bonds that are used to finance nonprofit schools, hospitals, social service agencies, universities, museums and art institutions. Elimination of tax-exempt 501(c)(3) bonds would have increased the borrowing costs for institutions, which could result in fewer projects being completed or in increased costs being passed on to nonprofit users and clients.

Fortunately, the Senate version of the tax bill prevailed in this regard and the repeal of private activity bonds did not occur, thanks in significant part to bipartisan support for affordable housing. However, significant risks to this industry sector remain based upon reported statements by Kevin Brady, the chair of the House Ways and Means Committee and a critic of private activity bonds. He has suggested that private activity bonds should be "focused on infrastructure projects that help build and enhance the national infrastructure because they're receiving national subsidies from every taxpayer in America." Conduit issuers, nonprofit borrowers and affordable housing developers should brace themselves for the possibility that any upcoming infrastructure legislation could seek to redirect the benefit of private activity bonds to large, national infrastructure projects and away from "local" improvements, such as housing and nonprofit facilities.

Article by Alison Benge, Deanna Gregory, Jon Jurich, Stacey Lewis, Faith Li Pettis, Jay Reich and Will Singer

February 1 2018

Pacifica Law Group LLP

In the Sports-Subsidy Game, Taxpayers Always Lose.

Few events unite our diverse country and bring people together like sports. No matter where we are from, which team we root for, or even if we don't care about the game itself, the highlights of Sunday's Super Bowl match-up will soon become part of our cultural lexicon and the shared American experience. Because of its role in maintaining our national identity, people may think of professional athletics like a common good, worthy of public investment. But, as personally meaningful and enjoyable as the big game may be, neither football nor any other professional sport is a public service: they are all for-profit enterprises that generate billions in private wealth for franchise owners.

This Sunday, we will watch athletes who earn an average annual salary of nearly $3 million compete to become champion of a league that makes more than $14 billion a year in revenue – in between commercials that cost $5 million for 30 seconds of airtime.

Big league sports do not need to be subsidized by taxpayers.

Continue reading.

Inside Sources

by Michelle Minton

February 02, 2018

KBRA Comments on Federal Tax Reform's Impact on Public Finance Credit.

NEW YORK–(BUSINESS WIRE)–Kroll Bond Rating Agency (KBRA) has released an analysis on the impact of federal tax reform on public finance credit.

KBRA believes that the tax code modifications will affect the public finance sector over time in a number of important ways. The most immediate effect is the elimination of the tax exempt status of advance refunding bonds. The curbing of unlimited state and local tax income and property tax deductions, and the doubling of the standard income tax deduction will contribute to a more challenging environment for certain municipal entities. In KBRA's view, the impacts of federal tax reform on the public finance sector will evolve over time.

To view the report, please click here.

Fitch: US Tax Bill Could Pressure Power Sector.

Fitch Ratings-New York-30 January 2018: The Tax Cuts and Jobs Act will pressure participants in the US power sector in different ways in the short run, Fitch Ratings says. Passing federal income tax reductions and returning excess accumulated deferred income taxes (ADIT) to customers through lower investor-owned utility rates could raise competitive pressures for public power and cooperatives, and be a credit negative for some corporate power issuers, including regulated utilities and utility holding companies.

The trend toward lower customer rates has already begun. Investor-owned utilities and their respective rate regulators in Illinois, Massachusetts and Oregon have already announced plans to direct their savings from the lower corporate taxes to ratepayers, rather than shareholders. This week, regulators and some state attorneys general sent a letter to the Federal Energy Regulatory Commission asking FERC to make a similar change.

We believe public power and cooperative utilities could face competitive rate pressure in some markets. However, that is not likely to be a material credit factor. Service areas with direct competition or where regional sensitivity to investor-owned utility rates exists will be the most exposed.

In general, the growth in US household income has made electricity costs a more affordable portion of a consumer's budget, easing rate pressures for most public power and cooperative issuers. Going forward, favorable operating conditions (including low natural gas prices and interest rates) and modest economic growth (Fitch forecasts at 2.5% in 2018 and 2.2% in 2019) should help sustain the public power and cooperative sector trend of improving financial metrics.

The impact on corporate ratings could be mitigated if state regulators balance the aim to lower rates for customers with the creditworthiness of utilities in their purview. The impact on corporate ratings will also depend on the amount of headroom an issuer has to absorb the leverage creep. Holding companies are more vulnerable given the elevated leverage profile for many driven by past debt-funded acquisitions.

Over the long run, the tax change's impact on public power issuers is likely to be negligible as the potential competitive pressures are only likely in the short term. The tax change could also be mildly positive for corporate issuers over the long run. We do not anticipate a long-term impact on the public power and cooperative sector.

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3 States Plan to Sue Over New Tax Law. Here's Why They Might Lose.

Connecticut, New York and New Jersey say that GOP tax policies unduly punish their populations. Some doubt whether their claims would stand up in court.

Governors from three Northeast states have announced plans to sue the federal government for discriminating against their taxing structure. But tax experts say their legal justification for doing so seems dubious at best.

The heads of state of Connecticut, New Jersey and New York have announced plans to file a joint lawsuit claiming that the federal government's new cap on deductions for state and local taxes, put in place by the Republican tax overhaul plan signed into law last month, is unjust because it targets wealthier states. Although no legal strategy has been announced, statements made by New York Gov. Andrew Cuomo suggest the lawsuit could use the U.S. Constitution's equal protection clause and the 10th Amendment protecting states' rights.

But that argument — that the law is unconstitutional because it affects different states in unequal ways — is a weak one, says Tax Foundation expert Jared Walczak.

Practically everything Washington does impacts states unevenly. For example, Florida and other states with higher retiree populations get more federal Medicare and Social Security dollars that other places. Meanwhile, the alternative minimum tax, which is designed to keep wealthy taxpayers from using loopholes to avoid paying taxes, targets a lot of residents in places like California, Connecticut and New York.

"And no one has suggested that the alternative minimum tax is unconstitutional," Walczak says. "[Cuomo's statements represent] a very novel argument and not one that is usually credited to the equal protection clause."

Capping the state and local tax deduction to $10,000 was one of the ways Congress tried to offset the cost of lowering federal income tax rates under tax reform. The cap, combined with new limits on the mortgage interest deduction, is expected to generate an additional $668 billion over the next 10 years, according to the Joint Committee on Taxation. Although Republican and Democratic lawmakers in states with higher taxes fought unsuccessfully against the cap, the policies were generally seen as disproportionately impacting more liberal-leaning states.

"It has nothing to do with sound policy," New Jersey Gov. Phil Murphy said while announcing the impending lawsuit. "It is clear: It is punishment."

But Congress has nipped and tucked the state and local tax deduction before.

When the federal income tax was first instated in 1913, all state and local taxes not directly tied to a benefit were deductible against federal taxable income. Then in 1964, Congress limited deductions to property, income, sales and motor fuel taxes. Fourteen years later, motor fuel taxes were eliminated from qualifying. And in 1986's tax reform, sales taxes were eliminated from deductibility — a move that disproportionately impacted taxpayers in states with no income tax. In 2005, Congress reinstated the sales tax deduction but only allowed taxpayers to deduct either income taxes or sales taxes (not both).

"So, over the years, Congress has apparently felt like they could narrow the deductibility," says Thomas Gais, director of the Rockefeller Institute of Government. "I'd assume they imagine they can get rid of the whole thing if they wanted to."

Where the states might have a more credible argument, Gais says, is in Cuomo's statement that the new federal tax law destroyed a century-old tax structure between the federal government and the states.

"The feds and the states share responsibility," says Gais. "[States] need to be able to raise money, especially when there are healthcare proposals that would limit Medicaid expenditures and probably other budget cuts coming at the federal level."

Indeed, no one is disputing the fact that capping how much taxpayers can deduct in state and local taxes from their federally taxable income makes it harder for high-tax states to raise taxes in the future. But Walczak and Gais both said they doubt that amounts to a 10th Amendment violation of a state's right to govern itself. They note that if anything was going to crowd out states' ability to raise taxes, it would have been during the 1950s and '60s, when the federal top marginal income tax rate was 91 percent.

In fact, Walczak says, high-tax states' uproar over capping the deduction is in conflict with the argument often heard within those states that tax rates play a minor role in businesses' and individuals location decisions.

"New Yorkers may favor a larger government and if they want to pay for it, that's a New York decision," Walczak says. "So maybe what we're hearing is that New Yorkers aren't as willing to subsidize that as leaders have been saying."

GOVERNING.COM

BY LIZ FARMER | JANUARY 30, 2018

Tax Benefits of Investing in O-Zones.

Read the report.

Economic Innovation Group | Feb. 1

Opportunity Zones: A New Tool for Community Development .

Read the report.

Novogradac & Company | Feb. 1

"Investing in Opportunity Act" A New Community Resource.

Read the report.

Nixon Peabody | Feb. 1

Tax Reform Incentives for Investments in LI Communities: Holland & Knight

Read the report.

Holland & Knight | Feb. 1

S&P: Dark Store Tactic By Big-Box Retailers Could Pressure U.S. Municipal Budgets And Credit Quality.

Household name big-box retailers and home improvement stores such as Lowe's, Home Depot, Sam's Club, Wal-Mart, Target, and Kohl's have begun using a controversial new legal tactic to appeal their assessed valuations and reduce their property tax bills in several states across the U.S.

Continue Reading

Jan. 29, 2018

Diagnosis – Unhealthy Financials Cause Another 501(c)(3) Hospital To Lose Its Favorable Tax Status.

A few months ago, I wrote a blog post about a hospital that had its Section 501(c)(3) status revoked by the IRS. In that case, the IRS found that the hospital had committed willful and egregious violations of the Patient Protection and Affordable Care Act (the "ACA"). For example, the hospital was not conducting a community health needs assessment every three years as required by the ACA, and was not shy about telling the IRS that the hospital had neither the financial wherewithal nor the employees to conduct a needed assessment every three years.

Continue Reading

The Public Finance Tax Blog

By Cynthia Mog on January 30, 2018

Squire Patton Boggs

New Tax Law Means Fighting Over Unfunded State Pension Plans is About to Get Worse.

The recently enacted U.S. tax law restricts federal deductions for state and local taxes (SALT) to $10,000 — including local property and sales taxes as well as local income taxes. While this new restriction will have many implications, it will have a particularly draconian impact on states with large unfunded liabilities for pension benefits and retiree health care, in particular the residents of Illinois, Kentucky, Connecticut, and New Jersey.

Unless states can implement effective ways to circumvent the SALT restriction, they will face much higher political barriers to meeting their unfunded benefit obligations through increased tax revenues. Instead, states will be forced to severely cut spending on public services and/or adopt major reforms of their benefit plans.

A state has payment obligations from three main sources — interest on its outstanding bonds, unfunded liabilities for pension benefits, and unfunded liabilities for health care payments to state retirees (before Medicare at age 65). The interest on outstanding state bonds is relatively easy to estimate; the total outstanding amount of all state bonds was $500 billion in 2016. With the advent of improved accounting rules, it is now possible to compute the unfunded pension and retiree health care liabilities of each state.

Continue reading.

The Brookings Institute

Robert C. Pozen

Thursday, January 11, 2018

Are SLGS Needed Now That Tax-Exempt Advance Refunding Bonds are Banned?

WASHINGTON – Municipal market demand for state and local government series securities is certain to plummet in the wake of tax law changes that halted tax-exempt advance refundings after Dec. 31.

The vast majority of SLGS were purchased for advanced refunding escrows, municipal bond market experts say. Unlike open-market Treasuries, the maturities of SLGS can be especially tailored to match the maturities of bonds in advance refundings so yield restrictions are not violated.

The exact percentage is unknown because Treasury officials don't keep track of what SLGS are to be used for at the time of purchase.

"There is a self-certification that the funds being used for the purchase fall within the definition of 'eligible source of funds,'" Brad Benson, spokesman for Treasury's Bureau of Fiscal Services, said in an email.

Overall SLGS usage is tracked by Treasury. As of Dec. 29, there were 21,015 outstanding SLGS (bonds and notes) valued at $94.4 billion.

Dave Erdman, director of the Wisconsin State Capital Finance Office, estimates that 90% to 95% of the SLGS his state has purchased have been used in connection with advanced refundings.

One might question whether the SLGS program is still needed.

Treasury won't comment, but its plans may become clearer when the time comes to reopen the window on SLGS purchases.

That should happen soon. Congress faces a Feb. 28 deadline to raise or suspend the debt ceiling before Treasury exhausts its extraordinary measures, which include haling SLGS sales.

Treasury closed the SLGS window on Dec. 8 when the department began taking extraordinary measures to avoid breeching the nation's debt ceiling.

"Based upon available information, Treasury expects to be able to fund the government through the end of February," Treasury Assistant Secretary for Capital Markets Clay Berry said in a statement Wednesday. "Treasury urges Congress to act promptly on this important matter."

Normally Treasury reopens the window on purchasing SLGS immediately after Congress raises or suspends the debt limit.

Erdman, who is a member of the Government Finance Officers Association debt committee, said there are good reasons for keeping the SLGS program.

"I have other transactions that I do that I need to use SLGS that are not related to an advanced refunding," he said.

Rich Moore, treasurer of the National Association of Bond Lawyers, echoed that sentiment.

"Anytime there are yield restrictions, SLGS are the correct bond issue," Moore said, citing acquisition financing and equity defeasance of tax-exempt bonds as two examples.

"I hope they don't discontinue it," said Moore, a partner in the San Francisco office of Orrick, Herrington & Sutcliffe.

Erdman said the current low investment yields may make it look like lower yielding SLGS aren't needed. “But I’ve been doing this long enough that when the investment rate increases pretty soon you are at or exceeding bond yield restrictions that you need to comply with,” he said. “While the current market may not point to it, historically we had had, and we will have, markets where instruments like SLGS are necessary.”

“Even if I was going to use cash to defease some bonds, I have to be cognizant of the yield restrictions and in order to meet those yield restrictions, I often use SLGS,” Erdman said. “There are other needs out there for SLGS over and beyond escrows that are funded with tax exempt refunding transactions.”

GFOA considers its discussions with Congress on reinstating advance refundings “to be very much alive,” said Emily Brock, director of GFOA’s federal liaison center.

The outline of the Trump administration’s infrastructure plan recently leaked to the media would allow advanced refundings of tax-exempt private activity bonds used for infrastructure.

“I think that signaled that the White House and the administration understand that advance refundings are a policy tool that can be used to free up capital for more infrastructure spending Brock said.

Sam Gruer, managing director of the New Jersey office of Minneapolis-based Blue Rose Capital Advisors, said Treasury may weigh the cost of keeping a reduced SLGS program with the benefit of providing a public service that helps state and local governments comply with tax laws on arbitrage.

“I don’t believe any municipality will be catastrophically harmed if the SLGS program is discontinued,” Gruer said. ‘It will be more expensive for the smaller issuers. For the larger issuers, often they don’t use the SLGS program any way.”

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 01/31/18 07:09 PM EST

TAX - COLORADO

Town of Breckenridge v. Egencia, LLC

Colorado Court of Appeals, Div. III - January 25, 2018 - P.3d - 2018 WL 549539 - 2018 COA 8

Town brought action against 16 online travel companies, alleging that companies were responsible for collecting and remitting taxes associated with hotel reservations.

After dismissing sales tax claim and denying town’s motion for class certification, the District Court granted summary judgment in favor of companies, on town’s claim for accommodation tax. Town appealed.

The Court of Appeals held that:

- Online travel companies were “brokers” of hotel rooms, rather than “lessors” or “renters” of the rooms, under town code, and thus, were not subject to town’s accommodation tax;
- Town was not excused from exhausting administrative procedures on its unpaid sales tax claim against online travel companies;

- Relief sought by town predominantly related to money damages, and thus, district court did not abuse its discretion in denying class certification under statute permitting certification when party opposing class has acted on grounds applicable to class as whole making appropriate injunctive or declaratory relief for whole class; and
- District court did not abuse its discretion in determining that town failed to satisfy predominance and superiority requirements of statute permitting class certification when common questions of facts or law predominate.

What The New Tax Law Means For Muni Bonds.

It was clear before the final tax bill was voted on and signed by the president that Congress had the municipal bond market in its crosshairs. The laundry list of municipal bonds they potentially would curtail or disallow was long and all encompassing. The final outcome of the law could have been much worse.

As a veteran of the municipal market, I've lived through numerous trial balloons and Congressional threats regarding the tax-free status and issuance of municipal bonds. But this time Congress really voiced its distaste for Muniland.

The new tax laws will no longer allow issuers to conduct advanced refundings. That means an issuer—any issuer—cannot exchange bonds before they are due to mature for other bonds with longer maturities. So if interest rates go lower, refinancings no longer provide any relief for issuers. Those prerefunded munis that already exist will mature. The municipal bond market will shrink. The brokerage firm, Jefferies, estimates that Advance Refundings account for about 17% of the annual issuance according.

That, coupled with the new $10,000 limits for deducting state tax against one's Federal tax makes munis more attractive to upper middle class and wealthy citizens living in high tax states like New York, New Jersey, California, Connecticut and Maryland.

So the equation is pretty simple: Shrinking municipal volume plus increased demand equals a good bid for munis no matter what happens to interest rates.

Municipal bonds will be less attractive to banks and insurance companies with their lower corporate tax rates.

The new tax law reduces the incentive for leveraged corporations from borrowing. The lower corporate tax rates and new depreciation rules may be an incentive to pay down debt. That said, corporate debt issuance might decline, making municipal bonds more attractive to individual investors at the margin. As you can see, there are a lot of "ifs" and "maybes" depending on how investors and corporate America react to the new tax rules.

So what safe investments are there for individuals in Muniland? With more than 50,000 municipal issuers and over 1.5 million CUSIPs, I will share what I believe are the best and safest muni credits.

There are two categories of absolutely essential municipals I like: Large airports and large ports. Rather than list 3-5 different CUSIP numbers that you may or may not be able to find, focus just on the categories: The top ten U.S. ports and the top ten U.S. airports. Their names are familiar:

Top Ten U.S. Seaports:

Los Angeles
Long Beach
New York/New Jersey
Georgia
Miami
Seattle-Tacoma
Virginia
Houston
South Carolina
Oakland

Top Ten U.S. Airports:

Los Angeles International
Hartsfield – Atlanta
JFK International – New York
O'Hare International – Chicago
Phoenix Sky Harbor
Dallas/Ft. Worth
San Francisco International
Denver International
McCarran International – Las Vegas
George Bush International – Houston

Stick with senior liens and leave subordinated or junior debt to the others. The yield differential isn't worth it. Try if you can to buy your bonds as a new issue. This way the price you pay will be the exact same price as the Vanguard municipal bond funds, PIMCO, Franklin—all the big guys. It's the one time do-it-yourself investors can be 100% confident the price they paid is the fair and right price.

I look for 2018 municipal bond market yields to gradually improve unless some unknown inflation tsunami hits. Stick with excellent credit quality and you'll clock those coupons no matter what consequences the new tax code heaps upon us.

Forbes

by Marilyn Cohen

Marilyn Cohen is founder and CEO of Envision Capital Management, a Los Angeles fixed-income money manager.

JAN 23, 2018

Tax Reform and Uncertain Economy Driving State Budget Proposals.

It's a big election year, and legislative agendas won't be focused on raising revenue.

With 36 governors either entering their final year in office or running for re-election, ambitious tax policy proposals aren't likely to headline this year's legislative agendas.

Still, there’s a lot to be done.

The federal tax overhaul, budget deficits, and the rising cost of health care and higher education have emerged as key issues as states kicked off their legislative sessions this month.

Continue reading.

GOVERNING.COM

BY LIZ FARMER | JANUARY 24, 2018

Impact of final Tax Reform Legislation on the Historic Tax Credit, New Markets Tax Credit, Low-Income Housing Tax Credit and Renewable Energy Tax Credits.

On Dec. 22, 2017, President Donald Trump signed into law “An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018” – widely referred to as the Tax Cuts and Jobs Act, or simply, the Tax Reform Legislation. As has been widely reported, the Tax Reform Legislation makes sweeping and extensive changes to federal tax law on a scale not seen since 1986. Here, we will focus on the impact of the Tax Reform Legislation on certain federal project-based income tax credits, including the Low-Income Housing Tax Credit (LIHTC), the New Markets Tax Credit (NMTC), the Historic Tax Credit (HTC), and the Production Tax Credit (PTC) and Investment Tax Credit (ITC) for renewable energy projects.

Unlike the tax reform bill passed by the House of Representatives, which would have significantly altered many of these project-based tax credits, the final Tax Reform Legislation generally leaves the credits in place, although with some modifications.

The HTC endured the most adjustment under the Tax Reform Legislation. Prior to the enactment of that legislation, the HTC provided a taxpayer who rehabilitated a historic structure with a tax credit equal to 20% of the taxpayer’s “qualified rehabilitation expenditures” if the structure was listed on the National Register or was otherwise certified by the Secretary of the Interior as being historically significant, or 10% of the taxpayer’s qualified rehabilitation expenditures if the structure did not meet those criteria but was originally placed in service prior to 1936; the tax credit was claimed in its entirety in the year the building was placed in service, subject to a five-year recapture period. The newly revised law eliminates the 10% credit for pre-1936 buildings not listed on the National Register or otherwise certified by the Secretary of the Interior and restructures the 20% credit so that it is claimed ratably over a five-year period beginning in the year the building is placed in service. (A transition rule allows taxpayers who own historic buildings as of Dec. 31, 2017, to take advantage of the pre-amendment version of the HTC for a period of time.)

While the other project-based tax credits were left in place unchanged, the shift, under the Tax Reform Legislation, in how multi-national corporations are taxed will likely impact their relative value. These credits are rarely of value to the developers of the projects to which they apply, as those developers typically do not have sufficient tax liability to fully utilize the credits. Instead, developers will typically shift the benefit of these tax credits to investors, in exchange for cash infusions into the underlying projects. Historically, these investors have been banks and other large corporations with significant tax liability; in many cases, these investors have significant overseas operations. One of the more significant changes the Tax Reform Legislation makes to the taxation of corporations is the imposition of a Base Erosion and Anti-Abuse Tax (BEAT), which is designed to counteract efforts by multi-national corporations to shift income from the United States to lower-tax jurisdictions. In calculating their BEAT liability, corporations may claim none of their HTCs and NMTCs, and only 80% of their LIHTCs and PTCs and ITCs for renewable energy projects, reducing the value of those credits to those corporations and presumably reducing the amount investors will be willing to contribute to projects in exchange for them (either due to investors' BEAT liability, or due to the decreased demand for the credits among investors). Moreover, beginning in 2026, LIHTCs and PTCs and ITCs for renewable energy projects will be treated like HTCs and NMTCs, and corporations will not be able to use any portion of these credits against their BEAT liability, effectively eliminating the value of those credits to investors subject to the BEAT.

Similarly, the change to the HTC – which is also generally shifted from developers of historic projects to investors in them – from a credit claimed all at once to a credit claimed ratably over five years will likely reduce the value of that credit to investors and/or impact the timing of investors' cash infusions into the underlying projects, potentially amplifying the need for bridge financing and increasing developers' borrowing costs.

Further, the reduction, under the Tax Reform Legislation, in the top corporate tax rate from 35% to 21% will reduce the value of depreciation deductions that are sometimes allocated to investors in low-income, historic and renewable energy projects, further reducing the tax benefits available to investors in those projects and likely further reducing the amount that investors are willing to deploy into those projects in exchange for those tax benefits.

While the actual impact of the Tax Reform Legislation on the market for these project-based tax credits will only become clear over time, it is safe to assume that the Tax Reform Legislation will negatively impact the sources of funds available to developers of low-income housing, historic rehabilitation and renewable energy projects, and projects located in disadvantaged areas eligible for the NMTC.

by Jed A. Roher

January 15, 2018

Certain State and Local Incentives will be Treated as Federal Taxable Income.

The new federal tax law makes some state and local incentives taxable, an important change sure to affect incentive policies across the country. Quarles & Brady LLP lays out what you need to know in this guest article.

Thousands of corporations throughout the United States receive various incentives from state and local governments. These incentives are aimed at fostering economic development and rewarding investment and job creation. Virtually every state offers economic incentives. And most corporations take advantage of them. The recently enacted Tax Cuts and Job Act will change the federal tax liability for many corporations receiving economic incentives.

The new law specifically states that certain incentives will be treated as taxable income for federal income tax purposes. The new law will affect corporations that receive incentives other than tax-related incentives, such as cash grants, land, low or no interest loans, or any direct transfer of property. The new law is likely to treat some government paid training and education programs as income as well.

It is clear that the Tax Cuts and Job Act will not affect the receipt of state and local tax incentives. Tax incentives remain the most common form of inducement and include a myriad of exemptions, deductions, and credits. State and local tax incentives do not give rise to federal taxable income under the new law. But in recent years state and local governments have begun shifting toward non-tax incentives. While large tax incentives get headlines, almost all location deals involve a non-tax contribution such as land, cash, or loans. It is the non-tax incentives that are potentially taxable under the new law. The new law will likely change the way incentive deals are negotiated. For example, it may be more advantageous to seek tax rather than non-tax incentives from state and local governments. State and local governments are likely to shift incentive offerings as a result. As importantly, the new law creates planning opportunities to avoid increased federal tax liabilities.

This provision is prospective; it applies only to incentives provided after the enactment date. However, payments made by state and local governments after the effective date are likely to be considered taxable regardless of when the incentive deal was signed.

David Brunori, Partner at Quarles & Brady, explains, “Those already receiving or contemplating non-tax incentives should consider the tax changes. And those governments handing out non-tax incentives may want to rethink their policies.”

Smart Incentives

Posted by Ellen Harpel | January 24, 2018

South Dakota Might Convince the Supreme Court to Dispense with the Quill Pen and Join the 21st Century.

On January 12, 2018, the U.S. Supreme Court announced its grant of certiorari in the case of *South Dakota v. Wayfair, Inc.* The oral argument for this case has not yet been scheduled, but it will most likely be held in April 2018, with a decision rendered by the end of the Court’s term in June 2018. Wayfair is a direct challenge of the Court’s holding in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), that, under the dormant Commerce Clause, a remote/online vendor does not have to collect and remit sales/use tax on sales made to customers who reside in a given state unless the vendor has a physical presence in that state. This issue (which we have discussed at some length here and here) is of no small moment to states and political subdivisions that levy a sales/use tax – according to estimates by the Government Accountability Office, Quill caused sales/use tax losses of between $8,500,000,000 and $13,400,000,000 in 2017, alone.[1]

Continue reading.

The Public Finance Tax Blog

By Michael Cullers on January 24, 2018

Squire Patton Boggs

[New Federal Tax Law: Individual State Conformity Laws Will Impact State Taxable Income]

As a follow up to our recent blog titled *[New Federal Tax Law: Forecasting State Revenues & Conformity Decisions]*, NASBO staff reviewed the Congressional scorekeepers' analysis related to federal taxable income changes. Changes to federal tax rates have no bearing on state tax rates, but changes in federal taxable income, adjusted gross income, exemptions and deductions will impact state taxable income – and therefore, state revenues – depending on how a state's tax laws conform to the federal tax code. Over the course of the next several months, each state will make decisions about their existing conformity laws.

Below are characteristics of state conformity laws that will impact state taxable income, which states are affected by each, and the likely impact on state revenues.

1. Six States Tie to Federal Taxable Income
Impact: A rise in state income tax revenues

Nationwide, federal taxable income is expected to rise under the new law. Six states (Colorado, Idaho, Minnesota, North Dakota, Oregon-which uses its own standard deduction and personal exemption, and South Carolina) use federal taxable income as a starting point for their state taxable income calculations, with some state-specific income additions and subtractions. If federal taxable income rises in in these states, state taxable income will rise because the elimination of the personal exemptions and limits on itemized deductions will outweigh the nearly doubled federal standard deduction.

2. 30 States Tie to Federal Adjusted Gross Income
Impact: A modest rise in state income tax revenues

Thirty states use federal adjusted gross income (AGI) or federal gross income as a starting point for their state taxable income calculations, with many state-specific income additions and subtractions. AGI is determined before applying personal exemptions and standard or itemized deductions. The federal tax legislation made few changes to "above-the-line" items that affect federal AGI: alimony paid and received, moving expense deductions, deduction for income attributable to domestic production activities, and bicycle commuting reimbursements. Nationwide, federal AGI is expected to rise under the new law. If that occurs in these states, state taxable income will rise, though by a modest amount.

3. Eight States Use the Federal Personal Exemption
Impact: A rise in state income tax revenues

The new federal tax legislation eliminated the personal exemption ($4,050 per exemption for the 2016 tax year). Eight states use the federal personal exemption (five of the six states that tie to federal taxable income, mentioned above, plus Maine, New Mexico, and Utah). For these states, state taxable income will rise. From a tax policy perspective, the federal personal exemption was partly replaced with an increase in the child tax credit. The child tax credit is a reduction to federal taxes owed; it does not affect either federal adjusted gross income or federal taxable income, the two income amounts that 36 states use as their starting point. Other states, including Delaware, Illinois, Indiana, Kansas, Louisiana, Maryland, Michigan, Missouri, Nebraska, New York, Ohio, Oklahoma, Oregon, Rhode Island, West Virginia and Wisconsin, tie the number of personal exemptions to the number of exemptions used in the federal tax return, then apply their own state exemption amount to it. State taxable income will rise in those states unless they elect to modify their state laws to continue having a state personal exemption.

4. Eight States Use the Federal Standard Deduction as their State Standard Deduction
Impact: A fall in state income tax revenues

The federal standard deduction nearly doubles with the new federal tax legislation. Eight states use the federal standard deduction as their state standard deduction (Colorado, Idaho, Minnesota, Missouri, New Mexico, North Dakota, South Carolina, and Utah). If more taxpayers use the federal standard deduction instead of itemized deductions as expected, federal taxable income will fall under the new law as a result. If that occurs in these states, state taxable income will fall.

5. Nine States Tie to Federal Standard or Itemized Deduction Usage
Impact: A rise in state income tax revenues

At least nine states mandate that a state tax filer use the same standard or itemized deduction method as they use on their federal return (Georgia, Kansas, Maine, Maryland, New York, North Carolina, Oklahoma, Utah, and Virginia). More taxpayers are expected to use the standard deduction instead of itemized deductions. If that occurs in these states, state taxable income will rise because in all four of these states the state standard deduction amount is lower than the federal standard deduction.

6. Six States Allow Federal Taxes to be Deducted
Impact: A rise in state income tax revenues

Six states allow federal taxes to be deducted from their state taxes (Alabama, Iowa, Louisiana, Missouri, Montana, and Oregon). Three allow full deductibility: Alabama, Iowa and Louisiana. Missouri, Montana and Oregon have dollar limits. In aggregate, federal taxes will fall under the new law. If that occurs in the six states with no dollar limits, state taxable income will rise.

7. States' Relationship to Federal Itemized Deductions
Impact: A rise in state income tax revenues

The most complicated impact on state personal income taxes is the various ways that states use federal itemized deductions in their state tax laws. Over half of the states use federal itemized deductions as a starting point for their state itemized deduction calculations. Most of them exclude state and local taxes paid – the itemized deduction that had the biggest change in the federal tax legislation. The other changes to itemized deductions are:

- limiting the mortgage interest of new loans of more than $750,000 instead of $1,000,000,
- eliminating mortgage interest deduction of home equity loans,
- limiting casualty losses to only federally declared disasters,
- the elimination of other miscellaneous deductions subject to the two percent floor,
- increasing the AGI limitations on charitable cash contributions to 60 percent from 50 percent, and
- for tax years 2017 and 2018, lowering the AGI threshold for deducting qualified medical expenses from 10 percent to 7.5 percent.

Fewer taxpayers are expected to itemize deductions or may itemize less, which will cause state taxable income to rise.

8. Seven States Conform to the New Federal Pass-Through Deduction
Impact: A fall in state income tax revenue

The six states that use federal taxable income as their starting point, plus Montana which conforms to that section of the federal tax code, will have a fall in state taxable income because of the new deduction of 20 percent of qualified business income from certain pass-through entities. The deduction may not exceed 50 percent of the pass-throughs' employees' W-2 wages.

National Association of State Budget Officers

By John Hicks

Expert: Tax Bill has Negative Implications for Health Systems.

In December, President Donald Trump signed the Tax Cuts and Jobs Act into law, effective Jan. 1.

Much has been written about how those changes to the Internal Revenue Tax Code will affect businesses, but little has been said about how the tax bill will affect municipal, nonprofit hospitals like those in the Norman Regional Health System.

"There are some specific implications for nonprofits," said NRHS CFO Ken Hopkins, reporting on the effects of the bill to hospital authority board members Monday.

While some elements of the bill will have only minor or no affect on the health system, there are three elements of the Tax Cuts and Jobs Act that have major implications for Norman Regional.

Those three are the elimination of the individual mandate, the elimination of advance refunding bonds and the reduction in the corporate tax rate.

After failing to kill the Affordable Care Act, Republicans used the partisan-supported tax bill to weaken the ACA. The Tax Cuts and Jobs Act eliminates the individual mandate penalty for not having health insurance starting in 2019.

While the repeal of the individual mandate leaves other ACA provisions in place, the mandate was designed to control adverse selection and expand the risk pool in the individual market, Hopkins said.

The Congressional Budget Office estimates that four million people will initially lose coverage, with that number rising to 13 million people losing coverage over the next decade, while premiums may rise 10 percent as a result of the repeal.

Unlike private hospitals that can turn away people without insurance, nonprofits like the Norman Regional Health System serve everyone, regardless of their ability to pay. That means an increase in the number of uninsured people affects Norman Regional's bottom line.

Hopkins said according to Moody's, this will cause the uninsured population to rise, hurting hospital operating margins and cash flow.

Elimination of advance refunding bonds: The Tax Cuts and Jobs Act basically eliminates advance refunding for municipal bonds issued after 2017 by making interest on advance refunding bonds taxable. Hopkins said that eliminates flexibility that municipal issuers have had to take advantage of lower interest rates and raises long-term borrowing costs.

Refunding is a new bond that pays off an older, higher-interest bond to save on debt service, restructure those debts or free up funds. It’s similar to a homeowner refinancing a mortgage to get a better interest rate or restructure payments and dates for budget flexibility.

Advance refunding allows entities to take advantage of low interest rates by refinancing bonds ahead of the call date, Hopkins explained to board members.

“You could borrow new money at lower rates, use those monies to give to a trustee and then they would pay off the bond holders on the old bond at the call date,” Hopkins said. “But all of that happened outside our balance sheet, so we would be sitting here left with nothing but the new debt at lower rates. This is actually what we did in 2016 and 2017. A lot of what we did were advanced refundings, and we got economic gain from that.”

Alternatives — such as interest rate swaps — introduce more risk, cost more and are more complex, Hopkins said.

Florida’s bond finance director said his state saved $3 billion over past 10 years from advanced refunding, and locally the Norman Regional Health System saved between $33 million to $38 million in cash value savings with a net present value of $20 million to $24 million.

“This law disallows us from being able to do this in the future,” Hopkins said. “That ultimately raises the borrowing costs.”

Reduction in corporate tax rate: The 40 percent Reduction in the corporate rate also will affect the health system because the effective net benefit of owning municipal bonds will drop.

“We don’t pay taxes, so that changing rate doesn’t affect us, but what it does do is it changes the desirability of tax-exempt bonds,” Hopkins said. “The reason you would purchase a tax-exempt bond is due to the tax advantage, and if the tax advantage is lessened, then the attractiveness of buying that bond in the first place is also lessened.

“The impact of lowering that rate is that the kinds of people who buy those bonds — banks and insurance companies — have to hold lots of reserves and they like to hold these bonds because of that tax advantage.”

Without the advantage, tax exempt municipal bonds like Norman Regional become less attractive for bank, property and casualty insurance and life insurance companies.

Municipal bonds will have to yield more relative to taxable bonds for corporate buyers to be willing to purchase them, he said which weakens the demand for tax-exempt bonds.

“When we want to issue bonds, it could be harder to find buyers for those,” Hopkins said. “One of the impacts of disallowing advance refunding is that the supply of bonds will go down. One of the impacts of lowering the rate is that the demand for bonds will go down. It may be that those two effects offset each other in terms of price, but at a much lower volume, so there’s likely to be much less tax-exempt debt in the market.”

Hopkins said it’s hard to know every impact over time.

The Norman Transcript

By Joy Hampton | Senior Staff Writer

Tucked Into the Tax Bill, a Plan to Help Distressed America

WASHINGTON — A little-noticed section in the $1.5 trillion tax cut that President Trump signed into law late last month is drawing attention from venture capitalists, state government officials and mayors across America.

The provision, tucked on page 130 of the sprawling tax overhaul, is an attempt to grapple with a yawning hole in the recovery from the Great Recession: the fact that, in huge swaths of the country, the economic recovery has yet to arrive.

The law creates "Opportunity Zones," which will use tax incentives to draw long-term investment to parts of America that continue to struggle with high poverty and sluggish job and business growth. The provision represents the first new substantial federal attempt to aid those communities in more than a decade. And it comes as a disproportionate share of economic growth has been concentrated in so-called "superstar" metropolitan areas like Los Angeles and New York.

Continue reading.

THE NEW YORK TIMES

By JIM TANKERSLEY

JAN. 29, 2018

TAX - NEW HAMPSHIRE

Public Service Company of New Hampshire v. Town of Bow

Supreme Court of New Hampshire - January 11, 2018 - A.3d - 2018 WL 358312

Public utility brought action against town seeking abatement of taxes as tax-exempt treatment facility.

The Superior Court granted the abatement, and town appealed.

The Supreme Court of New Hampshire held that public utility's expert's appraisal was more credible than town's.

Public utility's expert's appraisal was more credible than town's to value the utility as tax-exempt treatment facility in tax abatement matter, where trial court weighed conflicting testimony and issued 19-page order explaining why it found utility's expert's appraisal more persuasive.

TAX - OHIO

North Canton City School District Board of Education v. Stark County Board of Revision

Supreme Court of Ohio - January 2, 2018 - N.E.3d - 2018 WL 321560 - 2018 -Ohio- 1

Purchaser of foreclosed 36-unit apartment complex sought judicial review of a decision of the Board of Tax Appeals (BTA) applying a forced-sale presumption that the sale price was not the property's value for taxation purposes.

The Supreme Court of Ohio held that:

- Evidence was sufficient to demonstrate that the sale was at arm's length, so as to rebut presumption that the sale price of the property was an improper criterion for establishing the tax value of the property, and
- Arm's-length sale price, rather than amount that included postsale repairs, was proper value.

Evidence was sufficient to demonstrate that the sale of a 36-unit apartment complex after foreclosure proceeding was at arm's length, so as to rebut presumption that the sale price of the property was an improper criterion for establishing the tax value of the property; after the property failed to sell at a sheriff's sale, it was aggressively marketed, the highest offer for the property was accepted, and the trial court found the sale price to have been commercially reasonable.

Arm's-length sale price, rather than sale price plus cost of postsale repairs, was proper tax value for foreclosed 36-unit apartment complex that failed to sell at sheriff's sale, but was later purchased after it was marketed by national real estate brokerage firm; statute in effect at time of the tax year at issue required use of amount of an arm's-length sale as property's value for taxation purposes.

What do Walt Disney World and the 2018 Tax-Exempt Bond Market Have in Common?

Last week, all of my dreams came true when I had the good fortune of going to Walt Disney World with my family. In addition to watching my kids train to be Jedi Knights, I had the opportunity to meet a number of Disney characters, including Cinderella. In so doing, I was reminded that although tax reform eliminated tax-exempt advance refunding bonds issued after December 31, 2017 (discussed here and here), it did nothing to curb the use of so-called "Cinderella Bonds" to advance refund outstanding tax-exempt bonds. Heartened by this realization, I resolved to write this post to discuss the topic.

Continue Reading

The Public Finance Tax Blog

By Joel Swearingen

January 19, 2018

Squire Patton Boggs

Financial Sinkhole States In The Trump Tax Era.

What damage will the loss of a deduction do to blue states with stiff taxes?

Do you live in a sinkhole state? There are eight of them, led by California and New York.

These are places where the population dependent on the state — for employment, welfare or a pension — is larger than the population feeding it. That excess of takers over makers is recipe enough for trouble when the next recession hits. But now some of the sinkholes have a new worry.

The Trump tax law enacted in December just about killed the federal deduction that prosperous people take for state income taxes. In states with stiff taxes, the cost of living has suddenly gone up.

Continue reading.

FORBES

by WILLIAM BALDWIN

JAN 16, 2018

William Baldwin ,

Commentary: Significant Tax Exemption Concerns Arise for the Health Care Industry.

An unmistakable theme arising from the Tax Cuts and Jobs Act is increasing Congressional skepticism that nonprofit hospitals and health systems deserve the benefits associated with tax exempt status under Section 501(c)(3) of the Internal Revenue Code. This skepticism is reflected not only in the final exempt organization provisions of the Act, but also in several significant proposals that surfaced in, but did not ultimately withstand, the full legislative process.

This theme, and the long-term sustainability of tax exemption benefits, present significant planning concerns for advisors and counsel (e.g., underwriters' counsel, bond counsel, borrower's counsel, borrower's general counsel) in the municipal bond sector as they relate to debt issued by tax exempt hospitals and health systems. These concerns exist notwithstanding the fact that the final version of the Act preserved tax exemption for interest on private activity bonds. Greater organizational effort will need to be expended in the future to support continued claims to overall tax exempt status. This includes a governing board that will be more engaged in assuring operation for charitable purposes.

Many provisions of the Act are punitive to tax exempt health care. They begin with the elimination of advance refunding bonds (i.e., bonds issued to refinance existing bonds that are not callable within 90 days of the related issuance). They continue with provisions that may increase organizational unrelated business income tax (UBIT) exposure through the new prohibition against offsetting profits and losses from various unrelated enterprises, and provisions that subject tax exempt employers to UBIT on the value of certain employee entertainment, club dues, qualified transportation and a variety of other fringe benefits. And they accelerate with the new excise tax on compensation in excess of $1 million to "covered employees". The new excise tax applies not only to current compensation but also to all forms of deferred compensation and to "excess parachute payments."

Individually and collectively, these new provisions present significant tax planning challenges for tax exempt health care systems. As it relates to compensation in particular, these provisions place such systems at a significant disadvantage compared to privately-held, for-profit competitors in connection with executive level talent recruitment and retention.

But equally instructive were the series of punitive proposals made at some point in the legislative process but not included in the final bill. In many ways these are more illustrative of the mood of Congress towards the tax exempt hospital sector.

Most prominent among these was the provision of the House bill that served to eliminate the tax exemption for interest on private activity bonds, which alarmed, appropriately, the nonprofit sector. If enacted, it would have served to deny to tax exempt hospitals a traditional and critical vehicle for financing major capital expenditures. The House bill would also have increased UBIT exposure with respect to certain types of research conducted by tax exempt organizations.

Other proposals (beyond the excise tax as enacted) related to the manner in which tax exempt hospitals compensate their highest paid executives. The Senate Finance Committee "Chairman's Mark" proposed sweeping changes to the tax rules relating to nonqualified deferred compensation under Code Section 457. The Finance Committee attempted to essentially eviscerate the "Rebuttable Presumption of Reasonableness" guidelines under the intermediate sanctions rules of Code Section 4958.

Proposed changes to the intermediate sanctions regime included not only the elimination of the "RPR", but also provisions that would have (i) increased the personal financial exposure of "organizational managers" who approve excess benefit transactions; (ii) removed as an affirmative defense to excise tax liability the reliance on professional advice; (iii) added new categories of "disqualified persons" subject to intermediate sanctions; and (iv) imposed an additional excise tax on the exempt organization itself in the case of an excess benefit transaction (contrary to the historic policy of the intermediate sanctions regime).

In many respects, the concerns expressed in the recent legislative process are consistent with those expressed in the past by senior IRS Exempt Organizations officials and longstanding legislative concerns that the nonprofit health care sector is inexorably drifting towards the purely commercial sector (and thus should be taxed accordingly). These concerns have included the consistency of exempt status with several factors: e.g., (i) the emergence of the "nation-sized" nonprofits—organizations that are national (or even global) in scope and scale; (ii) the blurring of the line between tax exempt and commercial health care; and (iii) highly complex, lucrative executive compensation arrangements. Many of these concerns—and their compatibility with the community benefit standard— remain relevant today.

To be clear, the sky is not in imminent danger of falling. Despite the troubling theme that emerged during the tax reform process, tax exempt financing and the nonprofit health care sector remain alive and well. Yet the message from the Act is clear, and the unprecedented revocation of two hospitals' tax exemptions by the IRS in a single year,[1] sends a parallel message. Both the governing board and executive leadership of health systems must invest greater effort toward communicating—for both internal and external audiences—how the delivery of health care services through a tax exempt, non-profit model is distinguishable from the delivery of such services through a proprietary model.

Such efforts can be highlighted through tangible steps: e.g., emphasizing the achievement of charitable purposes through the strategic plan; including language in board resolutions about how specific board actions reflect the intention that those actions serve charitable purposes; highlighting research and education; confirming that the compliance officer monitors compliance with the various Section 501(r) requirements for charitable hospitals; and negotiating provisions in key service agreements, joint venture agreements and major transaction documents that preserve the tax exempt organization's control over exempt purposes and prevent unreasonable benefits to private parties.

Advisors who work with tax exempt hospitals and health systems on private activity bond issuances should anticipate the need to focus on the strength of the borrower's underlying claim to tax exempt status much more than in the past. Borrowers must not wait until a pending bond issuance to review and strengthen their documentation and operations with respect to these key issues.

The Bond Buyer

By Michael W. Peregrine & Erika Mayshar

January 16, 2018

[1] See Priv. Ltr. Ruls. 201731014 (Feb. 14, 2017) and 201744019 (Aug. 7, 2017).

The authors wish to thank their partner, Lisa Kaderabek, for her assistance in preparing this article.

Michael W. Peregrine is a partner at the law firm of McDermott Will & Emery.

NABL: Senate Bill Would Raise PAB Statutory Cap in Connection with P3's.

U.S. Senators John Cornyn (R-TX) and Mark Warner (D-VA) introduced the Building United States Infrastructure and Leveraging Development (BUILD) Act, a bill that would allow more private activity bonds to be used in connection with public-private partnership arrangements for certain infrastructure projects. Specifically, it would raise the federal statutory cap on Private Activity Bonds (PABs) issued by or on behalf of state and local governments for highway and freight improvement projects from $15 billion to $20.8 billion.

For more information, click here.

TAX - OHIO

Notestine Manor, Inc. v. Logan County Board of Revision

Supreme Court of Ohio - January 2, 2018 - N.E.3d - 2018 WL 321568 - 2018 -Ohio- 2

County auditor and board of revision appealed determination of the Board of Tax Appeals adopting valuation of residential rental property, which was federally subsidized low-income housing under federal Section 202 program, by taxpayer's appraiser.

The Supreme Court of Ohio held that:

- Contract-rent appraisal method, rather than market-rent appraisal method, applied to valuation of property, and
- Statute governing valuation of real estate did not require auditor to disregard effect of governmentally imposed restrictions when determining tax value of property.

Contract-rent appraisal method, rather than market-rent appraisal method, applied to valuation of residential rental property developed as federally subsidized low-income housing under Section 202 of the Housing Act of 1959, which involved highly restrictive covenants, though county asserted contract-rent appraisal resulted in nominal value that effectively granted property local-tax subsidy; rents were restricted to minimal amounts, any federal subsidization was strictly controlled by rigorous United States Department of Housing and Urban Development (HUD)-imposed restrictions on accumulation of surpluses, there was no indication that contract rents exceeded those generally available in the market or that property benefited from additional tax incentives, and policy concerns were for legislature.

Statute governing valuation of real estate, which required auditor to determine true value of “fee simple estate, as if unencumbered,” did not require auditor to disregard effect of governmentally imposed restrictions when determining tax value of federally subsidized low-income housing, but rather governmental use restrictions should have been taken into account when valuing such property subject to those restrictions.

TAX - WISCONSIN

Metropolitan Associates v. City of Milwaukee

Supreme Court of Wisconsin - January 10, 2018 - N.W.2d - 2018 WL 341962 - 2018 WI 4

Landowner brought action to challenge city’s property tax assessments of seven apartment building properties as excessive.

The Circuit Court, Milwaukee County affirmed. Landowner appealed, and the Court of Appeals affirmed. Landowner appealed.

The Supreme Court of Wisconsin held that:

- Use of mass appraisal to initially value apartment building property, followed by use of single property appraisal after valuation was challenged, complied with statutory mandate to use “the best information that the assessor can practicably obtain,” and
- Evidence was sufficient to support finding that city’s tax assessment of apartment property was not excessive.

Evidence was sufficient to support finding that city’s tax assessment of apartment property was not excessive; while city’s appraisal under sales comparison approach did not adjust for economic characteristics, valuations reached through city’s income approach supported the valuations reached under the sales comparison approach, and city properly accounted for the market trend with regard to expense ratio in the income approach appraisal by imputing a lower expense ratio more in line with the market.

Airbnb and Tennessee Reach Tax Deal.

Some Chattanooga rental hosts and local officials say an agreement allowing Airbnb to collect state and local sales taxes on short-term rentals in Tennessee is a good thing, but it doesn’t go far enough.

The home-sharing company said Thursday it has reached an agreement with the Tennessee Department of Revenue to collect and remit the 7 percent state sales tax, plus local sales taxes in varying rates, on rentals rather than relying on its 7,700 Tennessee hosts to do so.

Airbnb Creates an Affordable-Housing Dilemma for Cities Airbnb’s Tax Deal With Kansas May Be Model for Midwest Airbnb Strikes Tax Deal With Miami-Dade Mayor Instead of Fighting, Some Cities

Team Up With Airbnb and Uber Airbnb Settles Lawsuit With San Francisco
Airbnb spokesman Benjamin Breit said in a news release taxes generated from Tennessee bookings last year were worth $13 million. The revenue department can't say how much of that was actually remitted, spokeswoman Kelly Cortesi said, because the state doesn't break out and track taxes collected on home-sharing.

Breit said that with the tax agreement in place, "the state will be able to fully capitalize on people visiting Tennessee and staying longer through home sharing. This agreement will ensure all of this revenue is collected in a way that is easy for the hosts and state."

But the agreement doesn't cover city or county hotel-motel tax, which totals another 6 percent.

A couple of local hosts said it only makes sense for Airbnb to collect all the taxes.

Presenting a bill with 9.25 percent in sales taxes listed and then asking the guest for 6 percent more looks bad, said John Queen, whose North Chattanooga property stays busy with bookings.

"That kind of screws up the plan a little. It makes us look greedy," Queen said.

"How can you say, 'This tax doesn't include the hotel, and you pay me and I'll pay the city.' They're going to say, 'Right.'"

Otherwise, hosts will have to raise rates or just eat the 6 percent hotel-motel tax, he said. "They need to do the whole thing."

Host Phil Cross said having Airbnb collect taxes would be a help to him and also might help assure a level playing field by identifying hosts who don't have business licenses.

That's a big problem in the fast-growing home-sharing market.

Hamilton County Trustee Bill Hullander's office collects hotel-motel taxes for the county and its municipalities. He said "maybe 45 or 50 [home-share hosts] are participating like they're supposed to. In my opinion, there's probably that many more out there that aren't."

He said his office has been working with Airbnb on a separate agreement to collect the local hotel-motel tax for Chattanooga and the other municipalities that have home-sharing.

"We're probably months away from that happening, if we can get it worked out," Hullander said.

Cross said he got his business license and paid his taxes from the start, but it's hard to compete with under-the-table operators.

"That's a big tax burden to do this. If somebody's not doing that, they're putting 17.25 percent in their pocket, or they're reducing their nightly rate."

Queen said the same thing.

"I am perfectly fine with paying the taxes, Chattanooga invested a lot in the city to make it attractive, I just don't want to be the only one among five houses [used for home-sharing in his neighborhood] to do it," he said.

Chattanooga has taken its own steps to regulate short-term rentals, setting up a district where they're welcome and creating rules for operation. In December the city council voted to contract with Host Compliance LLC to monitor the industry. The company will use computer algorithms to track rentals and the city will match those with business-license lists. If caught without a license, operators will have 30 days to get legal.

Kerry Hayes, deputy chief of staff for Mayor Andy Berke, said Host Compliance is just now getting started in the city and it’s too early to see results.

Hullander and the local hosts noted the agreement announced Thursday doesn’t apply to other home-sharing companies such as HomeAway and VRBO.

Cortesi said taxpayer confidentiality rules prevent her from saying whether the state is negotiating for similar agreements with other home-sharing companies.

By Judy Walton

BY TRIBUNE NEWS SERVICE | JANUARY 19, 2018

Puerto Rico: Do First Claims on Sales Taxes Really Protect Your Municipal Bond Investment?

A combination of poor financial oversight, non-adherence to fiscal policies and an overextension of its financial leverage has led Puerto Rico into a decade-long fiscal decline, which has resulted in its inability to meet the financial obligation to its crushing debt.

In May 2017, the Federal Financial Oversight Board pushed Puerto Rico into a restructuring process, known as Title III, which is quite like the restructuring processes that occurred in Detroit, MI, and Stockton, CA, amid their financial struggles. However, what sets this restructuring apart from Detroit or Stockton is its magnitude. Puerto Rico’s financial restructuring process for its $70 billion debt portfolio, and potential restructuring of its $40 billion pension liabilities, will be one of the biggest undertakings for any local or state government in the history of the United States. The financial crisis of this U.S. commonwealth has contributed to a high poverty rate, where 40% of Puerto Rico’s citizens are living under the poverty line and the unemployment rate has hit above 10%, along with a nearly insolvent public healthcare system.

In this article, we will take a closer look at Puerto Rico’s general obligation debt and its revenue-backed debt and the implications of the restructuring process, as well as how under the financial insolvency of a local government, bonds with higher credit ratings could be subordinate to GO bonds with lower credit ratings.

Continue reading.

MunicipalBonds.com

Jayden Sangha

Jan 18, 2018

Municipal Bonds Will Survive Tax Reform.

Like the schools and bridges and levees they make possible, municipal bonds are built of strong stuff. They're facing more tough tests, but I expect this indomitable financial sector to prevail once again. Not everyone agrees, but my contrarian message is to keep calm and trust your tax-exempts.

Recall that a 10% drop in muni-bond prices after Donald Trump's election did not persist. The downturn rested on speculation that Congress would quickly pass massive income tax rate cuts, which would undercut the value of municipals to affluent retirees who count on every dollar of after-tax income.

As usual with munis, the knee-jerkers blew it. Tax reform wasn't quick, and the segment rebounded, aided by the tight supply of new issues and decent economic growth that did not ignite interest rates or inflation. Municipals outgained Treasuries for 2017 and returned about the same as high-grade corporate bonds. After investors pocketed what they saved by not paying Uncle Sam, tax-exempts had a considerable bottom-line edge.

So, then, what is clouding the outlook for the muni market now? It's this: Americans are facing a realignment of the relationship between the U.S. Treasury and the states and localities. No one in Congress aims to topple the tax-exempt bond market. Cities and states run by Republicans and Democrats alike sell road and school bonds. But some of the so-called tax reforms that seemed on the cusp of approval as we went to press may have unexpected consequences. Assuming legislation is enacted by the time you read this (or soon thereafter), what might limited deductibility of state and local income and property taxes mean to the muni market? Or, what if millions of taxpayers suddenly take the standard deduction rather than deduct mortgage interest?

Whatever your opinion of (and tolerance for) local taxation, gazillions of dollars of tax-free bonds from all over America are backed by general tax revenues. As Washington rescinds some of its help bearing those burdens, you can bet on a surge in appeals of assessments and pressure to cut local property taxes. Real estate values could suffer, along with state and local coffers. Many cities, counties, hospitals and school districts might then struggle to raise cash when they need it, and ratings agencies would be poised to downgrade issuer after issuer. For investors, that is bearish.

There are some other technical hazards, but even if tax reform manages to simplify the system, it's likely that the judging and pricing of individual bonds will become more complex and unpredictable. How, then, can I square such worries with my conviction that tax-exempt bonds will parry yet another challenge? Here's my reasoning:

I expect way fewer new bond issues. And that's despite the fact that investor demand is already overwhelming the volume of available bonds. Further shortages would prop up prices and offset some of the above risks.

Munis have many fans. I won't say tax-free bonds have a cult following among investors, but readers sometimes tell me they so deeply hate to pay taxes that they don't care if the after-tax yield on a taxable alternative would be to their advantage. Jim Colby, VanEck Funds' municipal bond chief, says he's heard the same thing "right from investors' mouths."

Chicken Littles are rarely right. Everyone who has in recent years emphatically declared that municipal bonds are headed for an existential crisis has turned out to be wrong, not counting the dire warnings about Puerto Rico. More broadly, advocates of a tax cut tend to exaggerate its benefits for economic growth and for investor optimism generally, and opponents overestimate its drawbacks. But until and unless there's a recession–which would be a serious matter for the soundness of municipal debt–keep calm and carry on.

Kiplinger's Personal Finance

by Jeffrey R. Kosnett, Senior Editor

January 8, 2018

TAX - COLORADO

Medina v. Catholic Health Initiatives

United States Court of Appeals, Tenth Circuit - December 19, 2017 - 877 F.3d 1213

Retirement plan participant brought putative class action against her employer, a nonprofit organization created to carry out the Roman Catholic Church's healing ministry which operated hospitals and other healthcare facilities, the plan administrator, and individual plan fiduciaries, alleging the plan was not an exempt church plan under Employee Retirement Income Security Act (ERISA) and so should have complied with ERISA's reporting and funding requirements, and that ERISA's church-plan exemption violated the Establishment Clause.

The United States District Court denied participant's motion for partial summary judgment and granted summary judgment to defendants. Participant appealed.

The Court of Appeals held that:

- Employer was associated with a church, as required for ERISA's church plan exemption to apply;
- Plan administrator maintained the plan for the benefit of employer's employees, as required for ERISA's church plan exemption to apply;
- Plan administrator was a principal-purpose organization within meaning of ERISA exemption for church plans maintained by a principal-purpose organization;
- Plan administrator was also associated with a church, as required for ERISA's church plan exemption to apply;
- Substantially all plan participants were employees of a church or associated organization, as required for ERISA's church plan exemption to apply;
- Avoiding was plausible secular purpose for ERISA's church plan exemption;
- ERISA's church plan exemption did not convey an impermissible message that religion was favored or preferred; and
- ERISA's church plan exemption avoided the excessive entanglement with religion that would likely occur in its absence.

Tax-exempt nonprofit organization that operated hospitals and other healthcare facilities was associated with a church, as required for retirement plan the nonprofit offered its employees to qualify as a church plan exempt from ERISA; the nonprofit was the civil-law counterpart of an entity that, under the Roman Catholic Church's canon law, was regarded as an official part of the Catholic Church, as the Vatican approved the entity's canonical statutes, which were analogous to a corporation's articles of incorporation, and it was accountable to the Vatican in several ways, and the nonprofit's articles of incorporation provided that it was organized and operated exclusively for the benefit of, to perform the functions of, and/or to carry out the religious, charitable, scientific, and education purposes of the canonical entity.

TAX - MISSISSIPPI

[Tunica County Board of Supervisors v. HWCC-Tunica, LLC]

Supreme Court of Mississippi - December 14, 2017 - So.3d - 2017 WL 6381257

Taxpayer filed bill of exceptions challenging county's proposed ad valorem tax levy and increase in millage rate.

The Circuit Court rendered levy unlawful and ordered a refund. County board of supervisors appealed.

The Supreme Court of Mississippi held that:

- Taxpayer's bill of exceptions challenging validity of county's ad valorem tax levy was appeal from tax assessment;
- Taxpayer's failure to obtain signature of president of county board of supervisors did not deprive circuit court of jurisdiction;
- Statutory advertising requirements relating to tax levies were mandatory, rather than directory; and
- County board of supervisors failed to comply with statutory advertising requirements prior to approval of ad valorem tax levy.

Taxpayer's bill of exceptions challenging validity of county's ad valorem tax levy was appeal from tax assessment, and therefore circuit court had subject matter jurisdiction over matter, where court ultimately made its decision after the taxes had been assessed and paid under protest.

Taxpayer's failure to obtain signature of president of county board of supervisors did not deprive circuit court of jurisdiction to review taxpayer's bill of exceptions challenging county board of supervisors' ad valorem tax levy; bill of exceptions made specific claims with regard to the actions of the board of supervisors and incorporated as an exhibit the pertinent minutes.

Statutory advertising requirements relating to levy of taxes were mandatory, rather than directory, and therefore failure to comply with such requirements rendered resulting levies void.

County board of supervisors failed to comply with statutory advertising requirements prior to approval of ad valorem tax levy, and therefore levy was void; board approved levy and increased millage rates before public hearing was advertised and held, and levy was not a new levy for which a hearing was not required.

GOP Tax Law Could Starve Cities of Revenue.

Housing experts predict that the tax overhaul will spur home values and property tax revenues to drop, forcing cities to find new ways to raise money — or to cut spending.

The recent, sweeping overhaul of the federal tax code holds the potential to shake the foundation of municipal finance and could lead cities to look elsewhere to raise revenues in the coming years, according to housing analysts.

Under the new tax plan, passed by Congress in December and signed by President Donald Trump just days before Christmas, the mortgage interest deduction will now be capped at $750,000, down from the previous cap of $1 million, and homeowners will no longer be able to deduct state and local taxes from their federal tax liability. Under the new plan, homeowners with existing mortgages above $750,000 can continue to deduct the interest, but new homeowners cannot.

The new plan also caps the deduction for state and local taxes at $10,000 and doubles the standard deduction. According to a study by the real estate website Zillow, 44 percent of U.S. homes were valuable enough to incentivize their owners to itemize and take the mortgage interest deduction. The new cap on mortgage interest deduction and state and local tax means only 14.4 percent of homes are valuable enough to incentivize their owners to itemize instead of taking the standard deduction.

In other words, the vast majority of homeowners will take the standard deduction, which analysts expect to drive down property values. And that means significantly less revenue for cities.

"Only 6 percent of homeowners have mortgages exceeding $750,000, and only 5 percent pay more than $10,000 in property taxes, but most homeowners won't itemize under the new regime," said Elizabeth Mendenhall, president of the National Association of Realtors, in a statement released after passage of the new tax code.

The mortgage interest deduction and the ability to deduct state and local tax has long been seen by real estate groups as a strong incentive for families to purchase homes. Capping the deductions could negatively impact a sector that economist largely agree has not fully recovered from the 2008 housing crisis.

"The new tax regime will fundamentally alter the benefits of homeownership by nullifying incentives for individuals and families," Mendenhall added in her statement after Congress passed the bill.

The results could be chilling on housing markets nationwide, with estimates ranging from a 4 percent drop in home prices (according to Moody's) to a 10 percent drop (according to the National Association of Realtors). Hotter markets in states and municipalities with higher property tax burdens — such as New York, California and the Washington, D.C. metro area — could experience more precipitous drops in home prices, according to Moody's.

The blow to the housing market could ripple throughout municipal finance structures, since cities rely on property tax for nearly half of their revenue. According to the Tax Policy Center, local governments collected $442 billion in property tax in 2013, the most recent year data for which data was collected — 47 percent of the general revenue collected by those municipalities. In Northeast states, including Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, and Rhode Island, property taxes accounted for three quarters of local tax revenues.

The passage and signing of the bill prompted Washington, D.C., Mayor Muriel Bowser to make a late-December plea to homeowners in her city to pre-pay their taxes before the New Year (and prior to the implementation of the new tax code) in order to take advantage of the old tax deductions.

"Because of how hastily this tax reform legislation was created and passed, even its authors cannot fully explain all of the many ways it will hurt millions of hardworking Americans. … One way Washingtonians can get the highest deduction possible is to pre-pay property taxes before the year ends," Bowser said in a statement Dec. 20.

Homeowners from the affluent northern Virginia suburbs to New York made haste to file taxes prior to the Jan. 1 deadline.

Capping of the mortgage interest deduction has traditionally been a policy position supported by progressives. Economists and progressive tax policy groups have long called for reforms to the mortgage interest deduction, which they say amounts to welfare for the wealthy and economists say inflates the value of homes and does little to incentivize broad homeownership.

In fact, several countries that do not utilize mortgage interest deductions have higher rates of homeownership than the United States.

“The evidence is pretty strong that in its prior form it was clearly a very expensive subsidy that mainly benefited high income homeowners who did not need the help,” says Stockton Williams, executive director of the Urban Land Institute’s Terwilliger Center for Housing. “And it doesn’t seem to a be a significant driver of homeownership.”

The effectiveness of the mortgage interest deduction in inducing homeownership is a mixed bag.

Of the top 20 countries in terms of homeownership rate, 11 don’t offer the benefit to homeowners, according to a recent study. Canada, Great Britain and Australia have higher rates of homeownership without offering the benefits of a mortgage interest deduction.

Homeownership rates are already at a 50-year low, according to the National Association of Realtors. Credit remains tight, limiting access to mortgage loans for new homeowners. In addition, the housing market recovery has been largely limited to luxury condominiums, high-priced homes and high-priced rentals. A dearth of affordable housing, and smaller starter homes has driven up prices for the available housing stock.

The provision protecting the interest deduction for existing mortgages might keep homeowners in their houses longer, but the inability to deduct local and state taxes could trigger a sell-off, says Williams.

“There could be further tightening in some of these high value housing markets.”

What is clear is that cities will have to think of new ways to raise more revenue — or make tough choices to cut spending.

Local property taxes pay for wide range of services, from public safety to parks to schools. Raising fees could help cities make up for lost tax revenue. But those fees are often seen as regressive taxes which land heavier on households on the lower end of the income spectrum.

“The cap on local and state taxes is going to force those communities to make some tough choices,” Williams says.“There’s reason for concern. Localities will have to get more creative in bringing in revenue.”

GOVERNING.COM

BY J. BRIAN CHARLES | JANUARY 9, 2018

[Taxes as Charity? New Jersey Towns Try to Elude G.O.P. Tax Law.]

FAIR LAWN, N.J. — Faced with a new federal tax law that limits state and local tax deductions, three communities in New Jersey have come up with a novel solution: They want people to donate to a town-run charity as a way of mitigating their property taxes.

The three towns — Paramus, Park Ridge and Fair Lawn — announced on Friday that they would allow residents to donate the same sum they would have been charged in property taxes to pay for municipal services. Under the tax bill signed by President Trump last month, deductions for state and local taxes, including property taxes, are limited, but charitable donations are not.

“The tax hike bill Congress passed last year is a ticking time bomb for New Jersey,” said Representative Josh Gottheimer, a Democrat from northern New Jersey who helped hatch the plan and whose district includes the three communities. “But today, we are proudly declaring that New Jersey won’t shy from a fight. We won’t be America’s piggy bank.”

The move is one example of how states and towns across the country with high tax rates are working feverishly to come up with creative ways to circumvent the federal tax law. In New York, Gov. Andrew M. Cuomo, a Democrat, has threatened legal action and is exploring the possibility of eliminating the state income tax and replacing it with a payroll tax. In California, a new bill proposes setting up a similar charitable contribution system to allow taxpayers to make donations instead of paying certain state taxes.

As with all the ideas there are many questions about whether the New Jersey towns’ plan could work without approval from Internal Revenue Service and possibly state legislation. Another question is whether people would be required to make a charitable contribution and, if so, whether that would make it in essence a tax.

The new plan, like any tax loophole, is simple in theory and complex in execution, but it could work more or less like this: Paramus, for example, would start a charitable trust and a taxpayer who pays $20,000 in annual property taxes would contribute that exact amount to the charitable trust.

The charitable trust would then allocate the $20,000 to various entities — the schools, the police department and other agencies — as though the donation were a tax payment. The town would then credit the taxpayer for 90 to 95 percent of the donation, making it nearly entirely deductible. (The town could factor in administrative costs to lessen a donation’s value.)

But building a town-run trust to take the place of a local tax collection process is relatively uncharted waters — for one thing such a change in municipal governance would require approval by each town’s local governing body.

“Our attorneys are already going through the plan,” said Richard LaBarbiera, the mayor of Paramus.

Still, in New Jersey, which has the highest property taxes in the country and where municipalities rely on them to pay for schools, libraries, police departments, fire departments and other essential functions, the three towns want to alleviate what would be a major burden on taxpayers.

Governor-elect Philip D. Murphy, a Democrat who has made finding ways to lessen the impact of federal tax plan a high priority, supports the towns’ efforts.

“We are all in on this,” Mr. Murphy said on Friday. “Not just this — we’ll continue to pursue all available means, legal, constitutionally, tax code and otherwise. But this one, we believe, has real legs and real precedent.”

The Trump administration seems keenly aware about efforts to come up with new loopholes.

“I understand what they are trying to do for their cities and their states and their taxpayers,” Gary

Cohn, Mr. Trump's top economic adviser, said in an interview on Friday with Bloomberg Television. "We at the federal government still have to collect revenue so we're going to have to evaluate what decisions they make in terms of what it does for overall collections at the federal level and the federal tax system."

It is not clear that using charitable donations to fund government operations is actually feasible.

The conservative Tax Foundation released a report suggesting that such a maneuver could violate I.R.S. rules. The reason is that the donation is being given purely for the financial benefit of the donor.

"To be deductible, charitable contributions must have a genuinely charitable aspect, and cannot primarily benefit the contributor or involve a quid pro quo," wrote Jared Walczak, a senior policy analyst at the Tax Foundation. "Payments which function as taxes may be classified as taxes even if states choose to call them something else."

Mr. Gottheimer noted that the idea of using charitable donations to help taxpayers was a process that is already in place in various forms in other states, including Alabama, Arizona and California. In Alabama, residents can receive a dollar-for-dollar tax credit when they donate to an approved organization that funds education scholarships. In California, residents and local businesses can receive a 50-percent state tax credit for donations to a state-run fund that raises money to help students pay for college.

The move by New Jersey communities comes as confusion and frustration have spread across the country among anxious taxpayers.

Last week, thousands of taxpayers scrambled to prepay their 2018 property taxes believing they could deduct them under the rules of the old tax code. But an I.R.S. advisory warned that not everyone would be eligible to write off property taxes from this year.

In response, Representative Leonard Lance, a Republican from New Jersey, said he planned to introduce legislation that would ensure that homeowners who prepaid their 2018 property taxes would be able to deduct the full amount, rather than just the portion of their 2018 property taxes that they had already been assessed.

"It will not affect a lot of people, but it will affect those who paid their 2018 property taxes in 2017," Mr. Lance said.

The lack of clarity over the tax plan could lead to a wave of litigation, and state treasurers are anticipating that Congress will work to clarify murky parts of the law. In the meantime, state officials have been approaching tax experts for help in finding ways to diminish the tax burdens on residents since the federal tax plan now allows taxpayers to deduct a total of $10,000 in state and local taxes.

In Washington, Congress is likely to face pressure to find ways to close new loopholes, but Democrats, who were shut out of the process of rewriting the tax code, are unlikely to help Republicans do anything that would harm taxpayers in blue states seeking relief. This will be an especially fraught challenge in a midterm election year and it puts Republicans in the awkward position of trying to regulate state tax systems, despite the party orthodoxy that states know best how to regulate themselves.

"It's a classic federalism conflict," said Itai Grinberg, a Georgetown University law professor and former tax policy official at the Treasury Department.

In New Jersey, Mr. Gottheimer came up with the idea for a municipal charitable trust after a bipartisan bill he sponsored with Mr. Lance to save the state and local tax deductions never made it out of committee.

But the hope among all the Democrats involved in developing and promoting the donation idea was that the issue of taxes and helping New Jersey taxpayers would transcend politics.

“This is not partisan,” Mr. Murphy said. “This is a smart versus not smart.”

THE NEW YORK TIMES

By NICK CORASANITI and ALAN RAPPEPORT

JAN. 5, 2018

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.

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 01/09/18 07:16 PM EST

Endangering Community Investment with Tax "Reform"

There is a significant divergence in meaning between endanger and glimmer. In fact, this may be the first time the two words have been used in the same sentence. They also capture different perspectives on the economic outcome likely to result from tax reform.

"GOP's tax measures endanger a preservation success story" was the original and more appropriate headline in my home delivery edition of the Chicago Tribune on Nov. 24, 2017. I don't know who at the paper read the column by its architecture critic Blair Kamin and thought the headline should be changed to “Glimmer of Hope” for the online version. I’m seeing very little glimmer knowing that the Institute of Cultural Affairs’ GreenRise historic restoration may be endangered.

Continue reading.

ShelterForce

By Ted Wysocki

January 4, 2018

[Deduct This.]

How states can undo one of the most potentially destructive elements of the Republican tax law.

One of the most controversial—and ill-conceived—changes in the new federal tax law passed last month is a $10,000 cap on the deduction that households can claim for tax payments to state and local governments. The provision—which primarily penalizes residents of blue states—has prompted officials in some of the areas most affected by the cap to consider new tax credit programs that would, in essence, transform now nondeductible state and local tax payments into deductible charitable contributions to state and local government organizations. Such a credit program, if well crafted, would stand on solid legal ground and moreover would represent an effective state response to a destructive new federal tax law.

Let’s consider how such a charitable credit program might work.
Imagine a city—let’s call it Springfield—that funds its schools, parks, police and fire departments, and other public services through local property taxes. Springfield could set up a Springfield Schools Fund, a Springfield Parks Fund, a Springfield First Responders Fund, and so on to support various branches of the city government. For every dollar that a resident voluntarily donates to such a fund, she would qualify for a tax credit that would reduce her property tax liability by 80 cents.

Continue reading.

slate.com

By Joseph Bankman, Daniel Hemel, Darien Shanske, and Kirk Stark

January 11, 2018

[Why Did the House Want to Repeal Tax-Exempt Private Activity Bonds?]

Happy New Year to all. When we last spoke, we were all breathing a sigh of relief that tax-exempt private activity bonds were spared the sword in the final tax reform legislation, and we poured out a little eggnog for our old friend, the tax-exempt advance refunding bond, gone too soon.

But based on comments from House Ways & Means Committee Chairman Kevin Brady, and the insights of those who hear the whispers in D.C., tax-exempt private activity bonds aren’t safe yet.

Indeed, the House leadership likely hasn't changed its mind about tax-exempt private activity bonds in the short time between November 2, when the Ways and Means committee released its proposal, and the enactment of the Tax Cuts and Jobs Act.

The question is: why?

Continue reading.

The Public Finance Tax Blog

By Johnny Hutchinson on January 11, 2018

Squire Patton Boggs

Tax Reform's New Incentives For Investments In Low-Income Communities: Part 1

HIGHLIGHTS:

- A new tax incentive in the recently enacted Tax Cuts and Jobs Act would allow investors selling appreciated securities or other investment property to defer tax on those gains to the extent that the proceeds are reinvested in an Opportunity Zone Fund. Further tax incentives would allow for exclusion of both some of the deferred gain and any post acquisition gain if the Fund is held long enough.
- Each of the 50 states and the District of Columbia (as well as U.S. possessions) will have an opportunity to nominate a minimum of 25 Opportunity Zones located within the state, district or territory.
- Eligible zones must generally must be nominated by the governor of a state within a 90-day period starting on the Act's date of enactment (by approximately March 22, 2018, unless a 30-day extension is applied for and granted).

Continue reading.

Article by Kathleen M. Nilles and Kristin A. DeKuiper

January 9 2018

Holland & Knight

Will U.S. Tax Reform Alter The Muni Landscape?

With a new U.S. tax law now upon us, many investors are questioning what the potential impacts may be on their portfolios – and on their potential investment selections going forward. Rafael Costas and Sheila Amoroso, co-directors of Franklin Templeton Fixed Income Group's Municipal Bond Department, address the major areas of potential impact the new legislation could have on muni bonds and offer their thoughts around each of these areas.

The recent passage of the US tax reform bill has caused some uncertainty within the municipal bond market. But it’s not necessarily bad news.

Supply Impact

Overall, we feel supply will decline somewhat from the elevated levels we saw in 2017, when many issuers issued debt they were intending to issue in 2018. Concerns about changes in the tax code that could affect certain kinds of bond issues led to the acceleration of those plans into 2017. The two primary areas of concern were advanced refundings and what are known as private activity bonds. Early versions of the tax bill were targeting the removal of the tax-exemption for each type.

Advanced refunding debt allows issuers to take advantage of refinancing opportunities before a bond’s first call date. We would note that advanced refundings lost the tax exemption only on a prospective (going forward) basis; outstanding advanced refundings are “grandfathered.”

Private activity bonds usually finance projects that have some component of private activity, but that are deemed to also meet “public needs.” While projects like stadia are often quoted as an example of “abuse,” the fact is that the majority of these bonds are issued by hospitals, private colleges, airports, housing authorities, and electric utilities that use the proceeds for pollution control equipment, for example.

In the final tax legislation, private activity bonds were left untouched while advanced refunding bonds lost their tax exemption. We believe that, given the current very low interest-rate environment, advanced refunding debt was not going to be a very significant part of the municipal market in the foreseeable future.

Demand Impact

We expect the demand picture for munis to be mixed, given various changes resulting from the new law. On the individual side, we expect increased demand from individuals as the new cap on state and local tax (SALT) deductions could cause them to look at increasing their exposure to tax-advantaged investments, with municipal bonds being a natural choice.

We also don’t feel that the lowering of the top marginal individual tax rate to 37% from 39.6% will materially reduce demand from current levels. Over time, demand for municipal bonds tends to be more affected by changes in long-term interest rates than by the level of individual income tax rates.

On the other hand, we could see reduced demand from corporations as a result of the reduction in the corporate tax rate to 21%. However, we note that this investor base represents a much smaller percentage of demand than the individual taxpayer, which should help minimize the impact to overall muni demand.

Finally, although the alternative minimum tax (AMT) for individuals remains, it was modified such that fewer taxpayers are expected to be subject to it. As a result, we could see demand for municipal bonds subject to AMT increase and the difference in yields between AMT and non-AMT munis compress as a result.

Credit Impacts

In our view, the fundamental credit problem facing the state and local government sector is unfunded pension liabilities and other retirement benefits. The new tax law per se did not address this issue, and so we do not expect to see a direct, immediate impact as a result of the new law.

We have not favored this sector for quite a while due to these concerns. The general fund debt sector does not represent a large portion of the overall municipal bond market, giving us a wide variety of other sectors and segments to invest in.

The limitation of SALT deductions and the potential for a reduction in revenue among high-tax jurisdictions may force municipalities to confront their pension issues sooner rather than later by forcing them to be more strategic in balancing budgets. The effects will be analyzed on a case-b--case basis. For example, although California has the potential to be negatively impacted from the SALT limitation, the funding ratio of its state pensions is much higher than many other states across the nation.

In summary, we think the new tax reforms will be less impactful to the municipal bond market than was expected when the legislation was introduced. The municipal market will continue to be an attractive investment for taxpayers who are looking for an allocation to provide tax-free income to their portfolios.1

For further information on additional aspects of tax reform, see Franklin Templeton's prior commentaries, *"US Tax Reform: This May not be the End"* and *"The Market Implications of Tax Reform a Bit Unclear."*

The comments, opinions and analyses presented herein are for informational purposes only and should not be considered individual investment advice or recommendations to invest in any security or to adopt any investment strategy. Because market and economic conditions are subject to rapid change, comments, opinions and analyses are rendered as of the date of the posting and may change without notice. The material is not intended as a complete analysis of every material fact regarding any country, region, market, industry, investment or strategy.

This information is intended for U.S. residents only.

What Are the Risks?

All investments involve risks, including possible loss of principal. Because municipal bonds are sensitive to interest-rate movements, a fund's yield and share price will fluctuate with market conditions. Bond prices generally move in the opposite direction of interest rates. Thus, as prices of bonds in a fund adjust to a rise in interest rates, the fund's share price may decline. To the extent a fund focuses its investments in a single state or territory, it is subject to greater risk of adverse economic and regulatory changes in that state or territory than a geographically diversified fund. Changes in the credit rating of a bond, or in the credit rating or financial strength of a bond's issuer, insurer or guarantor, may affect the bond's value. A fund may invest a significant part of its assets in municipal securities that finance similar types of projects, such as utilities, hospitals, higher education and transportation. A change that affects one project would likely affect all similar projects, thereby increasing market risk. Investments in lower-rated bonds include higher risk of default and loss of principal.

For investors subject to the alternative minimum tax, a small portion of municipal bond fund dividends may be taxable. Distributions of capital gains are generally taxable

Federal and state laws and regulations are complex and subject to change, which can materially impact your results. Always consult your own independent financial professional, attorney or tax advisor for advice regarding your specific goals and individual situation.

Footnotes

For investors subject to the alternative minimum tax, a small portion of municipal bond fund dividends may be taxable. Distributions of capital gains are generally taxable.

Franklin Templeton Investments

By Rafael Costas, Senior Vice President, Co-Director, Municipal Bond Department & Sheila Amoroso, Senior Vice President, Co-Director Municipal Bond Department

Jan. 12, 2018

Congress Fumbles Tax Fix to Stadium Subsidies.

In the midst of an NFL season rife with controversy, Congress has added more fuel to the fire. The final tax reform bill cut a House provision that Americans of all political stripes can agree on: closing the loophole that subsidizes stadium construction. Despite many previous attempts to end this absurd giveaway, real reform has failed once again.

It's no secret that state and local governments give tax money to professional sports teams, but not many people realize that the federal government — and therefore, every taxpayer — is on the hook, too.

Because interest from municipal bonds is exempt from federal income taxes, the $13 billion in municipal bond handouts given to stadiums that opened between 2000 and 2016 adds up to $3.7 billion in federal taxpayer losses. That's the cost of 39 F-35 Joint Strike Fighters or two Arleigh Burke-class destroyers.

Continue reading.

insidesources.com

by Michael Farren and Anne Philpot

January 03, 2018

The Tax Reform Roller Coaster Ends - Summary of Provisions Affecting Public Finance.

On December 22, 2017, the President signed the Tax Cuts and Jobs Act (the "Final Bill") into law, bringing an end to the nearly two-month rollercoaster ride that had the public finance industry white-knuckled and a little green in the face.

At the end of the day, the Final Bill is a far cry from the initial assurances that tax reform "won't touch tax-exempt bonds." However, given the rather shocking provisions initially included in the House Bill, the end result could have been a lot worse. The Final Bill ultimately will affect the municipal bond market with some ups and downs as things settle, but hopefully the transition will be more carousel and less roller coaster.

Corporate and Individual Tax Rates Reduced

The most prominent feature of the Final Bill is the reduction of the corporate tax rate from a maximum rate of 35% to a flat rate of 21%. On the individual side, the top tax rate was reduced from 39.6% to 37%, although this reduction expires at the end of 2025. Potentially offsetting this benefit to taxpayers is the change to certain deductions available under current law; most notably the reduction of the mortgage interest deduction from $1 million to $750,000 for married filers and the capping of the deduction of state and local taxes at $10,000. While it may be too early to quantify with any precision how the rate reductions will affect the public finance industry, it is likely that the result will be increased interest rates on tax-exempt bonds due to the decrease in the value of the tax-exemption (especially in the case of corporate bond purchasers).

Alternative Minimum Tax (AMT) – Eliminated for Corporations; Exemption Increased for Individuals

In the past, despite being "tax-exempt," interest earnings on PABs were treated as an item of tax preference includable in alternative minimum taxable income for purposes of determining the AMT imposed on individuals and corporations. As a result, purchasers of PABs generally demanded higher interest rates than they would for governmental bonds.

The Final Bill significantly changes the AMT in a number of ways. For corporations, the AMT is repealed in its entirety for tax years beginning after December 31, 2017. For individuals, both the AMT exemption amount and the exemption amount phaseout thresholds are increased and indexed for inflation for tax years beginning after December 31, 2017 but before January 1, 2026. With the repeal of the AMT for corporations and the increased exemptions (albeit temporary) for individuals, the typically higher interest rates associated with PABs (compared to non-AMT bonds) may be reduced – however, any benefit from this change in law will likely be tempered by the overall reduction in the tax rates discussed above.

Private Activity Bonds Live On (At Least for Now)

The Final Bill retains all categories of tax-exempt private activity bonds (PABs), which include, among others, bonds issued for projects owned by section 501(c)(3) organizations; low-income multifamily housing developments; single-family mortgage bonds; airports; docks, wharves, and ports; sewage and solid waste facilities; mass commuting facilities and facilities for the furnishing of water. While there had been last minute rumors that the price of retaining PABs might be the elimination of an issuer's ability to carry forward PAB volume cap, no such provision was included in the Final Bill. This is particularly good news for projects reliant on the coordination of multiple sources of financing – such as affordable housing developments – where the carry forward of volume cap is more common.

The lower corporate tax rate (discussed above) enacted under the Final Bill will decrease the value of tax-exempt interest to corporate investors, which will likely negatively affect issuers in the pricing of tax-exempt bonds. Potentially offsetting this bad news for PABs, however, is the repeal of the corporate AMT (also discussed above), which some have predicted will decrease the interest rate spread between governmental bonds and PABs.

Despite the favorable result for PABs in the Final Bill, now is not the time to rest easy. After the passage of the Final Bill, members of Congress have continued to question whether the scope of projects financeable by PABs should be reduced to include only projects that are related to "national infrastructure," the intended scope of which is unclear. With the promise that infrastructure is the next big ticket item on the agenda, PABs may be in line for another roller coaster ride. Thus, those interested in the continued existence of PABs should continue to extol their benefits to decision-makers in Washington.

Advance Refundings Eliminated

The Final Bill eliminates the ability of governmental issuers and issuers of qualified 501(c)(3) bonds to benefit from issuing advance refunding bonds (i.e. bonds issued more than 90 days before the redemption of the refunded bonds) on a tax-exempt basis. Unfortunately, the Final Bill does not reflect the robust efforts to lobby Congress to include transition rules. As a result, as of January 1, 2018, issuers are unable to issue tax-exempt advance refunding bonds.

The elimination of advance refundings significantly limits the flexibility of issuers and borrowers to lock-in debt service savings, restructure debt service, or to achieve relief from unfavorable financing terms. We anticipate that players in the municipal bond market will develop alternative synthetic financing arrangements to mimic the economics of an advance refundings. However, these alternative arrangements likely will not be as efficient for issuers as a simple advance refunding would have been.

Professional Stadium Financings Continue to Play Ball

The Final Bill retains the ability to issue tax-exempt bonds for facilities to be used as stadiums or arenas for professional sports, which is undoubtedly welcome news for those involved in projects across the country that are in the works. Despite the favorable treatment in the Final Bill, however, it is worth noting that both Democrats and Republican legislators have questioned whether professional sports stadiums should be financeable with tax-exempt bonds. This apparent bipartisan support may cause some governmental issuers with potential stadium financings in the pipeline to accelerate the projects in order to ensure that bonds are issued before any future legislation eliminates this ability.

Tax Credit Bonds Eliminated

The Final Bill eliminates future issuances of "qualified tax credit bonds," including qualified school construction bonds, qualified zone academy bonds, and qualified energy conservation bonds, among others. Although interest on tax credit bonds is not tax-exempt, these types of bonds have nevertheless allowed issuers to achieve a lower cost of capital on infrastructure projects by entitling the holder to a federal tax credit or, in certain cases, the issuer to receive a subsidy payment directly from the federal government. Mitigating this otherwise negative aspect of the Final Bill is the fact that many of these projects can still be financed on a tax-exempt basis with governmental bonds and/or PABs.

While no new tax credit bonds can be issued after December 31, 2017, holders and issuers of tax credit bonds issued before 2018 will continue to be eligible to receive the federal tax credit or federal subsidy payment, as applicable.

Low-income Housing Tax Credit (LIHTC) Intact

The affordable housing industry need not worry about how to pronounce "AHTC" (i.e. the "affordable housing tax credit"), as no changes – including name changes – were made to the provisions in the Code relating to the LIHTC. Had provisions eliminating PABs been passed, it would have been a severe blow to what are known as "4% tax credits," as they are required to be coupled with PABs issued for qualified residential rental housing. With PABs safe, affordable housing developers can rest assured that the 4% tax credits will live to see another syndication. However, the reduction in the corporate tax rate (discussed above), as well as the ability to only partially offset the new "base erosion and anti-abuse tax" with the LIHTC, will likely affect the value of the LIHTC to tax credit investors, in turn affecting the feasibility of certain projects.

Mortgage Credit Certificates (MCCs) Preserved

In another win for affordable housing, the Final Bill retains MCCs, which allow qualifying homebuyers to claim a tax credit for a portion of the mortgage interest paid during a tax year, making home ownership more affordable for first time homebuyers of low and moderate incomes. Issuers that receive volume cap for single-family mortgage bonds can "trade in" volume cap for the ability to issue MCCs, allowing these issuers to provide an array of products to assist first-time homebuyers depending on the homebuyers' needs and preferences.

PAYGO Problem Solved

As we previously reported, there was a concern that due to the projected estimated increase in the federal deficit caused by the Final Bill, the provisions of the "Pay-As-You-Go Act of 2010" (the "PAYGO Act") would result in the "zeroing out" (i.e., a 100% reduction) in subsidy payments paid to issuers of tax credit bonds (including build America bonds, qualified school construction bonds, qualified zone academy bonds and qualified energy conservation bonds, among others). Despite initial threats by Democrats to withhold support for waiving the PAYGO Act, a short-term funding bill was eventually passed with enough votes to avoid the mandatory sequestration. As a result, issuers of direct pay tax credit bonds will continue to receive the associated federal subsidy payments, albeit in an amount reduced under the sequestration imposed by the Budget Control Act of 2011.

So, Now What?

It is unlikely that the signing of the Final Bill will be the end of the ride. In fact, as was the case in 1986, there may very well be one or more pieces of legislation in the future that include technical corrections to address any unintended consequences of the Final Bill. It remains to be seen whether any of these corrections will relate to public finance (including whether the scope of projects financeable with tax-exempt PABs will be narrowed). In addition, the President's long-awaited infrastructure plan could include various features that would incentivize public finance and public-private partnerships in new ways.

Bracewell LLP

by Victoria N. Ozimek and Brian P. Teaff

USA January 3 2018

Seven Key Changes the New Tax Law will Force Hospitals to Consider.

The end of the year is always a busy time for healthcare finance and tax professionals. But with the Dec. 20 passage of the Tax Cuts and Jobs Act—details of which were unveiled only several days earlier—it's crazy busy.

Tax professionals are scrambling to understand the complex, often-confusing provisions of the hastily written law while trying to do tax planning for hospitals, medical groups and other healthcare clients. The law's generous new break for pass-through entities is a particular head-scratcher.

"My former associates are working 16-hour days to understand the change and roll it out into their tax-planning scenario," said Tina Hogeman, chief financial officer of the Medical Group Management Association. "I'm glad I'm not doing taxes this year."

Not-for-profit hospital systems will have to grapple with a number of changes that make their tax-exempt status less advantageous, including new provisions on unrelated business taxable income and executive compensation.

In addition, borrowing rates on tax-exempt municipal bonds may rise because the new law's big corporate tax cut may make tax-exempt interest income less attractive to institutional investors, said Richard Gundling, senior vice president of the Healthcare Financial Management Association.

"In the past, you've heard for-profit hospital companies complain they're not on equal footing with tax-exempt hospitals," said Monica Coakley, national tax leader for healthcare at KPMG. "This law in some respects turns the tables."

But there is pain for for-profits, too. Hospital companies carrying significant debt will have less ability to deduct interest on that debt from their taxable income. They had hoped to preserve the more generous deductions for existing debt, but lost that lobbying battle.

Moreover, because President Donald Trump signed the bill in December rather than waiting until after Jan. 1, publicly traded hospital companies will have to adjust their 2017 financial statements due to the sharp reduction in the corporate tax rate, dropping from 35% to 21%, and other changes in the tax law.

Like workers everywhere, employees of healthcare companies are likely to inundate human resources offices with questions when they receive their first paychecks in January about why they aren't seeing bigger net earnings resulting from the new law's tax cuts for individuals. But the HR offices will have to wait for the IRS to develop the new payroll tax withholding tables and issue guidance to employers.

Here are seven key takeaways about major considerations for hospitals in the new tax law, from an interview with KPMG's Coakley.

1. Tax-exempt hospitals no longer will be able to offset income from unrelated business activities such as cafeteria earnings with losses from other unrelated business activities. They may want to consider spinning off some entities as separate taxable corporations. That, however, could draw increased scrutiny from state and local officials who might question whether the hospital is still functioning as not-for-profit charitable organization and deserves tax-exempt status.
2. Tax-exempt hospital systems will be liable for a new 21% excise tax on compensation exceeding $1 million paid to its five highest-paid employees. Some large systems with multiple tax-exempt legal entities could have to pay the tax on the highest-paid employees in each entity, totaling more than five across the entire organization. They may want to consider revising their legal entity structure to reduce the number of their tax-exempt entities subject to excise tax law.
3. The new excise tax on high-earning employees does not apply to compensation for the direct provision of medical services. Some physicians receiving compensation over $1 million are paid for both management and medical provider roles. Not-for-profit hospitals will need to break out how much of the compensation is for medical services versus management in order to reduce or avoid paying the excise tax.
4. All hospital systems now have more limited ability to deduct False Claims Act settlements, which

are common in healthcare. For a portion to be deductible, hospital attorneys have to write that specification into any settlements or court orders.
5. For-profit healthcare corporations' ability to deduct interest payments would be capped at 30% of adjusted taxable income starting in 2018. Existing debt is not grandfathered under the previous, more generous deduction rules, as the for-profit sector had requested. So companies may need to consider whether to take action to reduce their existing debt load.
6. Publicly traded hospital companies will have to take the tax law changes into account for their 2017 financial statements for changes such as a reduced value of deferred tax assets, such as net operating losses. That's due to the lower corporate tax rate going forward. The Securities and Exchange Commission recently said companies can make reasonable estimates in their statements of the impact of the new tax law, and will be given additional time to come up with final numbers.
7. Because the new law repeals the tax penalty for Americans who do not obtain health insurance, it's projected that millions more people will be uninsured, leading to an increase in uncompensated care. Hospitals may want to consider tightening their financial assistance policies to limit or exclude assistance for patients who qualify for subsidized Affordable Care Act, Medicaid or other coverage but choose to forgo it.

"Health systems prepared their financial assistance policies based on the understanding that most people who qualify for (subsidized) insurance would be obtaining it," Coakley said. "Now with the mandate penalty being repealed, they may want to revisit those policies and trim back assistance."

Modern Healthcare

By Harris Meyer | January 2, 2018

Harris Meyer is a senior reporter providing news and analysis on a broad range of healthcare topics. He served as managing editor of Modern Healthcare from 2013 to 2015. His more than three decades of journalism experience includes freelance reporting for Health Affairs, Kaiser Health News and other publications; law editor at the Daily Business Review in Miami; staff writer at the New Times alternative weekly in Fort Lauderdale, Fla.; senior writer at Hospitals & Health Networks; national correspondent at American Medical News; and health unit researcher at WMAQ-TV News in Chicago. A graduate of Northwestern University, Meyer won the 2000 Gerald Loeb Award for Distinguished Business and Financial Journalism.

TAX - MAINE

Town of Eddington v. Maine

Supreme Judicial Court of Maine - December 7, 2017 - A.3d - 2017 WL 6045048 - 2017 ME 225

Electric power distributor submitted applications for tax abatement to the municipal officers of two towns for payment of property taxes on property that distributor did not own.

Both applications for the abatement were denied. Distributor appealed to the Board of Property Tax Review, which granted distributor's abatement requests. Towns petitioned for review.

The Superior Court affirmed the Board's decisions, and towns appealed.

The Supreme Judicial Court of Maine held that distributor's error in including a transmission line it did not own as property subject to property tax to two towns was an error in assessment, not in valuation, and thus abatement claim filed by distributor to two towns for property tax abatement was not subject to a 185 day deadline; evidence showed that towns taxed line in question twice, once from distributor and once from line's proper owner.

TAX - OHIO

[Columbus City Schools Board of Education v. Franklin County Board of Revision]

Supreme Court of Ohio - December 7, 2017 - N.E.3d - 2017 WL 6048024 - 2017 -Ohio- 8844

City schools board of education challenged county board of revision's reduction of county auditor's real-property valuation.

The Board of Tax Appeals reduced the valuation for two additional tax years. Board of education appealed.

The Supreme Court of Ohio held that property owner failed to carry its burden of establishing that person who filed valuation complaint was authorized by statute to do so, as required to establish jurisdiction.

Property owner, a limited liability company (LLC), failed to carry its burden of establishing that person who filed real-estate-valuation complaint on owner's behalf was authorized by statute to do so, as required to establish jurisdiction; after board of education challenged jurisdictional sufficiency of complaint, owner failed to respond, and also failed to respond to board's discovery requests.

TAX - RHODE ISLAND

[Lehigh Cement Co. v. Quinn]

Supreme Court of Rhode Island - December 13, 2017 - A.3d - 2017 WL 6347976

Taxpayer brought action for money damages against city, alleging that taxpayer leased 3.65 acres of land, that city taxed taxpayer on 16.8 acres of land, and that taxpayer paid nearly $500,000 in taxes attributable to property it neither owned nor leased, and seeking refund of such allegedly illegal or erroneous assessments.

The Superior Court granted city's motion for summary judgment. Taxpayer appealed.

The Supreme Court of Rhode Island held that:

- The plain reading of the statute permitting municipalities to assess back taxes on real estate is that the statute provides municipalities with a six-year look-back period in which to assess or reassess real estate that may have escaped taxation, and that the statute does not provide a taxpayer with relief from allegedly erroneous or illegal assessments;
- Fair-distribution clause of Rhode Island Constitution did not entitle taxpayer to refund of allegedly erroneous or illegal real estate taxes assessed by city; and
- Taxpayer's reliance on city's "representations" that taxpayer would receive credit or refund was not reasonable, and thus such representations were not sufficient to toll three-month limitations period for taxpayer to file suit in equity directly in Superior Court.

Janney Municipal Comment: Tax Reform's Cost to Municipal Issuers.

Read the Comment.

Wildfires Burn Through Property Taxes Securing Calif. County Bonds.

WASHINGTON — The property taxes securing 40 Sonoma County, Calif., bond issues face an estimated shortfall of $2.4 million because of the October California wildfires.

That estimate was recently released by Erick Roeser, auditor-controller-treasurer-tax collector for Sonoma County.

The 40 bond issues financed projects for two community colleges and various school districts that were hit by the Sonoma Complex wildfires.

Brooke Koop, Sonoma's property tax manager, said all the issuers have sufficient reserves to make debt service payments through June 30, the end of their fiscal years.

Koop said tax adjustments will be made in the next fiscal year if they are needed to cover future shortfalls. "We project out for 18 to 24 months to ensure we have sufficient reserves," she said.

Gov. Jerry Brown is expected to propose the state backfill, or make up, any disaster-related property tax shortfalls when he releases his new state budget on Wednesday.

Roeser also estimated Sonoma's Proposition 13 property tax revenues will decline $16.1 million from what they would have been during the current fiscal year.

The Sonoma County Office of Education recently posted a material event notice on the Municipal Securities Rulemaking Board's EMMA system that updated estimated revenues for every county school district based on Roeser's memo.

Federal disaster declarations were made for Butte, Lake, Mendocino, Napa, Nevada, Orange, Sonoma and Yuba counties in California as a result of the October wildfires.

"Approximately 5,300 parcels experienced some degree of fire damage, which will have an adverse impact on property tax revenues that support a wide range of services for citizens and visitors in Sonoma County," Roeser wrote in his Dec. 6 memo to Prop. 13 and ad valorem taxing agencies.

The memo described the estimated revenue losses as "preliminary" and based on a reassessment of 4,144 parcels that represented 78% of the damaged properties for the last nine months of the fiscal year.

The reassessments will stay in effect until the property is rebuilt or sold to another owner.

Roeser told The Bond Buyer in an interview that the Prop 13 revenue losses were smaller than an original estimate of about $30 million.

"When you break it down on an agency by agency basis it turns out to be about 1.9% of what agencies expected to receive in the current year," Roeser said. "So when you put it in those terms it turns out not as significant as we thought it could be.”

Even so, Roeser emphasized that the losses have been “absolutely devastating in California.’’

Because Prop. 13 puts a cap on property assessments, homes are not taxed at their full value. “The impact to property tax revenue is not necessarily representative of market value loss,” Roeser said.

More recently the Thomas wildfire struck Ventura County and the Creek and Rye fires centered in Los Angeles County.

“At 281,893 acres (440 square miles), the Thomas Fire is the largest wildfire in California history,” Ventura County spokesman Bill Nash said in an email. “It started at about 6:30 p.m. on December 4, 2017 and continues to burn. It is now 92% contained. The fire destroyed 1,063 structures, many of them homes. There have been two fatalities, one civilian, one firefighter.”

Santa Barbara County spokeswoman Gina DePinto said there has been less damage from the Thomas fire in her county. “Our initial estimates are 52 residences damaged or destroyed,” she said. “It’s too early for us to know about property tax loss.”

Roeser said he will be meeting with state officials in Sacramento on Jan. 10 about his county’s request for state funding to make up the difference in lost property tax revenues.

California has covered lost property tax revenue in the past for federally declared disasters, most recently for Lake County following the 2015 Valley Fire.

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 01/05/18 07:06 PM EST

TAX - SOUTH DAKOTA

Valley Power Systems v. South Dakota Department of Revenue

Supreme Court of South Dakota - December 13, 2017 - N.W.2d - 2017 WL 6380678 - 2017 S.D. 84

Industrial-engine distributor sought review of the Department of Revenue’s certificate of assessment that required distributor to pay alternate contractor’s excise tax, use tax, interest, and a penalty in regards to new exhaust manifolds installed on mobile power units that a utility company used to provide supplemental power at one of its power plants.

The Sixth Judicial Circuit Court affirmed. Distributor appealed.

The Supreme Court of South Dakota held that:

- The mobile power units were “fixtures” so as to subject distributor to excise contractor’s tax, and
- Distributor was subject to use tax on the exhaust manifolds.

Power units that were used by utility company to generate supplemental electricity during peak-load-electrical usage and for which industrial-engine distributor provided and installed new exhaust manifolds with diesel oxidation catalysts were “fixtures,” and thus distributor was subject to excise contractor’s tax; each power unit weighed 110,000 pounds, each unit sat in a fenced enclosure where it was connected to a fuel source and the electrical transmission grid, units had not been moved in the last 20 years, and units' actual use reflected utility company's intention to constructively annex them to the land for purposes of providing supplemental power at its power plant.

Industrial-engine distributor was subject to use tax on the exhaust manifolds that it installed on utility company's mobile power units; distributor was a contractor under statutes on realty improvements contractor's excise tax, and the exhaust manifolds were tangible personal property used in the performance of distributor's contract with utility company.

[2018 Outlook: IRS Implementing Data Driven Muni Bond Audits.]

WASHINGTON – In 2018 the Internal Revenue Service will rely on a new data driven approach for auditing municipal bonds, while focusing on several regulatory issues.

That's the prediction from bond attorneys, muni market groups and and the director of the recently consolidated IRS enforcement office that handles audits of both tax exempt bonds and Indian tribal governments.

The municipal bond market went through a roller coaster in 2017 that culminated in a new tax overhaul law that terminates advance refundings and tax credit bonds as of Dec. 31 without any transition rules to delay the effective date that had been sought by market participants.

"If you look at advance refundings all they have to do is strike through the code. It's done," said Emily Brock, director of the Federal Liaison Center of the Government Finance Officers Association. "Unfortunately I think there are a lot of technical points that weren't addressed in the final tax legislation that may need greater focus."

From an enforcement standpoint, terminating advance refundings and tax credit bonds means "there will be less for the IRS to look at" in 2018, Ed Oswald, a tax partner at Orrick Herrington & Sutcliffe in Washington, dryly observed.

On the regulatory front, the latest IRS priority guidance targets an update on regulations for bond reissuance, guidance on remedial actions and finalization of the long-awaited updated rules that the IRS and Treasury issued Sept. 28 on the notice and approval requirements for private activity bonds under the Tax Equity and Fiscal Responsibility Act.

Bond reissuance is a timely topic because reissuances will rise with the termination of advance refundings, several lawyers said.

"I suspect that we're going to need clarifications on what is needed or not needed to cause a reissuance," said Perry Israel, a bond attorney based in Sacramento, Calif. who is on the board of the National Association of Bond Lawyers. He foresees "a number of "Cinderella bond" structures in which taxable bonds are changed into tax-exempt bonds as a method of replacing advance refundings.

"Also, there will be a lot of intentional reissuances as banks try to keep their customers. Many direct placements with banks have been written with 'gross up' language that would increase the rate on the bonds if the after tax value is reduced to the bank," Israel said. "This means that if the bank's tax rate reduces, the rate on the bonds would go up — with the reduction in corporate tax rates that could be very costly and banks are going to want to change those adjustments to keep those customers."

Rich Moore, a partner at Orrick Herrington & Sutcliffe in San Francisco who is also a NABL board member, said it isn't clear whether the IRS will break new ground on reissuance rules.

"I don't know whether this new guidance would go in a regulation or be in a notice that would supercede the others," Moore said. "At a minimum, what it is going to do is just take the existing guidance on reissuance rules for tax exempt bonds and put them in one place."

Bond attorneys also are uncertain whether the new TEFRA rules will remain in "proposed" status for the indefinite future or be finalized this year.

IRS spokesman Dean Patterson said his agency "generally does not discuss the timing of future guidance or regulations."

Moore said he's "optimistic they can be finalized because they got the proposed regulations under the Trump administration and they are user friendly."

The proposed rules take into account tax law changes that have expanded the kinds of private activity bonds that can be issued and technological changes that have occurred since 1983 such as the Internet and electronic communications.

TEFRA established the public notice and approval requirements for PABs in 1982 before the PAB categories were expanded. The tax reform legislation recently approved by Congress left PABs untouched so the need for the updated TEFRA rules remains.

The remedial action rules need an update, Oswald said. These are rules on actions that issuers can take to remediate certain tax law or rule violations for tax-advantaged bonds, which include tax-exempt, taxable direct-pay, and taxable tax-credit bonds.

"It's still difficult economically to get either privatizations or P3 transactions done under the current remedial action rules," Oswald said.

On the enforcement side, the IRS expects to close 577 audits in the tax exempt bond office in fiscal 2018, which began on Oct. 1, 2017 and ends on Sept. 30, 2018. That's significantly down from the 717 closed in fiscal 2017 but slightly higher than the 570 concluded in fiscal 2016 and the 569 in fiscal 2015.

The IRS does not offer projections for how many voluntary agreement program cases it will close in fiscal 2018, but the trend has been a decline from 122 in fiscal 2015 to 67 in 2016 and 44 in 2017.

The IRS 2018 work plan for Tax Exempt and Government Entities publicly released Sept. 28 lists "hedge terminations; economic life and weighted average maturity (WAM); safe harbors for guaranteed investment contracts; and rules for qualified hedges" as areas for examination for its new data-driven Knowledge Management unit.

The 2018 work plan lists five areas to focus on as part of its compliance strategy: arbitrage of tax-advantaged bonds with guaranteed investment contracts and/or qualified hedges as well as bonds with investments beyond a temporary period; acquisition financing involving private activity bonds to determine whether the rehabilitation requirement was satisfied; non-qualified use in the disposition of financed facilities and/or excessive private business use; bonds issued with a deep discount; and private activity bonds with excessive weighted average maturities.

Christie J. Jacobs, who took over the consolidated offices of Tax Exempt Bonds and Indian Tribal Affairs in May, told The Bond Buyer in a mid-December interview that she doesn't have any new compliance concerns for 2018.

Jacobs, who has worked for the IRS for more than 28 years, headed the ITG office since its creation in 2000. She started working at the IRS as an intern while attending the Columbus School of Law at Catholic University.

She received her undergraduate degree from Vassar College and is a Maine native who now lives in Colorado.

The reorganization to a combined ITG/TEB office came as an efficiency move against the backdrop of a continuing wave of retirements that has reduced the workforce and reduced funding from Congress.

The TEB operation is expected to have only 19 agents conducting exams by June of 2018, down from 23 at the Oct. 1 start of the fiscal year. In 2009 the office had 60 agents, six managers, five support staff, and technical adviser.

"Because there are fewer people, they will spend less time figuring out where to focus their work and they will be given cases electronically," Jacobs said. "There's going to be compliance strategies developed based on data and we will go take those compliance strategies and do audits on those."

Jacobs said the ITG/TEB office is using a data driven, centralized approach to deciding when to conduct examinations. "This is for all of our divisions, just to be clear, but it's also for the tax exempt bond work as well," she said.

One area not tracked by the IRS is states' compliance with their private activity bond volume caps. "I don't think that's generally our function," Jacobs said. "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."

Carol Lew, past president of NABL and a shareholder at Stradling Yocca Carlson & Rauth in Newport Beach, Calif., thinks the new muni audit process, which encourages communication between issuers, their lawyers and auditors as soon as possible after the IRS notifies the issuer of an audit, is "making headway."

The net effect the new approach, Lew said, is that if a municipal issuer is audited "it doesn't necessarily mean there's a problem with their deal." Instead, the transaction might come under an area the IRS has targeted for examinations.

One example is that the 2018 work plan is focusing on multifamily housing projects that involve existing housing to determine if deals complied with the rehabilitation restriction.

"The issuers may see be a more indepth audit instead of a summary," Lew said.

By Brian Tumulty

BY SOURCEMEDIA | CORPORATE | 12/28/17 07:11 PM EST

[2018 Outlook: More Tax Legislation and Possible Supreme Court Ruling.]

WASHINGTON – Republicans in Congress expect the wide-ranging tax overhaul law just enacted will be followed by more tax legislation in 2018 that includes extensions for expired tax provisions such as one that would extend qualified zone academy bonds though 2017 and an excise tax on imported rum that benefits Puerto Rico and the Virgin Islands.

Senate Finance Committee Chairman Orrin Hatch, R-Utah, introduced the tax extenders bill the day after the Senate approved tax reform legislation.

The Senate extenders bill would continue for 24 months more than a dozen tax breaks that expired at the end of 2016, including a rum cover-over excise tax that produces revenue for Puerto Rico and the U.S. Virgin Islands to pay for local government operations.The QZAB extension only goes through 2017 because the new tax law terminates tax credit bonds after Dec. 31. Other extenders are energy-related, including a nuclear energy production tax credit.

Congress also will need to enact a technical corrections bill in the coming months to fix drafting errors and loopholes in the new tax law.

“It is inconceivable that Congress will not have to act early in the year on a technical reform bill,” said Frank Shafroth, director of the Center for State and Local Leadership at George Mason University.

Shafroth said the “cataclysmic rush” to enact the legislation bore not even a remote comparison to the outreach and deliberations over the last tax reform bill in 1986.

“Because the legislation will have such a significant impact on increasing the federal deficit and debt, it seems certain that interest rates will rise, thereby increasing the cost of debt issuance for not just state and local governments but also for schools and universities,” Shafroth said.

Meanwhile, the U.S. Supreme Court is expected to decide soon whether to consider a case involving South Dakota that would have nationwide impact on the ability of state and local governments to collect sale taxes on Internet purchases.

In addition, Congress may consider reforming the Internal Revenue Service to make it more customer friendly, according to House Ways and Means Committee Chairman Kevin Brady, R-Texas.

“My sense is that there could be broad bipartisan support for restructuring the IRS,” Brady told reporters on Dec. 18.

Brady said the tax bill left out provisions that were dropped at the last minute because of the Senate’s parliamentary Byrd rule as well as other proposals. Under that rule the Senate cannot include non-germane provisions without revenue implications via the reconciliation process or measures that would add to the federal deficit after the 10th year.

“This is not our last tax reform,” Brady said. “I’m going to recommend that we do have some form of tax reconciliation in future budgets because there are still areas of the tax code I think and we think can be improved whether it’s retirement savings, education, streamlining and we had a number of good ideas from our members we weren’t able to accommodate.”

Further tax legislation could provide an opening for municipal bond market issuers who think Congress left them in the lurch by not giving them a transition period before the termination of advance refundings and tax credit bonds.

Congress also will get pushback in 2018 from state and local governments on its controversial decision to limit to $10,000 per household the federal deduction for property and income or sales state and local taxes.

“Cities will continue to fight to fully restore SALT and the exemption for advance refunding bonds,” said National League of Cities President Mark Stodola, mayor of Little Rock, Ark.

U.S. Conference of Mayors President Mitch Landrieu, the mayor of New Orleans, described the tax legislation as “a full-fledged assault on cities and the families who live in them.”

“This bill will make our cities harder to live in and harder to run effectively –- all for the benefit of wealthy political donors,” Landrieu said.

Because Congress repealed the individual mandate requiring taxpayers to purchase health insurance, “Republican and Democratic mayors, not Washington politicians, will contend with emergency rooms filling up with the sick and the uninsured,” Landrieu said.

But repeal of the health insurance mandate won’t expire until the end of 2018.

The impact of the repeal could be partially offset before then if Congress enacts legislation to establish high-risk insurance pools at the state level and renews federal subsidies for low-income people to purchase health insurance. Republican lawmakers such as Sens. Susan Collins of Maine and Lamar Alexander of Tennessee are hoping Congress will enact bipartisan legislation with those fixes in 2018.

Congress, however, is expected to continue resist calls by state and local governments to enable to them to collect sales tax on Internet purchases.

The obstacle has been House Judiciary Committee Chairman Robert Goodlatte, R-Va., who has refused to consider legislation on Internet sales taxes authored by Rep. Kristi Noem, R-S.D.

Goodlatte has announced he won’t run for re-election in 2018, but relief could come sooner from the Supreme Court.

South Dakota Attorney General Marty Jackley announced Dec. 21 that the state filed its final reply in its request for consideration by the high court.

“Based upon the significant impact this issue has on every Main Street business, it remains my hope that our highest court will let us be heard,” Jackley said. “We have received extraordinary support from the State Attorneys General, the National Governors Association, educational leaders, and the business community in the national fight to bring tax fairness for our local retailers and to help support main street businesses.”

South Dakota is hoping the Supreme Court will decide whether to take the case by the end of January, setting up the possibility of a ruling by the end of the court’s term in late June.

The case is widely viewed as an opportunity for the Supreme Court to take into account technological advances since its 1992 ruling in Quill Corp. v. North Dakota, that sales tax collections for online sales can only be required if a retailer has a physical presence or “nexus” in a state.

South Dakota has no state income tax and is more reliant on sales taxes for its budget than most states.

A 2016 South Dakota law requires out-of-state retailers to collect and remit the sales tax similar to in-state retailers if the remote sellers have more than $100,000 in sales or complete more than 200 sales transactions per year within South Dakota.

After the law was enacted, the state contacted large remote retailers asking them to comply. The state then sued three that refused, resulting in the lawsuit, State of South Dakota v. Wayfair (W), Overstock and Newegg. South Dakota's highest court overturned the law, setting the stage for the appeal.

States and local governments lost an estimated $26 billion in potential sales tax revenue in 2015 because of online retail sales, according to the National Conference of State Legislatures and the International Council of Shopping Centers.

"I think the legislation, the way it is written, is actually a great opportunity for states and localities to address the collection of sales tax," said Emily Brock, director of the Federal Liaison Center for the Government Finance Officer Association.

While online merchandise sales have exploded, much of the sales tax is uncollectible, Brock said. "Local tax systems address local needs and so does the imposition of a sales tax," she said. "It's utilized effectively across the country."

By Brian Tumulty

BY SOURCEMEDIA | MUNICIPAL | 12/29/17 07:08 PM EST

Tax Bill Jolts Municipal-Bond Market.

December is typically a sleepy month in the already sedate municipal-bond world—but not this year

December is typically the sleepiest month in an already sedate municipal-bond world. But this year the prospect of a new tax bill roused the market to records.

Municipalities issued $43 billion in new bonds through the first 15 days of December, the largest amount of government borrowing during that same period since 1990, according to Thomson Reuters. The total includes $8 billion of new bonds on Friday.

The flurry of new debt triggered a series of price swings that don't normally occur in such a placid market. Within an eight-day period in late November and early December, municipal-debt values hit their low and high points for the fourth quarter, according to the S&P Municipal Bond Index.

"It's been kind of raining munis," said James Iselin, head of the municipal fixed-income team at money manager Neuberger Berman.

The price volatility unfolded as Congress debated whether to do away with long-held tax exemptions on certain types of municipal bonds. Investors don't demand as much interest on these bonds because they don't have to pay taxes on their earnings. That lowers borrowing costs for cities and states as well as charter schools, museums, private universities, hospitals and nursing homes.

A final bill hammered out last week by House and Senate negotiators eliminates the exemption on so-called advance refunding bonds, which cities and states use to refinance their old debt. The nonpartisan Joint Committee on Taxation estimates that move would mean an additional $17.3 billion in revenue to the federal government over the next decade.

Legislators decided to keep the exemption on private-activity bonds, which allow nonprofits and some for-profit firms to raise money for development projects perceived to have a public benefit. A prior House bill proposed eliminating that benefit altogether.

The full House and Senate are expected to vote on the final bill this week, and President Donald Trump is expected to sign the final version if it passes.

Borrowers and bond buyers began their scramble in November when Congress unveiled its first tax proposals. As issuance skyrocketed at the end of last month, municipal bonds reached their cheapest levels relative to 10-year Treasurys since 2015, according to Thomson Reuters Municipal Market Data.

Prices then rebounded as investors competed to buy up the new, cheap bonds. Thus far this month an average of $45 million in municipal-bond exchange-traded funds has changed hands a day, compared with $26 million in December of last year, according to a CreditSights analysis of Bloomberg data.

Even an announcement last Wednesday that the Federal Reserve would raise its benchmark federal-funds rate by a quarter percentage point didn't slacken demand. Rising interest rates tend to lower the price of outstanding municipal bonds that were issued in a lower rate environment.

"This may easily be the biggest December that we've ever seen when all is said and done in terms of new issue volume," said Peter Hayes, head of the municipal group at BlackRock Inc. and a buyer of these bonds. "Usually we're known for more straight line performance."

One reason for the demand is that many market participants expect municipal bonds to become more valuable in 2018 if governments pull back on new advance refunding bonds. Even private-activity bonds, which will retain their tax-exempt benefit under the current bill, are likely to be scarce for the first few months of the year because so many borrowers rushed to market over the past six weeks.

One borrower whipsawed by the market movements was Forsyth County, Georgia. After Congress began its tax debates, county officials decided they would issue about $70 million in advance refunding bonds used to refinance prior borrowings on parks and roads.

But when the county's documents were ready at the end of November, bond prices were lower and interest rates were higher. The county would gain little in savings, said Chief Financial Officer David Gruen, and decided to hold off.

When prices rose again this month, the county, its lawyers and underwriters changed their minds again. Mr. Gruen now expects to do the deal Wednesday if rates remain favorable.

"It is really been quite a roller-coaster ride," Mr. Gruen said.

Borrowing costs jumped as municipalities rushed to issue new bonds ahead of apotential change in tax rules.

One city, Portland, Ore., wasn't able to move fast enough. It wanted to move up an issuance of about $100 million in advance refunding sewer bonds planned for April 2018, said debt manager Eric

Johansen. But officials concluded they would not be able to bring the borrowing measure before the city council and get ratings reports on the proposed bond issue from debt-ratings firms in time.

"If we had a little more time, we would," Mr. Johansen said. He said he remains hopeful that Congress will give governments a grace period. "Any kind of extension of the effective date would be enormously helpful," he said.

Plenty of other borrowers were able to take advantage of the mayhem. The state of Florida this month sold $410 million in advance refunding bonds planned for 2018, said Florida bond finance director Ben Watkins.

Another state official asked Mr. Watkins "'What are you going to do for the next six months?'" he said.

"I said 'I guess I'm going to take time off.'"

The New York Times

By Heather Gillers

Updated Dec. 18, 2017 11:22 a.m. ET

Write to Heather Gillers at heather.gillers@wsj.com

Bipartisan U.S. Conference of Mayors Criticizes Congress for Passing Tax Reform Bill; Call it an 'Assault on Cities'

WASHINGTON, DC – New Orleans Mayor Mitch Landrieu, President of The United States Conference of Mayors (USCM), today released the following statement on Congress' tax bill on behalf of Democratic, Republican and Independent mayors:

"When Congress began its efforts to reform our nation's tax code, it had a unique chance to create jobs, protect middle class families, and build stronger communities. It has squandered that opportunity.

"The bill being sent to President Trump's desk is a full-fledged assault on cities and the families who live in them. Mayors raised their voices to protect essential tools for cities like the Low Income Housing Tax Credit and the Historic Tax Credit, while averting a full elimination of the State and Local Tax (SALT) deduction. There's no mistaking, however, that this bill will make our cities harder to live in and harder to run effectively – all for the benefit of wealthy political donors.

"Mayors of both parties fought tooth and nail to preserve the individual mandate, without which 13 million Americans could lose their insurance. Republican and Democratic mayors, not Washington politicians, will contend with emergency rooms filling up with the sick and the uninsured.

"But make no mistake: our cities will find a way forward. Mayors were elected to put their constituents first, and all of us – Democrat, Republican, or Independent – honor that commitment every day.

"No matter how much of a lurch we've been left in, mayors will meet this challenge."

Fitch: US Tax Bill Adds Pressure to States, Locals and Higher Ed.

Fitch Ratings-New York-20 December 2017: The final version of the US tax bill may affect some states' and locals' revenues and could add pressure to colleges and universities, says Fitch Ratings. However, the long term effect is uncertain due to the complicated interrelationships of the law changes and since many of the provisions will expire in the next decade.

The federal tax changes could limit tax raising flexibility for state and local governments, particularly for states that charge higher taxes, as the bill will cap the federal tax deduction for state and local taxes at $10,000. This will cause an increase in the impact of state and local taxes. Residents in states with comparatively high taxes, including California, Connecticut, New Jersey and New York, will be more affected and may have less tolerance for higher state and local taxes in the future. Less revenue-raising flexibility could limit growth in state and local spending and have negative implications for entities that rely on government support including school districts, public higher education institutions and healthcare providers with high Medicaid exposure.

The proposed tax rate reductions for higher-income taxpayers and changes to the individual Alternative Minimum Tax are most likely to affect tax payers that benefit from the current deduction for state and local taxes and could somewhat offset the immediate impact. Most states are not in a position to lower taxes in response to the change due to tepid revenue growth and ongoing spending pressures.

If the lowered caps on the deductions related to mortgage interest, property taxes and home equity loans reduce the incentive to buy houses, property values in areas with high average home prices could see lowered growth or even decline, reducing the amount of property tax local governments collect. This change could result in lower revenue growth prospects for local governments absent tax rate increases.

Fitch notes taxpayer action to minimize aggregate tax payments in advance of the federal tax changes, such as managing the timing of discretionary income and/or prepaying taxes, is likely to skew revenue results in the current and coming fiscal years. States will also need to consider the implications of the federal changes on state revenue streams given existing linkages to the federal tax code, and may choose to make modifications in upcoming legislative sessions.

More broadly, the elimination of tax-exempt advance refunding bonds will modestly limit financial flexibility but is not expected to have a significant effect on municipal issuers' credit quality.

The 1.4% excise tax on net income from the largest private colleges' endowments would be an incremental financial stress but would likely not have significant near-term credit effects on Fitch-rated colleges or universities. The impact under the final law is narrow. The Chronicle of Higher Education, using data from 2014 and 2015, estimates fewer than 30 private colleges and universities meet the enrollment and endowment per student levels in the bill that would trigger the tax. However, it could lower the incentives for donors to fund endowments and raise the possibility of higher and more onerous taxes on endowments in the future. The incentives for donors could also be pressured by the rise in the standard deduction if it lowers the number of taxpayers who itemize charitable deductions.

The long term effects of these provisions of the tax bill, and the federal changes overall, is uncertain. Many provisions are set to expire in 2025 and will likely be up for political debate in the interim. On the spending side, future federal action to close projected deficits could affect areas such as

Medicaid, a key area of vulnerability for states.

Muni Market's Trusted Buyers Could Disappear After Tax Cuts.

- **Could leave 'demand hole' for debt maturing in 10 to 17 years**
- **Tax rate drop to 21% from 35% makes munis less attractive**

Banks and insurance companies could once be trusted to scoop up state and local government debt. Now, they could start looking elsewhere to invest.

By cutting the corporate tax rate to 21 percent, tax-exempt municipal bonds could lose their allure to corporate buyers. That could have a major impact on the pricing of the longer-dated bonds these institutions tend to buy, analysts say.

"On a 35 percent tax rate, muni bonds look attractive to a corporation," said Jonathan Mondillo, portfolio manager and head of municipal trading for Alpine Funds, which oversees about $1.3 billion in municipals. "At a 21 percent tax rate, I'm not quite sure they do."

Banking institutions' holdings of municipal securities stood at $584.2 billion in the third quarter of 2017, up from $128.6 billion in 2000, according to Federal Reserve data. Property and casualty and life insurance companies have increasingly added to their muni investments as well, holding $530.2 billion at the end of the third quarter, the data show.

Together, banks and insurance companies held 29 percent of the $3.8 trillion in outstanding municipals in the third quarter, according to the Federal Reserve data.

Less consistent demand from banks could cause increased market volatility and less liquidity, according to a Dec. 17 note by George Friedlander, managing partner at Court Street Group.

While separately managed accounts prefer bonds maturing in less than 10 years and municipal bond funds prefer longer-dated paper, there could be a "demand hole" for securities maturing in 10 to 17 years due to the tax cut, he wrote in the report. In order to entice corporate buyers, yields may need to rise to taxable levels, he added.

To be sure, banks and insurance companies may still be attracted to the diversification and stable credit quality that municipals offer, said Gabriel Diederich, portfolio manager for Wells Fargo Asset Management, which oversees about $41 billion of state and local debt.

And while Congress' tax overhaul has the potential to hurt demand from banks, regulatory changes by lawmakers could offset some of the impact.

Bills in the House and Senate would treat municipal debt as high-quality liquid assets, thereby helping banks meet liquidity rules and providing a potential boon to muni demand, according to Bloomberg Intelligence senior government analyst Nathan Dean.

Sean Carney, head of municipal strategy at BlackRock, said the "psychology" of corporate buyers is still uncertain. It could take months or years to figure out their buying behavior as a result of the tax change, he said.

"We don't see outright selling, but down the road it will be interesting to see what market corrections it may take to entice them to add," he said. "That's the question."

Bloomberg Markets

By Amanda Albright

December 20, 2017, 12:00 PM PST

Municipal Bonds May Get a Boost From Congress's Final Tax Bill.

- **Curb on advance refundings could cut issuance by one-quarter**
- **Corporations may still be buyers, even with big tax cuts**

The final tax bill hashed out by Congress promises to provide a boost to the U.S. state and local government bond market by reducing sales of new tax-exempt debt beginning next year. It could also increase demand for the securities from investors in high-tax states such as California, New York and New Jersey, where residents would be hardest hit by limits on the ability to deduct state and local taxes on their federal returns.

Bond prices were little changed Monday, with the bill largely shaping up as analysts and investors had anticipated. Here's the major impacts:

Fewer Bonds

The final bill will take less of a bite out of issuance than the version passed earlier by the House because it preserves the ability of businesses such as hospitals and airports to issue so-called private activity bonds.

But it will still have a considerable impact by banning sales of tax-exempt debt for advance refundings, a refinancing technique that accounts for tens of billions of dollars of sales each year. If the curb on advance refundings is enacted, supply next year will be about $270 billion, compared with $380 billion to $400 billion if the deals were left intact, according to Barclays Plc.

"The big story next year is just simply the technical picture — supply and demand," said Duane McAllister, senior portfolio manager at Baird Advisors, who expects the change to advance refundings to cut supply by a quarter next year.

The risk posed by the legislation also spurred a rush to borrow by the end of the year that will contribute to a dearth of bonds early next year. Municipalities have sold $46.5 billion in bonds so far this month, a nearly 147 percent increase compared to the same month a year ago, according to data compiled by Bloomberg.

More Demand Seen

The drop-off in supply, paired with steady demand, will make municipals more valuable relative to U.S. Treasuries, McAllister said. He expects the 10-year muni-Treasury ratio — which measures the yield of municipal bonds against Treasury bonds — to decline to 75 percent next year, compared to 85 percent now.

The new conference bill would cut the top marginal personal income tax rate to 37 percent from 39.6 percent. That is likely too small a change to affect demand from individual investors who are the biggest buyers of municipal bonds, said Gabriel Diederich, portfolio manager for Wells Fargo Asset Management, which oversees about $41 billion of state and local debt.

“With this plan, the retail muni investor should look at the market and say, ‘Wow, this is a pretty tax-efficient security type for me,’” he said.

The revised tax bill would limit taxpayers’ ability to deduct state and local taxes at $10,000. That could heighten demand for municipals from investors living in higher-tax states, analysts say. In seven, including California, New York, Connecticut and New Jersey, the maximum effective tax rate could increase as a result of the changes, according to a Dec. 17 note by CreditSights analyst Pat Luby.

Still, demand from banks and insurance companies could decrease as a result of the revised tax bill, which proposes cutting the corporate tax rate to 21 percent. But Longer-dated municipal bonds may still lure corporate buyers, John Mousseau, director of fixed income at Cumberland Advisors, said in a Dec. 18 report.

“Most companies have paid lower taxes than the stated 35 percent in any case, so the fallout here may not be as great as pundits think,” he wrote.

Bloomberg Markets

By Amanda Albright and Martin Z Braun

December 18, 2017, 10:18 AM PST

TAX - CALIFORNIA

Gonzalez v. City of Norwalk

Court of Appeal, Second District, Division 3, California - December 4, 2017 - Cal.Rptr.3d - 2017 WL 5988844 - 17 Cal. Daily Op. Serv. 11, 577

City residents brought declaratory judgment action against city challenging ordinance deleting exemption to telephone user tax for cellular telephone services.

The Superior Court sustained city’s demurrer and dismissed action. Residents appealed.

The Court of Appeal held that change in interpretation of federal utility tax statute, to exempt certain cellular telephone plans from user tax, did not retroactively change meaning of municipal code provision imposing particular percent tax on all telephone service billed to city residents but incorporating federal exemption statute, and therefore subsequent ordinance’s elimination of municipal code’s reference to federal statute did not constitute an imposition, extension, or increase of taxes and thus did not require voter approval.

TAX - ILLINOIS

Village of Bedford Park v. Expedia, Inc.

United States Court of Appeals, Seventh Circuit - November 22, 2017 - 876 F.3d 296

Illinois municipalities, that had enacted one or more ordinances imposing taxes on rental of hotel rooms within their borders, brought putative class action in state court against online travel agencies, through which travelers could purchase hotel room reservations, alleging that travel agencies failed to remit taxes owed under ordinances.

Following removal, the United States District Court granted summary judgment in favor of travel agencies with respect to all but one municipal ordinance, and granted summary judgment in favor of remaining municipality. Municipalities and travel agencies appealed.

The Court of Appeals sitting by designation, held that:

- Certification to Illinois Supreme Court of questions concerning interpretation of Illinois municipal ordinances was not warranted;
- Travel agencies were not subject to municipal ordinances that required owners, operators, and managers of hotels or hotel rooms to collect tax and remit to respective municipality; and
- Travel agencies were not subject to municipal ordinances that imposed tax on those engaged in renting hotel rooms or engaged in business of renting hotel rooms.

Certification to Illinois Supreme Court of questions concerning interpretation of Illinois municipal ordinances that imposed taxes on rental of hotel rooms was not warranted, in action by Illinois municipalities alleging that online travel agencies failed to remit taxes owed under ordinances, even though Illinois Supreme Court had not yet ruled on such issues, since issues involved routine questions of statutory interpretation, and once ordinances were interpreted, question of whether ordinances applied to travel agencies merely required Court of Appeals to exercise judgment.

Under Illinois law, as predicted by Court of Appeals, online travel agencies, through which travelers could purchase hotel room reservations, were not “owners” of hotels or hotel rooms within meaning of municipal ordinances that required owners, operators, and managers of hotels or hotel rooms to collect hotel room occupancy tax from traveler and remit to respective municipality, since travel agencies, despite contracting with hotels for ability to make room reservations for travelers, did not have right to possess, use, or convey to others hotels or hotel rooms.

Under Illinois law, as predicted by Court of Appeals, online travel agencies, through which travelers could purchase hotel room reservations, were not “managers” of hotels or hotel rooms within meaning of municipal ordinance that required owners, operators, and managers of hotels or hotel rooms to collect hotel room occupancy tax from traveler and remit to municipality, since travel agencies did not supervise affairs of hotels or hotel rooms.

Under Illinois law, as predicted by Court of Appeals, online travel agencies, through which travelers could purchase hotel room reservations, were not “operators” of hotels or hotel rooms within meaning of municipal ordinance that required owners, operators, and managers of hotels or hotel rooms to collect hotel room occupancy tax from traveler and remit to municipality, since travel agencies did not perform function of running hotel, rather they performed one set of functions of hotel by making room reservations.

Under Illinois law, as predicted by Court of Appeals, online travel agencies, through which travelers could purchase hotel room reservations, were not “engaged in renting” hotel rooms within meaning of municipal ordinances that imposed hotel room occupancy tax on those engaged in renting hotel rooms or engaged in business of renting hotel rooms, since renting implied ownership and granting possession of property, and travel agencies did not own hotels or hotel rooms, nor could they independently grant travelers access to hotel rooms.

Under Illinois law, as predicted by Court of Appeals, online travel agencies, through which travelers could purchase hotel room reservations, were not “engaged in the business of renting” hotel rooms within meaning of municipal ordinance that imposed hotel room occupancy tax on those engaged in renting hotel rooms or engaged in business of renting hotel rooms, since travel agencies were not engaged in business of renting hotel rooms routinely or commercially, given that travel agencies did not rent hotel rooms.

How the Tax Bill Will Change Governments' Borrowing Costs.

Key provisions will likely increase states and localities' current debt load and make it more expensive for them to borrow in the future. The bill's impact on supply and demand in the municipal bond market, however, is unclear.

For the first time in more than 30 years, Congress has passed a major overhaul of the tax code. The Senate and House have approved the GOP compromise bill, and President Trump is expected to sign it before the end of the year.

The final bill is better than initially expected for state and local governments, but key provisions are still likely to force big changes to their cost of borrowing.

The cause of these changes is indirect: The bill's big break for corporations on their income tax rate will force some state and local governments into higher debt payments on money they have already borrowed directly from banks, thanks to triggers placed in those loan contracts. George Smith, a municipal bond attorney, says it's not unusual for these contracts to have language that allows banks to increase the loans' interest rates in the event of a corporate tax cut.

But Smith, who specializes in municipal borrowing at the Bryant Miller Olive law firm, says there's no way to tell how many existing loan agreements have such a clause since that information is often redacted in public notices. Additionally, while some banks have an automatic trigger in their agreements, other contracts may leave it to the bank to decide whether to hike the initial interest rate. In the latter cases, says Smith, governments can try to negotiate a rate with banks or refinance out of the initial loan.

"But if they don't have that ability," he says, "they're stuck paying the rate."

One recent deal Smith closed for a Florida city had a trigger. Under the contract, the city refinanced $23.6 million with a tax-exempt rate of 2.99 percent over 10 years. If the bank's corporate tax rate is cut, the loan interest rate will shoot up, meaning the city would pay an additional $711,000 in interest costs over the life of the loan.

Going forward, the lower corporate tax rate could also potentially make it more expensive for governments to issue bonds in the municipal market.

Here's why: Banks and insurance companies buy a lot of municipal bonds, making up 28 percent of the market. Banks also lend money directly to state and local governments. The interest rate governments pay in these deals is typically lower than other types of loans because banks don't have to pay taxes on the income they earn from the loan. The same is true for bonds issued in the muni market — the rates tend to be lower because they are tax-free.

But with the GOP tax bill, the corporate income tax rate is slashed from 35 percent to 21 percent. That means that banks and other corporations will start earning more money off other types of investments because their tax rate is a lot lower. It could even mean that, after taxes, those other investments are more lucrative than the low interest rate muni bonds and loans. The result is that muni rates may have to go up in order to be competitive.

Less clear is how all the changes in the bill will impact supply and demand in the muni bond market.

Thanks to the elimination of certain types of tax-free municipal bonds, there has been a mad rush to issue bonds before the end of the year. This has likely shifted some of next year's supply into the current year and has analysts predicting a significant decrease in the municipal bond supply in 2018. Most experts peg the drop around 25 percent, a more than $100 billion drop compared with this year.

With less supply, that could put governments in the driver's seat and help keep interest rates favorable to them. "It's a balancing act," says Todd Ely, director of the Center for Local Government Research and Training at the University of Colorado Denver. "Does the reduced supply counteract the likely reduced buying from corporate entities because munis aren't as great a deal as they used to be?"

There are other indirect circumstances that could also play a role in the cost of borrowing next year.

For one, the caps on state and local tax deductions in tax reform may also encourage taxpayers in high-tax states to shelter more income in municipal bonds.

The market also may get a boost from foreign investors, who of course aren't getting a corporate tax rate cut. While they don't benefit from the tax-exempt status of municipal bonds, slightly higher rates may mean that munis will be a better deal for them than other taxable bonds.

GOVERNING.COM

BY LIZ FARMER | DECEMBER 20, 2017

Western States Poised to Lose More Than $1 Billion Under Tax Bill.

As Congress speeds toward a vote on its massive tax overhaul, the lack of funding to cover the costs of the package means Western states are poised to lose nearly $1.3 billion in oil, gas and coal royalties.

Neither the House nor Senate versions of the bill are completely funded — Republicans argued economic growth spurred by the cuts would offset their cost. That lack of funding could ignite a 2010 federal law that requires across-the-board budget cuts, including withholding from states their portion of the money that oil, gas and coal companies pay to operate on federal land, when Congress approves a deficit-increasing measure. One prominent Western GOP senator insists that it's unlikely Congress would allow that to happen, but fears in state capitals remain.

Western states rich in coal, oil and natural gas — among them Wyoming, New Mexico and Montana — already rely heavily on those industries and have had their budgets hit hard in recent years by falling energy prices. Several have been struggling to find millions needed to plug budget holes, and losing the 48 percent cut of the federal government's royalty payments would be devastating, said officials across several states. The states' congressional delegations cast their votes along party lines, with Republicans voting for the bill and Democrats against.

Furthermore, the cuts would hit schools and other social services particularly hard, as many resource-rich states use royalty payments to fund those systems. This comes as states fear the impacts of the tax overhaul's other provisions, such as a cut in local and state income tax deductions.

"Triggering these cuts will put state budgets in the red and critical public services on the chopping block," U.S. Sen. Jon Tester, a Montana Democrat, said in a statement. "On the heels of a catastrophic wildfire season that burned a hole in Montana's budget, the last thing we need to be doing is handing out sweetheart deals to corporations that cost our state tens of millions of dollars."

Governors' offices did not respond to questions about how they would deal with the drop in revenue.

Montana is poised to lose $24 million in royalty payments if the tax bill goes through. That comes on the heels of a November special session that was called just five months into the state's two-year budget cycle to address a $227 million hole. The state's revenue department projected that in all, the state would lose $122 million under the Senate version of the tax bill.

Mike Kadas, the state's revenue director, said the royalty payments go into the state's general fund, about half of which goes toward education. Other large portions are directed to the university system, public health and human services, and the state's correction system.

'A Big Hit'

"Montana has been struggling to balance this budget for the last year or more, so $24 million is a big hit," he said. "We're all in the process of reducing services right now, so it just means more of that."

Kadas said there is already talk about raising state taxes, and resource-producing counties, which get 25 percent of the state's payout, would have to choose whether to reduce services or raise property taxes.

Chad Fenner, a county commissioner in coal-rich Big Horn County, Montana, which received $2 million in mineral royalties last year, said the predominantly Native American county already has had to raise taxes because of a lagging coal market. He said losing the payments would mean cuts to the ambulance service, senior center and fire protection, all of which were paid for with royalty money.

"I hate even thinking about it if that would happen," Fenner said. "It wouldn't be good for our county."

The law that would trigger the cuts, the Statutory Pay-As-You-Go Act, also known as PAYGO, requires across-the-board cuts to certain programs if legislation passed by Congress increases projected deficits. An analysis from the nonpartisan Office of Management and Budget determines the amount of the cuts. Congress can, however, vote to waive the effects of PAYGO, which is exactly what some Republicans are suggesting.

Max D'Onofrio, a spokesman for U.S. Sen. Michael Enzi, a Wyoming Republican, said there has yet to be a sequester under PAYGO because lawmakers have voted 16 times to waive the required cuts.

"Senate Republicans will work to prevent cuts," he said. "Congress made the PAYGO law and Congress can also waive its requirements, and they have done so before on a bipartisan basis."

But not all are convinced it would be so simple.

“We’ve been told, ‘Don’t worry, Congress will fix this part of the deal,’ but I’ll believe it when I see it,” Kadas said.

Enzi’s home state of Wyoming would be perhaps the hardest-hit by withheld payments. The state got north of $664 million last year in royalty payments — the most of any state. It also faces a $770 million two-year deficit.

Mark Gordon, the state’s treasurer and a Republican, said the education system would be hit hard by the loss of mineral royalties. The money funds education first before flowing to other priorities.

Royalty payments aren’t just returned to the states to compensate for natural resources — the government has an obligation to offset the costs of development by funding schools, roads and other needs in impacted areas, Gordon said. “There was a recognition that where development occurs, the proper goal for the government was to use those royalties to take care of some of those impacts.”

New Mexico’s Woes

New Mexico expects to receive about $455 million for this fiscal year, according to Democratic U.S. Sen. Tom Udall’s office, and like other Western states, it has had budget problems due to falling energy prices. The state went through nearly all of its reserves over the past two years and is working to rebuild them.

Udall said the bill sets New Mexico “on a collision course for a huge budget cut.” Both U.S. senators from New Mexico sponsored an amendment to the Senate bill to exclude mineral payments from the cuts, but it did not pass.

“New Mexico can’t afford a $450 million budget cut, especially one that would slash the budget for public schools,” Udall said in a statement. “And New Mexico’s schoolchildren shouldn’t have to pay for tax cuts for the top 1 percent.”

New Mexico state Sen. John Arthur Smith, the Democratic chairman of the Senate Finance Committee, recently penned a letter with his counterpart in the House to New Mexico’s congressional delegation warning of the impact of losing the mineral royalty payments.

The cuts would “go right to the heart of education,” he said. Republican Gov. Susana Martinez’s pledge to not raise taxes leaves the state with few other options, but Smith said increasing taxes is what the state needs to do to untie itself from the volatility of the oil market.

“You get labeled politically that you just want tax increases, but I just want reliable revenues,” Smith said. “This roller coaster thing is not a lot of fun.”

The Western Governors’ Association, which represents the governors of 19 states, said in a policy resolution that the federal government has no discretion over this money and that payment to the states is the only authorized use for the revenue.

“There’s no question whenever you have to deal with giving something away and taking something back, whoever is on the short end of that stick is going to feel it,” said Gordon in Wyoming. “And PAYGO rules, if they apply to royalty payments to states, are going to be pretty devastating to us.”

MINERAL ROYALTY PAYMENTS TO STATES, 2016

The lack of sufficient funding for the tax bill being considered by Congress would trigger a law known as PAYGO, which stops mineral royalty payments to states, among other things.

Alaska $12,195,000

Arizona $55,000

California $35,317,000

Colorado $83,887,000

Idaho $5,485,000

Montana $23,008,000

Nevada $5,522,000

New Mexico $368,604,000

North Dakota $32,521,000

Oregon $107,000

South Dakota $307,000

Utah $67,901,000

Washington $4,000

Wyoming $664,312,000

Source: U.S. Department of the Interior

By Rebecca Beitsch

STATELINE | DECEMBER 20, 2017

The Federal Tax Overhaul May Boost States' Bottom Lines, But Some Governors Don't Want the Money.

Any new windfall for states is certain to set off a battle in legislatures about how to spend it.

States may soon see an unexpected windfall of tax revenue as a byproduct of the federal tax law, but several governors have said they don't want the money.

Several governors have said they anticipate their state will take in more money because of the changes in the Republican tax overhaul, which President Donald Trump signed into law on Friday. The extra money could set off battles in state legislatures over how to spend the unexpected windfall, or whether they should even collect it in the first place.

"It is very clear that due to the loss of several longstanding federal tax deductions and exemptions, Maryland state revenue will likely increase by hundreds of millions of dollars," Maryland Gov. Larry Hogan, a Republican, said in a statement earlier this week. "Our goal will be to leave that money in the pockets of hardworking Marylanders."

Continue reading.

GOVERNING.COM

BY DANIEL C. VOCK | DECEMBER 22, 2017

The Battle to Save Private Activity Bonds May Not Be Over.

WASHINGTON – The Trump administration is expected to finally unveil its long-awaited infrastructure plan in January, but some muni market participants worry any legislation for federal funding might cut private activity bonds for revenue.

"The federal cash register is empty after tax reform," said Chris Hamel, managing director and head of municipal finance at RBC Capital Markets, pointing to the fact that the tax bill is expected to add almost $1.5 trillion to the federal deficit over 10 years.

"I worry that, given that the federal cash register is empty, will the issue of some limits on PABs be revisited as a pay-for in any expected infrastructure investment legislation?" he asked.

"I've heard that concern too," said Michael Decker, managing director and co-head of municipal securities at the Securities Industry and Financial Markets Association. "Once a revenue raiser gets floated or ends up on a list, then it's there forever."

The House tax bill had initially proposed to terminate tax-exempt private activity bonds by Dec. 31.

"It's good for the [municipal securities] industry to understand that the fight over PABs is not necessarily over," said Hamel.

But Hamel, echoing other infrastructure experts, said, "I think the prospects for meaningful infrastructure policy reform are slim."

Trump administration officials have been meeting with infrastructure and transportation groups over the last two weeks about the infrastructure plan the president is supposed to unveil in January, possibly around the time of his State of the Union address on Tuesday, Jan. 30.

"They're serious this time, I think," said Jeff Davis, senior fellow and editor of a weekly news report at the Eno Center for Transportation. Transportation Department Secretary Elaine Chao has repeatedly promised the plan would be released every few months this year.

The centerpiece of the plan is expected to be $200 billion of direct federal funding that would be used to leverage another $800 billion for infrastructure projects over a 10-year period.

Half of that money would be used for 20% federal share of incentive grants to states. Another 25% of the money would be used for grants for infrastructure projects in rural states and the final 25% would be for the big, high-profile, so called "transformative projects" picked by the Commerce Department.

"Apparently they're going to prioritize projects where a state or local government has created or identified a revenue stream that can support a project over its life cycle," added Michael Decker, managing director at co-head of municipal securities at the Securities Industry and Financial Markets Association. “They’re really going to encourage state and local governments to take on some of the responsibility themselves.”

Federal Funding

Right off the bat, infrastructure advocates are bashing the $200 billion of direct federal funding over 10 years as way too low.

“The president is whistling past the graveyard if he thinks $20 billion a year additional investment in American infrastructure by the federal government is going to do anything,” said Ed Rendell, the former Pennsylvania governor who co-founded Building America’s Future, a bipartisan coalition of elected officials dedicated to promoting infrastructure investment.

“It is far too little of an investment,” said Rendell. The American Society of Civil Engineers gives America’s infrastructure a national grade of D+ and says it will take $2 trillion over 10 years to move that grade to fair from poor, he said.

It would take $100 to $120 billion to build a high speed rail line between Washington, D.C. and Boston, he said. Yet the president is proposing federal spending of only $5 billion per year over 10 years for big projects.

“Who is he kidding?” asked Rendell.

Rendell and others said Trump and Congress should have included infrastructure initiatives in the tax bill to raise the federal gas tax, which hasn’t changed since 1993, and index it to inflation to stabilize the Highway Trust Fund. They also should have used funds from the repatriation of companies’ overseas earnings to pay for infrastructure rather than to pay for the tax bill itself.

“I think the tax bill was a missed opportunity,” said Jack Schenendorf, of counsel at Covington & Burling.

“The other thing they blew [in the tax bill] was not fixing the Highway Trust Fund when they had a chance,” said Casey Dinges, a senior managing director at the ASCE.

The HTF, which helps fund transportation projects, has been dwindling as cars have become more fuel efficient. Right now it’s spending about $10 billion more than its taking in in federal gas tax revenues and it will be “running on fumes” by 2020, said Davis.

As for PABs, Rendell said the administration and Congress “can’t cut them because if the president is contemplating any private involvement in infrastructure there has to be private activity bonds.”

80% State Matches

Another concern is that the plan will ask states to provide 80% matches for 20% federal incentive grants.

“I don’t think the states are looking for this kind of arrangement,” said Dinges.

He and others said its ironic the administration wants to ask states to put up 80% matches for 20% federal funding after Congress took away some of the tools states had for infrastructure funding in the tax bill.

“There were some pretty significant tools for infrastructure that were thrown out by the tax bill, like advance refundings,” said Emily Brock, director of the Government Finance Officer Association’s Federal Liaison Center. “Unfortunately [tax-exempt advance refundings provided] the opportunity to save money to make infrastructure investments and now that tool is gone.”

The big question on the incentive grants, said Davis, is whether 20% is that total amount of direct federal funding an issuer can get for an infrastructure project or whether the 20% can be combined with funds from other federal programs, such as the Federal-Aid Highway Program.

He said trying to convince states to accept federal funding that totals 20% and requires an 80% match “will really be a hard sell.”

“Most of the state departments of transportation, the Chamber of Commerce and the construction industry have had a consistent message all along,” said Davis. “They say: ‘New infrastructure programs are nice but the top priority should be to make sure existing programs don’t run out of money in 2020 and put them on a solvent basis permanently.’ The administration’s proposals to date have dodged that issue.”

Davis said that the last major transportation bill – Fixing America’s Surface Transportation (FAST) Act, which was enacted in December 2015 — authorized $305 billion over fiscal years 2016 through 2020 for highway, rail, and other programs.

Sources transportation experts said they think public-private partnerships (P3s) will be in the administration’s infrastructure plan, even though Trump, who once saw them as a major part of the plan initially has since seemed to turn against them.

“I still think P3s and finding a way to bring the private sector into the fold is going to be a piece of the plan,” said Jim Tymon, chief operating officer of the American Association of State Highway and Transportation Officials.

Schenendorf agreed. “I think P3s will be an important part of the overall proposal.” But he added that he thinks administration officials have learned from talking to folks that P3s don’t work in some parts of the country such as rural areas.

Slim Hope for Legislation

Many infrastructure experts, pleased that Trump is preparing to release his infrastructure plan, are not optimistic about his being able to get it through Congress.

RBC Capital’s Hamel said there are two major reasons to doubt there will be legislation.

“The till is empty,” he said, referring to the tax bill’s increase to the deficit.

“My fear is they used all of their dry powder to make tax reform work,” he said, explaining he thinks the administration is going to be “hard pressed” to find $200 billion to pay for federal funding for infrastructure.

Davis agreed, saying, “I think the ‘going to the well on let’s not pay for it’ may have run out.”

Another reason for skepticism, Hamel said, is that “anything that is going to be passed will need 60 votes in the Senate.”

The only way the Republicans were able to pass the tax bill was to go through a reconciliation process that required only a majority, rather than two-thirds vote in the Senate.

Also, House and Senate Democrats are still smarting from the fact that they were left out of the process of debating or adding any input to the tax overhaul bill.

Even though Democrats and Republicans seemed to have some common interest on infrastructure at the start of last year, there is a great deal of “political toxicity” right now, said Dinges.

“The Democrats, even though they love infrastructure, are they going to want to dance to help the administration?” he asked.

Also, “it seems the Democrats and the administration are starting from way different perspectives” on infrastructure, said Dinges.

Senate Minority Leader Sen. Chuck Schumer, D-N.Y. introduced a bill last January on behalf of Democrats that would have provided $1 trillion in direct federal spending on infrastructure, rather than just $200 billion.

If the Democrats are still bitter about tax reform, Dinges said, they could try to delay any infrastructure legislation, hoping to win seats in the mid-term elections and take over the majority of either or both the House or Senate to ensure that this time they can play a major role.

The Bond Buyer

By Lynn Hume

December 21 2017, 4:37pm EST

Tax Bill Will Lead to Radical Transformation of Muni Market.

WASHINGTON – The municipal bond market will undergo a radical transformation after the expected enactment of the tax bill, with far less volume next year, much lower demand for munis from banks and property and casualty insurance companies, and more costly and complex alternative structures for advance refundings.

This is picture painted by George Friedlander, managing partner of Court Street Group Research, in a weekly perspectives paper the group released Monday.

He said there will be more volatility in the market, a greater challenge placing bonds with lower than 5% coupon bonds with the institutional market, as well as more difficulty for small issuers selling longer serial maturities.

Friedlander said potentially there will be a greater role for exchange-traded funds and electronic trading platforms providing liquidity as well as for foreign investors and “crossover” buyers.

These are some of the impacts Friedlander and others sees from the expected passage this week of the first sweeping tax overhaul bill in three decades. The bill was released Friday evening after negotiations and agreement between House and Senate Republicans. The two chambers are expected to vote on it this week and send the bill to President Trump before Christmas.

The biggest holiday good news is that the final bill allows for the continuation of tax-exempt private activity bonds, which the House had initially proposed halting after the end of the year.

This is in line with the Senate bill, which also would have retained PABs, and it is a victory for the municipal bond market, especially since Republican conferees had discussed, but did not include, elimination of the three year carry-forward in volume cap.

The retention of PABs came after a lobbying campaign by proponents. Reps. Sam Graves, R-Mo., and Randy Hultgren, R-Ill., and 36 other colleagues urged House and Senate Republican leaders and tax-writers earlier this week to retain PABs in the tax bill because they are issued to finance infrastructure and nonprofit hospitals.

Sources say House Ways and Means Committee chair Rep. Kevin Brady, R-Texas, was a key opponent of PABs. He and other lawmakers are upset that PABs are used for projects involving corporations and other private parties, sources said. They claim there are abuses. Brady heard stories of PABs used to help finance a vineyard in California and felt that was a misuse of these bonds, the sources said.

But muni market participants claim that abuses – PABs used for massage parlors, golf courses, and McDonald’s — were shut down by the Tax Reform Act of 1986. The majority of PABs currently issued are 501(c)(3) bonds, which are used by nonprofit organizations such as hospitals and universities.

Proponents point out that PABs are a critical financing tool for multifamily and single-family housing and are used for airports, water and sewer projects, and local electric and gas facilities.

Treasury Secretary Steven Mnuchin and other administration officials in past months had proposed expanding the use of PABs so they could be used along with public-private partnerships to finance infrastructure projects. The Treasury Department had put PABs on its priority guidance plan for 2017-2018.

Muni market participants are hopeful that the administration and Congress will call for the expansion and enhancement of PABs next year as part of President Trump’s infrastructure plan, which he has promised to introduce in January.

Muni market proponents of PABs were elated at the final bill.

Tim Fisher, legislative and federal affairs coordinator for the Council of Development Finance Agencies, said, “We are thrilled that we were able to convince Congress to do something good for communities and economic development all around the country. We couldn’t have done it without our members, our partners, and everyone else who had a stake in this.”

“I’m relieved and gratified,” said Chuck Samuels, a member of Mintz Levin who is counsel to the National Association of Health & Higher Education Facilities Authorities. Usually “tax bills are like Russian novels: they’re long, boring and at the end everybody dies,” he said, “But we escaped” death.

Samuels said his group told lawmakers that if 501(c)(3) bonds were terminated, “thousands of nonprofits would either have lost access to capital or found it only at a prohibitive cost. We made it clear that some small, rural hospitals wouldn’t survive without tax-exempt financing.”

Bond Dealers of America said it “commends both House and Senate leadership for preserving the tax-exempt status of private-activity bonds in the conference report, and of governmental municipal bonds during tax reform.”

Surprisingly, the bill will also continue to allow tax-exempt bonds to be used for professional sports stadiums and arenas, which the House had wanted to eliminate as of Nov. 2 when its bill was introduced. That's good news for stadium projects underway in Las Vegas and San Diego.

The highest-profile project is the $1.9 billion, 65,000-seat Las Vegas National Football League stadium for which Clark County, Nev. has promised $750 million of support. The venue is to host the Raiders, relocating from their longtime home in Oakland, Calif.

Also, San Diego State University is seeking to redevelop 166 acres of land surrounding the stadium formerly occupied by the NFL's Chargers, who relocated to Los Angeles this year. While the stadium would initially be built primarily for the SDSU football team, documents released by the university add that it would "accommodate professional soccer," and also hinted that "the stadium is also expandable should the NFL ever return to San Diego."

The biggest disappointment for muni issuers and other market participants is that advance refundings will be terminated at the end of the year, along with tax credit bonds.

Friedlander said the huge rush to market that has occurred with advance refundings and some private activity bond transactions will result in very slow issuance during the first quarter of 2018.

"Total supply in 2018 could easily drop 25% to the $300 billion range, as issuers who rushed to market move to the sidelines and refundings drop by close to the $100 billion range," he said.

The halt to tax-exempt advance refundings was not a surprise because both bills had proposed that. Under current law, issuers of governmental and 501(c (3) bonds can do one advance refunding. PABs cannot be advance refunded.

Terminating advance refundings will eliminate the flexibility that muni issuers have had to take advantage of lower interest rates and free up funds for other projects. It will raise costs for issuers.

Ben Watkins, Florida's bond finance director, said recently that his state saved $3 billion over the past 10 years by being able to advance refund its bonds.

"Obviously the advance refunding elimination is a blow," said Samuels. "That's significant and issuers will have to deal with that. They'll have to restructure their financings."

"This is a misguided attack on state and local governments that diminishes moneys for infrastructure investments, usurps local decision-making and disrespects the federal/state partnership for building America's infrastructure, all in an effort to control the 'cost' of tax cuts," Watkins said over the weekend.

BDA said, "It is disappointing … to see the repeal of municipal advance refundings retained in the conference report. The repeal of issuers' ability to advance refund outstanding debt will result in higher borrowing costs and less flexibility when managing debt for vital capital improvement projects."

Issuers have some alternatives to advance refundings such as shorter or more frequent calls in bond documents, taxable refundings and tax-exempt current refundings. But those alternatives also include derivative products such as forwards, options and forward-starting interest rate swaps, which would increase issuers' their risk as well as their costs.

Muni market groups, particularly issuer groups, have been pushing lawmakers for transition rules that would delay the effective date by six months to a year, but the bill does not provide that.

National Association of Bond Lawyers president Sandy MacLennan said, “NABL is pleased that the importance of preserving private activity bonds was recognized in the final bill, however, the immediate loss of advance refundings is a disappointment.”

She added, “We will continue our collaborative efforts with other organizations to convince Congress of the value of advance refundings as an important financing tool for state and local governments, as well as non-profit organizations.”

The Government Finance Officers Association was troubled by both the advance refunding halt and the compromise on the federal deduction for state and local taxes.

“The conference report signals that Congress does not recognize certain tools, such as advanced refunding of municipal bonds, as a critical method by which issuers achieve cost savings on public infrastructure,” GFOA said. “We will continue to communicate with our federal elected officials the value these tools bring to our state and local government finance and how they ultimately serve to provide savings for taxpayers until the final vote.”

The bill offered a compromise on the federal deduction for state and local taxes. It included more a flexible, if more stringent, provision on the federal deduction of state and local taxes. It allows a deduction of up to $10,000 for state and local property taxes as well as income or sales taxes.

This was a nod to states with high income taxes like California as well as those with high sales taxes. The House bill had allowed for a deduction of up to $10,000 of property taxes. But Brady had promised California Republicans he would give them some relief from that provision. The deduction would have been eliminated altogether under the Senate bill.

“We are relieved to see that the conference committee provided $10,000 toward individuals’ ability to deduct state and local taxes,” said GFOA. “But by mapping the provision to its current use (allowing property and income or sales taxes) this signals an important byline – local tax policies are designed to satisfy the needs of local economies. The cap is a finger on the scale and is unfortunate.”

Perhaps the biggest harm to the muni market, according to Friedlander and other tax experts, will come from the 40% or 14 percentage point drop in the corporate tax rate to 21%, tax experts said.

The lower corporate rate, which is higher than the 20% rate in the House and Senate bills, will make munis unattractive to banks, property and casualty insurance companies and life insurance companies

“It’s a big deal,” said Friedlander in a recent interview. “It means the effective net benefit of owning municipals drops,” he said.

“It means a shift in the demand curve,” he added. “Munis will have to yield more relative to taxables for corporate buyers [like banks] to be willing to add them to their portfolios.”

Muni market participants will see far fewer bank loans and private placements, which have been increasingly popular in recent years, Friedlander and other sources said. That will especially hurt smaller, less frequent issuers that place bonds with banks so they don’t have to worry about credit issues and attracting the big underwriters, they said.

State and local governments are likely to see higher interest rates on their bank loans if their loan documents have corporate tax gross-up provisions that give the banks the right to increase the interest rates on the tax-exempt bonds they’ve purchased if corporate rates go down and the bonds are aren’t worth as much to them.

The individual alternative minimum tax would be retained in the tax bill but would not apply to individuals with taxable income under $500,000 and families under $1 million. The AMT applies to PABs and makes them less attractive, thereby raising their yields.

The corporate AMT would be repealed, as was included in the Senate bill. This would require corporations to pay tax on certain income not paid under the income tax such as tax-exempt bonds. All tax-exempt interest is subject to the corporate AMT, unlike the individual AMT, which just applies to PABs other than 501(c)(3) bonds.

The top individual tax rate will be set at 37%, down from the 39.6% rate in the House bill and from the 38.5% rate in the Senate bill. Brady said this would help offset the loss of state and local tax deductions for high income households.

The mortgage interest deduction would be capped at $750,000, up from $500,000 in the House bill but less than $1 million in the Senate bill.

The bill continues to treat Puerto Rico as a foreign country and is otherwise silent as far as providing relief to it. Brady said he would consider creating opportunity zones for Puerto Rico in an emergency supplemental bill. It was left out of the tax bill because it would not have complied with the Senate's Byrd Rule, which prohibits adding to the deficit after 10 years.

Republicans have said the bill will pay for itself by increasing economic growth to 3% of gross domestic product, creating jobs, and cutting taxes for the middle class.

Democrats, however, who are incensed at having been left out of the process, including the so-called "conference committee," complain the bill was railroaded through Congress and is a give-away to corporations. They say it will mostly benefit the wealthy, hurt the middle class, and increase the federal deficit. The bill is expected to add about $1.5 trillion to the deficit over 10 years according to the Joint Committee on Taxation.

The bill is to be voted on along party lines, with most Republicans expected to vote yes and most Democrats no. The goal of the GOP is to give the bill to President Trump to sign before Christmas.

The votes have been lined up in the Senate. Sens. Marco Rubio, R-Fla., and Mike Lee, R-Utah, who had threatened to oppose the bill unless the child tax credit was expanded, obtained additional benefits for working families on Friday and said they would support the bill.

Even Sen. Bob Corker, R-Tenn., who had been expected to vote against the bill over deficit concerns, has said he will support it. Sen. Thad Cochran, R-Miss. who was recently hospitalized, is expected to be available to vote for the bill. Sen. John McCain R-Ariz., who was also hospitalized has returned home but has said he will return here if his vote is needed.

The Bond Buyer

By Lynn Hume

December 18 2017, 4:57pm EST

Is the Tax Fight Over the SALT Deduction a Sign of Waning State and Local

Influence on Capitol Hill?

"Do we have the clout we once had?" said the executive director of the U.S. Conference of Mayors. "That's a very difficult question."

WASHINGTON — The sweeping tax bill Republicans in Congress sent to President Trump this week marks a year-end defeat for groups that fought unsuccessfully on behalf of governors, mayors, cities and counties to fully preserve a federal deduction for state and local taxes.

There are straightforward explanations for why tax-writers chose to cap the deduction for the state and local property, income and sales taxes households pay at $10,000 in the final legislation. One is that doing so provided a huge sum to help offset rate reductions and other changes GOP members of Congress wanted to make to the tax code.

"We were just a number on a spreadsheet," said Matthew Chase, the executive director of the National Association of Counties.

But the battle over the SALT deduction, and other aspects of the tax bill, also offers a look at how dynamics have changed during recent years when it comes to state and local government groups lobbying for their priorities on Capitol Hill.

Continue reading.

ROUTE FIFTY

By Bill LUCIA

DECEMBER 22, 2017

A Christmas Tax Story.

Over the last six weeks, my colleagues have posted numerous insightful posts about the various tax bills' impact on tax-advantaged bonds (see here, here and here). For our readers who have been entirely consumed by those provisions of the bill, I thought it would be helpful to highlight some of the other provisions of the joint House/Senate tax bill released on December 15. Thus, below is a very brief summary of some of the other noteworthy provisions in the 503 page joint tax bill.

Those receiving gifts in their stockings this holiday season:

Continue Reading

By Cynthia Mog on December 19, 2017

The Public Finance Tax Blog

Squire Patton Boggs

In Theaters This Christmas – The Parliamentarian: Slightly Slowing, but Ultimately not Stopping, Passage of the Tax Cuts and Jobs Act.

Update: The President signed the Tax Cuts and Jobs Act into law on December 22, 2017. On that same date, he also executed the Continuing Resolution passed by Congress that permits the federal government to make expenditures through January 19, 2018. This Continuing Resolution also suspends the application of the PAYGO law in respect of the annual deficits that will accrue as a result of the enactment of the Tax Cuts and Jobs Act. Thus, the full sequestration that otherwise could have applied to the subsidies on direct payment tax credit bonds (such as Build America Bonds, Recovery Zone Economic Development Bonds, Qualified School Construction Bonds, Qualified Zone Academy Bonds, and Qualified Energy Conservation Bonds), as discussed below, will not take effect. Direct payment tax credit bonds do, however, remain subject to sequestration under the Budget Control Act of 2011. Subsidies on direct payment tax credit bonds are reduced pursuant to that sequestration by 6.6% for the fiscal year ending September 30, 2018.

If action-adventure films with titles such as The Librarian, The Accountant, and The Mechanic can be greenlit, then surely there is a place for The Parliamentarian.[1] Skeptical? Read this plotline before dismissing the idea.

Continue Reading

By Michael Cullers on December 20, 2017

The Public Finance Tax Blog

Squire Patton Boggs

Tax Law Creates Confusion and Uproar in City Halls Across America.

Mass confusion is erupting in town halls across the country thanks to the new tax law, as tens of thousands of property owners scramble to pay next year's taxes ahead of schedule — while the governors of their states and the IRS give conflicting signals about whether that's even allowed.

In the Albany suburb of Bethlehem, N.Y., more than 100 people waited in a gym to pay their property tax bills — some of them for over an hour — on Thursday before a new federal $10,000 cap on state and local deductions goes into effect Jan. 1. Municipalities on Long Island were preparing to open over the weekend to give taxpayers more time to pay. But the IRS issued an edict Wednesday night saying the early payments could only be deducted on 2017 taxes if they had already been assessed. That threw residents and local government officials into a new round of confusion as everyone scrambled to determine which payments would qualify.

The uncertainty this week could be the first of many misunderstandings to come as new tax rules take effect starting New Year's Day. The tax law that President Donald Trump signed Dec. 22, which Congress rushed to pass before the end of the year, is explicit in some of its language, but vague in other areas. It explicitly forbade prepayments of state and local income taxes but was silent on prepayments for state and local property taxes.

View Full Story From Politico

Braves Stadium Hardly a Home Run for Cobb Taxpayers.

Former Cobb County Chairman Tim Lee was fond of calling the decision to build a taxpayer-funded stadium for the Atlanta Braves the “biggest economic development deal in our county’s history.”

In 2015, two years after the deal was approved and one year after his own finance director warned that county spending was quickly overtaking its revenue, Lee issued the following statement: “Thanks to serious, conservative leadership, Cobb County will realize a 60 percent annual return on investment from the SunTrust Park partnership,” he wrote. “In fact, it will be the first private public partnership of its kind to result in a return on investment to taxpayers in the very first year.”

Lee, who could not be reached for comment, was voted out, and county officials now say Cobb will be lucky if it breaks even on the project. Although it accounts for only a fraction of the county’s budget, the ballpark has become a potent symbol for many of irresponsible spending and skewed priorities. Since the first pitch in April, fees for everything from senior centers to business licenses have gone up. Libraries are in danger of closing, and there’s talk of a new penny sales tax to fund the police.

This, despite a record-high tax digest, which may or may not be attributable to the stadium in some areas.

J.C. Bradbury, an economics professor at Kennesaw State University, said the projected economic impact of the stadium was never methodologically sound.

More recently, the county has approved employee raises, new parks and large projects with no operating budget.

“It’s not just the Braves,” Bradbury said. “It is an excess expense, but the cost of a lot of things has gone up.”

Today, Cobb is facing a $30 to $55 million budget shortfall after raiding $21 million in rainy-day funds to plug a gaping hole in the 2018 budget.

Notwithstanding Lee’s generous predictions, County Finance Director Bill Volckmann said even though income from the stadium is on track to meet or even exceed expectations, “It’s not going to be a windfall.”

“It’s not going to fix all the county’s problems,” said Volckmann, adding that a property tax increase was likely without steep cuts. “Outside the millage, there’s not a revenue source that would cover the gap.”

Cobb Chairman Mike Boyce, who took office in January after running a campaign that was highly critical of the stadium deal, has sought to walk a fine line between promoting SunTrust Park and appealing to constituents who are still bitter about paying for it. He called the stadium project a “deal too good to be true,” but also expressed confidence that the halo effect on development would “eventually” make it revenue neutral.

“Nobody can say if that’s going to happen,” he conceded.

Boyce defended the employee raises and the new parks, both campaign promises. He blamed the bulk of Cobb’s fiscal woes on what he described as years of opaque budgeting, deferred maintenance and unrealistic expectations.

Successive tax cuts — including one pushed for by Lee and approved on the eve of his unsuccessful primary runoff against Boyce — further depleted county resources.

The chairman was also keen to point out that about half of the roughly $400 million budget is just for salaries to support departments either mandated by law — courts, elections, tax assessor, sheriff — or deemed essential to county operations, such as code enforcement, transportation, and police.

Boyce said commissioners have already identified millions in efficiencies, but it won't be enough without new cuts or taxes. He plans to hold a series of town hall-style meetings next year to explain to constituents "the true cost of running this government."

"Now that we've run out of all these buckets to raid, are you willing to pay what it costs to maintain a five-star county?" Boyce said he will ask residents. "What we have to show the taxpayer is have we turned over every single leaf to find every single savings that we can before we've asked you for more money."

The public debt obligation on the stadium amounts to $16.4 million a year. Of that, $6.4 million is paid by Cobb residents out of the county's general fund, while the remaining $10 million is funded through taxes and fees, including a countywide hotel/motel tax, a countywide rental car tax, a localized Cumberland hotel/motel tax, and localized Cumberland commercial property taxes.

Cobb pays another $1.2 million for stadium operation and maintenance and about $1 million for police overtime and traffic management at games and events.

None of these costs take into account the tens of millions spent on transportation infrastructure that critics say would not have been built but for the Braves. Nor does it account for the cost of the new parks, which were funded with another bond issue after money was diverted to pay for the stadium.

In total, Cobb County is paying a minimum of $8.6 million out of its general fund just for debt service, stadium operations and public safety.

On the revenue side, the Battery commercial project around the stadium has generated about $460,000 in property taxes for the county's general fund and $1.3 million for schools. Those numbers are expected to rise as the development fills up — it is already at more than 50 percent capacity.

The county declined to give an estimate of sales tax income from the stadium and Battery, but a previous study projected $1.7 million annually. That money goes toward special funds for education and transportation, not the general fund.

The Braves also pay $6.1 million toward the debt service, which has no impact on the county's obligation.

Economists who study publicly financed stadiums generally find the economic returns do no live up to backers' promises. The Braves and local officials made similarly bold claims in Gwinnett for its Triple-A affiliate that also fell flat.

The Braves said in a statement to The Atlanta Journal Constitution that the team is "proud of the millions of dollars in tax revenue SunTrust Park and The Battery Atlanta has generated for the county and schools."

“Our 30-year commitment is transforming the Cumberland area of Cobb County and has already been a catalyst for an additional $2 billion of development in the area surrounding the project,” the statement said.

The Cumberland Community Improvement District credits the Braves’ move to Cobb, which coincided with the end of the Great Recession, with spurring rapid economic growth in the area.

For some local Braves fans, having the stadium in their backyard is worth the public investment.

“I love it,” said Pat Eddlemon, a retired teacher from East Cobb who said she’s attended more than a dozen games this year. “I didn’t like going down there (to Turner Field) and there was nothing to do in Atlanta.”

“It creates jobs,” said Paul Brooks of Marietta, a retired software professional.

For others, the stadium is a drain on taxpayer dollars that could go toward things like transportation and public safety.

“It seems like money is raining on Cobb County, but only when it comes to the stadium,” said Guenevere Reed, an activist from South Cobb. “We’ve been duped … all the money that place is getting and we can’t get a bus from Six Flags Drive?”

Allison Mclaughlin, who lives in Mableton and works for a construction company, said she didn’t have strong feelings on the stadium itself but disapproved of some of the costs to taxpayers.

“I don’t think that it’s a good use of police time,” she said. “It seems like the Braves should be paying for that.”

By Meris Lutz,

December 27 2017, 12:18pm EST

The Atlanta Journal Constitution

GOP Tax Overhaul Will Be Felt by State, Local Governments.

With Congress sending President Donald Trump a tax overhaul, state and local governments are preparing for some fallout.

A look at some of the ways it might affect them:

FEDERAL-STATE CONNECTIONS

The federal tax overhaul will force officials in most states to decide whether to apply similar changes to their own income taxes.

Nearly every state with its own income tax relies on a federal definition of income. About half automatically apply federal tax provisions to their state income taxes unless lawmakers decide against it. In most others, legislators must update state laws to continue linking their tax code to the federal one.

“In essence, all states are going to have some impact from the federal reform and so they’re going to have some questions to confront,” said Nicole Kaeding, an economist at the conservative-leaning Tax Foundation.

Depending on which federal provisions a state follows, the tax overhaul could result in a boom or bust for state revenues.

For example, about dozen states currently link their standard income tax deduction to the federal amount, which is set to double. A similar doubling for states could result in an additional tax cut for their residents and a significant revenue loss for those states. But many of those same states also link their personal income tax exemptions to the federal one, which is due to be repealed. That could trigger a tax increase for their residents and an influx of money for such states.

Michigan Gov. Rick Snyder, a Republican, said Thursday that he wants lawmakers to work on a fix in the coming year. An individual in his state could owe $170 more in state taxes and a married family of four an additional $680 as a result of eliminating the personal exemption.

Many states also use federal tax laws as a basis for their corporate income taxes. So federal changes to business expense deductions could carry over to states.

The Tax Foundation says some states linking to the federal law also could see a windfall from a federal provision imposing a low, one-time tax on the foreign profits of U.S.-based businesses.

LOCAL TAXES

Under the GOP plan, taxpayers will now have a $10,000 cap on all deductions for state and local income, sales and property taxes. There was no cap previously.

Groups like the National Association of Counties and the National League of Cities had opposed any changes to the deductions, arguing they help local governments raise taxes needed to fund essential services, including public safety, community development and infrastructure. Their argument was that taxpayers, no longer able to deduct more than $10,000 of these taxes, will be less likely to support local tax increases — especially borrowing that requires voter approval, like with school construction.

“This represents a fundamental erosion of the federal-state-local balance in taxation and hamstrings counties’ ability to deliver essential services,” said Matthew Chase, executive director of the National Association of Counties, in a statement after the bill was passed.

Both Chase and Mark Stodola, president of the National League of Cities and mayor of Little Rock, Arkansas, said they were grateful the deductions were not eliminated entirely, but said their groups will fight to have them fully restored in subsequent legislation.

In addition to the deductions, the tax bill eliminated the tax-exempt status of so-called “advance refunding bonds,” which are used by local governments to refinance municipal debt. The counties’ association says this had been an important tool that enabled counties to save taxpayer money, particularly on infrastructure projects.

HIGH-TAX STATES

Officials in the highest-tax states know the caps on deductions for taxes paid will hit their residents hardest. They’re still sorting through what it could mean for state finances.

In New Jersey, the Democratic state Senate president announced last month after Democrat Phil Murphy was elected governor that lawmakers would push for higher income taxes on high-earners.

But Senate leader, Steve Sweeney, started rethinking his proposal as the tax changes moved through Congress.

Now, he's concerned about whether a state tax hike that would be felt more deeply for people who can no longer deduct it from their federal returns might backfire. Could it drive wealthy people out of the state? Will it push down home values?

"I'm not saying I'm walking away from it," Sweeney told The Associated Press. "I need to put the brakes on it until I know the impact."

The administrations in both New York and California said they wouldn't detail how they might respond to federal changes until they release their state budget proposals in January.

In Connecticut, Gov. Dannel Malloy's spokeswoman, Kelly Donnelly, said it's too early to tell how the budget might be affected by federal tax changes.

A MILLIONAIRE MIGRATION?

The richest Americans already stand to benefit most from the tax overhaul. But a $10,000 cap on deducting state and local taxes is a blow to high-tax states such as California and New York, where millionaires and retirees may now have more incentive to consider moving.

Most attractive to them would be low-tax states such as Texas, which has spent more than a half-billion dollars over the last decade convincing companies that relocating is better for their bottom line. Texas, Florida or Nevada — already among the fastest-growing states — now have another carrot to woo wealthy individuals.

But some experts call the idea of millionaires moving for lower taxes a myth. A study published last year by Stanford University professor Cristobal Young found less migration among millionaires than the general population, with about 12,000 people with incomes of $1 million or more each year moving to a new state. It concluded that millionaire tax flight occurs, but only "at the margins."

"It is a little bit more of an incentive to move from a higher-tax state to lower-tax states. But that incentive is already there," said Larry Sherlock, a tax attorney at Chamberlain Hrdlicka in Houston. "Up until now they've decided that it's worth the cost to live where they are."

By THE ASSOCIATED PRESS

DEC. 21, 2017, 4:24 P.M. E.S.T.

Christina A. Cassidy in Atlanta; David Eggert in Lansing, Michigan; David A. Lieb in Jefferson City, Missouri; Geoff Mulvihill in Cherry Hill, New Jersey; and Paul Weber in Austin, Texas, contributed to this report.

[Trump and the NFL Agree: Taxpayers Should Keep Subsidizing Stadiums.]

The NFL lobbied hard, and the president reportedly lent a hand.

After feuding with the National Football League for months, over everything from how players act during the national anthem to whether the games are violent enough, President Donald Trump appears to agree with the league about at least one thing: Taxpayers should subsidize stadiums.

The Republican-crafted tax reform bill, which is expected to pass both chambers of Congress today, maintains the current federal tax exemption for bonds issued to pay for the construction of stadiums.

An earlier version of the bill, which cleared the House in November, would have done away with that exemption (though public projects such as infrastructure could have been funded with tax-free bonds). The NFL lobbied to kill that change, and the version of the bill that emerged from the conference committee deleted the provision.

Preserving the ability to use tax-exempt bonds for sports stadiums was "a priority for Mr. Trump," according to a GOP aide who spoke to *The Wall Street Journal.*

[Continue reading.]

Reason

Eric Boehm | Dec. 19, 2017 10:29 am

[Tax Bill Whacks Liberal Big Cities.]

'This is the screw-New Jersey bill,' the mayor of Piscataway said.

The Republican tax bill, largely written by lawmakers from rural and Southern red states, is about to squeeze urban America.

The bill would eliminate tax breaks for everything from bike commute subsidies to building charter schools. One break for refinancing municipal bonds — which saved New York City alone $425 million over the past four years — would be gone. A key break for rehabbing old buildings is getting scaled back. At the same time, mayors and county executives are going to face pressure to cut taxes themselves.

The $10,000 cap on state and local income and property tax deductions is by far the biggest blow for high-tax, high-cost-of-living, liberal big cities and their surroundings. The deduction was worth an average of $24,900 to New York County residents and $17,000 to those living in Marin County, California, across the bay from San Francisco, according to 2014 IRS data compiled by the Tax Foundation.

Capping the benefit will potentially expose residents of those areas to a higher tax liability and reduce their property values.

That's immediately challenging for civic leaders in those places.

"As far as I'm concerned, this is the 'Screw New Jersey' bill," said Mayor Brian Wahler of Piscataway, New Jersey. "New York, New Jersey, Connecticut: Screw the Northeast."

Six of the top 10 counties for state and local deductions in 2014 were in those three states. The other four are in California.

Conservatives have long targeted the deduction for elimination, saying it amounts to a federal subsidy for state and local overspending. Limiting deductions for state and local taxes helps reduce tax rates for all taxpayers no matter where they live, Sen. Pat Toomey (R-Pa.) told reporters recently.

That’s “more fair than providing a concentrated benefit for people who choose to live in a place that has very high state and local taxes,” he said.

City and county officials lobbied hard against losing the federal deduction on state and local taxes, and managed to push back on some proposals that would have raised local government costs. Perhaps most importantly, they fended off losing the tax deduction for municipal bonds, kept the New Markets Tax Credit that attracts development to economically blighted areas, and saved the historic-preservation tax credit to a degree, though it’s now limited to federally designated buildings.

Still, civic leaders are left trying to tally the economic and cultural toll of the policies enshrined in the bill, H.R. 1 (115), that President Donald Trump is expected to sign into law before the end of the year.

“The entire economy could be very unsettled by this tax bill,” said Matthew McNally, director of federal affairs for New York City Mayor Bill de Blasio.

Paul White, executive director at Transportation Alternatives, a New York group that promotes walking and biking to work, put it more bluntly: “This bill runs counter to everything we are fighting for.”

Wahler, who’s run City Hall in Piscataway for 17 years and is a past president of the New Jersey Conference of Mayors, is thinking about trimming $8 million in road improvements planned for next year, out of a project originally tabbed for $60 million in total. He’s also looking to cut back on hiring new police officers to replace those retiring from the force.

Emergency services and road projects aren’t the only public services expected to suffer as a greater financial burden hits cities and counties. Affordable housing and education are also on the list.

Public school advocates are lamenting the cap on the state and local tax deduction, fearing it will lead residents to pressure state and local officials to cut taxes that also fund public education.

Urban schools already struggle with inequitable school funding compared with their suburban counterparts and serve high concentrations of low-income and minority students, public school advocates said. And urban areas with a weaker tax base may struggle to make up for what public school revenue could be lost.

“I think there’s likely to be a significant burden on urban and other low-income districts that don’t have a capacity to generate revenue at the local level,” said Thomas Gentzel, executive director of the National School Boards Association, a nonprofit.

Public school and charter school advocates are also concerned about the elimination of tax provisions that assist schools with renovations, repairs and debt refinancing.

The final GOP tax bill would scrap a common borrowing tool called a tax credit bond, one type of which — Qualified Zone Academy Bonds — allows schools in low-income areas to borrow at low interest rates. The bonds have historically been used by charter schools for building repairs and renovations.

The legislation would also end a refinancing option that cities and other local governments use more broadly to reduce debt through lower interest rates, known as advance refunding bonds.

That's what New York used to save $425 million in the past four years. Nationwide, advance refunding generated $3 billion to $5 billion in savings last year, said Matt Chase, executive director of the National Association of Counties.

With that refinancing instrument about to go by the wayside, local authorities are rushing to complete agreements by the end of this year. The New York Metropolitan Transportation Authority just wrapped up an advance refunding deal worth more than $2 billion. But it's difficult to forecast the budget impact of losing the tool.

"The finest point I can put on it is that it will increase our borrowing cost, which will put pressure on the budget," McNally said, adding that could mean reductions in city services.

Big-city commuters are likely to take a direct hit because the tax legislation would eliminate a write-off that businesses get to subsidize their workers' commuting costs. That includes mass transit, parking and bicycling.

Charles Melton, director of tax policy and government relations at the Silicon Valley Leadership Group, said losing that incentive "is a concern out here in California because more and more individuals are choosing to bike" and because "traffic is so impacted out here."

Even what seems like a relatively minor change can have a big impact on older urban areas. For instance, while the legislation would keep a tax credit for redeveloping historic and abandoned buildings, it makes those built before 1936 ineligible unless they're on the National Register of Historic Places or located in a Registered Historic District.

Since roughly half of all historic tax credit projects have a housing component, McNally said, the cut "will have an effect on housing and the creation of housing units nationwide," especially in places like the Northeast with a large number of historic buildings constructed before 1936.

Local officials aren't shy about blaming federal lawmakers for digging a budget hole and shifting national burdens onto them. That chafes Wahler, whose city has a nearly perfect credit rating and whose residents pay a higher share of overall federal taxes than those in other parts of the country, like the South.

But civic leaders from large cities in that region said they'll feel the pinch as well.

Mayor Stephen Benjamin of Columbia, South Carolina, said he feels like he's being punished for doing something Congress hasn't been able to: balance its books. His city has finished with a budget surplus in five of the seven years he's been in office, he said, doubled its reserves, had its credit rating increased twice, and its property tax rate remains at the same level it was a decade ago.

"We've done the things that we're supposed to do," said Benjamin, who's also the vice president of the U.S. Conference of Mayors. "I wish that the federal government would have the record that my city does."

POLITICO

By AARON LORENZO

12/19/2017

Gloria Pazmino, Caitlin Emma and David Siders contributed to this report.

[U.S. Muni Market Faces Challenges, Not 'Crisis' With Tax Changes.]

CHICAGO (Reuters) – The U.S. municipal bond market emerged bruised but not decimated by the federal tax bill that won final approval in the U.S. Congress on Wednesday, analysts said.

The worst-case scenario of Congress yanking the federal tax exemption for interest earned from debt sold in the $3.8 trillion market used by states, cities, schools and other issuers did not occur. However, some provisions in the bill will pose challenges for munis.

“I don’t see the muni market as being in any kind of crisis here,” said Philip Fischer, municipal research strategist at Bank of America Merrill Lynch.

The bill sent to President Donald Trump decreases the top individual federal tax rate from 39.6 percent to 37 percent, a level still expected to result in high earners buying munis for their tax-exempt benefits.

However, the drop in the corporate income tax rate to 21 percent from 35 percent would dim the attraction of munis for banks and insurance companies.

The final legislation caps individual taxpayers’ deduction for state and local taxes paid at $10,000 – a move seen as punitive to states with high taxes on income or property.

“As a credit issue, it’s a negative but the states that are hit the most – New York, California, etc. – are also some of the strongest growing regional economies so I‘m not expecting any immediate kinds of repercussions from that,” Fischer said.

Fitch Ratings said on Wednesday the cap could lead voters, who no longer can fully deduct their state and local taxes, from authorizing even higher taxes to pay for public services and infrastructure.

ATTRACTIVE AND SCARCER

On the other hand, the effective tax hike for some investors due to the cap could boost the popularity of munis as a means to reduce their tax burdens.

“If people’s tax rates go up, that makes muni bonds more attractive relative to taxable alternatives,” said Cooper Howard, senior research analyst at Schwab Center for Financial Research in Denver.

The muni market dodged a bullet when the final bill omitted a House provision seeking to end the tax break for private activity bonds. These bonds, which accounted for 27 percent of issuance in 2015, are sold for an array of projects including hospitals, nursing homes, colleges, airports and affordable housing.

However, a practice used by most issuers to refinance bonds on a tax-exempt basis beyond 90 days from their call date for interest rate savings was ended in the final legislation. Advance refunding bonds accounted for 30 percent of 2016’s supply and 18.8 percent of issuance so far this year, according to Thomson Reuters data.

Although a transition period was sought for these bonds, it was not included in the final bill, according to Emily Swenson Brock, director of the Government Finance Officers Association's federal liaison center. The elimination of advance refundings will pose a challenge for some existing bond issues that were structured with that practice in mind, she added.

Current refundings of debt within the 90-day call date window remain tax-exempt.

The threat to end tax breaks starting in 2018 for certain types of munis in the bills proposed last month by the House and Senate led to a $63.751 billion spike in issuance since the week of Nov. 27. That in turn lifted year-to-date supply to $403 billion, according to Thomson Reuters data.

The year-end supply surge along with the loss of advance refunding bonds were seen by some analysts as depressing muni debt sales in 2018.

But Fischer pegged issuance at a back-loaded $400 billion next year.

"The state and local governments have to finance themselves and they have to finance infrastructure," he said.

Reporting by Karen Pierog; Editing by Daniel Bases and Matthew Lewis

DECEMBER 20, 2017

NFL Owners' Tax Break Remains Intact.

NFL owners dodged a bullet in the new tax bill, which preserves the league's ability to tap into taxpayer money to build stadiums.

The owners are one of a number of special interest groups breathing sighs of relief after the GOP toyed with eliminating their tax break, but ultimately left it intact.

A flurry of last-minute objections also led to Republicans preserving deductions for student loans, medical expenses, electric cars, teacher supplies and graduate school tuition waivers.

And the final bill tweaks, but does not end, the so-called "carried interest loophole," which allows certain financial managers to pay a lower tax rate on some of their investments.

President Trump had repeatedly called for axing the break, and White House economic adviser Gary Cohn said they "probably tried 25 times" to get rid of it in negotiations, but hedge fund and private equity interests were too powerful.

"The reality of this town is that constituency has a very large presence in the House and the Senate. They have really strong relationships on both sides of the aisle," Mr. Cohn said Wednesday at an event hosted by the website Axios. "We just didn't have the support on carried interest."

House Minority Leader Nancy Pelosi said that was a major black mark against Mr. Trump.

"Maybe he didn't communicate this to the Republicans in Congress, or maybe they just used him as their frontman, but they didn't do that," she said Wednesday.

Republican Kevin Brady, the House's top tax-writer, brushed aside the criticism, saying the carried interest loophole is a relatively minor item in the broad context of a $1.5 trillion tax overhaul.

“Carried interest, we can talk about that for the next hour if you’d like, but for most Americans, they [could] care less about that,” he said on MSNBC. “They care about their paychecks and getting the economy going.”

Mr. Trump also didn’t get his way on stadiums.

In the heat of the NFL player protests against the National Anthem the president said it was time to rethink the league’s benefits by denying them access to tax-free municipal bonds.

“Why is the NFL getting massive tax breaks while at the same time disrespecting our Anthem, Flag and Country? Change tax law!” the president tweeted in October.

The original House version of tax cuts prohibited all sports teams from tapping tax-free municipal bonds — but the Senate won out, and the break was maintained.

Sen. Cory Booker, who has been pushing a separate measure with Sen. James Lankford to repeal the break, said it was ridiculous that their proposal was ultimately set aside.

“Insane that my bipartisan bill ending sweetheart tax giveaways for NFL stadium construction doesn’t get included,” Mr. Booker, New Jersey Democrat, tweeted this week. “They are preserving so many tax gifts for the most privileged while ending breaks for low and middle income Americans.”

Amid pushback from powerful realtor and homebuilder groups, tax-writers also ended up splitting the difference between the House and Senate plans on the popular mortgage interest deduction, setting a $750,000 cap for new purchases.

That’s down from the current limit of $1 million but higher than the $500,000 cap in the House plan.

Like with many provisions crafted to comply with strict budget rules, the $750,000 limit is temporary and will revert to $1 million starting in 2026.

The Washington Times

By David Sherfinski

Wednesday, December 20, 2017

TAX - OHIO

Huber Heights City Schools Board of Education v. Montgomery County Board of Revision

Supreme Court of Ohio - December 6, 2017 - N.E.3d - 2017 WL 6048409 - 2017 -Ohio- 8819

Landowner filed a complaint challenging the valuation of retail property.

The county board of revision determined that the property should be valued according to the sale price. Landowner appealed. The Board of Tax Appeals accepted the board’s valuation. City schools board of education appealed.

The Supreme Court of Ohio held that the record supported finding that amount for which property sold was its value for taxation purposes.

Record supported Board of Tax Appeals' (BTA) finding that sale of property was recent and at arm's length, and that, therefore, amount for which it sold was its value for taxation purposes, despite evidence that landowner spent considerable funds improving the property between the date of the sale and the tax-lien date and that landowner advocated for a higher valuation; school board conceded that property sold for claimed amount, landowner's employee testified as to amount of sale, and school board did not produce evidence rebutting the recency of the sale.

TAX - WASHINGTON

City of Spokane v. Horton

Supreme Court of Washington - December 7, 2017 - P.3d - 2017 WL 6049324

City brought mandamus action against county assessor and county treasurer, seeking to compel county to implement city's ordinance that granted local property tax exemption to senior citizens and disabled veterans.

The Superior Court granted mandamus relief. Assessor and treasurer appealed. The Court of Appeals reversed. City petitioned for review, which was granted.

The Supreme Court of Washington held that city did not possess the power to grant local property tax exemption.

Delegation of powers of taxation to municipal authorities was limited to statute's express language, statute allowed code cities to tax within constitutional limits, and constitution expressly authorized only the legislature the authority to enact exception to the tax uniformity requirement

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TAX - VERMONT

TransCanada Hydro Northeast, Inc. v. Town of Newbury

Supreme Court of Vermont - December 8, 2017 - A.3d - 2017 WL 6210911 - 2017 VT 117

Dam owner challenged town's valuation of flow easements for property tax purposes.

The Superior Court adopted town's valuation. Dam owner appealed.

The Supreme Court of Vermont held that:

- Trial court could use uniform per-acre value in appraising value of flow easements, and
- Dam owner failed to rebut presumption that town's valuation of flow easements was valid.

Trial court could use uniform per-acre value in appraising value of dam owner's flow easements for property tax purposes, despite fact that flooding affected acres unevenly, since easements were, by definition, interests in land, suggesting that value should be established by rights conveyed by deed rather than how easements were actually used, and valuation was based on sales of multiple comparable flow easements, each with particular per-acre value, using median per acre value to account for variation in values from acre to acre.

Dam owner failed to rebut presumption that town's valuation of flow easements, for property tax purposes, was valid, where dam owner's appraiser provided no testimony or evidence of actual per-acre value differing from that determined by town.

Republican U.S. Tax Bill Retains Some Municipal Exemptions.

SAN FRANCISCO (Reuters) – The final Republican tax bill released on Friday keeps a tax break for municipal bonds used to finance hospitals, affordable housing and other projects but eliminates a way issuers can take advantage of low interest rates.

The final draft of the bill preserves tax-free private activity bonds and tax-exempt stadium bonds, according to the Government Finance Officers Association.

Friday's bill would end advance refunding bonds in the $3.8 trillion municipal bond market. States, cities, schools and most issuers use these to refund existing debt on a tax-free basis beyond 90 days of its call date. Current refundings, which are done within the 90 days, would continue to be tax-exempt.

The National Association of Bond Lawyers said it was pleased that private activity bonds were preserved in the final bill. "However, the immediate loss of advance refundings is a disappointment," President Sandy MacLennan said in a statement.

Provisions in the House and Senate tax bills that sought to end certain municipal issuance in order to raise money for the U.S. government sparked a torrent of issuance starting in late November.

This week, the municipal bond market supply topped $20 billion for a second straight week as issuers scrambled to sell debt ahead of potential federal tax changes. An estimated $22.88 billion was expected to be sold, more than three times the average weekly muni issuance between 1990 and the end of November.

by Robin Respaut

Reporting by Robin Respaut; Editing by Richard Chang and Cynthia Osterman

DECEMBER 15, 2017

Muni Bonds for Private Activities May Get Some Love From Congress.

- **More expensive borrowing for airports, hospitals, housing**
- **House's Brady questions subsidies paid by 'every taxpayer'**

It now appears that the tax bill's approach to private-activity municipal bonds may be more nuanced.

I conclude this after reading Rep. Kevin Brady's remarks on Tuesday: "I think there's agreement that private activity bonds can play an important role," he said.

And then: "I think private activity bonds have drifted far afield from their original mission. There is a simple test: What are those activities that must be subsidized by every taxpayer?"

On Nov. 2, the House released its version of tax reform, and that included doing away with tax credit bonds, advance refundings, private activity bonds and tax-exempt stadium financing. The Senate's version sought to end only advance refundings.

The House and Senate are now reconciling their two versions of the future of the municipal market, and most analysts seem to be resigned to the loss of advance refundings and confident in the survival of private activity bonds.

Rep. Brady seems to be saying, "Not so fast. Maybe some private activity bonds are okay, but some are not."

As for "their original mission," what we call private activity bonds are really the modern-day expanded versions of industrial development bonds, sold for the benefit of corporations and 501c3 nonprofits.

IDBs have been driving Congress crazy for generations. In 1953, Senator John F. Kennedy, in a speech in Chattanooga, inveighed against the use of IDBs to lure New England manufacturers to Tennessee.

"Why are such securities exempted from federal income taxes when they are issued for a proprietary rather than a for a public purpose?" the future president asked. "I am hopeful that southern spokesmen and statesmen will assist me in my efforts to plug up this federal loophole."

An amendment to prohibit these kinds of bonds passed the House, but wasn't included in the final 1954 tax bill. Congress revisited IDBs in 1968 and, as Joan Pryde pointed out in her chapter on assaults on tax-exemption in the Bond Buyer centennial edition, established a private-use test, "which rendered municipal bond interest taxable if more than 25% of the proceeds of an issue were used to benefit private business." But it exempted bonds sold for stadiums, convention centers, airports, parking facilities and pollution control. Since then, Congress has made further tweaks.

Let's face it: the "origin" of IDBs was to encourage local economic development. Far more troubling was the second part of Rep. Brady's statement: "What are those activities that must be subsidized by every taxpayer?"

Good question, and one that inspires some real soul-searching. I guess we'll see how Congress answered it very soon. There were reports last night that private activity bonds would be saved, but until I see it in a printed version of the new bill, I am skeptical.

Bloomberg clients: We'll be doing a TOPLive Q&A on Thursday, December 14 at noon ET, moderated by Taylor Riggs, in which you can ask Joe Mysak questions about the municipal supply deluge, tax reform, what next year may hold for the sector and more. You can watch it here. If you want to ask a question, please send it to TOPLive@bloomberg.net

Bloomberg

By Joe Mysak

December 14, 2017, 4:00 AM PST

House's Brady Signals Tax Bill May Ease Curbs on Muni-Bond Sales.

- **'Private activity bonds can play an important role,' he says**

- **Risk of subsidy loss triggered a rush to sell debt this month**

Lawmakers are re-examining a provision that would roll back subsidies for a big chunk of the municipal-bond market beginning next year, according to House Ways and Means Chairman Kevin Brady.

The House bill calls for repealing the tax-exemption for so-called private activity bonds that allow hospitals, airports, housing developers and other businesses to finance projects at low interest rates. That provision has led to a flood of new bond issues that's on track to set a record this month as issuers rush to sell billions of dollars of the securities while they still can. The Senate bill doesn't curb sales of private activity bonds.

Brady, who's overseeing the House-Senate conference committee that will iron out the differences in the chambers' two bills, said lawmakers aren't necessarily going to roll back the tax breaks for the bonds completely.

"I think there's agreement that private activity bonds can play an important role," he told reporters Tuesday. The bonds are important for infrastructure also, he said.

Brady said last week that GOP lawmakers were looking at a number of categories of the securities to determine whether the projects they finance justify the subsidy.

"We are going to have that discussion with the Senate to find a resolution there," he said. "I think private activity bonds have drifted far afield from their original mission. There is a simple test: What are those activities that must be subsidized by every taxpayer?"

Whatever lawmakers decide on private activity bonds, the municipal market will still likely be affected by other provisions in the legislation: Both the Senate and the House bills would eliminate the use of tax-exempt bonds for advance refundings, a technique state and local governments use to refinance tens of billions of dollars of debt each year.

Bloomberg Politics

By Kaustuv Basu and William Selway

December 12, 2017, 9:30 AM PST

— With assistance by Erik Wasson

[Factbox: What's in the Final U.S. Republican Tax Bill.]

(Reuters) – Republicans in the Senate and House of Representatives are expected to vote within days on sweeping legislation that would overhaul the U.S. tax system for the first time in more than 30 years.

President Donald Trump wants to sign tax legislation before year-end to notch the first major legislative win for majority Republicans since January when they gained control of the White House as well as Congress.

The following are key parts of the final bill, estimated to add just under $1.5 trillion to the U.S. national debt over the next decade, or roughly $1 trillion after accounting for economic growth:

BUSINESS

CORPORATE TAX RATE: Cuts corporate income tax rate to 21 percent from 35 percent, beginning Jan. 1, 2018.

PASS-THROUGHS: Creates a 20 percent deduction for the first $315,000 of qualified business income for joint filers of pass-through businesses such as partnerships and sole proprietorships. For income above that threshold, the legislation phases in limits that produce an effective marginal tax rate of no more than 29.6 percent.

CORPORATE MINIMUM TAX: Repeals the 20 percent federal corporate alternative minimum tax, which was set up to ensure that profitable corporations pay at least some tax.

TERRITORIAL SYSTEM: Exempts U.S. corporations from U.S. taxes on most of their future foreign profits, ending the present worldwide system of taxing profits of all U.S.-based businesses, no matter where the profits are earned.

REPATRIATION: Sets a one-time mandatory tax of 8 percent for illiquid assets and 15.5 percent for cash and cash equivalents on $2.6 trillion in U.S. business profits currently held overseas. That foreign cash pile was created by a rule that allowed foreign profits to be tax deferred if they were not brought into the United States, or repatriated, a tax rule that would be rendered obsolete by the territorial system.

ANTI-BASE EROSION MEASURES: Includes provisions to prevent companies from shifting profits out of the United States to lower-tax jurisdictions abroad. These include an alternative minimum tax on payments between U.S. corporations and foreign-related companies and limitations on the shifting of corporate income through transfers of intangible property, including patents.

CAPITAL EXPENSING: Allows businesses to immediately write off, or expense, the full value of equipment for five years, then gradually eliminates 100 percent expensing over a five-year period beginning in year six.

INTEREST DEDUCTION LIMIT: Caps business deduction for debt interest payments at 30 percent of taxable income, without regard to deductions for depreciation, amortization or depletion.

CLEAN ENERGY: Leaves in place tax credits for producing electricity from wind, biomass, geothermal, solar, municipal waste and hydropower.

CARRIED INTEREST: Largely leaves in place the “carried interest” loophole that benefits private equity fund managers and some hedge fund managers, despite pledges by Republicans including Trump to close it. These financiers can now claim a lower capital gains rate on much of their income from investments held more than a year. The new legislation would extend that holding period to three years, putting the loophole out of reach for some fund managers, but preserving its availability for many.

INDIVIDUAL

BRACKETS: Sets seven tax brackets: for married couples filing jointly, 10 percent up to $19,050; 12 percent up to $77,400; 22 percent up to $165,000; 24 percent up to $315,000; 32 percent up to $400,000; 35 percent up to $600,000; and 37 percent over $600,000. For unmarried individuals and married couples filing separately, 10 percent up to $9,525; 12 percent up to $38,700; 22 percent up to $82,500; 24 percent up to $157,500; 32 percent up to $200,000; 35 percent up to $500,000; and 37 percent over $500,000. These brackets expire after 2025.

STANDARD DEDUCTION: Gives taxpayers a tax break without having to claim itemized deductions. For eight years beginning in 2018, the standard deduction increases to $12,700 from $6,350 for individuals and to $24,000 from $12,000 for married couples under the legislation.

CHILD TAX CREDIT: Doubles the child tax credit to $2,000 per dependent child under the age of 17, with a refundable portion of $1,400. The refundable portion allows families to lower their tax bills to zero and receive a refund for the remaining value.

PERSONAL EXEMPTION: Ends $4,050 individual personal exemption.

INHERITANCES: Increases the exemption for estate and gift taxes to $10 million from $5 million per person and indexes the new exemption level for inflation after 2011. That means even fewer Americans would pay the estate tax, but it would stay on the books.

MORTGAGES: For residences bought from Jan. 1, 2018, through Dec. 25, 2025, caps the deduction for mortgage interest at $750,000 in home loan value. After Dec. 31, 2025, the cap will revert to $1 million in loan value. Suspends the deduction for interest on home equity loans.

OTHER PROVISIONS

OBAMACARE MANDATE: Repeals a federal fine imposed on Americans under Obamacare for not obtaining health insurance coverage.

ANWR DRILLING: Allows oil drilling in Alaska’s Arctic National Wildlife Refuge.

By REUTERSDEC. 16, 2017

(Reporting by Amanda Becker and David Morgan, editing by Kevin Drawbaugh and G Crosse)

A Look at Some Winners and Losers Under the GOP Tax Plan.

WASHINGTON — Count President Donald Trump among the personal winners in the $1.5 trillion tax package that congressional Republicans are on the verge of passing. It’s not only a political score for Trump but likely a windfall for his real estate empire, too.

Oil drillers would also benefit. So would multimillionaire and billionaire owners of sports teams. Companies would enjoy a bounty from permanently lower tax rates. Lawyers and accountants will profit from the advice suddenly needed to guide clients through the tax plan.

The bill creates plenty of losers, too. An estimated 13 million Americans are projected to lose health insurance. Commuters will no longer receive a perk that has saved them money. Some residents of high-tax states like New York, New Jersey and California will pay more in taxes.

And millions of American households could face tax hikes in coming years. That’s because their new tax breaks are set to expire after 2025. And their taxes could creep up because the IRS has been directed to use a less generous gauge of inflation in adjusting tax brackets.

Republican lawmakers have sold their far-reaching legislation as benefiting everyone in the long run because, they argue, it will speed up economic growth. But most economists say that any boost in growth would be modest in the long term. And most argue that at least some of the tax benefits will be undermined by the much higher budget deficits that help pay for them.

Among the tax plan’s winners:

THE TRUMP ORGANIZATION

At least temporarily, companies with profits that double as the owner’s personal income would enjoy a substantial tax break. Consider the Trump Organization. It consists of about 500 such “pass-through” entities, according to the president’s lawyers. Rather than pay the top rate of nearly 40 percent, Trump would likely be taxed on these profits at closer to 30 percent.

The final bill also appears to specifically benefit the real estate sector, the bedrock of the Trump family’s wealth, with benefits for depreciating the value of property held by pass-through companies.

The president’s family didn’t receive every possible benefit. The estate tax on inheritances, for example, will stay in place, though it will apply only to the portion of a family’s estate that exceeds $11 million — twice the previous level — at least through 2025. And the alternative minimum tax, which is intended to prevent the wealthy from exploiting loopholes to avoid taxes, would stay in place as well, though its higher thresholds would also be temporary.

ENERGY DRILLERS

It’s no longer off limits to drill in Alaska’s Arctic National Wildlife Refuge for oil and natural gas. President Barack Obama had sought to protect the 19.6-million acres, a home for polar bears, caribou, migratory birds and other wildlife. But under the Republicans’ tax plan, fossil fuel companies could tap into oil and gas reserves. Alaska Sen. Lisa Murkowski and other Republicans insist that drilling can be done safely with new technology while ensuring a steady energy supply for West Coast refineries.

SPORTS TEAMS

Major sports teams will still be able to build and renovate their stadiums with tax-exempt municipal bonds. The House version of the tax bill had initially scrapped access to this form of debt by sports teams, a provision that drew objections from the NFL. But the final bill retains it.

Such tax-advantaged public financing should make it easier to have the Oakland Raiders, for example, move to Las Vegas and play in a new $1.9 billion dome. Forbes estimates the Raiders, owned by Mark Davis, to be worth $2.4 billion.

MAJOR CORPORATIONS

The tax rate for most companies would drop to 21 percent from 35 percent. This is a permanent rate cut, which, along with a shift to a lower rate on some foreign earnings, could help boost corporate profits. Not surprisingly, the stock market has soared in part over anticipation of these lower corporate taxes. The Standard & Poor’s 500 stock index has jumped nearly 24 percent since Trump’s election last year.

TAX LAWYERS

Rather than close loopholes, the tax bill appears to create more of them. Tax lawyers and accountants will likely be besieged by clients looking for professional guidance in restructuring companies and incomes to avoid taxes. In fact, tax experts and lawyers who reviewed a prior version of the tax bill outlined a slew of loopholes in a 35-page report in which it warned that the bill would “allow new tax games and planning opportunities for well-advised taxpayers.”

At the same time, many individuals and groups are likely to be on the losing end of the tax legislation. Among them:

THE UNINSURED

The tax bill removes a penalty that was charged to people without health insurance as required by Obama’s 2010 health insurance law as a way to hold costs down for everyone. By eliminating this mandate, the tax bill will likely deprive 13 million people of insurance, according to estimates by the Congressional Budget Office.

The repeal of the health insurance mandate will help preserve revenue to pay for the tax cuts. The government would no longer have to subsidize as many low-income people receiving insurance. This change would generate $314.1 billion over 10 years, according to the Joint Committee on Taxation.

COMMUTERS

It could get more expensive to ride the subway or park your car near work. Employers would no longer be able to deduct from their taxes the cost of providing parking or transit passes worth up to $255 a month to workers. Bicycle commuters would also lose their benefit from companies.

Technically, companies could still offer this benefit. But under the tax bill, they will lose the financial incentive to do so. Such a change could have the effect of reducing ridership on public transit and possibly increase costs for riders on rail and bus systems.

HOMEOWNER IN HIGH-TAX STATES

The bill imposes a $10,000 cap on people who deduct their state, local and property taxes. Currently, there is no limit on how much in state and local taxes you can deduct. Some Republican lawmakers in such high-tax states such as California and New York intend to vote against the bill because their constituents’ taxes could increase as a result of the provision. Their opposition, though, isn’t expected to block the bill’s passage.

TAXPAYERS AFTER 2025

Most Americans would receive tax cuts initially. But the lower rates and a host of other benefits would expire after 2025. This effectively sets up an $83 billion tax hike for many millions of Americans in 2027.

What’s more, people’s taxes could continue to creep up because the plan will adjust the tax brackets at a less generous measure of inflation than it formerly did. The slower indexing for inflation amounts to a $400 billion tax hike between 2028 and 2037 that would help finance the lower corporate rates, Lily Batchelder, a New York University law professor and former Obama White House adviser, observed on Twitter.

Congress could decide years from now to extend the lower tax rates. But doing so would increase the deficit far more than the $1.5 trillion now being estimated by Congress’ Joint Committee on Taxation.

Associated Press

Dec. 16, 2017

[Rise in CUSIP Request Activity Reflects Potential Tax Code Changes.]

Companies and municipalities registered more bonds to sell in the markets in November, as they moved to step up borrowing ahead of potential changes to the tax code, according to a new report from CUSIP Global Services, a unit of American Bankers Association.

The requests for U.S. corporate debt CUSIPS, which are akin to serial numbers for the securities, totalled 1,001 in November, up 13% from 886 in October.

“As 2017 draws to a close, with potentially significant tax reforms looming and interest rates still relatively low, issuers are ramping up issuance to take advantage of the current favorable environment,” said Richard Peterson, Senior Director, S&P Global Market Intelligence, in a statement.

Municipal bond identifier requests increased to 1,220 last month, up 20% from October. The surge came partly in response to a tax reform proposal from the House which would prohibit advanced refundings, which states and municipalities use to reduce borrowing costs, and on private activity bonds, the report said. The Senate version of the bill preserves private activity bonds but eliminates advance refundings.

“Starting in the last week of November and continuing so far into December, we’ve been seeing a significant increase in requests for municipal refunding bond and private activity bond identifiers as issuers rush to raise capital ahead of tax reform,” said Gerard Faulkner, Director of Operations for CUSIP Global Services.

“Depending on whether the House or Senate version of the tax reform bill is passed, advance refundings and private activity bonds could be terminated, which could significantly alter the muni landscape,” he added.

The Wall Street Journal

By Tatyana Shumsky

Dec 13, 2017 11:52 am ET

[U.S. Hospitals, Schools Rush to Raise Tax-Free Funds.]

Borrowers raised more than $4 billion in private-activity bonds last week, even as Congress debates doing away with tax exemptions for such debt

Hospitals, universities and nursing homes across the U.S. are rushing to borrow money tax-free—while they still can.

Last week, borrowers issued more than $4 billion in new so-called private-activity bonds, which allow nonprofits and some for-profit firms to raise money for development projects perceived to have a public benefit.

That was triple the amount issued during the same week in 2016, according to a Municipal Market Analytics analysis of Bloomberg data, and one of the highest weekly issuances of the past two years.

Prices on private-activity bonds have increased this week alongside other municipal bonds.

The borrowing outbreak is happening as Congress debates whether to do away with long-held tax exemptions on these bonds beginning Jan. 1. A House bill would eliminate the benefit altogether, while a bill that passed the Senate would leave the bonds untouched.

The Senate and House are working to send President Trump an agreed-upon version by Christmas. House Ways and Means Committee Chairman Rep. Kevin Brady (R., Texas), the lead negotiator from the House, this week suggested he might favor limits.

“I’m convinced their mission has drifted quite a bit,” he said. “They should be focused on infrastructure projects that help build and enhance the national infrastructure because they’re receiving national subsidies from every taxpayer in America.”

Private-activity bonds allow nonprofits and some for-profit firms to do what state and local governments do: borrow money at cheaper rates. Investors don’t demand as much interest because they don’t have to pay taxes on their earnings.

Their name refers to their use: proceeds pay for a variety of projects that benefit private entities like charter schools, museums, private universities, hospitals and nursing homes. Proceeds have averaged about $110 billion annually over the past decade.

Many borrowers and investors are not waiting to see what happens in Washington. Bond buyers last week rushed to purchase private-activity bonds for a railroad planned along Florida’s coast, putting in bids for approximately $2 billion worth of bonds even though only $600 million were for sale, according to Wes Edens, Chairman of Fortress Investment Group, which is leading construction of the project. The issuer was the Florida Development Finance Corporation.

“Pricing was probably a little bit better than we thought it would be,” Mr. Edens said.

One borrower in North Dakota decided to seek buyers for $363 million in bonds three weeks earlier than planned. The proceeds would help pay for a new Trinity Health hospital and replace two buildings constructed about 100 years ago. Preliminary documents were filed Tuesday to avoid the risk of being shut out of the tax-exempt markets, said Dennis Empey, chief financial officer for Trinity Health.

Another hospital operator, Mercy Health in Cincinnati, Ohio, also rushed a planned $585 million issuance to market while the congressional tax debate unfolded, said Jerome Judd, Mercy’s senior vice president of treasury and investment. The system, which operates 23 hospitals in Ohio and Kentucky, said the bonds are expected to be priced next week instead of the first quarter next year.

Loss of access to tax-exempt financing would raise Mercy’s borrowing costs, leaving less money for capital investments and community outreach, Mr. Judd said. The planned financing will be used for outpatient investment and refinancing existing debt, he said.

Congress first established rules for these bonds in 1968, offering a specific list of approved projects including airports and low-income housing. In the 1980s, Congress added new types of private-activity bonds and capped how much nonprofits could issue, but that cap was lifted in the 1990s.

Some critics of the bonds have argued certain borrowers shouldn’t be able to benefit from the exemption. A Congressional Budget Office report in December found that some projects financed with private-activity bonds “probably would take place without a subsidy” and others likely would not be worth the cost.

Hospitals, universities, engineers, airports, bond lawyers and public officials have argued that ending the tax exemption for these bonds would make it more difficult to complete vital projects.

Many of the bonds currently offer relatively high yields in an otherwise sedate, low-rate market because borrowers who lack taxing power to back their bonds often pay higher interest rates. Those who follow the market are predicting it will shrink if the exemption is gone.

"If private activity issuance ends, a high amount of high yield muni issuance could go away," said Jamie Iselin, head of municipal securities at investment manager Neuberger Berman.

At the City National Rochdale Municipal High-Income Fund, which manages $1.2 billion in high-yield municipal debt, senior portfolio manager Bill Black estimated that about two-thirds of his portfolio is made up of private-activity bonds.

"If the House tax bill gets approved it'll be hard for us to find bonds going forward," Mr. Black said. High-yield muni funds have suffered challenges in recent years as a result of limited issuance of tobacco bonds—high-yield bonds backed by payments from state settlements with tobacco companies.

High-yield bonds have rallied in recent weeks, pushing the S&P Municipal Bond High Yield Index to its highest point since the quarter began Oct. 1.

Even without a change in tax policy, private-activity bonds will likely become scarce and valuable in the next quarter, since many of the deals planned for January and February of next year are instead getting done in December. Demand tends to increase somewhat in January, when a large portion of bonds come due, leaving bondholders with cash to reinvest. Many bond investors are using this month's increase in supply as an opportunity to stock up.

Moody's Investors Service has been asked to issue credit ratings for roughly $8 billion in nonprofit health-care bonds this month, said Brad Spielman, a Moody's analyst for the sector.

"This may very well be the biggest month of issuance since 2008," Mr. Spielman said.

The Wall Street Journal

By Heather Gillers and Melanie Evans

Dec. 7, 2017 7:00 a.m. ET

—Richard Rubin contributed to this article.

Owls, Dogs and Ballet Dancers Join Race to Tap Municipal Market.

- **Private projects tend to be among riskiest types of borrower**
- **Tax-exempt deals are most at risk from House tax-reform bill**

Zoos, ballet dancers and seeing eye dogs are just some of the beneficiaries of what could be the biggest December for municipal bond sales in more than 30 years. Tax reform has electrified a market that is open to issuers of all stripes and once financed a Biblical theme park in Kentucky.

Both the House and Senate would limit a debt-refinancing tool known as advance refundings. The

House bill in its current form would take away the tax break for so-called private activity bonds, which allow hospitals, airports, housing developers and other businesses to finance projects at low interest rates.

There's still a chance the rules won't change. On Tuesday House Ways and Means Chairman Kevin Brady said the proposed removal of the tax-exemption for private activity bonds is being re-examined, raising the possibility that lawmakers aren't necessarily going to roll back the tax breaks for the bonds completely.

The risk that Congress may pull back subsidies from a large chunk of the municipal-bond market has caused a potentially record-setting rush to borrow before the end of the year. Among them are the following muni-bond deals, all sold or marketed since tax reform talks kicked into high gear in November.

Seeing Eye Dogs

A Morristown, New Jersey nonprofit that trains and breeds seeing eye dogs completed a $19.3 million deal that will refinance outstanding debt through an advance refunding. The Seeing Eye, which has used tax-exempt bonds to expand its facilities, wouldn't have been able to complete the deal at taxable interest rates, Bob Pudlak, chief financial officer, said in an email. "This source of funds has been very important to allow us to provide the very best care for our dogs and outstanding service to our students," he said.

Lions and Tigers and Bears

The Alabama Gulf Coast Zoo plans to sell $23.7 million in tax exempt, unrated debt to finance construction and acquisition costs for a new facility. The original one, in operation since 1989, will move four miles north to a new location where the animals will be farther away from the dangers of tropical storms.

The Oil Giant

One of the larger deals this past month came out of a Louisiana parish that sold $1 billion in tax-exempt bonds on behalf of the Houston-based Marathon Oil Corp. Proceeds will refund debt originally used to help finance a $3.9 billion expansion in the area. The deal will reduce the amount it pays on debt by $51 million per year, according to a Nov. 28 statement by the company.

Ballet Bonds

Segerstrom Center for the Arts — Orange County, California's largest nonprofit arts center and host to Broadway musicals, ballet performances and concerts — sold $64 million in tax-exempt bonds this week through a government agency to refund higher interest-rate debt. The deal, rated A-, would likely have had to pay around 1 percentage point more in interest rates should it have issued in the taxable market, according to a Bloomberg index of bonds maturing in 5 years.

WGBH, New England's leading public radio and broadcast station, sold $20.1 million in bonds in the tax-exempt market. The Boston nonprofit is set to sell about $30 million in taxable bonds to refund higher interest debt. Both refunding deals are expected to save it about $6 million, said Ben Godley, chief operating officer. The nonprofit doesn't plan to take on any more debt, which will minimize the impact of the tax overhaul once it's enacted, he said.

The Owls

A conduit will sell $41.6 million in bonds next week on behalf of a nonprofit operated by Kennesaw State University in Georgia to help out the home football team, the Owls. The bonds, which will offer a tax break to investors, will be used to refinance higher interest-rate debt. The 2010 bond issuance was used to construct an 88-acre park with athletic fields, stadiums and facilities at the 35,000-person campus.

Bloomberg Markets

By Amanda Albright and Danielle Moran

December 14, 2017, 5:30 AM PST

Congress's Tax Bill Keeps Subsidies for Private Activity Bonds.

- **Municipal debt had rallied on wager new sales would be cut**
- **So-called private activity bonds are a big share of market**

The final version of the tax bill struck by Congressional negotiators would continue to subsidize municipal bonds that help businesses to finance infrastructure projects such as airports and toll roads, dropping one provision that threatened to cut sales of tax-exempt debt by tens of billions of dollars starting next year.

The compromise legislation, hashed out by a committee of lawmakers from the Senate and House, would keep the tax preferred status for private activity bonds “that are used to finance valuable infrastructure projects,” according to highlights of the final measure obtained by Bloomberg News.

The document doesn’t say if the legislation would stop sales of tax-exempt debt for refinancings known as advance refundings, another large segment of the market that was targeted by both the Senate and House bills. Nor does it specify whether the use of private activity bonds would be limited somehow.

The federal tax overhaul unleashed a potentially record-setting torrent of bond sales this month, with borrowers rushing to raise money in the $3.8 trillion municipal market before the end of the year. Investors have also been snapping up the securities, sending them to their biggest rally since 2011 earlier this month on speculation they would grow more valuable if Congress enacted measures that drastically reduced new sales.

The compromise bill eliminates the risk that Congress would do away with a large niche of the tax-exempt debt market that’s routinely tapped by hospitals, universities and corporations to finance infrastructure projects. While there’s no official figure for how many private activity bonds are issued each year, Moody’s Investors Service estimates that they accounted for about 25 percent to 35 percent of the $459 billion in municipal bonds sold in 2016.

Both chambers of Congress now have to vote on the legislation before sending it to President Donald Trump for his signature.

Abolishing the tax exemption for PABs prompted an outcry from state and local government officials, who said it would increase the cost of public works and put the tax-cut legislation at odds with Trump’s stated goal of increasing spending on infrastructure.

Los Angeles World Airports, which runs LAX, would have had to choose between scaling back projects in its $14 billion modernization plan or finding $500 million in new revenue because of higher borrowing costs, Chief Financial Officer Ryan Yakubik said in a interview last month.

It would have also hurt charter schools, affordable housing developers and hospitals, among others. The loss of tax-exemption would have raised borrowing costs by 1 to 2 percentage points for small hospitals with a BBB rating or below, according to David Hammer, head of municipal bond portfolio management for Pacific Investment Management Co.

Bloomberg Politics

By Martin Z Braun and Sahil Kapur

December 15, 2017, 2:15 PM PST

— With assistance by Danielle Moran, Rebecca Spalding, and Mark Niquette

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GOP Under Pressure on Bond Issue in Tax Bill.

Groups representing affordable housing, hospitals, airports and colleges are intensely lobbying House Republicans to defer to the Senate and retain a critical financing tool scrapped in their own tax plan.

The groups say eliminating tax-exempt private activity bonds (PAB) would dramatically limit the ability of nonprofit hospitals to perform much-needed renovations, of certain colleges to finance new dorms and heating plants, of developers to build desperately needed affordable housing and much more.

Overall, they argue the changes will be harmful to vulnerable communities, making critical capital projects more expensive and likely resulting in the need to scale them back.

“Our support of all tax-exempt bonds is grounded in the harsh reality that a loss or restriction of the tax-exemption of interest on these bonds would immediately increase costs to state and local governments and nonprofit organizations (such as nonprofit hospitals, universities, and schools), in financing needed public services and the vital infrastructure that supports the economy,” 35 groups wrote in a letter sent Wednesday to both chambers’ Republican and Democratic leaders.

“This increase in cost will ultimately be borne by taxpayers, homeowners, renters, students, healthcare patients, commuters, air travelers, businesses relying on seaports, and other constituents.”

It’s crunch time for dozens of organizations as the Senate and House race to reconcile the differences between the chambers’ tax bills before the holiday break.

Private activity bonds are a type of tax-exempt financing for projects with some public benefit. Dozens of groups say they’re critical because they help finance capital projects for roads, housing, hospitals, primarily private colleges and universities, airports and other projects.

House Ways and Means Committee Chairman Kevin Brady (R-Texas) has raised skepticism over these bonds, saying they have “drifted far afield from their original mission.”

“There’s a simple test here: What are those uses that should be subsidized by every taxpayer in America?” Brady told reporters Wednesday. “Which of those categories are so important to our infrastructure, to our national base, that every taxpayer should help pay for it?”

He declined to go into the specific categories, adding, “Once the [Senate] conferees are named, we’ll have that discussion.”

But not all House Republicans agree with Brady.

Across the Capitol, at least two Senate conferees indicated their support for private activity bonds.

When asked if he believes the final version of the tax overhaul would keep private activity bonds, Senate Majority Whip John Cornyn (R-Texas) replied, “I hope so, I hope so.”

Sen. Tim Scott (R-S.C.), another conferee, said he doesn’t have a strong opinion on the bonds but is likely to advocate for keeping them since that’s what the Senate bill would do. At the same time, he suggested there could be some changes to the bonds.

“I defer to the Senate product that we had an opportunity to weigh in heavily, so I think there’s ultimately a lot of good being done through the PABs,” Scott said. “Do we keep it in its current form? I don’t know. I’m going to likely advocate that we do.”

The math of the tax bill is complicated for Republicans, who can’t pass a bill that adds more than $1.5 trillion to the deficit over 10 years under budget rules that prohibit a filibuster in the Senate.

Further complicating matters, the Senate reinstated the corporate alternative minimum tax in its bill not long before the measure passed to offset the cost of other provisions. Business groups were furious, and many senators are looking to remove the tax or soften it. To do so, senators will have to find money somewhere else to keep under the $1.5 trillion figure.

Eliminating private activity bonds would raise nearly $39 billion over 10 years, the nonpartisan Joint Committee on Taxation estimates.

Groups are ramping up the pressure, sending letters to congressional leaders and talking to Congress.

The Council of Development Finance Agencies is sending offices examples of projects that used private activity bonds in their states or districts — and that, they say, likely couldn’t have happened without them.

In interviews, many associations warned that the stakes are high for the members they represent.

For nonprofit hospitals, private activity bonds serve as a source of low-cost capital, said Mike Rock, the senior associate director of federal relations for the American Hospital Association.

“It’s going to increase their costs, and therefore reduce the resources they have for patient care and providing access to care in their communities,” Rock said.

Cash-strapped rural hospitals could, in particular, feel the brunt of this provision, sources said.

“It would not be melodramatic to say that rural hospitals will close throughout the United States if this provision becomes law and certainly the necessary upgrades, or sometimes even new hospital construction that’s necessary, will be delayed or restricted,” said Charles Samuels, general counsel for the National Association of Health and Educational Facilities Financing Authorities.

The repeal of private activity bonds could mean that airport renovations cost $3.2 billion more over the next five years, as the bonds are used to build new terminals, upgrade airport gates and other improvements to terminals, said Annie Russo, Airports Council International's vice president of government and political affairs. They might scale back or scrap some improvement projects.

"It's not only bad for airports and infrastructure overall and for the municipal community, but at the end of the day in the airport world, it's the passenger who bears the burden for this change in the House bill," she said.

The repeal of these bonds could also mean a loss of up to 881,000 affordable rental homes over 10 years, according to Novogradac and Company, an accounting firm that specializes in the real estate sector. That's also because developers get a 4 percent tax credit if at least half of their construction for an affordable housing project is financed by private activity bonds.

Barbara Thompson, the executive director of National Council of State Housing Agencies, was cautiously optimistic at the end of last week that private activity bonds would be kept in the final legislation.

"I don't think we're going to be lost in the shuffle to these larger issues," she said. "I think at the end of the day members will recognize that they will literally gut affordable housing efforts in this country at a time when they're needed most during one of the most severe housing crisis we have faced in modern history."

THE HILL

BY RACHEL ROUBEIN – 12/12/17

Final Tax Reform Legislation Saves PABs and Stadium Bonds, Kills Advance Refundings and Tax Credit Bonds.

Signaling the end of our six-week ride in a runaway cement mixer, the Conference Committee for the Tax Cuts and Jobs Act has released its Conference Report, which represents a compromise version of the House and Senate-passed versions of the Act. Each chamber has the votes to enact the compromise bill; they'll do it, and the President will sign it early next week. The Conference Report follows the Senate approach by preserving tax-exempt private activity bonds and governmental use bonds that are issued to finance professional sports stadiums, but it eliminates tax-exempt advance refunding bonds and tax credit bonds issued after December 31, 2017 – no transition relief. The Conference Report takes a solomonic approach to the alternative minimum tax, repealing it for corporations but not for individuals (though the exemption amount is increased for individuals). This should increase the attractiveness to corporate bondholders of tax-exempt private activity bonds that presently are subject to AMT.

Continue reading.

By Johnny Hutchinson on December 15, 2017

The Public Finance Tax Blog

Squire Patton Boggs

Bloomberg Blasts GOP Tax Bill.

Among the criticisms the business tycoon and ex NYC mayor lodges against the legislation: Restricting state and local tax deductions will mean less local investment for infrastructure.

Former New York City mayor and billionaire businessman Michael Bloomberg on Friday slammed the tax legislation Republicans are close to pushing through Congress.

Bloomberg described the tax code rewrite effort as an "economically indefensible blunder that will harm our future," in an op-ed published by the news outlet Bloomberg. He argued specifically that it would hurt education, infrastructure, income equality, and federal deficits.

"Restricting state and local tax deductions" he wrote, will mean "less local investment for infrastructure, and by raising deficits, the bill will constrain federal infrastructure spending."

Lawmakers have indicated that the consensus tax legislation GOP negotiators from the House and Senate are expected to make public on Friday will include a $10,000 cap on the deduction individual taxpayers can now claim for state and local property, income and sales taxes. Currently, there is no such cap.

Republicans have been attempting to come up with legislation that sharply reduces corporate tax rates and also provides mixed tax reductions for individual taxpayers, without adding more than $1.5 trillion to the nation's deficits over a decade.

Bloomberg wrote that he is supportive of dropping the top corporate tax rate of 35 percent as part of a tax overhaul. But he adds: "It's pure fantasy to think that the tax bill will lead to significantly higher wages and growth, as Republicans have promised."

GOP lawmakers are aiming to hold votes on a final tax bill early next week in the House and Senate and to deliver the legislation to President Trump's desk for his signature before Christmas.

Route Fifty

By Bill Lucia,
Senior Reporter

DECEMBER 15, 2017

Hawkins Advisory: Tax-Exempt Bond Provisions in the Conference Committee Version of H. R. 1

The attached Hawkins Advisory describes provisions affecting tax-exempt bonds and tax credit bonds that are included in the version of the Tax Cuts and Jobs Act approved on December 15, 2017 by a conference committee appointed to resolve differences between the versions of such legislation previously passed by the United States House of Representatives and the United States Senate.

NABL: Tax Conference Report Released.

Final Version of Tax Legislation Released

Republicans have released the final version of tax legislation just moments ago.

- The text is available here
- The joint explanatory statement is here

Bond-related provisions in the report include:

- **Private Activity Bonds** – Preserved in full
- **Advance Refundings** – No advance refunding bonds after December 31, 2017
- **Tax Credit and Direct Pay Bonds** – No new tax credit or direct pay bonds may be issued after December 31, 2017, but payments for outstanding bonds will continue
- **Stadium Bonds** – Preserved in full
- **New Markets Tax Credits** – Preserved in full

The next step is for the House and Senate to vote on the legislation, and if both houses pass it, then it will get sent to the President to be signed into law, likely before Christmas.

Final Tax Bill Gives Muni Market the Gift of Continued PABs.

WASHINGTON – The first sweeping tax overhaul bill in three decades brings holiday gifts to the municipal bond market with the full preservation of private activity bonds, after the House has initially proposed terminating them at the end of the year.

The final tax bill, which Republicans negotiated and signed on Friday, also preserves tax-exempt bonds for professional sports stadiums and arenas, which the House bill had proposed to halt Nov. 2, 2017.

But market participants will also get some coal in their stockings in the form of the huge reduction in the corporate tax rate to 21% from 35% as well as the loss of advance refundings and tax credit bonds at the end of this year.

Muni market groups had pushed for a transition rule providing a delay in the effective date for advance refundings, but did not get it.

The bill is the product of House and Senate Republicans who insist it will pay for itself through economic growth, create jobs, and cut taxes for the middle class.

Democrats, however, who are incensed at having been left out of the process, complain the bill was railroaded through Congress and is a give-away to corporations. They say it will mostly benefit the wealthy, hurt the middle class, and increase the federal deficit. The bill is expected to add about $1.5 trillion to the deficit over 10 years.

The bill is to be voted on by the full Senate and House next week, with most Republicans expected to vote yes and most Democrats no. The goal of the GOP is to give the bill to President Trump to sign before Christmas.

Sens. Marco Rubio, R-Fla., and Mike Lee, R-Utah, who had threatened to oppose the bill unless the child tax credit was expanded obtained additional benefits for working families on Friday and said they would support the bill.

Even Sen. Bob Corker, R-Tenn., who had been expected to vote against the bill over deficit concerns, has said he will support it. Sen. Thad Cochran, R-Miss. who was recently hospitalized, is expected to be available to vote for the bill. Sen. John McCain R-Ariz., who was also hospitalized has returned home but has said he will return here if his vote is needed.

Muni market proponents of PABs were elated.

Tim Fisher, legislative and federal affairs coordinator for the Council of Development Finance Agencies, said, “We are thrilled that we were able to convince Congress to do something good for communities and economic development all around the country. We couldn’t have done it without our members, our partners, and everyone else who had a stake in this.”

“I’m relieved and gratified,” said Chuck Samuels, a member of Mintz Levin who is counsel to the National Association of Health & Higher Education Facilities Authorities. Usually “tax bills are like Russian novels: they’re long, boring and at the end everybody dies,” he said, “But we escaped” death.

Samuels said his group told lawmakers that if 501(c)(3) bonds were terminated, “thousands of nonprofits would either have lost access to capital or found it only at a prohibitive cost. We made it clear that some small, rural hospitals wouldn’t survive without tax-exempt financing.”

But market participants, particularly issuers, were unhappy about the year-end halt to tax-exempt advance refundings.

“Obviously the advance refunding elimination is a blow,” said Samuels. “That’s significant and issuers will have to deal with that. They’ll have to restructure their financings.”

Bond Dealers of America said it “commends both House and Senate leadership for preserving the tax-exempt status of private-activity bonds in the conference report, and of governmental municipal bonds during tax reform.”

But the group said, “It is disappointing however, to see the repeal of municipal advance refundings retained in the conference report. The repeal of issuers’ ability to advance refund outstanding debt will result in higher borrowing costs and less flexibility when managing debt for vital capital improvement projects.”

The Government FInance Officers Association was troubled both by the advance refunding halt and the compromise on the federal deduction for state and local taxes.

“We are relieved to see that the conference committee provided $10,000 toward individuals ability to deduct state and local taxes,” said GFOA. “But by mapping the provision to its current use (allowing property and income or sales taxes) this signals an important byline – local tax policies are designed to satisfy the needs of local economies. The cap is a finger on the scale and is unfortunate.”

The group added, ” the conference report signals that Congress does not recognize certain tools, such as advanced refunding of municipal bonds, as a critical method by which issuers achieve cost savings on public infrastructure. We will continue to communicate with our federal elected officials the value these tools bring to our state and local government finance and how they ultimately serve to provide savings for taxpayers until the final vote.”

National Association of Bond Lawyers president Sandy MacLennan said, “NABL is pleased that the importance of preserving private activity bonds was recognized in the final bill, however, the immediate loss of advance refundings is a disappointment.”

She added, “We will continue our collaborative efforts with other organizations to convince Congress of the value of advance refundings as an important financing tool for state and local governments, as well as non-profit organizations.”

The preservation of PABs is in line with the Senate bill and is a victory for the municipal bond market, especially since lawmakers had discussed but did not include elimination of the three year carry-forward in volume cap.

The retention of PABs came after a lobbying campaign by proponents. Reps. Sam Graves, R-Mo., and Randy Hultgren, R-Ill., and 36 other colleagues urged House and Senate Republican leaders and tax-writers earlier this week to retain PABs in the tax bill because they are issued to finance infrastructure and nonprofit hospitals.

Sources say House Ways and Means Committee chair Rep. Kevin Brady, R-Texas, was a key opponent of PABs. He and other lawmakers are upset that PABs are used for projects involving corporations and other private parties, sources said. They claim there are abuses. Brady heard stories of PABs used to help finance a vineyard in California and felt that was a misuse of these bonds, the sources said.

But muni market participants claim that abuses – PABs used for massage parlors, golf courses, and McDonald’s — were shut down by the Tax Reform Act of 1986. The majority of PABs currently issued are 501(c)(3) bonds, which are used by nonprofit organizations such as hospitals and universities.

Proponents point out that PABs are a critical financing tool for multifamily and single-family housing and are used for airports, water and sewer projects, and local electric and gas facilities.

Treasury Secretary Steven Mnuchin and other administration officials in past months had proposed expanding the use of PABs so they could be used along with public-private partnerships to finance infrastructure projects. The Treasury Department had put PABs on its priority guidance plan for 2017-2018.

Perhaps the biggest harm to the muni market will come from the 40% or 14 percentage point drop in the corporate tax rate to 21%, tax experts said. The lower corporate rate, which is higher than the 20% rate in the House and Senate bills, will make munis unattractive to banks, property and casualty insurance companies and life insurance companies.

“It’s a big deal,” said George Friedlander, a managing partner at Court Street Research. “It means the effective net benefit of owning municipals drops,” he said.

“It means a shift in the demand curve,” he added. “Munis will have to yield more relative to taxables for corporate buyers [like banks] to be willing to add them to their portfolios.”

Muni market participants will see far fewer bank loans and private placements, which have been increasingly popular in recent years, sources said. That will especially hurt smaller, less frequent issuers that place bonds with banks so they don’t have to worry about credit issues and attracting the big underwriters, they said.

State and local governments are likely to see higher interest rates on their bank loans if their loan documents have corporate tax gross-up provisions that give the banks the right to increase the interest rates on the tax-exempt bonds they've purchased if corporate rates go down and the bonds are aren't worth as much to them.

The termination of tax-exempt advance refundings by year-end is not a surprise because both bills had proposed that. Under current law, issuers of governmental and 501(c (3) bonds can do one advance refunding. PABs cannot be advance refunded.

Terminating advance refundings by the end of the year will eliminate the flexibility that muni issuers have had to take advantage of lower interest rates and free up funds for other projects. It will raise costs for issuers. Ben Watkins, Florida's bond finance director, said recently that his state saved $3 billion over the past 10 years by being able to advance refund its bonds.

Issuers have some alternatives to advance refundings such as shorter or more frequent calls in bond documents, taxable refundings and tax-exempt current refundings. But those alternatives also include derivative products such as forwards, options and forward-starting interest rate swaps, which would increase issuers' their risk as well as their costs.

Muni market groups, particularly issuer groups, have been pushing lawmakers for transition rules that would delay the effective date by six months to a year, but the bill does not provide that.

The final bill includes more a flexible, if more stringent, provision on the federal deduction of state and local taxes. It allows a deduction of up to $10,000 for state and local property taxes as well as income or sales taxes.

This is a nod to states with high income taxes like California as well as those with high sales taxes. The House bill had allowed for a deduction of up to $10,000 of property taxes. But Brady had promised California Republicans he would give them some relief from that provision. The deduction would have been eliminated altogether under the Senate bill.

The individual alternative minimum tax would be retained but would not apply to individuals with taxable income under $500,000 and families under $1 million. The AMT applies to PABs and makes them less attractive, thereby raising their yields.

The corporate AMT would be repealed, as was included in the Senate bill. That would require corporations to pay tax on certain income not paid under the income tax such as tax-exempt bonds. All tax-exempt interest is subject to the corporate AMT, unlike the individual AMT, which just applies to PABs other than 501(c)(3) bonds.

The top individual tax rate will be set at 37%, down from the 39.6% rate in the House bill and from the 38.5% rate in the Senate bill. Brady said this would help offset the loss of state and local tax deductions for high income households.

The mortgage interest deduction would be capped at $750,000, up from $500,000 in the House bill but less than $1 million in the Senate bill.

The bill continues to treat Puerto Rico as a foreign country and is otherwise silent as far as providing relief to it. Brady said he would consider creating opportunity zones for Puerto Rico in an emergency supplemental bill. It was left out of the tax bill because it would not have complied with the Senate's Byrd Rule, which prohibits adding to the deficit after 10 years.

The Bond Buyer

By Lynn Hume & Brian Tumulty

December 15 2017, 6:20pm EST

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- **So-called private activity bonds are a big share of market**

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Bloomberg Politics

By Martin Z Braun and Sahil Kapur

December 15, 2017, 2:15 PM PST

— With assistance by Danielle Moran, Rebecca Spalding, and Mark Niquette

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Tax Measure Retains Financing Tool for Infrastructure.

The final GOP tax bill unveiled Friday evening would retain a popular infrastructure financing tool that had been eliminated in an earlier version of the legislation, delivering a big win for transportation advocates who lobbied hard for the provision.

The tax measure would keep the preferential tax treatment for private activity bonds. The tax-exempt bonds are issued for private projects and have been used by cities and states to help finance a wide range of infrastructure projects, including roads, highways, housing, hospitals and airports.

The House's tax bill scrapped the deduction on the bonds, drawing outcry from transportation advocates who said it would undermine President Trump's effort to rebuild the nation's infrastructure.

Nearly two-thirds of the core infrastructure investments in the United States are financed with some form of municipal bonds, with $400 billion in municipal bonds issued to finance projects in 2015 alone.

Rep. Mark Meadows (R-N.C.), chairman of the conservative Freedom Caucus, suggested last month that House Republicans eliminated the bonds not out of an ideological opposition to them, but in an effort to find savings to pay for tax cuts in the larger package. Ending the program would have saved nearly $40 billion over 10 years.

But negotiators opted to keep the private activity bond program in the final conference report, which is scheduled for a vote in the House on Tuesday.

THE HILL

BY MELANIE ZANONA – 12/15/17

TAX - CALIFORNIA

City of Fontana v. California Department of Tax and Fee Administration

Court of Appeal, First District, Division 2, California - November 28, 2017 - Cal.Rptr.3d - 2017 WL 5711769 - 17 Cal. Daily Op. Serv. 11, 310

Two cities petitioned for writ of mandamus to challenge State Board of Equalization decision to reallocate to third city local sales tax remitted to two cities following reorganization of seller.

The Superior Court set aside the Board's decision with directions to reconsider, and Board and all three cities appealed.

- The Court of Appeal held that:

- Court would review the decision of the Board for substantial evidence to support the Board's decision, and
- Substantial evidence supported decision that title to retail health care products was passed to consumers by new subsidiary company, rather than parent corporation, and thus to reallocate sales tax.

Substantial evidence supported State Board of Equalization decision that title to retail health care products was passed to customers by subsidiary company, rather than parent corporation, and thus to reallocate remitted local sales tax from cities where parent corporation's warehouses were located to city where subsidiary had its sole facility. There was evidence customers believed they were ordering goods from subsidiary, that subsidiary became the retailer when it purchased goods from parent for shipment to subsidiary's customer, and that when subsidiary paid parent corporation's separate shipping entity to deliver those goods to the customer, subsidiary completed performance with reference to the physical delivery of the goods.

TAX - NEW JERSEY

Hackensack City v. Bergen County

Tax Court of New Jersey - October 24, 2017 - 30 N.J.Tax 240

Following city's imposition of real estate taxes on county-owned building over five year period and after Superior Court determined that issue of whether Freeze Act applied to preserve county-owned building's tax-exempt status for the second and third years could only be determined by Tax Court after a final judgment by county board of taxation not subject to appeal as to whether building was tax-exempt for the first year, county moved for Freeze Act relief from county board's judgment regarding the second and third years.

The Tax Court held that:

- Freeze Act did not apply to preserve building's tax-exempt status for second and third years of city's imposition of taxes over five year period, and
- Doctrine of laches did not necessarily apply to bar county's motion for Freeze Act relief.

Freeze Act did not apply to preserve county-owned building's tax-exempt status for the second and third years of city assessor's imposition of real estate taxes on building over five year period after county board of taxation determined that building was tax-exempt the first year, although county board's judgment regarding exempt status of building indicated that building's value was "$0". There was no evidence that board considered fair market value of building, judgment of "$0" reflected the amount of taxes owed under the exempt status of building, and city assessor did not act improperly, unreasonably, or with the intent to harass county in removing building's exempt status.

Doctrine of laches did not necessarily apply to bar county's motion for Freeze Act relief to preserve county-owned building's tax-exempt status for the second and third years of city assessor's imposition of real estate taxes on building over five year period after county board of taxation determined that building was tax-exempt the first year, although county's motion was delayed an excessive amount of time from Superior Court, Appellate Division decision indicating that county was required to apply for Freeze Act relief in Tax Court. City failed to show that passage of time caused prejudice, and there were ongoing discussions between city and county during delay in which they attempted to resolve matter.

Hospital Distress to Grow If Congress Closes Door to Muni Market.

- **Small, lower-rated facilites could see costs rise 1-2 percent**
- **At least 26 non-profit hospitals already in default, distress**

As Congress moves to assemble the final version of its tax plan, projects like Spooner, Wisconsin's 20-bed hospital hang in the balance.

The rural community, about 110 miles (177 kilometers) northeast of Minneapolis, sold tax-exempt bonds to build the $26 million facility it opened last May. The hospital's chief executive officer said that if its access to such low cost financing had been cut off it would have paid over $6 million more in interest.

That may soon be an expense that other hospitals across the country will have to shoulder. The House's tax legislation revokes non-profit hospitals' ability to raise money in the municipal market, where investors are willing to accept lower interest rates because the income is exempt from federal taxes. That's threatening to saddle health-care providers with higher borrowing costs at a time when their finances are already under pressure.

"Should tax-exempt financing not be available in the future, it may really harm our ability to build affordable senior housing and assisting living facilities," said Michael Schafer, Spooner Health's CEO.

For small, rural hospitals across the country, labor, drug, and technology costs are increasing faster than the revenue and patients' unpaid debts are on the rise. Higher financing costs would be one more challenge.

David Hammer, head of municipal bond portfolio management for Pacific Investment Management Co., said the loss of the tax-exemption could raise borrowing costs by 1 to 2 percentage points at small facilities with a BBB rating or below. That "could have a meaningful impact on their balance sheets," he said.

At least 26 non-profit hospitals are already either in default or distress, meaning they've notified bondholders of financial troubles that make bankruptcy more likely, according to data compiled by Bloomberg. That includes falling short of financial terms set by their debt agreements and having too little cash on hand.

Many of them are based in rural communities where the populations tend to be "older, poorer and sicker," according to Margaret Elehwany, the vice president of government affairs and policy at the National Rural Health Association. She estimates that about 44 percent of rural hospitals operate at a loss. There have been at least seven municipal bankruptcy filings by hospitals since last year, the most of any municipal sector excluding Puerto Rico.

The risk that Congress will prevent hospitals from accessing the municipal market worries Dennis Reilly, the executive director of the Wisconsin Health & Educational Facilities Authority, an agency that issues debt for non-profits such as Spooner Health.

"All of us in the industry were completely blindsided by the House proposal," Reilly said in an interview from Washington, where he was meeting with members of Congress about the proposed bill.

“Without tax-exempt financing, not-for-profits across the country will have increased borrowing costs of 25 to 35 percent because they’ll have to access the taxable market,” he said. “For many of the rural providers like Spooner, much of their project they would not have been able to do with the higher cost of capital.”

A Rush to Beat the Clock

Hospitals are among those rushing to issue tax-exempt debt while they still can. Mercy Health, a Catholic health-care system that operates in Ohio and Kentucky, is scheduled to sell $585 million tax-exempt bonds next week. The deal, originally planned for early next year, was moved up after the release of the House proposal.

Spending more on debt would cut into the funds available for facilities, equipment and charitable outreach, like programs for opioid addiction, according to Jerome Judd, Mercy’s senior vice president and treasurer. “Things like that are impacted,” he said.

At least some members of Congress share the hospital executives’ concerns. Last month, some Republican lawmakers sent a letter to leadership pushing for the final plan to preserve the ability of hospitals and other entities, like affordable housing agencies and universities, to issue tax-exempt bonds.

“Private activity bonds finance exactly the sort of private public partnerships of which we need more of, not less,” they wrote. “These changes are incompatible with President Trump’s priority for infrastructure investment in the United States.”

It’s Tough to be Small

Some hospitals already opt to sell their bonds in the taxable municipal market to avoid disclosures and restrictions over how the proceeds are used, though they are typically larger entities that can secure advantageous rates because of the size of their deals. Patrick Luby, a municipal analyst at CreditSights, said smaller clinics with only a few million of bonds to sell would have a hard time accessing that market, which attracts corporate debt investors accustomed to big issues.

“Even what we would consider a large deal in the muni market is almost an odd lot in corporate bonds,” he said. “Very large hospital chains, large household name universities — global investors will buy those names, but they’re not going to buy a $15, $25, $50 million local hospital.”

If the House plan is enacted, hospitals “will have a really difficult time accessing the market,” he said.

Bloomberg

By Danielle Moran and Rebecca Spalding

December 8, 2017, 4:00 AM PST

— With assistance by Amanda Albright

[Open Market Escrow Bidding – Some Thoughts from Bidding Experts (Not Us

– The Real Experts)

Update: Treasury has announced that the sale of SLGS is being suspended at 12:00 p.m. ET on Friday, December 8, 2017. SLGS subscriptions filed before 12:00 p.m. ET on December 8, 2017 will be honored.

As we reported on November 22 in this blog (SLGS Will Soon be Unavailable for Subscription), beginning on or before December 8, we should expect the reinstatement of the federal debt ceiling to force the SLGS window to close. The current suspension of the debt ceiling expires on December 8, and there is no expectation that the suspension will be extended or that the debt ceiling will be raised by that date. This unfortunately occurs just as the glut of tax-exempt advance refundings is hitting the market so that those issues can close before the possible (likely?) year-end deadline before such advance refundings are outlawed by the pending House and Senate tax bills (a discussion of the Senate bill is available here and here and a discussion of the House bill is available here). This points to open market escrow securities soon being the only game in town, raising questions as to the availability of bids and open market securities for all the escrows soon to require funding. I recently had the nerve in this exceptionally busy time to ask two of the most experienced bidding agent representatives I know for a few moments of their time to share their perspectives on the market for these escrow securities. Both were very generous with their time and thoughts, which I report below.

Continue Reading

By Bob Eidnier on December 6, 2017

The Public Finance Tax Blog

Squire Patton Boggs

NABL: SLGS Window to Close.

The Treasury Department has announced that subscriptions for SLGS will not be accepted after noon Eastern Time Friday, December 8, 2018. The SLGS window will remain closed until further notice. Subscriptions received prior to noon Eastern Time Friday will be issued on the date requested.

The Treasury Department notice is available here.

U.S. Hospitals, Schools Rush to Raise Tax-Free Funds.

Borrowers raised more than $4 billion in private-activity bonds last week, even as Congress debates doing away with tax exemptions for such debt

Hospitals, universities and nursing homes across the U.S. are rushing to borrow money tax-free—while they still can.

Last week, borrowers issued more than $4 billion in new so-called private-activity bonds, which allow nonprofits and some for-profit firms to raise money for development projects perceived to have a public benefit.

That was triple the amount issued during the same week in 2016, according to a Municipal Market Analytics analysis of Bloomberg data, and one of the highest weekly issuances of the past two years. Prices on private-activity bonds have increased this week alongside other municipal bonds.

The borrowing outbreak is happening as Congress debates whether to do away with long-held tax exemptions on these bonds beginning Jan. 1. A House bill would eliminate the benefit altogether, while a bill that passed the Senate would leave the bonds untouched.

The Senate and House are working to send President Trump an agreed-upon version by Christmas. House Ways and Means Committee Chairman Rep. Kevin Brady (R., Texas), the lead negotiator from the House, this week suggested he might favor limits.

"I'm convinced their mission has drifted quite a bit," he said. "They should be focused on infrastructure projects that help build and enhance the national infrastructure because they're receiving national subsidies from every taxpayer in America."

Private-activity bonds allow nonprofits and some for-profit firms to do what state and local governments do: borrow money at cheaper rates. Investors don't demand as much interest because they don't have to pay taxes on their earnings.

Their name refers to their use: proceeds pay for a variety of projects that benefit private entities like charter schools, museums, private universities, hospitals and nursing homes. Proceeds have averaged about $110 billion annually over the past decade.

Many borrowers and investors are not waiting to see what happens in Washington. Bond buyers last week rushed to purchase private-activity bonds for a railroad planned along Florida's coast, putting in bids for approximately $2 billion worth of bonds even though only $600 million were for sale, according to Wes Edens, Chairman of Fortress Investment Group, which is leading construction of the project. The issuer was the Florida Development Finance Corporation.

"Pricing was probably a little bit better than we thought it would be," Mr. Edens said.

One borrower in North Dakota decided to seek buyers for $363 million in bonds three weeks earlier than planned. The proceeds would help pay for a new Trinity Health hospital and replace two buildings constructed about 100 years ago. Preliminary documents were filed Tuesday to avoid the risk of being shut out of the tax-exempt markets, said Dennis Empey, chief financial officer for Trinity Health.

Another hospital operator, Mercy Health in Cincinnati, Ohio, also rushed a planned $585 million issuance to market while the congressional tax debate unfolded, said Jerome Judd, Mercy's senior vice president of treasury and investment. The system, which operates 23 hospitals in Ohio and Kentucky, said the bonds are expected to be priced next week instead of the first quarter next year.

Loss of access to tax-exempt financing would raise Mercy's borrowing costs, leaving less money for capital investments and community outreach, Mr. Judd said. The planned financing will be used for outpatient investment and refinancing existing debt, he said.

Congress first established rules for these bonds in 1968, offering a specific list of approved projects including airports and low-income housing. In the 1980s, Congress added new types of private-activity bonds and capped how much nonprofits could issue, but that cap was lifted in the 1990s.

Some critics of the bonds have argued certain borrowers shouldn't be able to benefit from the exemption. A Congressional Budget Office report in December found that some projects financed with private-activity bonds "probably would take place without a subsidy" and others likely would not be worth the cost.

Hospitals, universities, engineers, airports, bond lawyers and public officials have argued that ending the tax exemption for these bonds would make it more difficult to complete vital projects.

Many of the bonds currently offer relatively high yields in an otherwise sedate, low-rate market because borrowers who lack taxing power to back their bonds often pay higher interest rates. Those who follow the market are predicting it will shrink if the exemption is gone.

"If private activity issuance ends, a high amount of high yield muni issuance could go away," said Jamie Iselin, head of municipal securities at investment manager Neuberger Berman.

At the City National Rochdale Municipal High-Income Fund, which manages $1.2 billion in high-yield municipal debt, senior portfolio manager Bill Black estimated that about two-thirds of his portfolio is made up of private-activity bonds.

"If the House tax bill gets approved it'll be hard for us to find bonds going forward," Mr. Black said. High-yield muni funds have suffered challenges in recent years as a result of limited issuance of tobacco bonds—high-yield bonds backed by payments from state settlements with tobacco companies.

High-yield bonds have rallied in recent weeks, pushing the S&P Municipal Bond High Yield Index to its highest point since the quarter began Oct. 1.

Even without a change in tax policy, private-activity bonds will likely become scarce and valuable in the next quarter, since many of the deals planned for January and February of next year are instead getting done in December. Demand tends to increase somewhat in January, when a large portion of bonds come due, leaving bondholders with cash to reinvest. Many bond investors are using this month's increase in supply as an opportunity to stock up.

Moody's Investors Service has been asked to issue credit ratings for roughly $8 billion in nonprofit health-care bonds this month, said Brad Spielman, a Moody's analyst for the sector.

"This may very well be the biggest month of issuance since 2008," Mr. Spielman said.

The Wall Street Journal

By Heather Gillers and Melanie Evans

Dec. 7, 2017 7:00 a.m. ET

—Richard Rubin contributed to this article.

Write to Heather Gillers at heather.gillers@wsj.com and Melanie Evans at Melanie.Evans@wsj.com

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Tax Overhaul Could Chill US Affordable Housing Construction.

PORTLAND, Ore. — Municipal governments worry the tax overhaul in Washington, D.C. could chill the construction of affordable housing as homelessness reaches a crisis point on the West Coast.

Officials with the housing authority in Portland, Oregon, said Tuesday the U.S. could lose nearly 1 million units of affordable housing over 10 years if the final bill eliminates the tax-exempt status for a type of bond commonly used by developers to finance affordable housing.

That estimate comes from a recent analysis by Novogradac & Co., a San Francisco-based accounting firm that specializes in real estate and affordable housing issues.

While the tax bill is not finalized, developers are now racing to lock in financing and the uncertainty over the bonds has raised upfront costs for some projects, affecting projects from Oregon to Massachusetts to Illinois to Minnesota. The concern comes at a time when homelessness is soaring on the West Coast amid an acute shortage of affordable housing. Cities, including Portland, are rushing to get projects in the pipeline to address the crisis.

“It’s a little bit of chaos because there’s so much to unpack in the implications of this and folks are scrambling,” Michael Buonocore, executive director of Portland’s housing authority, said in a phone interview. “This is straightforward math and it is not just funding for public housing that is purely funneled through the government. The low-income tax credit fuels … private industry and lenders too, so it’s across the spectrum.”

In Portland, for example, uncertainty over the fate of the private activity bonds has added $1 million to the cost of a 240-unit affordable housing complex, the largest that’s been built in Portland in many years, Buonocore said. Developers will nonetheless break ground in January, but the fate of future projects is less certain, he said.

More than half of affordable housing projects nationwide rely on a 4 percent tax credit that can only be claimed by a developer if at least half of the construction is financed by private activity bonds. The bonds are awarded by states, with the help of local governments, for qualifying projects.

While both House and Senate versions of the tax bill currently retain low-income housing tax credits, the House version would remove the tax-exempt status of the private activity bonds, making them essentially useless as a financing tool.

The analysis by Novogradac & Co. also estimated that lowering the corporate tax rate from 35 percent to 20 percent — a feature of both the House and Senate versions of the tax bill — would effectively devalue low income housing tax credits and result in a loss of investor equity nationally of about $1.2 billion.

That would translate into about 90,000 fewer affordable rental units over the next decade nationwide, the analysis found.

Portland housing officials say locally that would mean $200 million in lost equity and 1,800 fewer units.

By THE ASSOCIATED PRESS

DEC. 5, 2017, 7:24 P.M. E.S.T.

Ohio Mayors Alliance Outlines Adverse Impacts of Federal Tax Overhaul on Ohio Cities and Taxpayers.

The Ohio Alliance of Mayors, in conjunction with the United States Conference of Mayors, held a press conference Friday, November 17 in Columbus, OH to oppose the repeal of State and local tax deductibility (SALT) in the House and Senate tax reform bills. Speaking to Ohio reporters, the bi-partisan group of mayors were led by Columbus Mayor Andrew Ginther, Findlay Mayor Lydia Mihalik, Cincinnati Mayor John Cranley and Kettering Mayor Don Patterson.

The Ohio mayors also opposed elimination of the key economic development tools bills, including the repeal of private activity bonds in the House bill, the repeal of advance refunding of bonds, the elimination of the historic tax credit, among others.

"These bills will raise middle tax family taxes," said Cranley, while Mihalik urged both the House and the Senate to keep SALT.

United States Conference of Mayors senior staffer, Dave Gatton, represented the Conference at the event. The Ohio Mayors Alliance is comprised of the State's top 30 cities and was organized in 2016 to give the mayors a stronger voice within the state legislature and federal decisions affecting Ohio.

You can read the press release here.

Preserve Private Activity Bonds: CDFA

The U.S. House of Representatives and the U.S. Senate have passed their respective versions of the Tax Cuts and Jobs Act. Both bills eliminate Advance Refundings, while the House bill would also eliminate all Private Activity Bonds. House and Senate leadership will meet in a conference committee to reconcile differences between the two bills.

CDFA is asking for nationwide support to preserve Private Activity Bonds and Advance Refundings. Letters, emails, faxes and phone calls. From far and wide. From urban, suburban and rural. From Democrats and Republicans alike. Every one of you has a stake in this effort.

We ask that regardless of where you live, you reach out to the House and Senate conferees and communicate the following language verbatim.

Continue reading.

U.S. Tax Reform: Legislation Lays Groundwork For Reshaping The Federal-State Fiscal Relationship.

SAN FRANCISCO (S&P Global Ratings) Dec. 4, 2017–With passage in the U.S. Senate of the Tax Cut and Jobs Act on Dec. 2, the federal-state fiscal relationship is poised to undergo a transformational overhaul, in S&P Global Ratings' view. The first step in this process is the likely enactment of tax legislation that sharply curtails the state and local tax (SALT) deduction. But the effect of the broader tax package on the federal budget trajectory may prove even more consequential for the states. Projections from the Joint Committee on Taxation and the Congressional Budget Office indicate the tax legislation could increase the federal deficit by $1.0 trillion to $1.47 trillion over 10 years. Prospects for enlarged fiscal deficits may provide federal lawmakers renewed cause to consider making policy changes that rein in projected federal spending, particularly in the entitlement programs. Assuming these efforts once again focus on health care, we believe it's plausible they could culminate in a capping of the federal commitment to Medicaid.

If lawmakers pursued it, eliminating Medicaid's open-ended entitlement status would have significant fiscal implications to state finances. As much as Medicaid is a safety net health insurance program, it's also a mechanism for the delivery of countercyclical federal fiscal aid to states. Since its inception, the increased federal aid to states that occurs when enrollments rise, such as during economic downturns, has been automatic because Medicaid is a federal entitlement. Countercyclical federal aid arguably played an underappreciated role in stabilizing state finances and credit quality in the immediate aftermath of the Great Recession. Curtailing or eliminating this dynamic could expose the states to large Medicaid-driven budget deficits in economic downturns, likely necessitating difficult offsetting fiscal adjustments. Potential adjustments states may consider include some combination of limiting coverage, diverting resources from other programs, or raising taxes. The latter of these policy options is likely to be more constrained for some states in light of the reduced SALT deduction.

As we have previously noted, capping the SALT deduction will also likely widen the existing balance of payment disparities among the states. That is, for those states that raise and contribute more in federal tax revenue than they receive in federal spending, the net imbalance is likely to grow. And by increasing the tax burden for high income taxpayers that itemize their federal taxes, the capped SALT deduction will attenuate the fiscal policy options available to these states. The states are also likely to face marginally higher future debt service costs because the legislation also ends their ability to advance refund previously issued bonds on a tax-exempt basis

We have described the states' fiscal integration with the federal government as an institutional advantage that over time has contributed to strong credit quality in the sector. In our view, the tax legislation working its way through Congress may represent the first phase in an unwinding of this implicit backstop that cushions state finances during times of economic stress. Already, we have seen an increase in rating volatility in the state sector over the past two years as a consequence of demographic and structural economic pressures. Elevated rating turbulence, including with ratings continuing to reach lower down the rating scale, may emerge as the norm rather than an exception given the direction of federal policy.

U.S. Tax Reform: Local Government Issuers In The New York Tristate Region Could Be Stressed.

Many property-owning taxpayers in the New York City tristate region will likely feel a heavier tax burden under proposed legislation, which could lead to financial strain for local governments in the region if tax bases contract or residents become less willing to support tax increases.

Continue Reading

Dec. 5, 2017

Special Focus: Fiscal Federalism is Threatened by Tax Reform's Attack on State and Local Governments.

Executive Summary: As we discussed last month, both the House and Senate shocked state and local governments with provisions that either increase their costs of functioning, reduce financial flexibility or increase the cost of financing important projects. The implications for Fiscal Federalism are profoundly negative.

Starting with advance refundings alone, two things are true: First, that there IS a cost to state and local governments associated with the elimination of the advanced refunding option. Any bond market option has a value associated with it. Eliminate the option and you are taking that option value away from state and local issuers. Second, the estimated benefit of the elimination of advanced refundings of roughly $17 billion over 10 years is undoubtedly wildly overstated. These overstatements are so often the case in tax bills, so why should this time be different?

Continue reading.

This Special Focus is brought to you by Court Street Group and Neighborly Insights.

by George Friedlander

Posted 12/06/2017

Kroll: Federal Tax Reform Has Significant Implications for State and Local Government Finances.

Kroll Bond Rating Agency (KBRA) has released a macro-market research report, "Federal Tax Reform Has Significant Implications for State and Local Government Finances." The report makes the following key points:

- The major tax reforms undertaken by the Republican administration today will change the tax equation across all sectors of the economy from individuals to homeowners to corporations, but it also has major consequences for state and local government finances. Since federal, state and local tax policy interact in a variety of complex ways, federal tax reform will have important implications for how state and local governments fund and manage operations over time.
- While there are still some unknowns about what provisions of the House and Senate tax reform plans will ultimately be legislated, it appears that high tax, high income states will be the most affected by provisions in the current plans.
- States that conform to the Internal Revenue Code definitions for taxable income are likely to see

revenue from personal income taxes increase, assuming no change in tax rates.

Please click on the link below to access the report:

Federal Tax Reform Has Significant Implications for State and Local Government Finances

If you have any difficulties accessing the report, please contact info@kbra.com or visit www.kbra.com.

TAX - MONTANA

Zinvest, LLC v. Gunnersfield Enterprises, Inc.

Supreme Court of Montana - November 21, 2017 - P.3d - 2017 WL 5591723 - 2017 MT 284

Purchaser of real property, who acquired interest in property from county following unpaid property taxes by record title owner, brought quiet title action.

The District Court entered order quieting title to property, and denied record title owner's motion for summary judgment. Record title owner appealed.

The Supreme Court of Montana held that tax assessment on property was invalid, and thus subsequent tax lien sale was void.

Tax assessment on parcel of real property, which went to property's previous owner, rather than record title owner, was invalid, and thus subsequent tax lien sale of property from county to purchaser, and issuance of tax deed, were void in purchaser's quiet title action. Statutory protections requiring property to be assessed in the owner's name, and prohibiting department of revenue from changing any ownership records unless the department has received a transfer certificate, were mandatory.

Passage of Senate Tax Bill Leaves Fate of PABs to Reconciliation.

The Senate's passage of its tax bill by a 51-49 vote early Saturday morning sets the stage for a sea change in the municipal market once it's reconciled with the House's version and signed into law.

The fate of private activity bonds, which would be spared in the Senate bill but killed in the House measure, hangs in the balance. With advance refundings eliminated in both bills, that popular cost-saving tool for municipalities is all but dead.

Both bills would reduce the corporate tax rate to 20% from 35%, although the Senate bill would delay the reduction until 2019. Muni market experts have said that will kill any demand for munis by banks, property and casualty and insurance companies and life insurance companies.

President Trump, however, raised the possibility that the final corporate tax rate might be 22% as a result of upcoming House and Senate negotiations.

Speaking to reporters at the White House Saturday morning, Trump said, "It could be 22 when it comes out but it could also be 20. We'll see what ultimately comes out."

The ultimate fate of PABs is uncertain. The Senate bill, while preserving them, amended its bill on Friday to retain both the individual and corporate alternative minimum tax, which is applicable to PABs that are not 501(c)(3) bonds and makes them less attractive. The bill, on the plus side for the muni market, would raise the amounts exempted from the AMT. The earlier version of the Senate bill would have eliminated the AMT.

House Ways and Means Committee Chairman Kevin Brady said Thursday he might agree to preserve PABs but push for limits on their uses. That's raised concerns among muni market participants who now worry that PABs will be restricted in the upcoming negotiations over a final tax bill rather than left alone as in the Senate bill.

"I think over time that's an area that has drifted in its mission from infrastructure projects that have regional or national significance that should be supported by every taxpayer in America into a wide range of issues," Brady, R-Texas, said in response to a question from The Bond Buyer.

The House bill would terminate PABs after the end of the year. Brady echoed some House Republicans who want some PABs preserved for infrastructure.

Brady said House lawmakers have been learning about the various uses of PABs. "Part of the reason for addressing it in the House version was to have this discussion about should they continue, and if so, in what form," he said.

The Senate on Friday also revised its tax bill to adopt the House provision on federal deductions for state and local taxes. Both bills would eliminate the deductions for state and local income and sales taxes but would permit the deduction of up to $10,000 of state and local property taxes.

Republican Rep. Tom Reed of New York, a member of the House Ways and Means Committee, told The Bond Buyer Thursday that California and Illinois Republican House lawmakers are continuing to press for a deduction for state and local income taxes to be added in conference. Among the possibilities, according to Reed, is a ceiling on the deduction for a combination of property taxes and state and local income taxes.

"Stay tuned," Reed said. "This is all part of the legislative process. There is going to be further expansion of the SALT deduction. That is one issue that has to be resolved."

The Senate bill would keep the current mortgage interest deduction for loans of up to $1 million. The House would cap mortgage interest on new home loans beginning Jan. 1 at $500,000. Both bills would end the deductibility of home equity loans.

Before passing its bill the Senate raised to 23% from 17.4% the amount of income that can be deducted by filers of pass-through entities.

Meanwhile, 21 House Republicans sent a letter to the House and Senate GOP leaders early last week urging them to preserve PABs and advance refundings.

The number of House Republicans who signed the new letter is significant because it nearly equals the 22-seat majority Republicans hold in the House. No Democrats voted for the House tax reform bill and none are expected to support the final House-Senate legislation.

Republicans hold a 240-194 advantage in the House with one seat vacant pending a March 13, 2018 special election to replace former Rep. Tim Murphy, R-Pa.

"We strongly object to the proposed elimination of tax-exempt private activity and advance refunding bonds in any final tax reform package," said the letter sent Brady and House Speaker Paul Ryan, R-Wis.

Their proposed termination, the letter said, "undermines President Trump's infrastructure and economic development agenda for the middle-class."

Copies also were sent Senate Finance Committee Chairman Orrin Hatch, R-Utah, and Senate Majority Leader Mitch McConnell, R-Ky.

The letter pointed out that the proposed changes "violate a request made by 162 members of the House of Representatives in a March 9, 2017 letter."

The earlier letter was a bipartisan request led by Reps. Randy Hultgren, R-Ill., and Dutch Ruppersberger, D-Md., co-chairs of the House Municipal Finance Caucus.

Brady acknowledged understanding the message in the letter.

The elimination of advance refundings in both versions of the bill is already spurring a rush to market in the primary as issuers try to take advantage of the ability to refinance debt prior to the call date while they still can.

However, municipal issuers may have to forget about buying state and local government series securities for the escrows of all those advance refundings.

The debt limit is looming and if Congress doesn't suspend it or increase it by Dec. 8, then the Treasury Department will have to take extraordinary measures and the first action it usually takes is to halt sales of SLGS.

SLGS are specially tailored, non-marketable securities from Treasury that can only be purchased by state and local governments or other muni issuers subject to yield restriction and arbitrage rebate restrictions under the Internal Revenue Code. They are most often bought by issuers for advance refunding escrows, which are subject to yield restriction requirements. Issuers want to make sure their investment yields don't exceed their bond yields. But issuers can also invest in SLGS with bond proceeds to avoid generating arbitrage.

"Because of the pending tax bills, issuers all across the country are rushing to do advance refundings before New Year's," said Sam Gruer, managing director at Blue Rose Capital Advisors. "The market is expecting a significant amount of advance refundings and the SLGS window is going to be shut down in the middle of it."

Gruer said issuers may instead have to buy open market Treasuries for their advance refunding escrows.

"Given the potential for a large amount of transactions, issuers should start planning for this now," he said.

Market sources said they are especially worried that smaller state and local governments with smaller transactions will be unable to advance refund their bonds.

Federal tax rules contain a safe harbor under which tax regulators won't question the yield on an advance refunding escrow if the issuer obtains at least three bids for the securities to be put into the escrow. But what if smaller issuers don't get three bids or any bids at all for escrow securities?

Underwriters and investment advisors may be swamped with advance refundings and not want to spend the holiday season trying to find bids for small deals, some sources said.

The Congressional Budget Office said in a report issued Thursday that if the debt limit is not suspended or raised after Dec. 8, the Treasury will have to take extraordinary measures but that that will keep the federal government from running out of cash until late March or early April.

Currently there is no statutory limit on the issuance of new federal debt because Congress the limit of federal debt through Dec. 8 in the Continuing Appropriations Act, 2018, and the Supplemental Appropriations for Disaster Relief Requirements Act, 2017, enacted in September.

That means that on Dec. 9, absent any action by Congress to extend the suspension or increase the ceiling, the debt limit will be reset to reflect the cumulative borrowing through the period of suspension.

As of Nov. 17, an additional $700 billion was borrowed, bringing the amount of outstanding federal debt subject to the limit up to $20.5 trillion, the CBO report said. On Dec. 9 the new debt limit will be that amount plus whatever is additionally borrowed through Dec. 8, the report said.

“Under current law, on Dec, 9, federal debt will be at the statutory limit and the Treasury will need to use “extraordinary measures” to continue to raise cash,” the CBO said. “Those measures would probably be exhausted in late March or early April.

The Bond Buyer

By Brian Tumulty & Lynn Hume

December 02 2017, 8:43pm EST

While You Were Sleeping . . . . The Senate Passed Its Version of the Tax Cuts and Jobs Act.

At about 2:00 a.m. EST on Saturday, December 2, 2017, the only people awake in Washington, D.C. were alcoholics, the unemployable, and angry loners. Also awake were members of the United States Senate (but I repeat myself). At that early hour, the Senate passed its version of the Tax Cuts and Jobs Act (the “Act”) by a vote of 51 – 49. Bob Corker of Tennessee was the only one of the 52 Senate Republicans to vote against the Act; none of the 48 Senate Democrats voted for it.

The House of Representatives passed its version of the Act on November 16. The differences between the versions of the Act as passed by the House and Senate will now be reconciled either by a conference committee comprised of members of the House and Senate or some other form of negotiation between the two chambers of Congress. Once a final version of the Act has been negotiated, the House and the Senate will vote on this version, assuming it is not identical to either the House or Senate version. For analysis and speculation regarding the Act’s effect on tax-exempt bonds, hit the jump.

Continue Reading

By Michael Cullers on December 3, 2017

Affordable Housing Advocates Say Trump Tax Reform Bill is 'Devastating.'

Elimination of private-activity bonds would lead to steep drop in affordable housing units

Affordable housing advocates were cautiously optimistic that the House tax reform bill would have only modest effects on low-income housing after the Trump administration's framework explicitly retained the tax credit responsible for virtually all construction and preservation of low-income housing units—the Low-Income Housing Tax Credit (LIHTC).

While the House's tax reform bill released Thursday does include LIHTCs, the unexpected elimination of private-activity bonds would have devastating effects on the construction and preservation of affordable housing. When combined with other changes the bill proposes, accounting firm Novogradac & Company estimates a loss of nearly 1 million affordable housing units produced over 10 years.

"This was the worst case scenario that we were bracing for," said Rachel Fee, Executive Director of the New York Housing Conference. "We knew bonds were slated for elimination in previous tax reform proposals so that threat has been out there," she explained, "However, given that the tax reform framework announced last month explicitly supported the housing credit, we were hopeful that there was sincere interest from the administration and House Republicans in supporting this public-private partnership model with a track record of success."

The LIHTC program provides two types of credits for developers willing to put affordable housing units in their projects—the 9-percent credit and the 4-percent credit. The 4-percent credit can only be claimed if 50-percent or more of the project is funded using tax-exempt private-activity bonds.

The House tax reform bill, dubbed the Tax Cuts and Jobs Act, proposes eliminating private-activity bonds, so while LIHTCs are explicitly retained in the bill, the elimination of the bonds would eliminate the 4-percent credit and likely lead to a precipitous drop in construction of low-income housing units produced by the program.

"These bonds contribute to 60-percent or more of the affordable rental housing built or renovated every year," said Michael Novogradac of Novogradac & Company. "Hundreds and hundreds of thousands of units of affordable housing would be lost over the next 10 years."

The bond elimination compounds a problem that was expected in the bill—the corporate tax rate cut. The bill proposes cutting the rate from 35 to 20-percent. This would ultimately lower the value of LIHTCs and thus the amount of equity available to developers for building low-income housing units.

Novogradac & Company's analysis measured the effects of the elimination of the 4-percent LIHTC, the corporate tax cut, and change in inflation adjustments through out the tax code and found a reduction in LIHTC-financed units produced somewhere between 882,000 and 983,000 over 10 years.

The New York Housing Conference, in coordination with New York City and the State of New York, estimates that the combination of the corporate tax cut and the elimination of the 4-percent credit would cost New York alone $4.5 billion and 17,128 affordable housing units annually.

It could ultimately lead to as much as a 15-percent drop in the number of new affordable housing units, and that's before taking into account the effects of eliminating private-activity bonds.

Private-activity bonds are used to fund a number of different public works, in addition to affordable housing units. Trump has actually proposed expanding the use of private-activity bonds in the past, as part of his push for increased spending on infrastructure projects, so this cut comes as a surprise. Treasury Secretary Steven Mnuchin actually advocated for "enhancing" private-activity bonds during his confirmation process.

The Joint Committee on Taxation estimates that elimination of private-activity bonds would save the federal government $38.9 billion over the next 10 years. That's a drop in the bucket for a bill that the House estimates would add $1.5 trillion to the deficit over 10 years.

CURBED.COM

BY JEFF ANDREWS NOV 3, 2017, 5:00PM EDT

[Tax Reform Bill Would Eliminate Future Supply of Nearly 1 Million Affordable Rental Housing Units: Novogradac]

According to Novogradac & Company analysis, the Tax Cuts and Jobs Act, House Ways and Means Committee Chairman Kevin Brady's landmark tax reform legislation would reduce the future supply of affordable rental housing by nearly one million units. That would translate to a reduction of as much as two-thirds of the current production of affordable rental housing provided by the Low-Income Housing Tax Credit (LIHTC) program.

Specifically, the following changes proposed by the bill would negatively affect the number of rental homes built or renovated by the LIHTC:

- Eliminate private activity bonds and associated 4 percent LIHTCs.
- Lower corporate tax rate from 35 percent to 20 percent, and
- Change inflation factor for future LIHTC allocations from CPI-U to "chained CPI."

The following analyzes the effect of each change and provides a rough estimate of the degree to which each change would affect the number of affordable rental housing units supported by the LIHTC over 10 years.

1. Elimination of private activity bonds and associated 4 percent LIHTCs.

The latest data available from the National Council of State Housing Agencies (NCSHA) shows that in 2015, 49,380 tax-exempt multifamily private activity bond-financed homes were awarded 4 percent LIHTCs. However, according to data from the Council of Development Finance Agencies (CDFA), new tax-exempt multifamily bond issuance increased at least 51 percent or more in 2016; based on CDFA data the estimated number of rental homes financed is assumed also to have increased by 51 percent in 2016. Accordingly, repeal of the 4 percent LIHTC for tax-exempt bonds means a loss of roughly 788,000 to 881,000 affordable rental homes over 10 years, or more.

2. Lower corporate tax rate from 35 percent to 20 percent.

The reduction of the top corporate tax rate from 35 percent in 2017 to 20 percent in 2018 would reduce the tax loss benefits of LIHTC investments, since the value of depreciation expense deductions would be reduced. An analysis by Novogradac & Company found that lowering the corporate tax rate to 20 percent would reduce LIHTC equity by about 15 percent, translating to $1.2 billion or more in loss equity annually. This loss of investor equity translates into loss of 85,600 to 93,900 affordable rental homes over 10 years, or more.

Much of this loss could be addressed through a two-step proposal to increase allocable LIHTC and modernize the credit percentage formula.

3. Change inflation factor for future LIHTC allocations from CPI-U to "chained CPI."

The current draft of tax reform legislation would change the inflation adjustments throughout tax code from a factor based on the consumer price index for all urban consumers (CPI-U) to one based on a "chained" CPI-U. Many economists claim that the chained CPI-U provides a more accurate estimate of changes in the cost of living from one month to the next by accounting for the effects of substitution on changes in the cost of living. This change will decrease inflation adjustments in LIHTC allocations in future years, and would lead to a loss of 8,200 more affordable rental homes over 10 years.

Conclusion

On balance, it appears that Chairman Brady's tax reform legislation would reduce the total amount of LIHTC-financed affordable rental homes by about 882,000 to 983,000, or more, over 10 years. Furthermore, given the lower financial feasibility under a lowered corporate rate, the changes would also result in rental homes that would likely serve higher average income levels, provide fewer amenities and/or social services.

Published by Michael Novogradac on Friday, November 3, 2017 – 12:00am

Novogradac & Company

House Tax Bill Threatens to Make Housing Even Less Affordable for Poor.

- **House measure would end tax-free bonds for affordable housing**
- **As a result, nearly 1 million rental units may not be built**

Even before Hurricane Harvey dumped 50 inches of rain on Houston, damaging hundreds of thousands of homes and apartments, affordable housing was already scarce. Because of rising rents, more than 200,000 low-income residents were spending over half their earnings on someplace to live.

But a provision in the tax bill passed by the U.S. House of Representatives would only intensify the housing crunch in the nation's fourth-largest city — and others across the U.S. — by crippling affordable housing construction, developers and local government officials say.

The House measure would eliminate a form of tax-exempt debt called private-activity bonds — and, consequently, tax credits generated by the securities — after Dec. 31, wiping out a key tool used to finance more than half of the affordable units built each year, according to the National Council of State Housing Agencies.

The shift would jeopardize ITEX Group's $50 million acquisition and renovation of the Villa Americana, a 258-unit low-income complex in south Houston that was built in 1972. The hurricane has only increased the demand for housing: In September, the average rent for a single-family home jumped 8 percent from a year earlier to $1,886, according to the Houston Association of Realtors.

"If this tax legislation ever gets through, the project will probably die," said Chris Akbari, ITEX Group's president and chief executive officer. "There's no way right now to bridge the gap for some of these projects that need to be rebuilt or need to be built in these Hurricane affected areas."

While the Senate's plan doesn't eliminate private activity bonds, or PABs, the subsidy could still be pulled when negotiators iron out the differences between the two bills. That possibility is alarming developers, housing advocates and city officials who are lobbying Republicans to keep the provision out of the final legislation.

A Massive Crisis

If they're not successful, the number of affordable rental units built nationwide over the next decade may be reduced by as much as 880,000, according to an estimate by Novogradac & Company LLP, an accounting and consulting firm specializing in real estate.

"We view this as a massive crisis," said K. Nicole Asarch, president of the Texas Affiliation of Affordable Housing Providers.

PABs are issued by state and local governments and other public authorities to allow developers to borrow in the municipal market, where interest rates are lower because bondholders don't have to pay taxes on the income. They're also used by hospitals, universities and other non-profit groups, as well as by airlines and power companies.

The impact of the abolition of PABs on affordable housing is compounded because developers that finance more than 50 percent of their projects with the debt can receive income-tax credits, which they sell to investors in exchange for equity financing. About $14 billion multifamily housing bonds were issued in 2016, according to the Council of Development Finance Agencies.

"The only way to unlock those credits is to issue private activity housing bonds," said Garth Rieman, director of housing advocacy at the National Council of State Housing Agencies. "If PABs go away, those credits go away."

Wages Can't Keep Up

The need for low-cost housing has been on the rise. As wages stagnate and housing costs increase, families nationwide are spending a greater share of their incomes on housing. Over 11 million households spend more than half of their income on rent, a 50 percent increase since 2001, according to the Joint Center for Housing Studies of Harvard University.

The problem is particularly acute in cities. In San Francisco, the least affordable in the U.S., a worker would need to earn $58 an hour, five-and-a-half times California's minimum wage, to afford a two-bedroom apartment, according to the National Low Income Housing Coalition.

Without PABs, the amount of affordable housing built in New York City and state would be reduced by 17,000 units a year, said RuthAnne Visnauskas, commissioner of New York state's Division of Housing and Community Renewal. She said most of the $2 billion of PABs that New York is allocated each year under federal regulations are used for housing.

“We never thought PABs would be at risk,” Visnauskas said. “It’s really thrown people on their heels.”

But the impact won’t be limited to America’s most-expensive cities. Despite Houston’s reputation as affordable, before Harvey there were 215,000 low-income households in Harris County that spent more than half of their earnings on housing but only 84,000 publicly subsidized units, said Kyle Shelton director of strategic partnerships at Rice University’s Kinder Institute for Urban Research.

In Baytown, Texas, about 30 miles (49 kilometers) east of Houston on Galveston Bay, the Bay City Village apartment complex was so badly damaged by Hurricane Harvey that 50 its 62 units are still unoccupied. Before the storm, Related Cos.’s affordable-housing division planned to buy and rehabilitate the 40-year-old complex, using a combination of PABs and tax credits, said Matthew Finkle, president of New York City-based Related Affordable. The Republican tax plan has put that project in doubt.

“It would have a huge impact on the ability to execute that deal,” he said. “Without the bonds, without credits, and the equity from those credits it just becomes very difficult to make the deal pencil out.”

Bloomberg Politics

By Martin Z Braun

December 1, 2017, 4:00 AM PST Updated on December 1, 2017, 7:23 AM PST

Tax Cut Bill Could Wallop Muni Bond Market.

The House and Senate tax cut bills would adversely impact the economies, bond issues and home prices in high-tax states

The sleepy municipal bond market could be subject to a rude awakening if Congress succeeds in passing a tax cut bill.

The final bill, if there is one, will most likely impact the supply and credit quality of municipal bonds and the strength of many state and local economies issuing municipal debt, and their housing markets could be hit by falling home prices.

Here’s how the House and Senate bills could impact the muni market:

- The House bill caps the state and local tax (SALT) deduction at $10,000; the Senate eliminates it.
- The House and Senate bills both eliminate advanced refundings, which muni issuers use to refinance higher interest debt not currently callable with lower interest bonds.
- The House bill eliminates tax-free private activity bonds that colleges, hospitals and affordable housing developers use to finance projects, which constitute about 25% to 30% of municipal bond supply, according to Barclays. The Senate bill has no such provision.

Overall there is little good news in either the House or Senate bill for the muni market, with a few exceptions. Neither the House nor Senate tax bill tampers with the tax deductibility of muni bond interest, which is the primary reason investors buy munis and state and local governments issue them.

Both bills eliminate the AMT, which private activity muni bonds were subject to, and both would likely reduce the supply of tax-free municipal bonds, which could boost the prices of tax-free munis already in the market.

The impact on muni bond demand, however, would be mixed. While changes to the SALT deduction could increase demand for munis from investors in high-tax states searching for tax-deductible investments, many taxpayers may no longer need the deduction because they won't be itemizing deductions due to the doubling of the personal tax deduction, included in both the House and Senate bills. In addition, demand for munis from institutional corporate investors would decline because of the cut in corporate taxes, also included in the House and Senate tax bills.

If Congress passes a tax bill that is close to the House or Senate version, "there will be tremendous pressure on many state and local governments particularly those in the Northeast and on the West Coast," said Mark Zandi, chief economist at Moody's Analytics.

Those governments, primarily in high-tax states like California, Connecticut, New York and New Jersey, would have a difficult time financing services and would have to make big changes, says Zandi, noting that investors in those government bonds would be hurt along with homeowners in those districts.

He explains that home prices in high-tax districts are impacted by the tax deductibility of state and local taxes because people tend to buy as much house as they can on an after-tax basis. If the after-tax affordability of a house declines because of tax changes, those home prices will fall, due to a decline in demand, and that, in turn, would impact the property tax revenues of those districts. And that would increase the credit risks of the muni bonds issued by those districts.

"There is nothing credit positive" for munis in the House or Senate tax bill, says Jane Ridley, senior director in the U.S. Public Finance at S&P Global. She's not expecting a wide range of downgrades but notes that some states and local governments will find it difficult to balance their budgets if tax revenues decline because they will have a harder time raising taxes that are either not deductible or not fully deductible.

Investors and advisors will need to regard each municipal bond issue on a case by case basis, understanding how the final tax bill will impact an issuer's revenues and tax base and how the municipality is addressing those changes, advises Ridley.

Certain segments of the muni bond market will be particularly vulnerable if the final bill includes a provision contained in the House bill that eliminates private activity municipal bonds. "The elimination of tax-exempt PABs…would most directly affect debt issuance for transportation infrastructure issuers," according to an analysis by S&P Global Ratings. The "entire not-for-profit health care sector" would also be adversely affected, according to S&P Global Ratings.

There will likely be changes in the final tax bill before a final vote. The House has passed its bill and as of late Tuesday the Senate bill has made it through the Finance and Budget committees. A full Senate vote could come as early as this Thursday. If the Senate passes its tax cut bill, the horsetrading between the two congressional houses will begin.

THINK ADVISOR

BERNICE NAPACH

NOVEMBER 28, 2017

[GOP Tax Plan Threatens Big Break for Stadium Bondholders, Putting Raiders Project at Risk.]

- The House tax reform bill ends a 60-year run of teams' access to tax-exempt municipal bonds.
- The Senate bill does not include this provision, and it's unclear how the final legislation will shake out.
- Some expect removing this provision could hurt projects like the $1.9 billion domed stadium being built in Las Vegas for the Raiders.
- The Raiders do not expect to issue bonds until next year.

In 1953, the Boston Braves started a trend. They became the first Major League Baseball team to relocate in 50 years, drawn to Milwaukee by a new publicly funded stadium, according to Brookings research. That set the stage for the next 64 years of sports stadium financing.

The recently passed House tax bill would end this six-decade run of teams' access to tax-exempt municipal bonds for building what have become multibillion-dollar stadiums. The change isn't in the Senate bill, but if it makes it into whatever form goes to the president's desk, experts say it threatens the $1.9 billion Raiders dome in Las Vegas and the future of stadium financing.

"If you were going to build a stadium that actually had to be paid for out of the income of the football team, you would never spend $1 billion, let alone $2 billion," said Roger Noll, professor of economics emeritus at Stanford University. "This would affect them enormously."

Fifty-four pages into the House "Tax Cut and Jobs Act," which passed with no votes from Democrats, lawmakers say sports stadiums "do not generally meet the criteria" of public-purpose bonds on which interest is excluded from federal taxes. Under the new provision, the interest on any bonds issued after Nov. 2, 2017, for pro sports stadiums, is taxable.

This could be a problem for the Raiders.

None of the $750 million in bonds Clark County, Nevada, agreed to back for a new stadium have been issued. Las Vegas Stadium Authority officials told CNBC they don't expect the issuance to happen until at least the first quarter of next year. The stadium Authority's preliminary estimates already show a $20 million to $25 million reduction in public contribution without the tax break.

"It will raise costs, the margin projections will now be less, and it would take a longer time to realize the bonds," said Mark Rosentraub, director of the Center for Sport and Policy at the University of Michigan. Rosentraub worked on financial projections for the new stadium on behalf of the University of Nevada, Las Vegas, before the Raiders were involved. "Whether or not it breaks a deal or doesn't break a deal, that's up to a lot of factors and conjecture."

The tax change raises costs for teams but research suggests it could be a boon for federal taxpayers. A 2016 Brookings Institution study showed that pro sports stadiums have spent $3.2 billion federal taxpayer dollars since 2000. The think tank hasn't published forward-looking research but the Joint Committee on Taxation scored the tax savings at $200 million over the next 10 years, which Brookings researchers said seems "very low."

"There's no economic or political reason why a federal taxpayer in Oklahoma should subsidize the movement of the Raiders from L.A. to Las Vegas," said Ted Gayer, who authored the report and is director of the economic studies program at Brookings. "It's an egregious misuse of our taxpayer dollars."

Of 45 major league stadiums that have been built since 2000, 36 were financed at least partially with tax-exempt bonds, according to the study.

“It’s difficult enough to get new stadiums financed these days,” said Steve Greenberg, managing director at Allen & Co., who specializes in sports M&A. “Anything that would take away that tax exemption would make a difficult situation even tougher, whether it’s the Raiders or anybody else.”

It’s not just the Raiders spending big on stadiums. MLB team the Texas Rangers is expecting its $1.1 billion Globe Life Field to open in 2020. The Oakland A’s, in the city which lost its hometown Raiders to Las Vegas and the Warriors to San Francisco, has selected a site near Laney College for its stadium, also opening in 2020.

College teams and major league soccer teams have also leaned on tax exemptions, just with much lower price tags. Pizza Hut Park in Frisco, Texas, now called Toyota Stadium, cost the public $69 million, or 57 percent of its total cost, according to Harvard professor Judith Grant Long’s 2012 book “Public-Private Partnerships for Major League Sports Facilities.”

Financing for the Las Vegas project becomes trickier when you factor in who owns the Raiders. There are 18 billionaire owners in the National Football League, according to Forbes. Raiders principal owner Mark Davis is not one of them.

Los Angeles Rams owner and real estate mogul Stan Kroenke, by contrast, is worth an estimated $8 billion, and is financing the new Rams stadium as a part of his 298-acre sports and entertainment district, without federal support. That scope might not be an option for Davis, who in comparison is worth an estimated $500 million and gets an annual income from operating his football team.

“Virtually every stadium in the NFL has been built within the last 20 years,” Stanford’s Noll said. “The Raiders are sort of at the end of the tunnel, and they’re the ones that get hammered.”

NFL stadiums built in the past two decades have gotten more elaborate and expensive, averaging $2 billion in renovation costs, which Noll attributed to access to public financing and owners’ egos. He compared the modern football stadium to Egyptian pyramids, and owners as today’s “pharaohs,” looking to make a lasting monument.

These “pyramids” are rebuilt roughly every 20 years, which also tends to be when ownership changes, Noll said. If that time frame is right, a few could be ready for a face-lift; Arrowhead Stadium in Kansas City built in 1972, the Chicago Bear’s Soldier Field, which opened in 1924 and was renovated in 2003, and the Buffalo Bills’ New Era Field, which originally opened in 1973. The Washington Redskins have talked about a new stadium to replace FedExField, and a plan to renovate Nissan Stadium in Nashville, Tennessee, was released earlier this year.

In the meantime, the NFL and Nevada legislators are fighting back.

In response to the tax debate, league spokesman Joe Lockhart, told reporters on a conference call that the NFL teams are eager to keep the tax break, and touted stadiums as economic drivers for communities, Reuters reported.

Local lawmakers are looking to make sure their stadiums are exempt when the final version of tax reform gets passed. Despite previous opposition to government-funded stadiums, Republican Sen. Dean Heller of Nevada is lobbying for the Raiders’ Las Vegas dome to have access to tax-exempt bonds. Nevada Democrat Rep. Dina Titus said the tax bill in its current form would damage her district, which includes Las Vegas.

“This provision is one of the many reasons why the GOP tax bill is bad for Nevada,” Titus said in a statement the day the House passed its tax bill. “In case any of the Republican proposals move forward, I have been working with Rep. [Richard] Neal and other lawmakers to submit a measure in conference committee that would postpone the effective date.”

Despite the tax code disruption, there’s still bound to be demand for stadiums, said Allen & Co.’s Greenberg. The funding structure will change, and has already started shifting to rely more on private financing, he said.

“That is a trend that you’re going to continue to see,” Greenberg said. “The days of a municipality ponying up the lion’s share of the financing for a billion-dollar arena in this environment, I don’t see those days coming back.”

Whether a stadium provision makes it into law remains to be seen. The Senate bill, if it passes this week, still has to be reconciled with the House’s version before President Donald Trump can sign it. The Senate’s version passed the Finance Committee, and next goes to the Budget Committee, which meets Tuesday.

Senate Majority Leader Mitch McConnell still needs to lock in 50 votes and half a dozen Republican senators are still wavering. Undecided lawmakers worry that tax reform, in its current form, would only modestly boost economic growth, significantly increase the national debt and give the biggest tax breaks to the wealthiest Americans, among other factors.

Kate Rooney | @Kr00ney
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Republicans in House Seek Protection for Municipal Bonds in Tax Bill.

(Reuters) – A group of Republicans in the U.S. House of Representatives on Wednesday urged keeping federal tax breaks on private activity bonds sold by the developers of hospitals, nursing homes, airports and toll roads to reduce costs.

A tax bill in Congress to eliminate that exemption, plus tax breaks on advance refunding bonds used to lower interest costs, stunned the $3.8 trillion municipal debt market.

U.S. Representative Randy Hultgren, an Illinois Republican and co-chair of the Congressional Municipal Finance Caucus, said a letter he and 20 other Congressmen signed to object to the proposals was aimed at highlighting the value of tax-free debt issuance.

“It’s really important for projects. We’ve seen multiple returns in jobs created,” he said, adding that supporters will continue to push to retain these tax exemptions as the bills work their way through Congress.

The proposals are incompatible with President Donald Trump’s push for greater infrastructure investment, the letter stated.

“This change in policy contradicts the growing need of the federal government to rely more, not less, on states and municipalities, as well as the private sector, to help to finance needed infrastructure in a market driven, cost effective manner,” the letter said.

It added that advance refunding of municipal debt issues over the last five years will translate into saving taxpayers in every state billions of dollars in interest costs.

Legislation that passed the House earlier this month, as well as a bill pending in the Senate would disallow states, cities, schools and other issuers from refinancing on a tax-exempt basis bonds that are more than 90 days from the date the debt can be bought back by an issuer. This is done by issuers in order to save money by taking advantage of lower market interest rates.

Current refundings of debt within a 90-day call date window would remain tax-exempt.

The House bill would also yank the tax exemption for new private activity bonds (PABs) used by nonprofit organizations and governments to finance projects including hospitals, nursing homes, colleges, affordable housing, economic development, ports, toll roads and airports at lower costs.

Tim Fisher, legislative and federal affairs coordinator for the Council of Development Finance Agencies, said the letter may help if and when a Congressional conference committee meets to hash out differences between the House and Senate bills.

"(The letter) is a good sign that shows certain House Republicans are willing to go on the record," he said.

The elimination of PABs would raise nearly $39 billion for the federal government between 2018 and 2027, while removing tax-exemption for advance refunding bonds would generate $17.3 billion over that time period, according to an estimate from the Joint Committee on Taxation.

By REUTERS

NOV. 29, 2017, 7:48 P.M. E.S.T.

(Reporting by Karen Pierog in Chicago; Editing by Daniel Bases and Lisa Shumaker)

Buried in the Tax Bills, Multiple Unintended Consequences.

Republicans' determination to pass overhaul magnifies risks in an already complicated system

In their rush to pass a sweeping tax overhaul, Republicans and the Trump administration may be headed for a reckoning with the law of unintended consequences.

The U.S. tax system is a complex, jury-rigged contraption. At the best of times, tampering with any part invariably triggers collateral consequences. Those risks are magnified now by Republicans' determination to pass the plan with minimal hearings on party lines by Christmas.

Gary Cohn, President Donald Trump's chief economic adviser, touched on this in a recent interview on CNBC: "We not only have to think about what the objective is with taxes, and tax reform. We have to think how do we get 218 votes [in the House of Representatives], and how do we get 51 votes [in the Senate] on top of understanding the intended consequences [and] the unintended consequences."

The bills, as they stand, contain countless incentives for gamesmanship: differing tax rates for different types of foreign property and profits, arbitrary expiration and implementation dates to hold the 10-year deficit impact below $1.5 trillion, and changes to the Affordable Care Act to free up government dollars that could roil private insurance markets. “There are more ticking time bombs in this bill than a Road Runner cartoon,” says Martin Sullivan, chief economist for the nonprofit group Tax Analysts.

Two components in particular could have significant, unintended consequences: the treatment of pass-throughs—businesses such as partnerships that pay taxes as individuals rather than corporations—and of state and local taxes.

Historically, pass-throughs paid the same rate as individuals. Small businesses often say this is unfair because the top individual rate, now 39.6%, is above the corporate tax rate, now 35%.

Those complaints have little economic foundation: 86% of pass-throughs are so small they pay a personal rate of 25% or less, according to the Tax Policy Center, a think tank. Moreover, pass-through income is taxed once whereas corporate income is commonly taxed twice: at the corporate level, then on dividends and capital gains to shareholders.

Nonetheless, to appease business owners the House bill taxes 30% of pass-through income at just 25%. The Senate bill would let them deduct 17.4% of their income. Professionals such as doctors and lawyers above a certain income level would be prohibited from paying that lower rate.

Sen. Ron Johnson (R., Wis.), who has been a holdout, complains pass-throughs are still unfairly disadvantaged compared with the proposed corporate rate of 20%.

This change doesn’t come cheap: the nonpartisan Joint Committee on Taxation says the House provision will lose nearly $600 billion in revenue over the coming decade and the Senate provision $225 billion, due to tighter eligibility and an early expiration to reduce the deficit impact.

Yet the loss could easily be far more. Legions of attorneys, accountants and consultants will work over time to help any high-income client reclassify him or herself as a pass-through.

Suppose you’re a doctor or lawyer. Daniel Shaviro, a law professor at New York University, says: “Not to worry. Some law partnerships or doctors own their buildings, so you form two pass-throughs, one is the service business and the other owns the building, rents it out to the first and gets the low rate.” Or, he says, a law firm may form a partnership that owns its name and charges partners royalties for its use.

Treasury may struggle to craft guardrails against such maneuvers that hold up in court, says Kent Smetters, director of the Penn Wharton Budget Model, which simulates fiscal policy effects. His team estimates the pass-through changes will lose $71 billion to $94 billion more than JCT estimates.

There is precedent: After Kansas eliminated state income taxes on pass-throughs in 2012 it suffered a huge hit to revenue and finally reversed course this year. The federal tax reform in 1986 reduced personal rates below corporate rates, so many businesses became pass-throughs and corporate tax revenue fell short of expectations.

To pay for lower corporate and pass-through rates, legislators will eliminate several deductions, the largest of which is for state and local taxes (although the House would preserve a $10,000 break for property tax.) The rationale: the deduction serves no economic purpose and merely subsidizes state and local government spending.

The same is true for the federal break for municipal bond interest, yet its benefits are more evenly shared by Republican and Democratic states and thus it hasn't been touched. The state and local deduction benefits mainly affluent residents of Democratic states like California, New York and Maryland.

Sacrificing that deduction serves a purpose: It finances a more growth-friendly federal tax code. Yet many states have come to rely on hefty taxes paid by their wealthiest residents to finance extensive and costly public services.

Losing the federal deduction will raise effective tax rates on wealthy residents of states such as California, New York, Connecticut and New Jersey by two to five percentage points, according to Goldman Sachs economists. Some residents will move; others will never come. Goldman reckons New York City could lose 2% to 4% of its top earners as a result. The erosion of their tax base could imperil those states' fiscal health and force them to slash public services.

For some conservative lawmakers that may be an intended consequence. But it's also why no Democrats back the plan and will likely try to undo it if they retake Congress, much as Republicans have tried to undo the Affordable Care Act ever since Democrats enacted it on party lines. That sort of instability is yet another unintended consequence of the nation's increasingly polarized politics.

The Wall Street Journal

By Greg Ip

Nov. 29, 2017 12:06 p.m. ET

Write to Greg Ip at greg.ip@wsj.com

U.S. Conference of Mayors President and New Orleans Mayor Mitch Landrieu Issues Statement in Response to Senate Passing Tax Reform Bill.

Bill Marks Critical Step Forward in Providing Essential Funding

Washington, DC – The U.S. Conference of Mayors, the National League of Cities, the National Association of Counties and the National Association of Regional Councils today released the following statement applauding passage of the Brownfields Enhancement Economic Development and Reauthorization Act of 2017 (H.R. 3017):

"We commend members of the U.S. House of Representatives for passing this important legislation in a bipartisan manner. It marks a critical step forward in providing local officials not only with the funding they need, but also the flexibility to tailor their brownfield redevelopment to meet the individual needs of their cities, counties and regions.

"For many people, brownfields are just the neighborhood eyesore or the former industrial site, but for Mayors and other local officials they also represent unrealized potential. We see the redevelopment of brownfields as a chance to bring jobs back to a community, revitalize neighborhoods, increase our tax base, and reuse and enhance already existing infrastructure in a more sustainable way.

"We appreciate that members of the House invited local officials to testify and incorporated many of our suggestions to improve the bill. We thank Representatives Greg Walden, Frank Pallone, John

Shimkus, Paul Tonko, Bill Shuster, Peter DeFazio, Garret Graves, Grace Napolitano, Elizabeth Esty, John Katko, and David McKinley for their steadfast support on this issue. Their sustained efforts will allow us to build upon our past successes as we continue to redevelop the more than 400,000 brownfield sites across the country."

The United States Conference of Mayors

Analysis of the Tax Cuts and Jobs Act: Tax Policy Center

The Tax Cuts and Jobs Act is working its way through Congress. On November 9, the House Ways and Means Committee passed a version of the Tax Cuts and Jobs Act (link is external) and the entire US House of Representatives passed its version of the bill (link is external)on November 16. The Senate Finance Committee also passed its version of the Tax Cuts and Jobs Act (link is external) on November 16.

The Tax Policy Center has released distributional estimates of the Tax Cuts and Jobs Act to reflect the bill as passed by the Senate Finance Committee on November 16, 2017. We find the bill would reduce taxes on average for all income groups in both 2019 and 2025. In general, higher income households receive larger average tax cuts as a percentage of after-tax income, with the largest cuts as a share of income going to taxpayers in the 95th to 99th percentiles of the income distribution. On average in 2027, taxes would rise modestly for the lowest-income group, change little for middle-income groups, and decrease for higher-income groups. Compared to current law, 9 percent of taxpayers would pay more in 2019, 12 percent in 2025, and 50 percent in 2027.

TPC has also released an analysis of the macroeconomic effects of the Tax Cuts and Jobs Act as passed by the Senate Finance Committee on November 16, 2017. We find the legislation would boost US gross domestic product (GDP) 0.7 percent in 2018, have little effect on GDP in 2027, and boost GDP 0.1 percent in 2037. The resulting increase in taxable incomes would reduce the revenue loss arising from the legislation by $179 billion from 2018 to 2027. Because most of the tax cuts expire after 2025, we expect deficits (not including interest costs) would decline from 2028 to 2037 and macroeconomic feedback would boost the deficit savings by $34 billion over that interval. Including macroeconomic effects and interest costs, the legislation is projected to increase debt as a share of GDP by over 5 percent in 2027 and by over 4 percent in 2037.

Links to our most recent analyses and detailed tables are below. To brush up on some tax policy basics, or to refer to our previous analyses, see our Prepping for the 2017 Tax Reform Debate collection page.

Senate Tax Bill Could Add Anti-Stadium Bond Provision.

Sen. James Lankford offered an amendment to the Republican tax bill in the Senate to eliminate tax breaks for professional sports stadium construction, matching a provision in the House bill.

The Oklahoma Republican's Senate bill proposal would make sports stadiums ineligible for tax breaks given to private activity bondholders. Income on private activity bonds is tax-exempt if the project financed by the bonds has some public benefit. Lankford's amendment would spell out that professional stadiums cannot be categorized as a public good and therefore the tax break couldn't apply.

"Senator Lankford disagrees with using billions of federal taxpayer dollars for the subsidization of private stadiums when we have so many infrastructure needs in our country," Lankford spokesman D.J. Jordan said in an email. "Everyone likes free federal money to build their expensive stadiums, but with $20 trillion in federal debt, this is waste that needs to be eliminated."

Despite differences in legislative text between the Lankford amendment and the House bill, the effect would be the same: the tax break would be eliminated, said Tim Fisher, coordinator of legislative and federal affairs at the Council of Development Finance Agencies.

CDFA, which represents finance officers at state, local, non-profit and private entities, opposes the provision because bonds for stadiums can help spur economic growth, Fisher said.

"Stadium bonds are an important part of the development finance toolbox," he said.

It was unclear Thursday afternoon if the amendment would be included in the Senate's debate on the tax bill or during the vote on final passage.

ROLLCALL

By JACOB FISCHLER

NOV 30, 2017

Republicans in House Seek Protection for Municipal Bonds in Tax Bill.

(Reuters) – A group of Republicans in the U.S. House of Representatives on Wednesday urged keeping federal tax breaks on private activity bonds sold by the developers of hospitals, nursing homes, airports and toll roads to reduce costs

A tax bill in Congress to eliminate that exemption, plus tax breaks on advance refunding bonds used to lower interest costs, stunned the $3.8 trillion municipal debt market.

U.S. Representative Randy Hultgren, an Illinois Republican and co-chair of the Congressional Municipal Finance Caucus, said a letter he and 20 other Congressmen signed to object to the proposals was aimed at highlighting the value of tax-free debt issuance.

"It's really important for projects. We've seen multiple returns in jobs created," he said, adding that supporters will continue to push to retain these tax exemptions as the bills work their way through Congress.

Legislation that passed the House earlier this month, as well as a bill pending in the Senate would disallow states, cities, schools and other issuers from refinancing on a tax-exempt basis bonds that are more than 90 days from the date the debt can be bought back by an issuer. This is done by issuers in order to save money by taking advantage of lower market interest rates.

Current refundings of debt within a 90-day call date window would remain tax-exempt.

The House bill would also yank the tax exemption for new private activity bonds (PABs) used by nonprofit organizations and governments to finance projects including hospitals, nursing homes, colleges, affordable housing, economic development, ports, toll roads and airports at lower costs.

Tim Fisher, legislative and federal affairs coordinator for the Council of Development Finance Agencies, said the letter may help if and when a Congressional conference committee meets to hash out differences between the House and Senate bills.

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Tim Fisher, legislative and federal affairs coordinator for the Council of Development Finance Agencies, said the letter may help if and when a Congressional conference committee meets to hash out differences between the House and Senate bills.

“(The letter) is a good sign that shows certain House Republicans are willing to go on the record,” he said.

The elimination of PABs would raise nearly $39 billion for the federal government between 2018 and 2027, while removing tax-exemption for advance refunding bonds would generate $17.3 billion over that time period, according to an estimate from the Joint Committee on Taxation.

Reporting by Karen Pierog in Chicago; Editing by Daniel Bases and Lisa Shumaker

November 29, 2017

Hawkins Advisory: Tax-Advantaged Bond Provisions in Senate Tax Bill.

The attached Hawkins Advisory describes provisions affecting tax-exempt bonds and tax credit bonds that are included in the version of the Tax Cuts and Jobs Act passed by the U.S. Senate on December 2, 2017.

Read the Advisory.

ACG and BDA Tax Reform Update.

Read the Memorandum.

BOND DEALERS OF AMERICA

NOVEMBER 28, 2017

MBFA Chair Contributes Article on PABs and Advance Refundings in the Bond Buyer.

The City of Columbia and other local governments have long worked in good faith with our federal partner to develop policies and programs that invest in our communities and deliver results. As such, I deeply appreciate that both the House and Senate tax bills would maintain the century-old tax exemption for municipal bonds. State and local governments make over 75 percent of our nation's infrastructure investments, many of them financed with municipal bonds, and the preservation of the tax exemption for municipal bonds in both bills recognizes that the best thing the federal government can do on infrastructure is to first do no harm.

However, I am deeply concerned that the House bill would eliminate the tax exemption for private activity bonds and that both bills would eliminate the advance refunding of municipal bonds, robbing local governments of the ability to save taxpayer money by taking advantage of lower interest rates. I am also concerned that the House bill would eliminate the New Markets Tax Credit and the Historic Preservation Tax Credit, which are important tools in our economic and community development efforts. Combined with proposals to limit or completely eliminate the deduction for state and local taxes included in both bills, it is not hyperbole to argue that absent changes, these bills pose a grave threat to local government finance in general and to local government efforts to build and maintain core infrastructure.

Private Activity Bonds may sound esoteric and even boring, but they play a critical role in financing projects and programs that foster job creation and economic development and meet important public policy goals. In Columbia and South Carolina, they finance hospitals, affordable housing (including rental projects and mortgage financing), airports, student loans, and more. Equally important: Private Activity Bonds maximize community control, putting decision making firmly in the hand of state and local officials. The tax exemption for private activity bonds allows the federal government to support infrastructure investments and economic development efforts with a minimum of federal bureaucracy and interference. Repealing it makes little sense, especially in light of the reforms, strict controls, and volume caps on private activity bonds instituted by the 1986 tax act.

I am at a loss as to why both the House and Senate bills would eliminate advanced refunding of municipal bonds. I am, to quote one of my fellow mayors, "completely baffled" by this provision. Summaries of the bills offer no policy justification for this provision, making it clear that it is nothing more than a money grab from local governments and local taxpayers to finance tax cuts elsewhere in the bill. Since 2012, advanced refunding has saved South Carolina cities, counties, school districts, universities, and utilities (and their taxpayers and ratepayers) approximately $164 million. It makes no sense to rob local governments of the ability to take advantage of lower interest rates and save our taxpayers and utility customers money.

Just as alarmingly, the Senate bill's elimination of the deduction for state and local taxes would increase taxes for a large number of South Carolinians and taxpayers across the country, imposing federal taxes on dollars they never see in the first place – the textbook definition of double taxation. Simply put, the deduction puts more money in the hands of American families. In addition, any alterations to the deduction would upset the carefully balanced fiscal federalism that has existed since the permanent creation of the federal income tax over 100 years ago. As a general principle, the City of Columbia strongly believes that no federal law or regulation should preempt, limit or interfere with the constitutional or statutory rights of states and local governments to develop and operate our own tax systems.

The Historic Preservation Tax Credit and the New Markets Tax Credit have a strong track record of delivering results in South Carolina and across the country. They are crucial to our economic development and community revitalization efforts. New Markets has supported hundreds of millions of investment in struggling South Carolina neighborhoods, creating thousands of jobs. The Historic Preservation Tax Credit has been critical to the revitalization of Downtown Columbia and our neighborhoods. (I would be remiss if I did not include a plug for Senator Tim Scott's proposal, the Investing in Opportunity Act, to create tax incentives for investment in distressed communities. It is a perfect example of how the federal government can work with local governments to promote economic revitalization.)

I am fully aware of the urgent need to simplify our tax code and broaden our tax base, preferably in a deficit neutral manner. This bill does not do that. Many of its $5.5 trillion in tax cuts, which are tilted towards corporations and the wealthy, would be paid for on the back of local governments and our taxpayers through the provisions outlined above. $1.5 trillion of the bill's tax cuts would simply be added to our debt and paid for by future generations.

Regardless of where you stand on the issue of tax cuts, there is a better way: one that respects a century of federalism and the federal-local partnership and does not pass costs on to local governments, local taxpayers, and middle-class families.

Click HERE to view the Bond Buyer article online.

December 1, 2017

Financing Infrastructure Through Tax Policy: Tug-Of-War With A Frayed Rope.

In Short :

The Situation: Private activity bonds are issued by or on behalf of states and local governments to finance certain private (or partially private) projects that benefit the public. Usually, interest income from bonds issued by states and local governments to finance government projects is exempt from federal income taxes.

The Development: The U.S. House tax reform bill proposes to eliminate the tax exemption for newly issued private activity bonds, while the Senate's tax bill would allow the exemption to remain.

Looking Ahead: It remains to be seen how the final tax reform measures will treat interest from government project bonds.

Recent bills on U.S. tax reform before the House and Senate have taken competing positions with respect to the tax exemption for private activity bonds ("PABs"). While the House bill would eliminate the tax exemption for newly issued PABs, the Senate proposal would retain their tax-exempt status. The ultimate outcome could have major implications for infrastructure projects, including those funded by public-private partnerships.

Public-private partnerships are a type of funding model for infrastructure projects, whereby the public partner is represented by the local, state, or national government and the private partner is typically a privately-owned business, often with an expertise that can add value and complement the overall goals of the project. There are several potential benefits of this type of partnership, such as quicker completion of projects and minimizing the debt that local governments need to take on.

Overview of Private Activity Bonds

PABs are bonds issued by or on behalf of states and local governments that finance certain private (or partially private) projects that benefit the public. Generally, the income interest from bonds issued by states and local governments to finance government projects is exempt from federal income taxes, while the income from bonds issued for the benefit of private actors and mixed public-private businesses is subject to federal income taxes. However, there is an exception for bonds issued to finance qualified private activities, such as the construction of airports, docks and wharves, high-speed intercity rail facilities, waste facilities, and mass transit. In those specific cases, states and local governments can issue bonds to finance projects owned by private or mixed private-public businesses, and the income from those bonds is currently exempt from federal income tax.

In the United States, PABs are a major source of funding used for infrastructure projects. While the Trump administration has expressed the benefits of stimulating infrastructure investment through public and private capital and made it clear that this is a key agenda item, the need for investment and upgrades in the United States is something that is widely accepted by both political parties. Recent transportation projects such as the I-77 hot lanes in North Carolina and I-95 managed lanes in Virginia benefitted from the issuance of PABs. The competing House and Senate bills are now creating uncertainty with respect to this important financing mechanism.

Competing House and Senate Tax Proposals on Private Activity Bonds

The tax reform bill recently passed by the House would eliminate the tax exemption for PABs. The House's projected increase in revenue for eliminating this exemption is approximately $39 billion. However, this change would also essentially eliminate an important financing method used for public-private partnerships since, if enacted, interest rates for financing infrastructure projects would likely increase and the incentive for private investment in public projects would likely decrease.

The Senate tax reform bill would maintain the tax-exempt status of PABs and, therefore, preserve the incentives that private entities currently have to invest in public work projects. This aspect of the Senate plan is consistent with President Trump's pledge to attract private capital to rehabilitate America's infrastructure. The elimination of PABs will likely make it much more difficult to meet the President's goal of $1 trillion of infrastructure spending, including increased investment from the private sector.

Final Provisions on Project Activity Bonds Not Yet Settled

It is unclear whether the tax-exempt status of PABs will be retained in the final version of any U.S. tax reform. We will continue to monitor developments, and provide updates as events progress.

TWO KEY TAKEAWAYS

1. PABs are a significant source of funding used for infrastructure projects.

2. The Senate tax reform bill would maintain the tax-exempt status of PABs, preserving the incentives that private entities currently have to invest in public work projects.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Last Updated: November 24 2017

Article by Rory T. Hood and Eric W. Sedlak

Jones Day

Proposals With State and Local Implications in Limbo Amid Turbulent Senate Tax Debate.

The state and local tax deduction remains a marquee item. But there are also notable amendments filed involving tax credits, marijuana and municipal bonds.

WASHINGTON — Proposed changes to the Senate tax bill that could affect state and local governments remained pending Thursday night, as Republicans worked to resolve sticking points with the legislation and an expected vote on it slid into Friday.

The most significant amendments on the radar for many states and localities are two versions of a proposal from Sen. Susan Collins, a Maine Republican. These would add a $10,000 deduction for state and local property taxes to the bill. As written, the legislation would end state and local tax, or SALT, deductions individuals can now claim.

Beyond SALT, lawmakers filed other amendments of note for state and local governments and those who work on economic development.

For instance, one from Sen. Lindsey Graham, a South Carolina Republican, would delete a section in the bill that would scale back an existing historic rehabilitation tax credit, commonly used to help finance the restoration of old buildings.

Another amendment, from Sen. Cory Gardner, a Colorado Republican, would rewrite the “280E” section of the tax code so that state-licensed marijuana firms could claim standard business tax deductions on their federal tax returns. Colorado is among the U.S. states that permits regulated recreational marijuana use and sales.

And Sen. Sherrod Brown, an Ohio Democrat, put forward an amendment that would eliminate language in the legislation repealing the tax exempt status of advance refunding bonds. In some situations, state and local governments can use the bonds to refinance debt and save on borrowing costs.

Democratic proposals have so far not gained much traction as the Senate tax bill has taken shape. But 21 House Republicans, led by Rep. Randy Hultgren of Illinois, did send a letter this week to House and Senate leaders urging that tax exemptions for advance refunding and private activity bonds be preserved in tax legislation.

Private activity bonds are used in some public-private partnership deals, and states and localities can also issue them on behalf of 501(c)(3) nonprofits, including institutions like hospitals and universities.

There is also language embedded in the Senate bill to open a portion of the Arctic National Wildlife Refuge to oil and gas drilling.

This is potentially significant for Alaska, which has seen budget difficulties in recent years as state revenue from oil and gas production there has declined. But the prospect of opening the area to drilling remains deeply controversial among conservationists and others who do not want see the refuge's landscapes and wildlife habitats disturbed by development.

Republican leaders strained Thursday to shore up the votes needed to pass their tax measure without Democratic support.

They hit a roadblock when the Senate parliamentarian shot down a "trigger" mechanism to raise taxes in the event that projected economic growth, which would help cover the cost of tax cuts, falls short in the years ahead. Sen. Bob Corker, a Tennessee Republican, had indicated that the trigger was a priority for securing his support.

Meanwhile, Democrats blasted new estimates from the congressional Joint Committee on Taxation that showed the growth the bill would spur would make up for only $458 billion, of the $1.4 trillion in lost revenues it would cause over a 10-year timeframe.

"This bill offers very little other than a holiday bonanza to multinational corporations and special interests," Sen. Ron Wyden, an Oregon Democrat and the ranking member on the Senate Finance Committee, told reporters. The analysis, he added, contradicts claims the bill would pay for itself.

Route Fifty

By Bill Lucia,
Senior Reporter

November 30, 2017

Republicans Send Tax Cut Bill to Towns With Curbs on Bond Deals.

- **Tax bills curb refinancings that saved $3 billion last year**
- **Governments around U.S. rush to borrow before tool revoked**

The list of infrastructure needs in Elkhorn, Wisconsin, is long: a decrepit public-works building, a century-old city hall and the all-important task of filling winter's bounty of potholes.

In October, Elkhorn scraped together $449,000 through a bond sale known as an advance refunding, a frequently used technique that allows debt to be refinanced years before it can be paid off. Such deals have become a mainstay of the $3.8 trillion municipal-debt market, accounting for about a third of the borrowing in 2016, saving state and local governments an estimated $3 billion that year alone.

"The more you pay in interest, the less you get done," said James Heilman, finance director for Elkhorn, a city of 10,000 residents about 47 miles (76 kilometers) southwest of Milwaukee. "We never have a lack of needs as far as infrastructure goes — what we have is a lack of money."

But his town’s representative in Congress — House Speaker Paul Ryan — may take away that tool. The broad overhaul the Republican shepherded through his chamber would tax the income from bonds sold for advance refundings, a step that would effectively make them no longer viable because investors would demand higher yields to buy the securities.

That’s not the only way the cost of the federal tax cuts would ripple down to local governments. Both the House and the Senate proposed limiting — or eliminating outright — the deduction for state and local taxes, which may make it more politically difficult for governments in high-tax states like New York to raise them further. The House bill would also make it more expensive to build airports, hospitals and affordable housing by preventing businesses from borrowing in the tax-exempt market.

But doing away with advance refundings would eliminate a crucial tool that’s saved governments tens of billions since interest rates tumbled after last decade’s recession. The process involves issuing new bonds, buying Treasuries and using the income to cover debt-service bills as they come due — rather than paying the bonds off all at once, as homeowners do when refinancing mortgages. The savings can free up money for public works or help keep tax increases at bay.

The change will do little to cover the cost of tax cuts that will add $1.4 trillion to the deficit over the next decade, according to Congress’s Joint Committee on Taxation. The committee estimates that eliminating the subsidy for advance refundings will raise about $17 billion in revenue through 2027.

“We’re not even sure that federal policy makers understand the impact,” said Matthew Chase, executive director of the National Association of Counties. “We think this was grabbing numbers off a spreadsheet as revenue raisers without really understanding the scope of the market.”

The impact will be felt equally in urban, Democratic districts and Republican strongholds in the suburbs and fast-growing regions of the south. Lexington School District One, in central South Carolina, used advance refundings to avoid property-tax increases, said John Butler, its chief financial officer. The district, which serves over 25,000 students, will save more than $10 million from one done earlier this year.

“If they don’t keep them tax-exempt, in the long run the school district will end up paying more interest on the bonds and that will cause the taxpayer to pay more taxes,” he said.

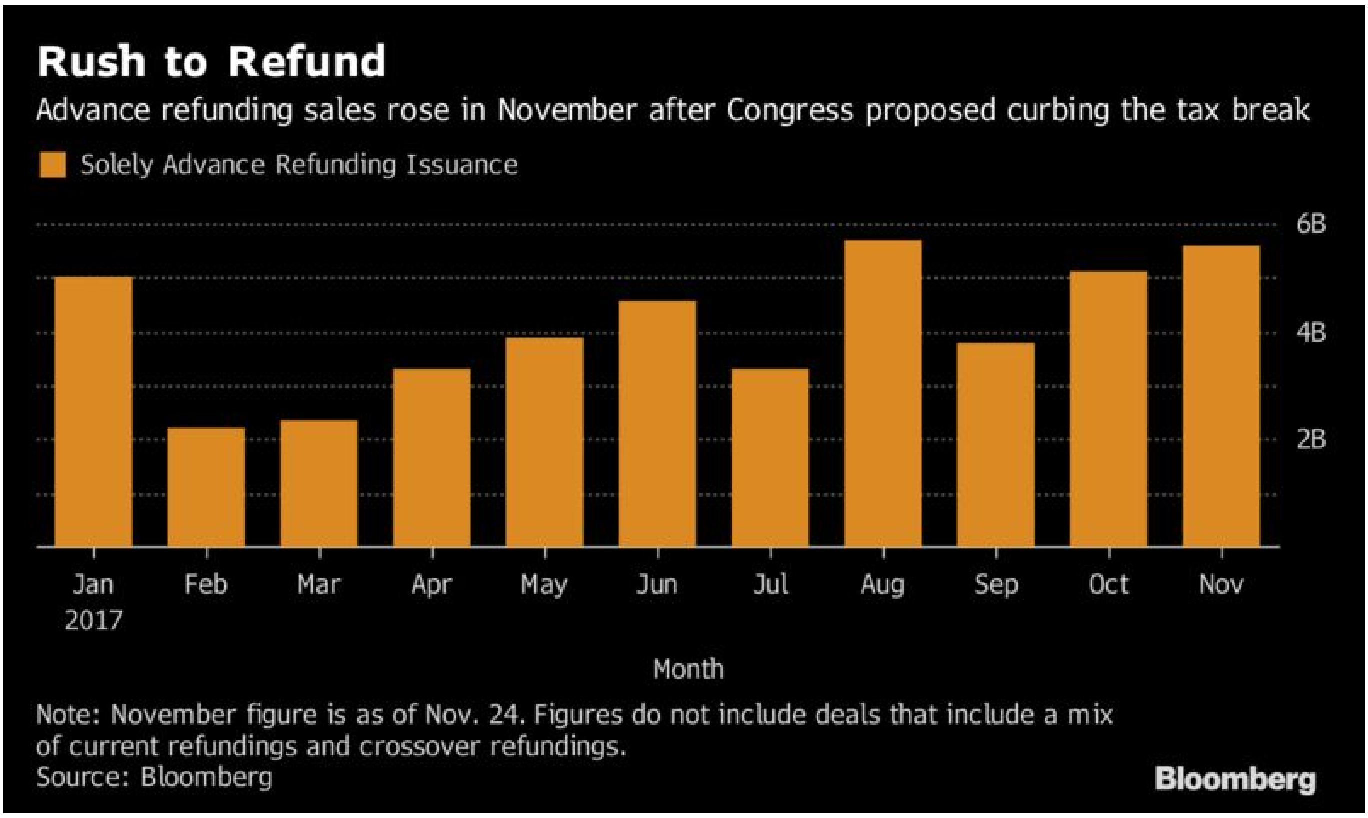
While the Senate and House plans differed on some details, both chambers backed the curbs on advance refundings, indicating it’s likely to remain in the final version of the legislation. The opposition from local governments wasn’t much of an obstacle in the House. Representative Joe Wilson, a Tea Party-backed Republican from South Carolina’s Lexington County, said the House bill was an overall win for residents of his district.

“It lets families keep more of the money they earn, stops American jobs from moving overseas and gives small businesses more room to expand,” he said in the emailed statement. “Reducing taxes promotes cycles of new jobs, new housing, and new investments in real estate, growing the tax base and the economy.”

Representative Terri Sewell, an Alabama Democrat and former bond lawyer who serves on the House Ways and Means Committee, offered an amendment that would have kept the refundings tax-exempt, only to see it struck down. The deals have drawn criticism in Congress for being costly to the Treasury by simultaneously subsidizing the original bonds and those issued to refinance that debt.

Sewell called that critique “ridiculous,” saying she has seen firsthand how lowering debt costs can help communities and nonprofits. “For the life of me I can’t understand why the Republicans would go after these useful tax incentives,” she said. “Why would we discourage the ability to have savings?”

Cities, states and nonprofits have started to flood the market with bond sales to refinance before the legislation becomes law, pushing the calendar of offerings over the next month to the highest in 13 months.



AshLee Strong, a spokeswoman for Ryan, said if it’s enacted governments will still be able to sell low-cost tax-exempt debt for construction projects. “State and local governments will be able to continue financing important public works projects,” she said in an email.

But Heilman, the finance director of Elkhorn, said the shift will prevent cities like his from freeing up needed cash by taking advantage of lower interest rates when the opportunity arises.

“I don’t think there’s a community in this country that couldn’t use to do a little more infrastructure work,” Heilman said. “Or if it’s a little bit of savings on their tax roll, that’s not a bad thing either.”

Bloomberg

By Amanda Albright

November 29, 2017, 4:00 AM PST

Republicans in House Seek Protection for Municipal Bonds in Tax Bill.

(Reuters) – A group of Republicans in the U.S. House of Representatives on Wednesday urged keeping federal tax breaks on private activity bonds sold by the developers of hospitals, nursing homes, airports and toll roads to reduce costs.

A tax bill in Congress to eliminate that exemption, plus tax breaks on advance refunding bonds used to lower interest costs, stunned the $3.8 trillion municipal debt market.

U.S. Representative Randy Hultgren, an Illinois Republican and co-chair of the Congressional Municipal Finance Caucus, said a letter he and 20 other Congressmen signed to object to the proposals was aimed at highlighting the value of tax-free debt issuance.

"It's really important for projects. We've seen multiple returns in jobs created," he said, adding that supporters will continue to push to retain these tax exemptions as the bills work their way through Congress.

The proposals are incompatible with President Donald Trump's push for greater infrastructure investment, the letter stated.

"This change in policy contradicts the growing need of the federal government to rely more, not less, on states and municipalities, as well as the private sector, to help to finance needed infrastructure in a market driven, cost effective manner," the letter said.

It added that advance refunding of municipal debt issues over the last five years will translate into saving taxpayers in every state billions of dollars in interest costs.

Legislation that passed the House earlier this month, as well as a bill pending in the Senate would disallow states, cities, schools and other issuers from refinancing on a tax-exempt basis bonds that are more than 90 days from the date the debt can be bought back by an issuer. This is done by issuers in order to save money by taking advantage of lower market interest rates.

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Karen Pierog

NOVEMBER 29, 2017

Tax Bill Would Curb Municipal Bond Deals.

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In October, Elkhorn scraped together $449,000 through a bond sale known as an advance refunding, a frequently used technique that allows debt to be refinanced years before it can be paid off. Such deals have become a mainstay of the $3.8 trillion municipal-debt market, accounting for about a third of the borrowing in 2016, saving state and local governments an estimated $3 billion that year alone.

"The more you pay in interest, the less you get done," said James Heilman, finance director for Elkhorn, a city of 10,000 residents about 47 miles southwest of Milwaukee. "We never have a lack of needs as far as infrastructure goes — what we have is a lack of money."

But his town's representative in Congress — House Speaker Paul Ryan — may take away that tool. The broad overhaul the Republican shepherded through his chamber would tax the income from bonds sold for advance refundings, a step that would effectively make them no longer viable because investors would demand higher yields to buy the securities.

That's not the only way the cost of the federal tax cuts would ripple down to local governments. Both the House and the Senate proposed limiting — or eliminating outright — the deduction for state and local taxes, which may make it more politically difficult for governments in high-tax states like New York to raise them further. The House bill would also make it more expensive to build airports, hospitals and affordable housing by preventing businesses from borrowing in the tax-exempt market.

But doing away with advance refundings would eliminate a crucial tool that's saved governments tens of billions of dollars since interest rates tumbled after last decade's recession. The process involves issuing new bonds, buying Treasurys and using the income to cover debt-service bills as they come due — rather than paying the bonds off all at once, as homeowners do when refinancing mortgages. The savings can free up money for public works or help keep tax increases at bay.

The change will do little to cover the cost of tax cuts that will add $1.4 trillion to the deficit over the next decade, according to Congress' Joint Committee on Taxation. The committee estimates that eliminating the subsidy for advance refundings will raise about $17 billion in revenue through 2027.

"We're not even sure that federal policymakers understand the impact," said Matthew Chase, executive director of the National Association of Counties. "We think this was grabbing numbers off a spreadsheet as revenue raisers without really understanding the scope of the market."

The impact will be felt equally in urban, Democratic districts and Republican strongholds in the suburbs and fast-growing regions of the south. Lexington School District One, in central South Carolina, used advance refundings to avoid property-tax increases, said John Butler, its chief financial officer. The district, which serves over 25,000 students, will save more than $10 million from one done earlier this year.

"If they don't keep them tax-exempt, in the long run the school district will end up paying more interest on the bonds and that will cause the taxpayer to pay more taxes," he said.

While the Senate and House plans differed on some details, both chambers backed the curbs on advance refundings, indicating it's likely to remain in the final version of the legislation.

The opposition from local governments wasn't much of an obstacle in the House. Rep. Joe Wilson, a Tea Party-backed Republican from South Carolina's Lexington County, said the House bill was an overall win for residents of his district.

"It lets families keep more of the money they earn, stops American jobs from moving overseas and gives small businesses more room to expand," he said in the emailed statement. "Reducing taxes promotes cycles of new jobs, new housing, and new investments in real estate, growing the tax base and the economy."

Rep. Terri Sewell, an Alabama Democrat and former bond lawyer who serves on the House Ways and Means Committee, offered an amendment that would have kept the refundings tax-exempt, only to see it struck down. The deals have drawn criticism in Congress for being costly to the Treasury by simultaneously subsidizing the original bonds and those issued to refinance that debt.

Sewell called that critique "ridiculous," saying she has seen firsthand how lowering debt costs can help communities and nonprofits. "For the life of me I can't understand why the Republicans would go after these useful tax incentives," she said. "Why would we discourage the ability to have savings?"

Cities, states and nonprofits have started to flood the market with bond sales to refinance before the legislation becomes law, pushing the calendar of offerings over the next month to the highest in 13 months.

AshLee Strong, a spokeswoman for Ryan, said if it's enacted governments will still be able to sell low-cost tax-exempt debt for construction projects. "State and local governments will be able to continue financing important public works projects," she said in an email.

But Heilman, the finance director of Elkhorn, said the shift will prevent cities like his from freeing up needed cash by taking advantage of lower interest rates when the opportunity arises.

"I don't think there's a community in this country that couldn't use to do a little more infrastructure work," Heilman said. "Or if it's a little bit of savings on their tax roll, that's not a bad thing either."

The Associated Press

November 29, 2017

[Brady Open to Keeping PABs, Limiting Their Uses.]

WASHINGTON – House Ways and Means Committee Chairman Kevin Brady said Thursday that he might agree to preserve private activity bonds, while pushing for limits on their uses in upcoming negotiations over a final tax bill with the Senate.

"I think over time that's an area that has drifted in its mission from infrastructure projects that have regional or national significance that should be supported by every taxpayer in America into a wide range of issues," Brady, R-Texas, said in response to a question from The Bond Buyer.

Brady's comment came during a media availability to talk about the progress on tax reform.

The Senate is working toward passing its bill and the House leadership announced on Thursday that the House will vote Monday night on whether to go to conference with the Senate.

The tax reform bill passed by the House on Nov. 16 would terminate PABs and advance refundings after Dec. 31.

The bill pending in the Senate would also terminate advance refundings after Dec. 31, but would preserve PABs and even enhance their attractiveness to investors by repealing the alternative minimum tax that applies to them (except for 501(c)(3) bonds).

Brady said House lawmakers have been learning about the various uses of PABs. "Part of the reason for addressing it in the House version was to have this discussion about should they continue, and if so, in what form," he said.

Meanwhile, twenty one House Republicans sent a letter to the House and Senate GOP leaders earlier in the week urging them to preserve PABs and advance refundings.

The number of House Republicans who signed the new letter is significant because it nearly equals the 22-seat majority Republicans hold in the House. No Democrats voted for the House tax reform bill and none are expected to support the final House-Senate legislation.

Republicans hold a 240-194 advantage in the House with one seat vacant pending a March 13, 2018 special election to replace former Rep. Tim Murphy, R-Pa.

“We strongly object to the proposed elimination of tax-exempt private activity and advance refunding bonds in any final tax reform package,” said the letter sent Brady and House Speaker Paul Ryan, R-Wis.

Their proposed termination, the letter said, “undermines President Trump’s infrastructure and economic development agenda for the middle-class.”

Copies also were sent Senate Finance Committee Chairman Orrin Hatch, R-Utah, and Senate Majority Leader Mitch McConnell, R-Ky.

The letter pointed out that the proposed changes “violate a request made by 162 members of the House of Representatives in a March 9, 2017 letter.”

The earlier letter was a bipartisan request led by Reps. Randy Hultgren, R-Ill., and Dutch Ruppersberger, D-Md., co-chairs of the House Municipal Finance Caucus.
Brady acknowledged understanding the message in the letter.

“I think it’s important to hear from our members,” he said. “The House really stripped down the tax code to its bare essentials and started to rebuild it based on what’s important this century, not last century. And so we’re learning what’s really important and that’s why we restored the adoption tax credit and the employer $5,000 help for child care.”

The new letter, dated Nov. 28, was initiated by Hultrgen at the urging of the Municipal Bonds for America coalition and the Council of Development Finance Agencies.

Justin Underwood, director of MBFA, said on Thursday that the letter “clearly demonstrates that there are congressional members who are hearing from mayors and other locally elected officials in their districts who are concerned how critical Main Street infrastructure projects will be financed after Dec. 31.”

“The MBFA is encouraged by the members who have stepped forward to sign this letter, and others who are working behind the scenes, to ensure the House and Senate leaders know of the devastating effect that the proposed elimination of tax-exempt private activity bonds and advance refundings will have on the future growth of communities across our country,” Underwood said.

The American Society of Civil Engineers estimates the U.S. has a $2 trillion shortfall in infrastructure spending. “Private activity bonds finance exactly the sorts of public private partnerships of which we need more of, not less,” the letter said.

The letter also highlighted the use of advance refundings by state and local governments “to reduce the cost of financing existing debt.”

“While it’s difficult to say what the eventual impact of this letter will be, right now it does strengthen the hand of Senate negotiators who want to ensure private activity bonds are protected in a final bill,” said Tim Fisher, legislative and federal affairs coordinator for CDFA. “It’s a valuable chip for negotiators to have in the horse-trading to come.”

House and Senate Republican leaders are under pressure on many issues to make changes to the tax reform bill, including Senate proposals to: enhance the child tax credit; enhance the treatment of pass through businesses and; install a triggering mechanism to reinstate some tax cuts if economic growth is less than predicted.

Nonetheless, the Senate voted 52-48 Wednesday night to begin 20 hours of debate on its version of the tax bill. Votes on numerous amendments are expected.

Sen. Susan Collins, R-Me., has amendments to counter the proposed full repeal of the state and local tax deduction by allowing homeowners to deduct up to $10,000 for property taxes.

The focus on advocates of advance refundings and PABs is to try to retain them in the final tax legislation House and Senate Republican leaders will hammer out to reconcile differences in the two bills.

The Bond Buyer

By Brian Tumulty

Published November 30 2017

TAX - NEBRASKA
Burdess v. Washington County Board of Equalization
Supreme Court of Nebraska - November 3, 2017 - 298 Neb. 166903 N.W.2d 35

Landowner filed petition for review of an order made by the Nebraska Tax Equalization and Review Commission (TERC), which affirmed county's valuation of wasteland acres and homesite acres owned by landowner.

The Supreme Court of Nebraska held that:

- Assessor properly valued wasteland at more than $0 in accord with special valuation statutes, and
- Evidence was sufficient to support decision that homesite acres and nearby property were not comparable.

County assessor properly valued wasteland at more than $0 in accord with special valuation statutes. Assessor valued wasteland based on a market analysis of arm's-length sales of property sold subject to certain probable and legal agricultural purposes and uses, and used actual comparable sales of farmland containing wasteland in a nearby county where urban development had little influence on the price of sales.

Evidence was sufficient to support county assessor's decision that homesite acres and nearby property were not comparable and thus to support $14,000 valuation difference, although both properties were zoned agricultural and they were one-half mile apart. Assessor testified that the properties were located in different market areas, that the nearby property was located on a river bottom while the subject property was located on a bluff; and that people would not pay as much to build on the river bottom.

Taxing Questions For Bond Investors.

Last week, the House of Representatives passed its version of the Republican Party's proposal for U.S. tax reform. If enacted, this reform is likely to have substantial impacts on fixed income markets. While there are still plenty of hurdles – including reconciling different proposals from the House and Senate, and securing White House agreement – it's worthwhile to review some of those likely impacts following last week's important step forward.

Tightening Up the Municipal Bond Market

The most significant impacts of tax reform may end up being on the municipal bond market. We see two key changes occurring.

First, both the House and Senate proposals would effectively eliminate "advance refunding" of tax-exempt bonds. This is when, in order to lock in low interest rates, a trust is created to pay the interest on higher-coupon municipal debt that is not yet callable, and new, lower-coupon debt is issued to fund the trust. In recent years, debt issued to fund advance-refunding trusts has represented 50% or more of total annual new issue volume in municipals. Although a fair amount of higher-coupon municipal debt has already been refunded, the tax law change is likely to have a meaningful impact on future supply.

Second, the House proposal (although not the Senate proposal) eliminates tax-exemption for private-activity bonds. Although the details have yet to be ironed out, traditional municipal market issuers such as colleges, hospitals and airports, to name a few, may lose the privilege of tax exemption.

This is likely to impact the credit quality of certain issuers as the cost of borrowing goes up. For example, if restrictions on private-activity bonds are included in the final legislation, an airport's funding costs may go up by as much as 30% if it needs to issue taxable rather than tax-exempt municipal bonds. Hospitals are likely to experience similar negative credit consequences.

Overall, however, these proposals may result in less supply of tax-exempt municipal bonds, creating a positive technical backdrop for investors. The recent outperformance of munis over taxable bonds suggests that the market is already anticipating this. Jamie Iselin, who leads our municipal bond business at Neuberger Berman, likes to remind me how ironic it is that many of the investors who were running from munis at the beginning of the year because they were unjustifiably concerned about lower tax rates for taxable bonds are now running back again as they realize that tax reform could end up squeezing supply.

Cutting Corporation Tax, but Also Interest Deductibility

For corporate credit, the key provisions center on the reduction in corporate tax rates, either immediately or with a one-year lag, and the disallowance of tax deductibility on interest payments in excess of 30% of EBITDA.

In practice, the change in interest-payment deductibility will leave companies with debt-to-EBITDA ratios of less than approximately 4.0, or with an interest coverage ratio greater than 3.3, unaffected. Only the most leveraged companies are likely to be affected. For a wide swath of investment-grade and highly rated high yield credits that will only feel the impact of the tax cut, this proposal is a clear positive. Even for more leveraged high yield issuers, the outlook will be mixed, depending on the extent to which the tax cut offsets the loss of some interest-payment deductibility.

Winners and Losers

The potential impact on U.S. economic growth is uncertain. On one hand, there are clear positives: Lower tax rates should stimulate some consumption spending, and the ability to fully deduct capital spending for five years, as under the House bill, should strongly incentivize more investment spending.

There are potential concerns, however.

First, it will be important to monitor whether the hoped-for increase in capital spending – the sluggishness of which has been a disappointing aspect of the economic recovery – becomes a reality.

Second, the combined thrust of this proposal is to lower the government subsidy for housing, particularly for homes in high-tax states and for expensive homes. That will raise after-tax effective mortgage rates, leading to lower turnover in expensive homes, more downward pressure on second-home prices and less sensitivity of home prices to changes in interest rates.

And finally, while reductions in tax rates should create, at minimum, a short-term boost to consumption spending, the distributional impacts of this proposal may cause a retrenchment in spending among higher-income groups that offsets higher spending among other income groups.

Overall, tax reform is now "live" and likely will remain an important market issue as we end the year and start 2018. It's worth taking time to consider who the winners and losers will be within the bond market, as there could be plenty of change on the way.

Seeking Alpha

By Brad Tank

Nov. 20, 2017 5:39 PM ET

Preserving a Critical Tool for U.S. Public/Private Development.

While the $1.5 trillion tax-cut bill passed November 16 by the U.S. House of Representatives is widely seen as beneficial for commercial real estate, one provision would eliminate a municipal financing tool that has been essential for housing, infrastructure, and industrial development investment for decades.

The House bill would repeal tax-exempt "private activity bonds" (PABs), which have been part of the Tax Code since 1968. That year Congress allowed the same exemption from federal income taxes which applies to conventional state and local debt to municipal bonds which fund publicly beneficial projects through public/private partnerships. PABs make up 20 percent of the overall municipal bond market today.

The evolving Senate version of the bill retains PABs.

Over time, PABs have evolved—under tight statutory controls and an annually capped amount of funding authority—as the sometimes unseen but critical glue in the financing of countless catalytic developments, including many of which have been recognized as exemplary by ULI:

- Denver Union Station, which received a ULI Global Award for Excellence in 2015, used PAB

financing for a 23-mile (37 km) commuter line linking the transit hub to Denver's largest suburb, Aurora. and Denver International Airport, creating thousands of jobs and cutting traffic in the region.
- The Hahn and Co. Building, honored this year with the ULI Jack Kemp Excellence in Affordable and Workforce Housing Award, utilized PABs to transform a downtown Newark, New Jersey, department store which had been vacant for 30 years into a mixed-use anchor of revitalization containing housing, retail, and cultural space.
- One Workplace, profiled in a recent ULI Case Study, used PAB financing to reconfigure and update a former paper manufacturing plant in Santa Clara, California, into the new corporate headquarters, showroom, and warehouse facility for one of the largest commercial furniture suppliers in the state. The project is a cutting-edge example of adaptive use.

ULI's industry- leading product councils have featured PABs in recent work on the latest public/private partnerships. ULI's growing Advisory Services program has frequently recommended use of this critical form of development financing.

Kansas City Mayor and ULI Trustee Sly James expressed a concern of many local officials recently when he noted that "PABs are essential to a number of City infrastructure projects and expected to be a significant tool in financing the new KCI [Kansas City International] airport approved by voters earlier this month; elimination of PABs could throw the project's future into question."

PABs are an especially important source of capital for affordable rental apartments and first-time home purchases for working families, generating $18.5 billion of aggregate housing investment in 2016, according to the Council of Development Finance Agencies.

PAB financing accounts for more than half of the new rentals created through the Low Income Housing Tax Credit program; eliminating them would result in 780,000 to 880,000 fewer affordable apartments being developed over the next decade, at a time when housing affordability needs for lower-income families have spiked almost everywhere.

From ULI's establishment more than 80 years ago to its current member-led direction under a new strategic vision for the Institute, an enduring global priority has been to promote the most effective forms of financing and investment to create thriving communities. For 50 years PABs have been such a tool.

Urban Land Institute

By Stockton Williams

November 20, 2017

Tax Bill's Fine Print: Making It Tougher for Cities, States to Refinance Debt.

Tax exemption would be erased for type of bond local governments rely on to lower financing costs for schools, roads and other projects

The North Olmsted City school district in suburban Cleveland was planning to wait a few years before refinancing $48 million in outstanding bonds used to build a new middle school and high school. Now Treasurer Robert Matson is hoping to get the deal done before Christmas.

The reason: The Republican tax plan in congress would eliminate a tax exemption on some types of bonds issued by state and local governments to refinance their old debt. “It just made all the sense in the world to do it,” Mr. Matson said.

The GOP proposal targets the exemption for so-called advanced refunding bonds, which allow governments to refinance old bonds earlier to take advantage of low interest rates and, occasionally, to postpone upcoming debt payments.

The House approved its version of the tax measure last week, and the GOP has said it aims to get agreement on the bill by year’s end. It is one of several municipal-market exemptions that could be phased out under the legislation. The nonpartisan Joint Committee on Taxation estimates that ending advance refundings would mean an additional $17.3 billion in revenue to the federal government over the next decade.

Analysts said the move is likely to reduce the yearly supply of municipal bonds and increase borrowing costs for governments.

The expected change in policy is already prompting cities and states to fast-track their advance refunding offerings before the end of the year. One underway is from the state of Wisconsin, which last week circulated preliminary advanced refunding documents for $375 million of transportation revenue bonds.

“We just want to get ahead of the possible large amount of supply that could hit the muni market in December,” said the state’s capital finance director David Erdman, who had originally expected to refinance the debt in 2018 or 2019.

New York’s Metropolitan Transportation Authority sold $2 billion in transportation revenue bonds Monday and Tuesday partly to get ahead of any potential change in tax policy said spokesman Aaron Donovan.

Advance refundings have been allowed for decades, as long as governments have been issuing tax-exempt bonds. In 1986, as part of the tax overhaul under President Ronald Reagan, Congress limited government borrowers to one advance refunding per bond issue. The yearly volume of advance refundings varies depending on interest rates and the availability of old bonds to be refinanced.

Government borrowers have sold an average of $60 billion in advance refunding bonds per year over the past decade, about 15% of total municipal issuance. Last year, advance refundings swelled to $125 billion, or 30% of total issuance.

With advance refundings, borrowers invest the proceeds in safe, short-term securities, and those funds are used to make payments on older bonds that typically can’t be refinanced until a decade has passed.

Advance refundings make the most sense for borrowers when short-term rates are high relative to long-term rates. In that scenario, the income produced by the shorter-term securities bought with the proceeds of the advance refunding bonds will approach the borrowing costs on those bonds.

Both sets of bonds remain outstanding until the first set can be refinanced, and both provide investors with interest exempt from federal taxes.

Participants in the municipal market said they have several concerns about the possible policy change. They worry public-finance officials would no longer be able to take advantage of low interest rates and municipal bond investors and traders would have less debt to buy and sell.

“As a bond manager we could be looking at less attractively priced interest levels for bond investors,” said Dan Heckman, senior fixed income strategist at U.S. bank private wealth management.

Ending advance refundings would also take away a crutch some governments have used for short-term budgetary relief. Cash-strapped cities sometimes issue new, longer dated bonds to advance refund bonds that are coming due so they can postpone big debt payments.That move often adds to those cities’ interest costs, compounding financial pressures.

If the proposal becomes law, municipalities could start writing earlier refinancing dates into their bond contracts to maintain their flexibility, some analysts said. But because many investors prefer longer dated bonds, that move could drive up borrowing costs as much as a quarter of a percent, said John Mousseau, director of fixed income at Cumberland Advisors, an investment-management firm.

Government-finance officials say the benefits of advance refunding to local taxpayers are significant. Florida bond finance director Ben Watkins estimated the state has saved $3 billion over the past 10 years with advance refundings.

“The vast majority of state and local government refundings are for economic savings rather than as a budgetary gimmick,” said Mr. Watkins, a former chair of the Government Finance Officers Association debt committee who serves on the group’s executive board.

The Wall Street Journal

By Heather Gillers

Nov. 22, 2017 7:00 a.m. ET

Write to Heather Gillers at heather.gillers@wsj.com

Portland to Require Prevailing Wage for Workers on Developments that Get Tax Breaks.

The Portland City Council voted 8-0 Monday night to require contractors working on new developments that receive tax breaks to pay their employees a prevailing wage.

It also granted $6.5 million in tax breaks for two affordable housing projects that could add 135 units, more than half of which would be considered affordable.

Mayor Ethan Strimling hailed the vote to require contractors to pay prevailing wages on Tax Increment Financing-funded projects.

“This is a huge step forward on the prevailing wage,” Strimling said. “We will be the first community in the state to put this in their TIF rules.”

The council, however, shot down an amendment by Strimling and Councilor Pious Ali to require those contractors working on projects that receive Tax Increment Financing to participate in an apprenticeship program registered by the state or federal government.

That provision, which was strongly supported by union workers during a public hearing but excluded from the proposal forwarded by the council's Economic Development Committee, was set aside because of the potential impact on affordable housing projects.

Instead, the council will explore offering grants for a broader job-training program that would help other industries as well.

Councilor David Brenerman said that the apprenticeship program would have had a limited impact, since it would have applied to only a few projects.

"Rather than a symbolic gesture," Brenerman said, "it seems to me we should do something that is meaningful to actually train people."

Strimling first sought last year to add new requirements to individual projects receiving Tax Increment Financing.

After councilors blocked an effort to make a last-minute change to an agreement with biotech firm Immucell, he decided to forward his proposal to the council's Economic Development Committee.

Strimling's proposal, which was re-introduced in April, was more aggressive than the one that came out of committee. Not only was the apprenticeship program removed, but so was a requirement that at least 25 percent of the work hours be performed by Portland residents, minorities, women or veterans.

Instead, the committee recommended adding anti-discrimination language to the city policy and looking at the costs of studying whether there is a disparity in the employment practices of contractors.

The council also changed its policy to offer stronger incentives for affordable housing. Developers will be able to keep a higher percentage of their post-development property taxes – up to 75 percent for a maximum period of 30 years from 65 percent for a maximum period of 20 years – in an effort to make the city more competitive when seeking state funding.

Prevailing wages are set on an annual basis by the state Department of Labor on a county-by-county basis for state construction projects exceeding $50,000.

In 2017, prevailing wages, including fringe benefits, were around $20 an hour, ranging from $13.63 an hour for a fence-setter to $91.28 for an elevator installer, according to the Labor Department.

Jason Shedlock, executive director of the Maine State Building & Construction Trades Council, which represents 5,000 union-affiliated members, pushed back against fears expressed by affordable housing developers, who were concerned about increased costs and delays.

"Set an example and show that you do care about job training right now," said Shedlock, Strimling's mayoral assistant until the position was this summer.

Councilors expressed support for apprenticeship programs and acknowledged their value, but hoped they would be able to help more workers by offering grants through a competitive process for wide-ranging job-training programs.

City Councilor Justin Costa joined Ali and Strimling in supporting the apprenticeship program. Councilor Spencer Thibodeau was absent due to an illness.

Councilors also voted to award $6.5 million in tax breaks for two housing projects that could add 135 units, more than half considered affordable.

The Tax Increment Financing proposals would return a portion of property taxes generated from new developments to the property owner, rather than providing an upfront cash subsidy.

The Portland Housing Authority would receive $2.1 million in tax breaks for its 55-unit project proposed for Boyd Street, while Avesta Housing would get $4.4 million for its 80-unit project on Cumberland Avenue.

Both groups hope the city commitment will make them more competitive when seeking state subsidies early next year, which are critical for each project to come to fruition.

And both agreements take advantage of a provision that allows affordable housing TIFs to last up to 30 years instead of 20.

Avesta would receive 75 percent of the property taxes generated from the new development, estimated to be $148,000 a year or $4.4 million over 30 years.

Under the proposed TIF agreement, the Portland Housing Authority would receive half of the post-development property taxes, an average of nearly $71,500 a year, totaling $2.1 million over 30 years, to help offset operating costs.

The Boyd Street project would produce 55 units of mixed-income housing, with 44 units being affordable to people earning up to 60 percent of the area's median income. A housing report released by the city in October had that income threshold at $34,500 for a single person and $49,260 for a family of four.

Avesta Housing's Deering Place project at 510 Cumberland Ave. would consist of 80 units of mixed-income housing, including 48 units considered affordable to households earning less than 50 percent of the area's median income. For 2017, that income limit was $28,750 for a single person and $41,050 for a family of four.

THE PORTLAND PRESS HERALD

BY RANDY BILLINGS
STAFF WRITER

November 21, 2017

[SLGS Will Soon be Unavailable for Subscription: Squire Patton Boggs]

Are we having fun yet?

To add further stress to the advance refunding issues that everyone is scrambling to close by the end of the year, subscriptions for SLGS will not be available on or after December 8, if not earlier.

The most recent suspension of the application of the federal debt ceiling expires on December 8, and Congressional leaders have said that Congress will not vote this December either to extend the suspension of the application of the debt ceiling or to increase the ceiling. Instead, Congress will rely on the Treasury's use of "extraordinary measures" to defer having to deal with the debt ceiling.

One of these extraordinary measures is the suspension of the sale of SLGS. In all past instances when Treasury has suspended the sale of SLGS, Treasury has honored subscriptions for SLGS that were made before the suspension took effect, even if the delivery date of the SLGS fell after the suspension date. We anticipate that the Treasury will continue its historic practice here, but we will not know for certain until Treasury announces the closure of the SLGS window. Issuers should be prepared to bid for open market securities if a SLGS subscription cannot be made before December 8.

Because there are going to be a crush of advance refunding issues coming to market ahead of the potential December 31, 2017 repeal of tax-exempt advance refundings, issuers should also anticipate some difficulty in attracting at least three bids and/or favorable prices, given the likely volume of advance refunding issues that will be chasing a relatively limited number of providers of open market securities.

The Public Finance Tax Blog

By Michael Cullers and Johnny Hutchinson on November 22, 2017

Squire Patton Boggs

GOP Tax Overhaul Could Hit State and Local Pension Plans With Federal Tax.

"It's a huge burden," the executive director of the National Conference on Public Employee Retirement Systems said as he discussed the tax proposal.

WASHINGTON — State and local government pension plans would be confronted with new costs and complications under the Republican tax bill the U.S. House approved last week.

Some, but not all, public pension investments would become subject to what's known as the Unrelated Business Income Tax, or UBIT, if the current version of the House bill were to be enacted. The proposed change to how the tax is applied would make it so state and local government pension plans are treated in a way that is similar to private sector pensions, or nonprofit organizations.

Hank Kim, executive director of the National Conference on Public Employee Retirement Systems, said that if the House proposal were to go into effect, it would be the first time that state and local pension systems would have to pay federal tax on their investments.

Route Fifty

Continue reading.

By Bill Lucia,
Senior Reporter

November 21, 2017

Alternatives to Tax-Exempt Advance Refundings Would Cost Issuers.

WASHINGTON — Halting tax-exempt advance refundings at the end of the year, as proposed by both pending tax bills, would increase issuers' costs, deprive them of savings for new projects, and push some to enter into swaps that could increase their risk.

Market experts say there are alternatives to advance refundings, many of which have been used since Congress, in the 1986 Tax Reform Act, barred private activity bonds from being advance refunded and limited governmental and 501(c)(3) bonds to one advance refunding.

These include taxable refundings, shorter or more frequent calls, current refundings, forwards, options, and forward-starting, interest rate swaps.

While muni market participants are fighting to save tax-exempt advance refundings, it may be hard for them to make headway on this front since tax bills in both the House and Senate are aligned against retaining these bonds after 2017.

Advance refundings are used most often by issuers to lower their borrowing costs. When interest rates drop, outstanding bonds with relatively high interest rates can be advance refunded.

Refunding bonds are issued at the lower interest rate and their proceeds are used to purchase securities, typically state and local government series securities or U.S. Treasuries, which are put into escrow until the call date of the bonds being refunded when the escrowed investments can be used to take the bonds out of the market.

Advance refundings also can be used by issuers to: lengthen the average maturities of existing date to reduce annual debt service; refinance certain types of projects to facilitate a merger or; do away with outdated or unwanted covenants in bond documents.

Halting tax-exempt refundings would be costly for muni issuers, most market sources agree.

"Eliminating tax-exempt advance refundings eliminates the issuer's ability to realize the full tax-exempt savings and lock it up prior to the call date of the bonds to be refunded," said Dave Caprera, of counsel at Kutak Rock in Chicago.

"It's going to cost state and local governments a bunch of money — and ultimately taxpayers," said Kurt Freund, a managing director at RBC Capital Markets in Phoenix.

"It's going to raise the cost of issuance," said Tom Dannenberg, president and chief executive officer of Hutchinson, Shockey, Erley & Co. in Chicago.

Dannenberg said it will take away an issuer's ability to both easily lower debt service costs and free up additional borrowing capacity for other much-needed projects.

Prohibiting advance refunding bonds could also shrink the market.

The par amount of tax-exempt advance refundings done in 2016 was more than $120 billion, almost 27% of the new long-term issue market, according to data from Thomson Reuters (TRI). That amount has been higher in the past and varies widely year-to-year depending on interest rates.

The Joint Committee on Taxation estimates Congress will raise $17.3 billion in revenues over 10 years by terminating advance refundings.

Dannenberg says he thinks JCT's estimates are suspect because it is assuming all tax-exempt refundings will be replaced by taxable advance refundings and he doesn't see that happening.

“If issuers can’t do tax-exempt refundings, they won’t simply do taxable advance refundings,” he said.

The tax bills’ provisions also have a retroactive impact in that issuers that sold bonds in recent years with the expectation that they will be able to advance refund them with tax-exempts will no longer be able to do so, George Friedlander, managing partner at Court Street Group Research, pointed out in a recent paper.

The bills have caused many issuers to push up tax-exempt advance refundings to November and December of this year before they are foreclosed from doing so.

But there are alternatives. For outstanding bonds, sources said, issuers can do taxable advance refundings, if they still produce savings. Issuers can also do tax-exempt current refundings, which must be done within 90 days of the call date. Current refundings would still be permitted by the tax bills.

Offerings for new bonds can be structured with shorter or more frequent call dates, forward or option contracts, and forward-starting interest rate swaps.

Freund said some issuers can still save money doing taxable refundings, depending on how high the interest rates are on the bonds to be refunded and current interest rates.

“Right now we’re analyzing and I would imagine others are analyzing — if they’re not they should be — whether it makes sense to do a tax-exempt refunding before the end of the year or a taxable refunding in February,” he said.

A taxable refunding would permit “a little bit less onerous pace going forward with the financing” and could still result in savings, albeit not as much savings as would result from a tax-exempt advance refunding, he said.

Issuers can also “do current refundings, I think that will happen for sure, going forward,” said Freund.

Chris Hamel, managing director and head of municipal finance at RBC Capital Markets in New York, said current refundings have become popular in recent years with low interest rates as a way to minimize negative arbitrage.

If interest rates are so low that an issuer’s investment yield from the securities it’s escrowed in a refunding is lower than the yield on its refunding bonds, then the issuer is stuck with negative arbitrage that eats into its savings. With a current refunding, the escrow is only in place for 90 days or less, minimizing the negative arbitrage.

RBC provided The Bond Buyer with statistics showing current refundings last year were 23% of the market, compared to 26% for advance refundings. In 2015, current refundings were 30%, compared to 22% for advance refundings.

New bonds can be structured with shorter calls or more frequent calls than the standard 10-year call, market sources said.

“Right now short calls cost a lot,” said Friedlander. He said he doesn’t see the market going to five-year calls, at least for now, because “the extra yield investors will want will be too much for issuers.”

But Hamel said bank-qualified bonds in Pennsylvania, Nebraska, South Dakota and other states already have five-year calls. “It’s not as if this doesn’t already exist” in some parts of the market, he said.

And Freund said that while typically right now, “the earlier the issuer makes the call, the more the issuer will pay for it,” markets “evolve over time.”

“Five years from now people may only do five-year calls,” and costs won’t be as high as going with a five-year call today, he said.

Freund said it depends on the market and the maturity. “Right now, in many circumstances you can price an eight-year call at about the same as a 10-year call for a high-yield piece of paper,” he said, adding “but not in all markets all the time.”

Issuers also can enter into derivative products such as long bond purchase agreements, forwards, options, and forward-starting interest rate swaps, to achieve some, but not all of the savings they would have gotten from a tax-exempt advance refunding, sources said.

“I think another product you’ll see people use, I would suspect, are contracts for forward delivery of bonds,” said Freund.

An issuer may have bonds with a call date of July 1, 2022, he said. Ninety days before that call date would be April 1, 2022. The issuer might sell bonds six months before call date, price them and sell them to investors, but delay the delivery date of the bonds until April 1, 2022 when it could do a current refunding. The issuer has locked in low interest rates with a little bit of premium. It’s hedging against interest rate increases and paying for that, said Freund.

“These are all techniques we saw the market adopt after the 1986 limitations on advance refundings and they still can be used,” said Sam Gruer, managing director of Blue Rose Capital Advisors. “New products will be developed. The industry as a whole is very innovative.”

Billions and billions of dollars of forward-starting interest rate swaps were done in the late 1990s and early 2000s by issuers who were prohibited from doing any, or any more advance refundings, Gruer said.

In a forward starting swap, an issuer enters into an interest rate swap that doesn’t take effect for several years. Here’s how it worked.

A state sold governmental or 501(c)(3) bonds in the early 1990s and advance refunded them in 2002. These refunding bonds were callable in 2012. In 2007, interest rates dropped even further and the state wanted to advance refund them again, but was prohibited from doing so by the Tax Reform Act of 1986.

So the state entered into a floating-to-fixed, forward-starting swap agreement with a dealer in 2007 that locked in the low interest rates from that year but didn’t take effect for five years or 2012, when the refunding bonds could be called. Under the agreement, the state would pay fixed rates and receive floating rate payments from the bank or dealer acting as the swap counterparty.

The state also issued floating rate bonds in 2012. The floating rate from the swap and floating rates of the bonds canceled each other out. The state was left with a synthetic fixed rate bond that it used to current refund the 2002 refunding bonds when they became callable in 2012.
A variation of this is structure was for the issuer to pay higher rates on the swap when it takes effect, in order to get some of all of the payments upfront from the bank or dealer swap counterparty.

Gruer said forward-starting swaps “need to be analyzed carefully and maybe it’s appropriate for some issuers but not for others.”

He said some of these transactions cost issuers during the financial crisis when banks raised prices for letters of credit backing variable rate bonds and then stopped issuing them altogether. Under those LOCs if the bonds couldn’t be remarketed the bank would have to buy them.

Money market funds at that time would only buy the bonds if they were backed by LOCs. That’s because bonds backed by liquidity facilities were in trouble. Under those agreements banks agreed to buy bonds that couldn’t be remarketed if the bonds were backed by an insurer rated triple-A. While the insurers were historically rated triple-A, they were all downgraded during the financial crisis.

By Lynn Hume

BY SOURCEMEDIA | MUNICIPAL | 11/22/17 07:33 PM EST

For Trump, GOP Tax Bill Could Have Big Downside.

The GOP tax plan that is speeding through Congress could deliver a much-needed win for the White House, but it could also kill one of Trump’s other top priorities: legislation to rebuild U.S. infrastructure.

Not only would the tax overhaul use up one of the potential funding options for repairing infrastructure, it would also eliminate a financing tool that states have used to back a wide range of infrastructure projects.

That could spell doom for Trump’s infrastructure overhaul, which was always going to be a tough sell for fiscal conservatives on Capitol Hill.

“Preemptively removing [private activity bonds] as a financing tool for infrastructure projects would undermine Congress’s stated goal of leveraging a $1 trillion investment in our nation’s infrastructure,” said Richard A. White, acting president and CEO of the American Public Transportation Association.

“Instead, this provision would have a chilling effect on private sector investments in infrastructure projects.”

The tax package that passed the House last week would eliminate the deduction on tax-exempt private activity bonds, which are used by public-private partnerships to help build roads, highways, housing, hospitals, airports and other critical projects.

Eliminating the program would save nearly $40 billion over a decade, according to a GOP summary sheet.

But transportation advocates worry ending the deduction will directly undercut Trump’s effort to revitalize the nation’s infrastructure.

The White House, which has promised to release its rebuilding proposal as soon as tax reform is finished, is aiming to raise $1 trillion worth of overall infrastructure investment. The administration wants to incentivize the private sector to partner with state and local governments on transportation projects by providing $200 billion in federal seed money.

But public-private partnerships rely heavily on tax-exempt private activity bonds and other municipal bonds. Ending their preferential tax treatment could make private firms less inclined to get involved with public infrastructure projects, according to transportation advocates.

Nearly two-thirds of the core infrastructure investments in the United States are financed with some form of municipal bonds, with $400 billion in municipal bonds issued to finance projects in 2015 alone.

“[Private activity bonds] are a crucial instrument for many local governments to build infrastructure,” said Marcia Hale, president of Building America’s Future. “If no longer available, it would be a major loss.”

Members of Congress have already been raising the issue with the administration.

During a meeting with the Congressional Women’s Caucus in the Capitol last week, Transportation Secretary Elaine Chao pitched Trump’s $1 trillion infrastructure plan and highlighted their preferred public-private partnership model.

But one of the participants, Rep. Elizabeth Esty (D-Conn.), raised a question: How are you going to drum up the private investment if we eliminate the preferential treatment of the private activity bonds?

“There was a long pause,” Esty said, recalling the conversation last week.

But Rep. Mark Meadows (R-N.C.), chairman of the conservative Freedom Caucus, said the elimination of the private equity bonds would not be a “death knell” for Trump’s public-private infrastructure model because other sources of funding, like municipal bonds, would still be available. And for many projects, he added, private equity makes up “the lion’s share” of the funding.

“Private activity bonds aren’t the only thing that can do public-private partnerships. Obviously, it’s one vehicle, but it’s not the only vehicle,” he said last Thursday. “You’ve got a number of other things that you can [use].”

But Meadows, a member of the Congressional Caucus on Public-Private Partnerships, also suggested that House Republicans eliminated the bonds not out of an ideological opposition to them, but in an effort to find savings to pay for tax cuts in the larger package.

The Senate bill, he noted, retains the bonds’ tax exemption, and Meadows said he’d support the Senate’s approach — depending on the cost.

“The biggest thing for me is making sure we have a vehicle [for infrastructure funding],” he said. “Obviously it’s one tool that gets removed, and I would not be surprised to see it get added back in the Senate.”

Indeed, there is a wide range of support among Republicans for keeping the private activity bonds in the final bill.

Reps. Randy Hultgren (R-Ill.) and Dutch Ruppersberger (D-Md.), who co-chair the Municipal Finance Caucus, have been urging GOP leadership to keep the program.

And House Transportation and Infrastructure Committee Chairman Bill Shuster (R-Pa.) also thinks that the issue should be re-examined in the tax plan.

“It’s been very beneficial in the transportation world,” Shuster told The Hill this month. “I want to see them stay.”

Lawmakers who are pressing to keep the private activity bonds in the final tax product are encouraged that the Senate version of the bill preserves them.

But transportation advocates also have concerns with the Senate measure, which would repeal the tax-exemption for advance refundings of municipal bonds. Eliminating that cost-saving opportunity for governments could hurt infrastructure efforts, advocates say, because the extra savings are sometimes used by transit agencies on infrastructure projects.

“We are concerned … that changing the treatment of private activity bonds, advance refunding bonds, and tax credit bonds will have a negative impact on overall infrastructure spending,” said Ken Miller, Oklahoma state treasurer and president of the National Association of State Treasurers.

“As the Senate finalizes their tax-reform bill, we urge them to maintain the current treatment of these bonds to ensure the country is fully prepared to finance the administration’s ambitious infrastructure plan in the year ahead.”

Other roadblocks in the tax plan

Trump’s infrastructure bill could hit another roadblock if the GOP tax overhaul passes: coming up with an offset to cover the cost.

While there is bipartisan agreement about the need to rebuild U.S. infrastructure, there has been less consensus over how to pay for it.

International tax reform, however, was considered one of the few viable funding options for the infrastructure plan.

A group of bipartisan lawmakers, including some members of the Freedom Caucus, had been pushing to use the revenues from repatriation, or taxing corporate earnings stored overseas at a one-time lower rate when they return to the U.S., to pay for infrastructure upgrades.

But the GOP tax bill would instead use repatriation to help pay for tax cuts — and that provision seems nearly certain to be part of the final legislation.

If the tax bill passes, that would take the potential funding option off the table for infrastructure — and that could make passing a bill difficult, if not impossible.

Fiscal conservatives have long been wary of massive federal spending on transportation, insisting that any package be fully paid for.

“If you don’t put infrastructure with tax reform, then you’re not going to do infrastructure — almost by definition,” Rep. John Delaney (D-Md.) told The Hill this month.

But Delaney said that if Republicans are unable to pass their tax overhaul, then it’s possible they will try to make a deal with Democrats on taxes — and that could include tying repatriation to infrastructure.

“Then there might be a chance for it to come back,” he said.

THE HILL

BY MELANIE ZANONA – 11/26/17 10:30 AM EST

– Mike Lillis contributed

Tax ‘Reform’: Don’t Pinch the SALT Deduction.

True tax reform should aim to satisfy four main ‘fiscal’ principles: It should aim at a tax system that is flatter (with lower nominal rates), broader (as many people as possible should have skin in the game), simpler and, even allowing—as I would –for some supply side magic, it should be fiscally responsible. As that final goal is extremely difficult to reconcile with those earlier principles without either truly brutal claw-backs in entitlements (not something I would favor) or (my very clear preference) some sort of federal VAT/GST/Sales tax, both political impossibilities for now, the best that can be hoped for is that any change in the tax regime should not worsen the country’s (unattractive) long term financial condition by too much.

It’s hard to see how (despite proposals such as the cut in corporate tax rates—good, but 20 percent looks like an overreach—and the welcome abolition of the Alternative Minimum Tax) the GOP plans genuinely satisfy any of those conditions.

Continue reading.

NATIONAL REVIEW

by ANDREW STUTTAFORD

November 26, 2017 2:23 PM

Save the SALT Deduction.

Do congressional Republicans and President Trump want to undertake a multitrillion-dollar federal bailout of states and cities? If not, the Senate and House should squelch their competing proposals to reduce or eliminate Americans’ ability to deduct state and local taxes on their federal tax forms.

Curtailing tax breaks is generally a good idea. Subsidies for certain activities distort the economy. When the mortgage-interest deduction spurs a family to buy a more expensive home than they would have otherwise, it keeps that money from more productive parts of the economy.

But state and local tax deductions do not fall into this category. Since the nation’s founding, American citizens have safeguarded small-scale democracy. The Bill of Rights prescribes that “the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states.”

Scholars and judges differ over where state control ends and federal oversight starts. But no scholar argues that states, cities and towns don’t possess the right and obligation to staff schools, pave roads, purify water and put out fires.

For this, local and state governments need money — which they mostly get from their own taxpayers, not from Washington. To assert that the federal government has the primary claim on this tax dollar, as Republicans are doing, is to claim that the federal government bears the primary responsibility for these tasks.

That's not a conservative argument, but a European one. In France, the national government, not Paris, stands behind a $37 billion "Grand Paris" plan to improve public transportation. In America, by contrast, Washington expects New York and New Jersey to bear half the cost of a new tunnel under the Hudson River, even though Amtrak, the national railroad, depends on this critical piece of infrastructure. Similarly, New York has received only $1.3 billion toward the $4.2 billion cost of the first three stops of the Second Avenue subway. The rest comes from New York taxpayers.

Wealthier taxpayers do disproportionately benefit from these tax deductions, because they pay the most in taxes. In New York City, just 1 percent of tax filers — 37,273 households — pay 49.3 percent of city income taxes. But their ability to deduct these taxes from federal taxable income is an indirect subsidy to New York's poorer and middle-class residents, who benefit from state and local spending on education, Medicaid, public safety and homeless services.

If Congress were going to diminish America's local-governance model anyway, now is not the time. Nearly a decade into the economic recovery, state and local governments remain under fiscal stress, particularly when it comes to pension and health care promises to retirees.

Chicago owes $45.2 billion to current and future public-sector pensioners, but had set aside only $9.5 billion as of the city's latest audited annual report. New Jersey and its local governments owe $122.2 billion, but have set aside just $53.7 billion. Even healthier governments, such as New York State and New York City, owe tens of billions of dollars in future health care payment obligations to retirees.

As retirement costs have grown, state and local governments have cut back on infrastructure investments. Municipal debt — the mechanism through which governments borrow to build and maintain infrastructure — is 17 percent below its 2007 level after inflation.

Republicans characterize this issue as a blue-state problem because blue states have higher taxes. But red states are struggling too. Texas owes $39.1 billion for pensions, but has set aside just $25 billion. Gulf states, including Florida and Louisiana, must invest in flood-protection measures. Houston voters approved new borrowing for such infrastructure this month — borrowing enabled by local tax deductions.

Republicans also characterize the issue as one of local mismanagement. "I don't think it's up to the federal government to save New York from its bad decisions," said Mick Mulvaney, Mr. Trump's budget director, last week. True, governments from Chicago to New Jersey have made poor fiscal decisions. In a system that grants citizens great autonomy to govern themselves at the local level, disparities in financial management are inevitable. But it is none of Washington's business that New York's taxes are too high.

One reality remains — somebody must pay. Three sources exist: taxpayers; public-sector retirees, via pension and health-benefits cuts; and municipal investors, via Detroit-style debt defaults in severe cases. Congress is making the first more difficult for state and local governments, and in most places, legal protections prevent governments from cutting pension benefits.

That leaves bondholders. As the Standard & Poor's rating agency said this week, the overall impact of a tax plan that curtails state and local tax deductions "could be costly and detrimental to the credit quality of many public-finance issuers."

Signing a bill into law that creates systemic distress for a financial market that affects the lives of all Americans is hardly the best way to improve the economy. And it may result in eventual tax increases, not tax cuts, at the federal level. Global investors may grow tired of America's lurching from crisis to crisis and raise the cost of federal borrowing, as well.

THE NEW YORK TIMES

By NICOLE GELINAS

NOV. 24, 2017

Nicole Gelinas is a contributing editor to the Manhattan Institute's City Journal.

How US Tax Reform will Impact Muni Bonds.

Upcoming tax changes has potential to significantly impact the US muni market

Despite higher Treasury yields and developing tax reform legislation, US municipals have demonstrated some reasonable resilience. Indeed, US Treasury debt lost roughly 40 basis points (bp) since the beginning of September, while munis managed to squeak out a slightly positive return (8bp). Year-to-date returns of 5.4% still exceeds UST by 290bp, and has outperformed AA-rated taxable investment grade US corporate bonds by 40bp. Our high conviction in moving down in credit quality continues to pay off, with Single-A and Triple-B rated muni issuers gaining 5.9% and 8.0%, respectively

On November 2, the US House of Representatives, Committee on Ways and Means released a proposed bill for comprehensive tax reform. Though each provision of the bill is expected to be scrutinized and debated, there are still a number of caveats which could directly (and indirectly) affect the US municipal bond market.

For one, the reduction in corporate taxes from 35% to 20% could impact the demand from banks and property and casualty insurers. Considering these investors focus on longer-dated bonds, and make up nearly 25% of all muni bondholders, any forced selling would likely have a meaningful impact. Long-term yields could rise, as the muni curve steepens.

On the other hand, the proposal to eliminate Federal deductions of state and local taxes (SALT) would essentially raise individual's effective tax rates. In turn, this could make owning tax-exempt municipal bonds even more valuable for high income individuals; especially in-state bonds, in high tax states, including New York and California.

To be fair, the suggested cap on mortgage interest deduction could also negatively impact home prices, thereby reducing property tax revenue. As a result, local governments dealing with higher effective tax rates from SALT may be more limited in their ability to raise taxes (or issue new bond deals), in order to raise necessary income. In turn, this could adversely affect an issuer's credit quality and increase borrowing costs. In our view, this is a longer-term issue, as the years following passage of reform, higher effective tax rates will likely fuel higher muni demand.

Other proposals, such as eliminating the tax-exemption on private activity bonds or advanced refundings, can have meaningful impacts on muni supply. While issuers could flood the market in an effort to get ahead of any new law, a decline in future supply would likely exacerbate an already strong technical environment.

The removal of AMT (Alternative Minimum Tax) would also impact muni bonds where interest is subject to higher AMT rates. Though interest payments are still considered exempt from ordinary income, they are nonetheless subject to AMT. As a result, these bonds carry higher yields. If AMT is eliminated, prices on these securities could rise. Markets have reacted some to this potential provision, but not fully, as the spread between AMT and non-AMT bonds remains wide

For high income earners in North America, US munis are likely to remain a core holding in fixed income portfolios. That said, similar to many other fixed income assets, valuations in munis have also gone up. This is largely due to a significant supply/demand technical imbalance, as the new issuance of US munis has slowed. As a result, yield ratios (or muni yields relative to US Treasury yields) have declined. Still, when compared to taxable bond yields, munis are still compelling for investors in high income tax brackets.

Citi Private Bank

by Kris Xippolitos
Global Head of Fixed Income Strategy

November 20, 2017

This is an excerpt from the Bond Market Monthly update by Kris Xippolitos dated November 9 2017

S&P Criteria FAQ: Our Evolving Approach To Special Tax And Priority-Lien Tax Debt.

On Nov. 13, 2017, S&P Global Ratings published a request for comment (RFC) on proposed changes to its rating methodology for assigning issue credit ratings secured by a priority lien. This would replace our “Special Tax Bonds” criteria (published June 13, 2007).

Continue reading.

TAX - NEW JERSEY

Congregation Chateau Park Sefard v. Township of Lakewood

Tax Court of New Jersey - October 20, 2017 - N.J.Tax - 2017 WL 4768875

Religious congregation brought action challenging county board of taxation’s denial of local property tax exemption for residence used as a parsonage.

Cross-motions for summary judgment were filed.

The Tax Court held that residence qualified for parsonage tax exemption even if property where congregation met to worship was not itself tax-exempt.

Residence where clergyman for religious congregation lived was owned by congregation and thus qualified for parsonage tax exemption, even if property where congregation met to worship and engage in religious activities was not owned by congregation and was not itself tax-exempt.

California Tax Credit Allocation Committee Prepares 'Dual Track' Strategy for Bonds.

The California Tax Credit Allocation Committee (CTCAC) is preparing a strategy for the possible elimination of tax-exempt private activity bonds through federal tax reform, according to an announcement today by Mark Stivers, the executive director. Stivers said if the program remains in jeopardy (the tax-exempt status of the bonds is repealed in the House version of the Tax Cuts and Jobs Act), CTCAC will be ready to accept streamlined applications and issue as much of the remaining bond cap allocation as possible in late December. CTCAC also plans to accept, review and award tax credit requests for late applicants on its standard 2018 schedule. Because 4 percent tax credits are unlimited and not competitive, CTCAC anticipates that the bond issuances will be able to close by the end of this year with the assurance that CTCAC will later award tax credits to qualifying developments.

Novogradac & Company LLP

Tuesday, November 14, 2017

S&P: Preliminary Macro-Level Volatility Assessments Assigned To Six Types Of Tax And Fees.

The assessment of revenue volatility in a pledged tax or fee ("tax") for debt issued by U.S. municipal governments, state governments, or other public finance obligors is an important factor in S&P Global Ratings' proposed methodology for rating priority-lien tax revenue debt (see the article "Request for Comment: Priority-Lien Tax Revenue Debt", published Nov. 13, 2017).

Continue reading.

Nov. 13, 2017

BDA: Tax Reform Makes Major Progress in Both House and Senate.

Yesterday, the House of Representatives passed H.R. 1 the *Tax Cuts and Jobs Act*, which would eliminate private-activity bonds and municipal advance fundings, 227-205. The bill passed on a party-line vote, with 13 Republicans voting against the tax package.

While this is a big win for Republican leadership in the House, eyes quickly turned to the Senate where controversies continue to grow.

Senate Finance Concludes Mark-Up

Late last night, the Senate Finance Committee advanced the *Tax Cuts and Jobs Act* by a vote of 14-12. The Senate package, unlike the House companion, maintains the tax exemption for private-activity bonds while terminating advance refundings.

Majority Whip John Cornyn (R-TX) after the vote told the Bond Buyer that he will fight to include PABs in the final tax package when both Chambers come to the negotiating table.

Senate Republican leadership has signaled that they plan to introduce the package to the floor the week following Thanksgiving recess. At this time, it is unknown whether the debate rules will allow amendments to be offered.

Push for Private Activity and Advance Refundings

Earlier this week, the BDA sent letters to both House and Senate leadership in support of privavte-activity bonds and municipal advance refundings and requesting both be protected in any compromise bill.

The House Municipal Caucus, with support of the BDA and the MBFA, continue to be vocal advocates of maintaining current law for both provisions. And work continues on the Senate side, to embolden champions of both PABs and municipal advance refunding bonds, to be vocal leaders in the next stages of debate and compromise.

Next Steps

With much undecided, Members of Congress and their staff need to hear from you before and during the Thanksgiving recess. It is vital to continually remind the House and Senate of the importance of both provisions.

Talking points can be found here along with state specific advance refunding data.

The BDA will continue to provide updates as they become available.

Bond Dealers of America

November 17, 2017

Fitch: US Senate Tax Proposal Would Pressure US Colleges.

Fitch Ratings-New York-14 November 2017: The Senate Republicans' tax proposal released last week would add incremental pressure to US colleges and universities if made into law in its current form, Fitch Ratings says. The proposal is less onerous than the House proposal but would still raise costs, possibly threaten key funding sources over time and could add to student pressures that might result in lower enrollment.

The Senate proposal differs from the House's as the Senate version would preserve private colleges' and universities' ability to issue tax-exempt private activity bonds (PABs), an important capital financing vehicle for private universities. Eliminating PAB issuance, as the House version proposes, would increase borrowing costs for private institutions. While higher-rated institutions already issue taxable debt for more flexible use of proceeds, we expect this change would reduce the rate of investment in the sector overall and would speed a shift into alternative capital financing structures including private bank placements or internal equity. The Senate and House versions both propose ending tax-exempt advance refundings at the end of this year, which could marginally raise capital costs.

The Senate proposal matches the House's proposed 1.4% excise tax on the net income of certain private college endowments – currently those with more than 500 students and $250,000 per student of assets not related to the organization's tax-exempt purpose. The implementation of this tax is key to its immediate impact as the "The Chronicle of Higher Education" estimates only about 65 institutions would be affected today – generally institutions with financial capacity to manage through a resulting reduction in endowment support for student aid, research and other operating costs.

The impact on endowments would be moderated in any given year by investment returns. Establishment of a framework to tax endowments is credit-negative across the sector, as the rate could be increased or the levy more broadly applied in the future. Both proposals also would change the standard deduction, which could lower the tax benefits of endowment donations.

The Senate proposal is less negative than the House proposal as it retains the student loan interest rate deduction and certain other exemptions and credits related to higher education. In our view, loss of these tax benefits could make colleges more expensive for students. Given heightened emphasis on college affordability, this could mean lower enrollment, especially at regional colleges with very price-sensitive students.

Both proposals would substantially reduce the federal tax deduction for state and local taxes, which would place a practical limit on the tax raising flexibilities of higher tax states. Those states could be forced to make budgetary cuts to maintain their financial flexibility over time if natural revenue growth fails to keep up with expenditure growth. Higher education is generally one of the first things states cut at times of fiscal stress and cuts to appropriations could lead to a decline in an important higher education funding source.

If the Senate bill was made into law today we would not expect these incremental pressures to translate into downgrades for the Fitch-rated universe. The next steps practically ensure the proposals will change. The first step is for the House and Senate proposals to be further amended and reconciled. Thus the final outcome on colleges and universities will remain uncertain through the end of 2017.

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Additional information is available on www.fitchratings.com. The above article originally appeared as a post on the Fitch Wire credit market commentary page. The original article can be accessed at www.fitchratings.com. All opinions expressed are those of Fitch Ratings.

American Cities Stuck With Part of Tab for Republicans' Tax Cuts.

- **Yanking bond subsidies will make local projects more costly**
- **'The brunt of that will be born by ratepayers and taxpayers'**

Congress's plan to cut taxes by more than $1 trillion sends part of the bill to America's states and cities.

The Republican-led House Thursday passed its version of a tax-code overhaul that pulls the tax-exemption from investments in so-called private activity bonds that finance projects like airports, water facilities and roads, promising to make financing tens of billions of dollars worth of public works each year more expensive. And, like the Senate's plan, it would do away with advanced refundings, a technique municipalities frequently use to refinance their debt when interest rates fall.

"The only thing that's going to go up is the interest that you're going to pay on that cost of capital," said Columbia, South Carolina Mayor Stephen Benjamin, who is the chair of Municipal Bonds for America, a coalition lobbying to keep tax breaks on municipal borrowing. "The brunt of that will be born by ratepayers and taxpayers."

The measures don't go all that far to cover the cost of tax cuts that will add an estimated $1.4 trillion to the federal deficit over the next decade. Doing away with private-activity bonds would save the federal government about $39 billion over the next decade because investors would steer their money into stocks, corporate bonds and other assets subject to the income tax, according to the estimates of the House bill by the Joint Tax Committee. Yanking the subsidies from refinancings would save less than $20 billion over that time.

But it will mean a lot to local governments. Advanced refundings saved them an estimated $11.8 billion in the five years through 2016, according to data compiled by the Government Finance Officers Association.

The proposed tax changes would likely result in higher interest costs for municipal borrowers and strain their budgets, according to S&P Global Ratings. Tax break or no, localities still need to build roads, maintain schools and keep the water running.

Without tax-exempt status, money for projects now financed with private activity bonds would be raised in the taxable bond market, where the cost is higher. For example, an A-rated municipality that issues $100 million in 30 year general-obligation bonds in the taxable market rather than the tax-exempt market would see an additional cost of 0.55 percentage points, or $16.5 million more over that term, according to calculations based on Bloomberg's indexes.

While the Senate bill kept the tax-exemption for private activity bonds intact, both chambers' bills have backed ending advanced refundings. If that happens, local governments lose a tool that helped them during times of revenue shortfalls, like the period after the onset of last decade's recession, said John Hicks, executive director of the Washington-based National Association of State Budget Officers.

“It’s a disappointment and a surprise that advanced refundings are being proposed for repeal,” Hicks said. “It’s an opportunity loss.”

Bloomberg Politics

By Elizabeth Campbell

November 16, 2017, 10:13 AM PST Updated on November 16, 2017, 11:08 AM PST

MBFA Letter to Senate Finance Chairman Hatch.

The Municipal Bonds for America (MBFA) Coalition submitted a letter to Senate Finance Chairman Orrin Hatch (R-UT) and other members of the Senate Finance Committee to show its appreciation for protecting the underlying tax exempt status on municipal bonds, including private activity bonds (PABs). However, the Coalition strongly objected to the inclusion to deny tax exemption to advance refunding bonds.

November 14, 2017

Mayor Benjamin Submitted Letter to Sen. Cardin on Amendment to Strike Advance Refunding Provision.

Steve Benjamin, Mayor of Columbia, SC, and Chairman of the Municipal Bonds for America (MBFA) Coalition, submitted a letter showing support for Sen. Cardin’s amendment, which would strike the repeal of advance refunding bonds in the Tax Cuts and Jobs Act. The MBFA is appreciative of the attention that is being paid to this very important issue that would impact state and local governments across the country and is pushing for further support for the amendment during the mark-up proceedings this week.

House Tax Plan Faces Bipartisan Backlash Over Repeal of Development Incentives.

Local officials say private activity bonds needed for affordable housing

The grand opening Wednesday of Archer Park, an affordable housing complex of 190 units in a long-troubled neighborhood of Southeast Washington, had the trappings of similar ceremonies in the past.

But along with oversized ribbon-cutting scissors and celebratory speeches, the gathering had something less typical: An undertone of alarm over looming changes to the federal tax code that D.C. officials say would make developments like Archer Park impossible.

The development's solar-paneled roof and immaculate workout room have replaced what was once a set of squat brick buildings that hosted an open-air drug market — but only with help from a system of tax-exempt financing that would be eliminated in House Republicans' proposed tax overhaul.

The funding mechanism, known as private activity bonds, is one of several common tools of municipal finance that would be repealed under the House tax plan, which is expected to come to a vote this week. The Senate plan, by contrast, would preserve most of those tools.

Like much of the machinery of government, the provisions in question are esoteric and scarcely noticed when working as intended. But threats to eliminate them have stirred a backlash among local officials, who say they're needed to fund housing and infrastructure projects that would not otherwise be commercially viable.

The debate stretches far beyond the Beltway and, unlike the parallel discussion over whether to preserve the federal deduction for state and local taxes, is largely absent of a partisan tint.

Instead, city, county and state officials say the funding tools — which also include tax credits for revamping historic buildings and the New Markets Tax Credit, which lures developers to poor neighborhoods — are equally important in urban, rural, red and blue parts of the country.

"This is not a political issue," said Richard C. David, the Republican mayor of Binghamton, N.Y. He said he worries in particular about the loss of the Historic Tax Credit, which he said is vital for transforming aging buildings downtown in his city of 46,000.

Among the current projects that rely on such tax credits, he said, is the redevelopment of a public library into a culinary arts center by SUNY Broome Community College.

"I could give you a dozen buildings in downtown Binghamton that I think are going to be stagnant without the Historic Tax Credit," David said. The proposed elimination of those and other tax credits "shows a disconnect" in Congressional leaders' understanding of local government needs, he said.

That sentiment was echoed by Matthew Chase, executive director of the National Association of Counties, who said many of the local officials he represents have been baffled and upset by proposals in the House plan to remove the private activity bonds and assorted tax credits for government-backed development.

"They're extremely disappointed that at a time when the White House is focusing on infrastructure, they're attacking the top tools that we use for economic development and infrastructure," he said. "I think there was a clear lack of awareness on what these bond provisions fund. They are starving our financing for airports, ports and affordable housing, at a time when this country needs to be investing in all of them."

Arguing in favor of the tax bill on the House floor Wednesday evening, Rep. Kevin Brady (R-Tex.), chairman of the House Ways and Means Committee, said reform was needed because the current system has "trillions of dollars in carve outs and loopholes" for "special interests."

Lauren Blair Aronson, spokeswoman for the committee, said in a written statement that the tax bill "will continue to help state and local governments finance important public works projects" by maintaining the tax-exempt status of municipal bonds for those projects. The bill would "deliver greater accountability to taxpayers by removing this special status for private activity bonds, which directly benefit private individuals and entities," she said.

Officials in cities struggling with a high cost of living say private activity bonds are especially important for encouraging private-sector developers to build affordable housing.

D.C. Mayor Muriel E. Bowser (D) says approximately 9,000 units of affordable housing have been created in the District since 2010 using private activity bonds.

In New York City, the loss of private activity bonds would threaten $2.6 billion annually in funding for affordable housing, an amount that translates into thousands of units per year, said Freddi Goldstein, a spokeswoman for Mayor Bill de Blasio (D).

Todd A. Lee, executive director of the D.C. Housing Finance Agency, said the tax-exempt bonds — which effectively allow developers to borrow at municipalities' low interest rates — are important both by themselves and because their use can make projects available for a 4-percent tax credit for low-income housing. Combined, those breaks can bring private investment to low-return projects that would otherwise never get off the ground, he said.

"These 190 units would not be here but for the 4-percent tax credit," said W. Christopher Smith, chairman and chief executive of WC Smith, the real-estate company that developed Archer Park. Speaking after the opening ceremony for the complex, Smith estimated that half of his colleagues who build affordable housing are unworried by the House plan, confident that "there's no way" Congress would remove private activity bonds.

"The other half are just scared to death," he said.

The Washington Post

By Peter Jamison

November 15, 2017

Federal Tax Reform: Senate Proposal Repeals Advance Refundings but Keeps Private Activity Bonds.

The Senate Finance Committee unveiled a section-by-section description of its tax reform package on November 9, 2017, including municipal bond provisions that reject efforts by the House Ways and Means Committee to terminate the tax exemption for interest earned on qualified private-activity bonds and public-purpose bonds issued to finance the construction of professional sports stadiums, and the tax-favored status of tax credit bonds. However, the Senate's version of the Tax Cuts and Jobs Act follows the House in repealing the tax exemption on bonds that advance refund governmental or qualified § 501(c)(3) bonds after 2017, leaving the future of advance refundings in substantial doubt. The Joint Committee on Taxation (JCT) projects that the Senate's version of the act will raise $16.8 billion from its repeal of advance refunding bonds, compared to $56.9 billion that the House bill plans to raise from various tax-exempt-bond repeals.

Earlier on November 9, the House Ways and Means Committee completed its tax reform bill (H.R. 1) and reported it out of committee without changing the provisions that would adversely affect the tax-exempt bond market. As discussed in further detail in our alert on November 3, 2017, the House version would prohibit the issuance after December 31, 2017, of: all private activity bonds; tax credit bonds providing either a tax credit or direct-subsidy payment; advance refunding bonds; and governmental bonds used to build professional sports stadiums (with an earlier effective date of November 2, 2017).

Please [click here](#) to view a table that summarizes and compares some of the key provisions of the House and Senate bills.

Legislative Timetables and Uncertainties

The Senate Finance Committee is expected to have statutory language available when it begins its markup of the act on today at 3 p.m. ET, and a vote of the Committee is expected within the next few days. On the other side of Capitol Hill, the House Ways and Means Committee bill was approved on Friday and is scheduled to be considered by the House Committee on Rules on Wednesday. House Speaker Paul Ryan (R-WI) has indicated that he expects to bring the House tax-reform bill to the floor for a vote on Thursday. A vote in the Senate could be held as soon as the week after Thanksgiving.

House Speaker Ryan and Senate Majority Leader Mitch McConnell (R-KY) both have said that they want to approve a tax-reform bill before the end of 2017. For that to happen, Senate Republicans must work within strict budgetary and procedural constraints. The Senate's version of the act must add no more than $1.5 trillion to the federal deficit over 10 years and must also satisfy an additional requirement that the tax reforms add nothing to the federal deficit beyond a 10-year budget window, which ends in 2027 for legislation passed this year. These budgetary restrictions and other limits on what can be considered part of a "reconciliation" measure in the Senate were established under Section 313 of the Congressional Budget Act of 1974 and are popularly referred to as the "Byrd Rule" (after their initial sponsor, the late Senator Robert C. Byrd (D-WV)).

If the Senate's bill raises federal deficits for any fiscal year after 2027, a Senator may raise a point of order against the legislation, which would require part of the legislation to be struck or 60 Senate votes to waive the Byrd Rule. Senate leaders understand the difficulty of obtaining this number of votes on a highly partisan piece of tax legislation, leaving deficit-neutrality within 10 years as the only practical option for the act to pass the Senate. In this regard, it is significant that the House bill, as written, violates the Byrd Rule because it would add about $155 billion to the 2028 federal deficit, according to estimates by the Committee for a Responsible Federal Government.

While the House and Senate will need to resolve their different tax proposals in a conference committee after each chamber passes its bill, most commentators expect the final version of the act to look more like the Senate's plan than like the House's version because of the stricter constraints on reconciliation bills in the Senate under the Byrd Rule. The Senate Finance Committee's mark already faces serious side-constraints because it is within $4.3 million of violating the reconciliation instructions' $1.5 trillion target for deficit increases through 2027. That leaves the Senate with little margin for error if it accepts any of the popular provisions in the House plan, such as the individual deduction for state and local real estate taxes—which are not part of the Senate's initial draft—and it remains to be seen whether any of those measures will be accommodated through cuts elsewhere in the bill, delays in implementation of some measures, or earlier expiration dates for others.

Certainty as to the fate of municipal bonds will come only with a final tax reform bill passed by both chambers and a signature of the President. If such tax reform is not enacted by year's end, lingering uncertainty as to the provisions and effective date of subsequent attempts at legislation could prevent some deals from being issued on a tax-exempt basis well into the new year.

Attorneys in Ballard Spahr's Public Finance Group have participated in every kind of tax-exempt bond financing. These financings include bond issues for governments, hospitals and health care institutions, universities, colleges, student housing, single- and multifamily housing, airports and other exempt facilities, and public-private partnerships.

by the Public Finance Group

November 13, 2017

Ballard Spahr LLP

[U.S. Tax Reform: How The Proposed Senate Bill Would Affect Municipal Credit Quality - S&P]

(S&P Global Ratings) Nov. 15, 2017–The U.S. Senate's tax reform bill–published last week as a "conceptual markup," with the actual legislation not expected to be available until the day of the vote–is a mixed bag for the municipal market, in our view.

Continue reading.

Local Governments Scramble to Assess Impacts of Tax Proposals.

Whether representing a booming urban center, a ritzy suburb, a steel town struggling for growth, or an overtaxed collar county of Chicago, local officials are concerned about the GOP tax plan.

District of Columbia Mayor Muriel Bowser and Alexandria, Virginia Mayor Allison Silberberg stood in front of a gaggle of reporters with the U.S. Capitol looming behind them on Monday, urging Congress to reject a suite of provisions in the House and Senate tax plans that could hurt state and local governments. Bowser ticked off billions of dollars of investment made in the city utilizing bonds that would no longer exist under the House tax proposal, including "historic investments in affordable housing" that has supported veterans and low-income families. The list included everything from public schools, to major revitalization projects, to parks and small businesses.

The briefing mirrored the conversations that local officials across the country are having as they attempt to figure out what the implications of the tax bill for the future of their local governments and residents.

While the District of Columbia itself stands to lose from the bill Congress is writing down the street, beyond the Beltway—both near and far—local governments are scrambling to assess the impact to their communities and impact their ability to govern.

Continue reading.

By Mitch Herckis,
Route Fifty Senior Director of Programs

November 16, 2017

House Tax Bill Would Hit Nonprofits Hard.

Hospitals, university buildings and affordable housing projects could become much more expensive to develop if the tax plan approved Thursday by the Republican-controlled House becomes law.

The plan calls for eliminating a tax break on a type of bond financing used to build those and other projects, prompting worries by hospitals, colleges and housing groups that they could be forced to cut services, raise prices or cancel projects. They hope the Senate tax plan, which would not eliminate the tax break, comes out on top.

Nonprofits and affordable housing builders are able to borrow money by selling so-called private-activity bonds, which share an important feature with municipal bonds issued by government agencies to finance public projects: The interest income paid to bondholders is not subject to federal or state income tax.

Because of that tax exemption, investors are willing to buy bonds with lower interest rates, which means lower borrowing costs for bond issuers.

The House tax plan, by eliminating the federal tax exemption, would raise borrowing costs for new private-activity bonds.

Investment bankers and finance officers at nonprofits estimate the loss of the tax exemption could push up interest rates on private-activity bonds by 0.5 percent to 1.5 percent — a significant sum when the principal typically runs from the tens to the hundreds of millions of dollars.

Consider Keck Graduate Institute, one of the Claremont Colleges in California, which this year borrowed $52.6 million to build a 290-unit apartment building for students. The institute is paying about 4.7 percent interest on that private-activity debt.

Hugh Tanner, an investment banker at Raymond James who helped put the bond offering together, said Keck would have paid more like 5.7 percent if it had to issue taxable bonds.

Over the 30-year life of the bond, that extra 1 percent would add up to $14.8 million in additional interest, he said.

Those higher borrowing costs would trickle down to students. The institute plans to charge $1,360 for studios — below average for Claremont — but Tanner said rents would have to have been closer to $1,500 a month had Keck borrowed at the higher, taxable rate.

Kevin DeGood, director of infrastructure policy at the liberal advocacy group Center for American Progress, said cutting the bonds' tax exemption would hurt nonprofits across the country while providing little extra tax revenue.

The Joint Committee on Taxation, an arm of Congress, estimated that cutting the exemption would result in additional federal tax income of $39.8 billion over the next 10 years — a meager sum considering that the committee also estimates the tax plan as a whole will result in an overall reduction of federal tax income of $1.4 trillion over that period.

"If you're a hospital, the additional interest you pay if your bonds are taxable has to come out of donations, out of patients, out of somewhere," DeGood said. "There is no benefit to anybody to make it more expensive for a hospital to build a new wing. There is not a rational policy argument here. This is about hunting in the night for revenue to pay for egregious tax cuts."

Private schools, too, could be pinched by higher borrowing costs.

Over the past 10 years, private colleges and universities in California — including the University of Southern California, Pepperdine, Stanford and several smaller schools — have borrowed $4.1 billion through private-activity bonds to build all manner of campus projects.

For affordable housing developers, who rank second only to hospitals in their use of private-activity bonds, the idea of paying higher interest rates is a secondary concern. Their biggest worry is that if these bonds become taxable, the change would have the secondary effect of killing one of the biggest funding sources for affordable housing projects: low-income housing tax credits.

There are two types of those credits, both of which give tax breaks in exchange for investing in affordable housing projects.

One of the types of credits, though, is available only to projects that are financed mostly with tax-exempt bonds. No tax-exempt bonds means a whole class of tax credits would effectively disappear.

Will Cooper Jr., chief executive of Irvine affordable housing investment firm WNC Inc., estimated that the combined loss of tax-exempt bonds and the related tax credit program could reduce the number of affordable housing units built in California by 200,000 over the next decade.

By James Rufus Koren / Los Angeles Times

Posted Nov 17, 2017

Tax Bill Could Crush Private Bond Work, Deter Stadium Financing.

The House could vote as early as Nov. 16 on tax reform provisions that developers say could decimate the number of future public-private infrastructure projects and could deter municipalities from investing taxpayer dollars in stadium construction or renovation.

The House GOP tax reform bill (H.R. 1) would repeal the tax-exempt status for qualified private-activity bonds, which could lead up to a 50 percent reduction in such projects and could lead to the loss of tens of thousands of low-income housing units, developers say. Another provision would eliminate a tax exemption for income earned on interest from stadium bonds that might make those projects slightly more expensive—but it might not stop cities from luring teams with promises of taxpayer-backed stadium funding.

The Council of Development Finance Agencies said a poll of its project development members found that more than half of recent infrastructure projects using private activity bonds—a market of about $84 billion— wouldn't have gone forward without the tax exemption for interest earned on the bonds. The group estimates that eliminating that exemption would increase interest rates for borrowers by 1.5 percent to 2.5 percent and increase borrowing costs for state and local governments by as much as 25 percent to 35 percent, Tim Fisher, legislative and federal affairs coordinator with the group, told Bloomberg Tax Nov. 15.

Conversely, the elimination of the tax exemption for stadium bonds would be a hit, but probably wouldn't tank current projects.

"It's a meaningful amount of money, but frankly not enough to jeopardize the project going forward," Las Vegas Stadium Authority Chairman Steve Hill said at a Nov. 9 authority meeting. The group is going to borrow about $700 million to lure the Raiders away from San Diego to a new stadium in Sin City, and is backing up the project with an increase in the hotel tax.

Neither of the House exemption-elimination provisions are in the latest Senate proposal.

Bond Change Potentially 'Devastating'
Private activity bonds are issued by state or local governments and loaned to private companies to finance qualified projects. The bonds are most commonly used for the construction of affordable multifamily housing, but also for hospitals and infrastructure projects such as roads and bridges

Eliminating the exemption on the private-activity bonds used for construction, transportation, and water infrastructure projects in which a private entity either owns, manages, or leases the project would earn the federal government about $38.9 billion over the next decade, according to a Joint Committee on Taxation report. But developers and politicians argued that the negative effects to public-private development—such as low-income housing and nonprofit education and medical projects—would be "devastating" for local government.

Analysis by J.P. Morgan showed that municipal markets have rallied on expectations that several provisions in the House or Senate bills could reduce issuing of municipal bonds between 15 to 30 percent next year.

Fisher told Bloomberg Tax he anticipates that if the House bill becomes law, there will be a rush to issue bonds before the exemption is eliminated and then a large decrease as municipalities and private investors pare back or become more selective with projects that made up 19 percent of the municipal bond market in 2016.

Low-Income Housing Projects
Rep. David Price (D-N.C.) decried the provision in testimony last week, saying eliminating the exemption would cost his state more than 6,200 units of affordable housing.

"If Republicans get their way, these projects would die on the vine," he said in testimony Nov. 9. "At a time when funding for infrastructure is repeatedly squeezed, the last thing we should do is push through a plan that would hamstring our local governments and destroy our ability to leverage private investment."

"By eliminating Private Activity Bonds, the ability of communities around the country to finance critical healthcare, infrastructure and affordable housing projects will be eliminated, as governments and project sponsors will be forced to borrow at higher interest rates," Jon Penkower, managing director of the California Statewide Communities Development Authority, told Bloomberg Tax in an email Nov. 14. "According to Novogradac & Co. (using National Association of Home Builders formulas), the elimination of private activity bonds and therefore 4 percent Housing Credits would cost California $2.2 billion in federally catalyzed investments annually and lead to the loss of 20,000 affordable homes annually."

But eliminating the exemption might bring more fairness to the economy and lessen taxpayer burdens. Most of the owners of projects funded through private-activity bonds have the way to capture through fees or other charges—such as tolls, rent, or hospital bills—the increased cost of the debt, a Congressional Budget Office analysis found. The change might also force nonprofits to be more selective and operate more efficiently.

Fisher disagreed, saying that the economic hit to construction jobs and government services would be “orders of magnitude bigger” than the revenue the federal government will gain.

“Private activity bonds are really the core of what state and local governments do. They’re the bedrock tools of development,” he said. “It’s just going to be a huge impact.”

California Reaction

California, the most populous state, is eligible to use the greatest amount of public-activity bonds. Last week, a group of state lawmakers sent a letter to House Majority Leader Kevin McCarthy (R-Calif.) and Minority Leader Nancy Pelosi (D-Calif.) in part to urge them to fight for the exemption.

“Eliminating the tax-exempt private activity bond program and the 4% low-income housing tax credits that go with them undercuts the bipartisan affordable housing package the Legislature passed this year,” the letter said.

California’s Infrastructure and Economic Development Bank has issued private activity-bonds in support of museums, schools, performing arts centers, charitable organizations, and research institutes throughout the state, according to a Nov. 9 letter to the state’s congressional delegation from Michael Cohen, director of the state’s Department of Finance. The bonds are used to help around 1,000 veterans buy homes every year in the state, Cohen said.

Stadium Bond Tweak

Meanwhile, although the House bill could make it more expensive for municipalities to lure professional sports teams, it might not be a large enough stick to dissuade the current practice of luring a franchise with tax-backed assistance.

Hill said the House bill’s tweak would increase costs of developing the new Raiders stadium about $3 million annually because the interest rate difference between the current tax-exempt bonds and taxed bonds was about .5 percent. An increased hotel tax is projected to bring in about $50 million annually to pay down the stadium’s $700 million in bond debt and help with ancillary development.

According to Bloomberg Terminal data, there are currently 627 outstanding municipal bonds for stadium construction or renovation totaling about $8.56 billion of debt. Government entities in New York, Florida, and Texas have issued about $5.83 billion of that. America’s largest major-league sports organizations either declined to comment or didn’t respond to requests for comment. However, the Wall Street Journal reported that the National Football League is going to lobby against the House bill’s provision.

Analysis by the Joint Committee on Taxation says eliminating the exemption would increase revenue by about $200 million over the next decade. However, an analysis by the Brookings Institution says the exemption has cost the federal government $3.7 billion since 2000.

The practice of luring teams with financial assistance is still going strong. This year Nashville pledged to issue between $200 million and $225 million in bonds to erect a soccer stadium in hopes of netting a Major League Soccer expansion team. FC Cincinnati is also currently in talks with Hamilton County, Ohio officials and seeking about $100 million to create a new facility.

Bloomberg BNA

By Alex Ebert

November 16, 2017

With assistance from Che Odom in Washington

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Smaller Private Colleges Face Tougher Burden if Private Activity Bonds Go Away

The House Republican tax package would put some more pressure on the already pressured private higher education sector.

Eliminating the tax-exemption for private activity bonds would force private schools to issue more expensive taxable debt for capital projects.

The House bill, which advanced Thursday from the House Ways and Means Committee, would terminate PABs on Jan. 1, 2018.

A large number of the nation's private higher education institutions are located in the Northeast region and have historically borrowed for various campus improvement projects with tax-exempt bonds sold by conduit issuers.

"The loss of the tax exemption means the cost of capital across the board for private colleges is going up," said Bill Rhodes, who heads Philadelphia-based Ballard Spahr's higher education practice. "It's going to draw up their borrowing costs."

Rhodes said the loss of PABs could force some schools that have started long-range master plans to rethink the scope of their projects.

The loss of access to the tax-exempt market wouldn't be felt equally.

Moody's Investors Service Analyst Susan Fitzgerald said a growing amount of larger research institutions have been issuing taxable bonds in recent years due to favorable market conditions and more flexibility about how to use the proceeds, so their short-term capital projects may not be negatively impacted.

"Taxable and tax-exempt debt are very compressed with spreads now," said Fitzgerald. "This current market environment would not be a shock to the system, but in 20 to 30 years it could be."

Municipal Market Analytics managing director Lisa Washburn said many smaller private colleges are already facing negative headwinds and the loss of PABs would just add to their financial burden. It would be different, she said, for the most selective private schools with the largest endowments, which have the financial flexibility to withstand the rising borrowing costs and have already gained experience in the taxable bond arena.

"The Harvards, Princetons and Dartmouths are not likely to be meaningfully impacted, but smaller more tuition-dependent schools would definitely face some risk from the bill," said Washburn.

"The smaller, less selective schools would definitely be more impacted from the loss of private activity bonds because their resources are generally much thinner."

A report Thursday from S&P Global Ratings said higher education would be among the most impacted sectors from the House tax bill with both private and public schools impacted by an elimination of advanced refundings.

Jessica Matsumori, senior director for S&P's U.S. Public Finance Higher Education Group, said smaller schools could face serious fiscal challenges without the use of tax-exempt bonds.

"Smaller private colleges may face capital-raising challenges as the par amounts of their debt are small and their brand may not be as strong as the larger schools tapping the taxable market," said Matsumori. "While the difference in rates is not very meaningful at the moment for higher rated borrowers, this will certainly increase the institutions' cost of capital and could have significant implications over the longer term if the difference between taxable and tax-exempt rates widen or even return to a more historic relationship."

Fitzgerald said liberal arts colleges with small endowments would feel brunt of losing PABs since many are already feeling credit pressures from meeting targeted enrollment numbers with fewer high school graduates pursuing higher education than in past decades. She said with increased fiscal challenges in a competitive higher education landscape, increased borrowing costs hit the smaller schools much harder than universities with more revenue diversity.

"Many of these small schools already run on thin margins," said Fitzgerald. "It would squeeze their budgets."

Fitch Ratings analyst Emily Wadhwani said if the PAB option goes away for private colleges it would likely lead to more alternative capital financing structures with some schools delaying investments for non-critical maintenance expenses. Despite the rising cost of capital that would result, Wadhwani said the end of PABs would not likely have any direct impact on credit ratings.

"While it's probably too soon to tell whether the PAB exemption will remain in any final tax overhaul bill, there will be clear implications if it does," said Wadhwani. "It would increase borrowing costs incrementally and could pressure debt issuance overall for the sector."

While tuition-dependent schools may see the brunt of the damage from the tax bill, another provision in the legislation that taxes endowment investment earnings would negatively impact wealthier universities. The proposed bill includes 1.4% tax on endowment income of private not-for-profit colleges and universities with financial assets more than $100,000 per student.

Moody's noted in a Nov. 7 report that about 45% of private higher education issuers it rates surpass this threshold and some schools may also get additional pain from an excise tax of 20% on salaries of private higher education employees earning over $1 million.

Matsumori said the House's proposed 1.4% tax on endowment earnings would hit an estimated 20% of private and public colleges that S&P rates and may lead to high tuition rates at those institutions. She noted that while most small schools would not be subject to the endowment earnings tax, other parts of the bill that could lead to eliminating individual estate and charitable contribution deductions would add another barrier to fundraising efforts.

Washburn said the loss of PABs would mean some schools may need to reexamine their capital projects and prioritize more. She said the sea change could ultimately lead to fewer construction projects on college campuses.

"Projects will need to be evaluated in the context of costing more to finance and the impact of the higher debt service on the budget," said Washburn. "Arguably, all else equal, fewer dollars will be available for higher education infrastructure."

BY SOURCEMEDIA | MUNICIPAL | 11/09/17 07:21 PM EST

By Andrew Coen

Conduit Issuers Contemplate a World Without Private Activity Bonds.

PHOENIX – Conduit issuers would lose the major reason for their existence if Congress terminates future issuance of private activity bonds.

Conduit issuer officials told The Bond Buyer that an inability to issue the bonds they sell for healthcare, higher education, affordable housing, and other types of projects would result in a new reality both for issuers and the borrowers who have relied on them. In some cases they would virtually blink out of existence except to manage their existing debt portfolios, but others would fall back on secondary missions or possibly assume additional responsibilities at the discretion of legislators.

The Republican tax bill pending in the House would eliminate PABs.

"It'd be a setback, I'm not going to kid you, because this is our business," said Harry Huntley, executive director at the South Carolina Jobs-Economic Development Authority. "This is what we do."

The Senate GOP's initial tax proposal would keep private activity bonds.

Conduit issuers are the vehicle that non-governmental private activity bond issuers, such as 501(c)(3) nonprofits and businesses using PAB allocations, use to issue tax-exempt bonds.

South Carolina's JEDA, created more than 30 years ago, is the statewide issuer for industrial development revenue bonds, 501(c)(3) deals, and other types of issuance that stand to go away under H.R. 1, the Tax Cuts and Jobs Act.

Huntley said JEDA issued more than $1 billion last year, but most years is roughly in the $500 million neighborhood. Huntley said he expects many conduit issuers would cease to exist, though his would continue.

"We're not going to evaporate and go away," said Huntley, noting that JEDA has statutory authority to run taxable bond programs and provide small business loans. But those conduit issuers with more specialized roles would be in a different situation, he said.

"Some of the authorities would probably go away," said Huntley.

One of those more narrowly-tailored conduit issuers is the Washington Health Care Facilities Authority, which fills a specific role in Washington State.

"We're the only issuer of not-for-profit 501(c)(3) healthcare bonds," said Donna Murr, executive director at WHCFA.

WHCFA would exist only to monitor its existing debt, Murr said. She said WHCFA has issued over $16 billion since its 1980 creation with about $5.5 billion currently outstanding. The authority saved borrowers about $68 million last year, she said.

Since its inception in 1997, the Louisiana Local Government Environmental Facilities and Community Development Authority, or LCDA, has helped finance more than $6 billion of economic and infrastructure projects for municipalities, nonprofits, and eligible for-profit companies as a political subdivision of the state.

Executive Director Ty Carlos said the proposal to end tax-exempt private activity bonds came as a surprise because it wasn't known to be on the table.

"I think it's going to have pretty significant implications here for economic development," he said. "It's very concerning."

Carlos said he scrambled to notify LCDA's members and board of directors "to make them aware of what we understand is going on." He suggested that they contact Louisiana's representatives in Congress to "air their concerns."

"I hope this gets resolved before tax reform is passed," he added.

In Florida, a state-created conduit issuer is helping a charter school in Doral fast-track its bond issue to market because of the proposed tax bill in the House, said Florida Development Finance Corp. Executive Director Bill Spivey.

"They were going to close in January, but now they are trying to get it done by December," Spivey said Thursday. "We can accommodate that and are just accelerating the process as much as we can to try to help."

In California, where several conduit issuers operate under the umbrella of the treasurer's office, State Treasurer John Chiang has some specific concerns.

"The most important thing to the treasurer is how does the elimination of PABs impact affordable housing," Tim Schaefer, the deputy treasurer for public finance. "The second factor is to what extent does the elimination of PABs have as a direct, and trickle down impact, on the healthcare industry."

The California Health Facilities Authority was the fourth-largest municipal bond issuer by volume through the first nine months of 2017, according to Thomson Reuters (TRI) data, credited with more than $3.3 billion of debt.

The state deployed more than $6 billion of tax-exempt PAB authority for multifamily and single family homes in 2016, according to a letter Chiang sent to U.S. House Majority Leader Rep. Kevin McCarthy, R-Calif., in early November.

"As of September, we had issued $16 billion in healthcare facilities debt in the state of California," said Vince Brown, a deputy state treasurer. "It's across the board from childrens' hospitals to some of the big players like Sutter and Kaiser. So this will impact the whole hospital financing structure from conduits."

If they lose the ability to sell tax-exempt debt to fulfill their missions, Schaefer said, the conduits might have to reinvent themselves and go into the business of selling taxable debt.

Huntley, who recently traveled to Capitol Hill to lobby against the termination of PABs, said he thought members of Congress heard the conduit issuers' message but that PABs are a "low-hanging fruit" for lawmakers looking to provide tax benefits elsewhere in the code.

“It’s picking off the low-hanging fruit like our private activity bonds to provide for a maybe outsized corporate tax break,” he said, adding this clashes with the Trump administration’s stated goals of encouraging private infrastructure investment and charter schools.

“I hope that politics doesn’t get in the way of doing what’s right,” he said.

BY SOURCEMEDIA | MUNICIPAL | 11/14/17 07:15 PM EST

Charter Schools Face Higher Capital Costs if Congress Ends PABs.

BRADENTON, Fla. — Charter schools could face significant growing pains if Congress passes a tax bill that bans the use of private activity bonds.

Even though the first charter school issued bonds 19 years ago, the sector remains a small but steadily emerging segment of the municipal market.

Without access to tax-exempt financing as proposed in H.R. 1, the Tax Cuts and Jobs Act, start-up charter schools face an uncertain future while existing schools could struggle to expand, analysts and industry experts said.

The bill is pending in the House of Representatives. Senate Republicans are also working on tax legislation, releasing a proposal that spares PABs.

“The recently proposed federal tax reform bill in its current form would be a huge blow to all public charter schools that depend on bond financing,” said Lynn Norman-Teck, executive director of the Florida Charter School Alliance, referring to the House bill.

“Without access to this low cost source of financing, public charter schools would need to turn to other sources of capital, which would be more expensive and restrictive,” she said. “The additional costs of alternative capital would pull money out of the classroom where it is needed the most.”

Florida’s 654 charter schools enrolled 283,755 students in the 2016-17 school year, according to the Florida Department of Education.

Charter schools are publicly funded nonprofit or for-profit public schools that operate under a contract or charter from a local school district or state charter authorizer. Most teach students from pre-kindergarten through high school.

They offer tuition-free access to students, and typically enjoy more flexibility from regulations than a traditional public school.

Viewed as an innovative form of education over traditional public schools, charter schools are supported in most states and by President Donald Trump.

Trump’s pick to lead the U.S. Department of Education, Betsy DeVos, is an ardent supporter.

“Parents no longer believe that a one-size-fits-all model of learning meets the needs of every child,” DeVos told the U.S. Senate Committee on Health, Education, Labor and Pensions during her Jan. 17 confirmation hearing. “And they know other options exist, whether magnet, virtual, charter, home, faith-based or any other combination.”

For that reason, charter school supporters were surprised that the House GOP proposed eliminating low-cost financing for them.

“I would be highly distressed, regardless of where you are on charter schools,” California Deputy Treasurer Tim Schaefer, referring to the potential elimination of PABs.

“You can be friend or foes to charter schools, but here in California there are parents demanding that alternative,” he said. “If you take away from the charter schools, the ability to finance…you are denying people those choices, because it would create an environment where they are unsustainable.”

California has the highest number of students in charter schools, at 602,840, according to an October 2017 enrollment report by the National Alliance for Public Charter Schools.

Texas has the second-highest enrollment, with 303,130 students, and Florida came in third.
To access the bond market, most charter schools must be 501(c)(3) nonprofit entities. Conduit issuers are used to sell their tax-exempt bonds, though there are a few exceptions.

Since the first $11 million of bonds were issued in 1998, a total of $17.73 billion of bonds have been sold for such facilities across the U.S., according to an issuance database created by Wendy Berry, a NewOak director and senior analyst.

If Congress eliminates PABs, Berry said charter schools will encounter higher borrowing costs using other financing options, and they will have fewer dollars to spend on the core mission of education programming.

“I think this was a big surprise for the folks who follow this the closest, the folks who make sure the municipal market is represented in the halls of Congress,” she said. “This was not something that was discussed.”

Berry, who specializes in covering the charter sector, said “there have been a surprising number of taxable deals done.” Some federal financing programs are available, though they are also taxable.

“It’s not good news, obviously,” she said.

Minnesota passed the first charter school law in 1991, with California following suit in 1992.
Today, more than 6,800 charter schools in 43 states and the District of Columbia educate nearly 3 million students, according to the National Alliance for Public Charter Schools.

Some 67% are independently run non-profit, single-site schools; 20% are run by non-profit organizations that run more than one charter school; and 13% are run by for-profit companies, according to the Alliance.

The House bill would also remove other sources of charter school capital funding such as new markets tax credits, qualified zone academy bonds, and other tax credit programs, S&P Global Ratings said in “U.S. Tax Reform: Municipal Credit And Market Implications,” a Nov. 9 report.

“While charter schools in some states – for example Colorado, Arizona, Nevada, and Michigan – may qualify to still issue debt as governmental bonds, most states are not currently set up to do so and would require additional legislative action to be eligible,” the S&P report said.

The House bill would “significantly curtail new market activity” and make it even more difficult for start-up or new charter schools to finance their school buildings, or for existing schools to expand, S&P analysts said.

In Michigan, 10% of students are enrolled in 294 charter schools, which are considered public school academies. Any parent, teacher, group or entity can apply for a charter, except private school operators.

As public schools, charters in Michigan receive per-student base funding. They also are eligible for governmental bond issuance.

In 1979, charter schools became eligible under the State School Aid Act to borrow from the Michigan Municipal Bond Authority, using its shared credit rating. The authority issues state qualified school bonds.

Most states have not created such entities, and charter schools rely on conduit issuers to sell tax-free private activity bonds as 501(c)(3) nonprofits.

In response to the charter school facility financing challenges, the California Legislature passed Assembly Bill 2717 in 2006, making charter schools eligible for financing assistance through the California School Finance Authority, according to the CSFA's Conduit Bond Program Report.

The CSFA has issued about $1 billion of private activity bonds for charter schools since then, according to Deputy State Treasurer Vince Brown. The CSFA also has an intercept program to make sure the debt service gets paid to the bondholders, he said.

The CSFA has been the largest issuer of charter school debt in the state, issuing 64% of the total par amount since 2010 and 75% of the par amount since 2013, "thereby distinguishing itself as the primary conduit bond issuer for California charter schools," according to the authority's report.

The National Alliance for Public Charter Schools, in a Nov. 7 letter to House Committee on Ways and Means Chairman Kevin Brady, R-Texas, and ranking member Richard Neal, D-Mass., said several provisions in H.R. 1 would be "devastating" to charter schools.

In addition to eliminating PABs, the act would terminate the use of advance refundings and remove a charter school's ability to finance new projects with new markets tax credit financings and qualified zone academy bonds, said the two-page letter by Alliance President Nina Rees.

From 2003 through 2016, NMTC investments in charter schools totaled $1.99 billion, supporting academic space for 200 public charter schools and leveraging $3.21 billion in total project financing, Rees wrote.

"Early-stage schools would be put at a particular risk by the elimination of NMTCs as those credits typically support the development and construction of new buildings," she said. "The result of this bill is that some charter schools would not be able to afford a facility."

NewOak's Berry described the situation in Congress as the "first inning of what is likely to be an extra-inning ballgame."

"The Senate has released their version and it's totally different from the House," Berry said. "I'm optimistic if the worse comes to fruition then they will pay higher borrowing costs but it will not be the end of the ability to finance charter schools."

BY SOURCEMEDIA | MUNICIPAL | 11/15/17 07:20 PM EST

Loss of Tax-Exempts Would Widen the Gap Among Healthcare Issuers.

CHICAGO — Already bruised this year by GOP efforts to dismantle the Affordable Care Act and pressured on operations, the not-for-profit healthcare sector would also face higher capital costs should the House Republican tax bill pass.

The package before the House would eliminate tax-exempt advance refundings and private activity bonds for housing, private universities, not-for-profit hospitals, and other development projects. The Senate Republican proposal preserves PABs. Leaders are aiming for reconciliation between the two in mid-December.

The end of tax-exempt borrowing would ripple through the hospital sector with far-reaching effects across the healthcare landscape, said market participants.

It could drive more interest in direct bank loans and prompt an even bigger wave of mergers and consolidations as smaller and lower-rated hospitals and systems struggle to raise affordable capital. The current consolidation wave has largely been driven by hospital efforts to conform to changes demanded by the ACA.

“I think certainly it’s going to be difficult for hospitals and it’s going to raise capital costs, but for the larger and highly-rated systems they will probably be O.K. because they have been issuing some taxable debt and have relationships and there are cross-over buyers that are certainly interested,” said George Huang, a director in Municipal Securities Research at Wells Fargo Securities. “They are sophisticated and can spread the additional costs.”

“Where it becomes more of an issue is for the smaller guys who will see their market access impaired,” Huang added. “The whole municipal market would evolve.”

On Tuesday, GOP senators announced their version would include a repeal of the ACA’s individual insurance mandate in a move to help cover the deficit from tax cuts. The Congressional Budget Office has estimated that 13 million would lose coverage without the mandate.

That could drive up the uncompensated care costs for hospitals that fell after the ACA was adopted and the ranks of insured – either through private insurance or Medicaid expansion — swelled.

Healthcare borrowers have brought $32.7 billion of tax-exempt issuance to market so far this year, according to data from Thomson Reuters (TRI). About $300 billion of long-term, tax-exempt healthcare-related borrowing and about $20 billion of short-term paper was outstanding last year, said Richard Ciccarone, president of Merritt Research Services.

Smaller hospitals likely would rely more on bank loans which could grow more costly as their deals are often too small and not index eligible to attract traditional fixed-income corporate buyers, said one public finance healthcare banker whose clients include both small, local systems and national systems.

“If a corporate buyer has a choice between a known name and larger, double-A rated system and a smaller A rated system or hospital that requires more research, they are going to pick the known name,” said the healthcare banker.

The banker said there could possibly be some accommodation in the corporate market in response to the tax changes, with a sub-sector focused on paper from former tax-exempt borrowers. Still, using the corporate market requires a whole new set of demands on borrowers; make-whole call features are preferred to traditional 10-year municipal calls and more frequent routine disclosure is required which can add to a borrower's cost, the banker added.

Nuveen offered a similar assessment on the disparity.

"For issuers, we expect a bifurcated outcome: larger, more highly rated issuers should be able to access the taxable bond market for their infrastructure financing needs. Smaller, lower-rated or non-rated issuers may be unable to access the bond market," Shawn O'Leary, senior vice president at Nuveen Asset Management LLC, said in a report on the impact of the tax bill on various sectors.

The average spread between the Bloomberg Barclays Taxable Municipal Bond Index and the Bloomberg Barclays Municipal Bond Index from November 2016 through October was 126 basis points. The higher costs could force some to put off projects or renovations.

"Demand exists in the tax-exempt market for these smaller deals, and professional investors have the credit research capabilities to analyze such issuers," O'Leary said. "This is not true of the taxable market. The loss of access to the tax-exempt market would likely shut out critical access hospitals."

Huang added that the full extent of the hit might not be felt until rates rise or spreads widen between taxable and tax-exempts. "For years, hospitals have had excellent cost of capital and could borrow cheaply," he said.

Some upsides exist on the use of taxable debt and that's been the appeal for larger systems. It frees them of the burden of going through a conduit issuer, so they can get into the market more quickly, and it frees them from IRS rules on how the proceeds can be spent. "For some, it's worth the tradeoff," Huang said.

Another upside is for current holders. The elimination of advance refunding could drive up demand for existing tax-exempt healthcare paper, improving its valuation, Huang said.

The American Hospital Association sounded the alarm on behalf of its members in a letter last week to the House Ways and Means Committee, warning that smaller hospitals can't afford more costly loans and taxable borrowing, saying that throughout the sector the higher costs will be borne by patients.

"Non-profit hospital borrowers save, on average, an estimated two percentage points on their borrowing compared to taxable bonds or bank financing," wrote Thomas Nickels, AHA executive vice president.

"Lower borrowing costs translate into lower health care costs for patients. The lower cost of tax-exempt financing also makes possible necessary upgrades and modernizations that would not be possible for hospitals with weaker finances," he added.

In the near-term, conduits could see a rush to market. It's a tough task to hurry a deal to market if not already in the works. The deal must run through the conduit process which includes a TEFRA hearing required by the Internal Revenue Service and counsel must issue an opinion. For issuers that had plans for early 2018 financings, it's doable, and slated deals can be increased.

Michigan-based Trinity Health is speeding up planned borrowing that would include $200 million of net new money, up to $300 million to reimburse itself for a hospital acquisition, and a refunding of up to $550 million.

"We are looking at trying to come to market at some time in December," Dina Richard, treasury and chief investment officer, said during the system's annual investor call last week. "We have accelerated our plan of finance in light of the recent tax reform discussion," she said.

"The Illinois Finance Authority would be accommodating, and is prepared to speed deals through the hearing process and would call special meetings if any borrower has any needs that arise" until Dec. 31, said its executive director, Christopher Meister.

The agency is the state's primary route for healthcare borrowers to access the municipal market. A financing on the board's agenda last week for Northwestern Memorial Healthcare was increased in size slightly due to the change.

Higher borrowing costs would exacerbate existing fiscal pressures due to changes in customer demands, cost consciousness and public and congressional pressure to contain costs along with changing reimbursements with a wave of retirements among Baby Boomers, market participants added.

Fitch Ratings left a negative outlook on the sector this year while the rating outlook is stable. Pressures on operating margins reflect the erosion in payor mixes as the baby boom generation moves into Medicare and newly eligible Medicaid patients access more healthcare services to address deferred care and chronic conditions. The sector also faces growing wage and benefit pressures.

BY SOURCEMEDIA | MUNICIPAL | 11/15/17 07:20 PM EST

By Yvette Shields

Muni Groups, Upset by House Tax Bill, Pin Hopes on Senate.

WASHINGTON – Municipal market participants turned their attention to the Senate for a better outcome after the House voted 227 to 205, mostly along party lines, on Thursday to pass a tax bill that would put an end to private activity bonds and advance refundings after this year.

The House bill would also eliminate the deduction for state and local income and sales taxes as well as cap the deduction to $10,000 for property taxes. That led 13 Republicans, mostly from high-tax states like New York, New Jersey, California to defect from their party and vote no on the House bill.

Muni market groups said they will now focus their fight on the Senate and any negotiations between the two chambers over a final bill.

The bill in the Senate would save PABs and also enhance them by eliminating the alternative minimum tax. However, it would also completely repeal the SALT decision and stop advance refundings after this year.

"We have only just begun the process of a battle that we have come prepared to fight," said Emily Brock, director of the Government Finance Officers Association's federal liaison center.

She said the House vote was not unexpected but "represents a vote on legislation that untangles a century-long federal-state-local partnership and places significant burdens on state and local governments' revenues which provide public services."

The House bill "could have calamitous effects on infrastructure and local economies across the country," Brock said. "Clearly the time is now to help the Senate understand the potential impacts to public infrastructure that these provisions wield."

New Orleans Mayor Mitch Landrieu, president of the U.S. Conference of Mayors blasted the House for passing a "dangerous" tax reform bill and called on the Senate to end the "assault on cities."

Bond Dealers of America CEO Mike Nicholas said the group is "disappointed" that the House passed its bill with the provisions to terminate PABs and advance refundings.

"While a comprehensive reform of the tax code is needed, the reform should encourage state and local governments to invest in infrastructure, housing, hospitals, and senior living facilities, not limit the tools it has available to provide these needed investments, while hurting issuers ability to manage risk and invariably raising costs for all taxpayers," he said.

Nicholas said that while BDA members applaud the bill in the Senate for retaining PABs, Senators must "retain current law with regards to municipal advance refundings in any package brought to debate on the Senate floor."

Some Democrats on the Senate Finance Committee have complained that the tax bills pending in both chambers would fall under the Pay-As-You-Go Act of 2010 and force the Office of Management and Budget to sequester billions of dollars in across-the-board spending cuts in Medicare and other federal mandatory programs, zeroing out subsidy payments for direct-pay bonds such as Build America Bonds.

The Congressional Budget Office confirmed the bills would be a problem under the PAYGO Act in a letter to House Democratic Whip Rep. Steny Hoyer, D-Md. But Senate Finance Committee chairman Orrin Hatch, R-Utah, rebuffed the idea that PAYGO would hold up the tax bill. He told committee members on Wednesday there has never been a single sequester ordered under the PAYGO statute.

Budget experts said that in order to waive the tax bills from the PAYGO Act, Congress would have to pass a separate bill, apart from the reconciliation process, that would require 60 votes, rather than a simple majority, in the Senate.

But long-time legislative observers said the Republicans may have the upper hand on the PAYGO issue. They can just pass a tax bill and then offer a bill to waive the PAYGO Act, putting Democrats on the spot to either support the waiver or trigger OMB-mandated billions of dollars of cuts to mandatory federal programs.

Some municipal market groups are putting their hopes for more favorable action in a conference between the House and Senate tax bills. The Senate Finance Committee approved the bill Thursday night. It will then release the text of the bill next week so the full Senate can vote on it after Thanksgiving. The House could both take up and vote on the Senate bill or the two chambers could try to resolve their differences in conference.

Sandy MacLennan, president of the National Association of Bond Lawyers, said, "We remain optimistic that the municipal bond and related tax credit provisions in the House bill will be revised in conference."

The House bill would eliminate tax credit bonds after this year.

"It is especially important to retain the favorable tax treatment for private activity bonds and advance refundings which are important financial tools for municipal issuers and non-profit organizations," MacLennan said. "Elimination of either of these tools will ultimately either reduce investment in capital projects or increase costs paid by local taxpayers, ratepayers, and users of these facilities."

Chuck Samuels, a member of Mintz Levin who is counsel to the National Association of Health and Higher Education Facilities Authorities, said he is "disappointed but not surprised" that the termination of PABs was left in the House bill.

"But House Ways and Means Committee Chairman Brady has made clear the House still has work to do on its bill in preparation for conference and we are working hard on House members as well as keeping Senate bill clean," he said.

BY SOURCEMEDIA | MUNICIPAL | 11/17/17 07:27 PM EST

KBRA: Tax Reform Proposals Impact Public Sector Tax Exemption Program.

Over the last two weeks, both the Republican-controlled House and Senate released their proposals for tax reform. Key revenue-raising provisions in each version include elimination of the tax exemption on certain types of municipal bonds. The House passed a tax reform bill that eliminates the tax exemption on private activity bonds (PABs) and advance refunding bonds. The Senate proposed a bill that retains the tax exemption for PABs, but eliminates the tax exemption for advance refunding bonds.

While there is debate about the actual revenue impact of the provisions in these bills, one thing is clear, they will increase the cost of capital for state and local governments across the country at a time when operating budgets are constrained and growth in tax revenues is projected to be insufficient to fund critical infrastructure projects.

- Private activity bonds have been a critical component of the funding for public facilities and infrastructure for decades.
- Many high profile projects have incorporated PABs in their funding, including the Port of Miami, Presidio Parkway and the new Goethels Bridge.
- Advance refunding bonds enable state and local governments to take advantage of lower interest rates in the same way that a homeowner takes advantage of lower mortgage rates to reduce monthly mortgage payments.
- KBRA believes that the tax exemption for both PABs and advance refunding bonds help state and local governments to more effectively manage the cost of operations and fund capital projects.
- KBRA will monitor the changes made to PAB and advance refunding bond financing programs and evaluate the impact on public finances.

Please click on the link below to access the report:

Tax Reform Proposals Impact Public Sector Tax Exemption Programs

If you have any difficulties accessing the report, please contact info@kbra.com or visit www.kbra.com.

[Municipal Finance Caucus Speaks Out in Defense of Bonds.]()

In a marathon legislative day in on Capitol Hill, tax reform took one step towards final passage of the House and potentially a step back in the Senate.

Municipal Finance Caucus Speaks Out
Last night, House Municipal Finance Caucus co-chairman Reps. Randy Hultgren (R-IL) and Dutch Ruppersberger (D-MD), with support from the BDA and MBFA, testified during a House Rules Committee hearing in defense of two amendments filed to H.R 1 the Tax Cuts and Jobs Act:

- **Amendment 54:** Reinstates private activity bonds by striking Sec. 3601. (co-sponsors:Hultgren (R-IL), Messer (R-IN), Ruppersberger(D-MD), McGovern (D-MA), Polis (D-CO))
- **Amendment 55:** Reinstates advance refunding bonds by striking Sec. 3602. (co-sponsors Hultgren (R-IL), Messer (R-IN), Ruppersberger (D-MD), McGovern (D-MA))

After hours deliberation, the Rules Committee decided not to accept any of the 139 amendments filed. Amendments will also not be allowed on the House floor during debate which is expected to begin today and conclude with a vote for final passage tomorrow morning.

While all amendments were rejected, having these points raised during the process **will have influence over Senate deliberations**. Senators and their staff are watching the House debate closely noting amendments filed and statements made. This action will go far in emboldening Senators to take a stand.

Both the BDA and MBFA continue to work with our partners in the Municipal Finance Caucus in an effort to have Members speak on the record, during the House debate, in defense of private-activity and municipal advance refunding bonds.

House Moves Towards Vote
The House will conduct one hour of debate over the rules of the tax package and then begin a four hour debate on the bill itself. House Leadership currently feels as if they have the 218 votes needed for passage.
Expect some push back to emerge from moderate members of the House Republican Caucus over Senate changes to the package, but it is not known if there will be enough to delay the vote.

Senate Adds Controversy
The Senate Finance Committee added a few layers of difficulty for approval of their tax package yesterday afternoon. During a Committee recess for lunch, rumors leaked that Chairman Hatch was amending the repeal of the individual mandate of the Affordable Care Act as a payfor for the sweeping tax cuts included in the package. These rumors were later confirmed and the provision was added.

Overnight, the Chairman announced that a majority of the individual tax cuts will expire after 2025, while maintaining permanence for corporate rates, in an effort to bring the legislation in compliance with Senate rules.

Next Steps
The BDA is sending letters to both House and Senate Leadership today in support of privavte-activity and municipal advance refunding bonds and requesting both be protected in any compromise bill.

We will continue to provide updates as they become available.

Bond Dealers of America

November 15, 2017

House's Tax Plan Impacts Key County Priorities.

House tax reform plan keeps muni bonds mostly tax-free, caps property tax deduction, taxes interest on advance refunding bonds, private activity bonds

The House Ways and Means Committee passed the GOP's tax overhaul bill, the Tax Cuts and Jobs Act (H.R.1) Nov. 9 by a 24–16 vote along party-lines. Introduced Nov. 2 by Chairman Kevin Brady (R-Texas), the legislation culminates a year of work by Brady and House Republican leadership to craft a comprehensive tax reform package. The 452-page bill would alter nearly every portion of the tax code, including many key county priorities outlined below.

Broadly, the House Republican tax reform plan would lower individual and corporate tax rates and sets a new rate for so-called "pass through businesses," or businesses that file on the individual side of the tax code. To make up revenue lost by lowering rates and to simplify the code, the package also eliminates or caps dozens of tax deductions and credits. Ultimately, the Joint Committee on Taxation estimates H.R. 1 will result in a roughly $1.5 trillion increase in the national deficit over the next decade.

Both chambers of Congress intend to move quickly on the legislation, aiming to send a final bill to the president's desk before Christmas. While the initial versions approved by each chamber could differ substantially, ultimately both chambers must agree on the same package before taking a final vote. Republicans plan to use the budget reconciliation process to pass the bill, which only requires a simple majority vote in the Senate but adds additional financial restrictions and rules to the legislation.

Continue reading.

NATIONAL ASSOCIATION OF COUNTIES

By JACK PETERSON Nov. 13, 2017

Bipartisan U.S. Conference of Mayors Criticizes House for Passing 'Dangerous' Tax Reform Bill; Calls on Senate to End the 'Assault on Cities'

WASHINGTON – New Orleans Mayor Mitch Landrieu, President of The United States Conference of Mayors (USCM), today released the following statement on behalf of Democratic, Republican and Independent mayors demanding the Senate make improvements to the House tax reform bill:

"The bipartisan U.S. Conference of Mayors made it clear that we will not ever support a bill that disproportionately benefits the wealthy and undercuts the hard working men and women of our working class. Today, by passing this dangerous bill, Congress chose to do the bidding of the billionaires and to ignore the deep concerns of their constituents. But the fight is not over. As this now moves to the Senate, we will continue to aggressively fight this full-fledged assault on cities and demand that the state and local tax deduction (SALT) along with the tax exemption on private activity bonds and advance refunding bonds remain intact. We will not stand for any bill that further rewards the wealthiest Americans at the expense of nurses, teachers and fire fighters.

"As long as tax reform is under consideration in Washington, mayors will hold their Congressional representatives accountable and push to enact measures that create jobs and make our communities stronger. This bill fails that test – but we remain optimistic that the Senate's version will remove corporate giveaways and offer real reforms for cities and their middle class residents."

U.S. Tax Reform Poses More Risks for State and Local Governments.

CHICAGO/NEW YORK — State and local governments could suffer hits to revenue collections under the tax reform bills being considered in the U.S. Senate and House because of the potential loss of a federal subsidy applied to bond issues and because a proposed increase in the standard taypayer deductions would affect some states.

These additional risks to state and local governments are coming to light as lawmakers and experts sift through the bills before the two chambers.

State and local governments have already been grappling with the potential revenue-raising risks of provisions in the two bills that would eliminate or cap taxpayer deductions of state and local income, sales and property taxes from their federal tax bills.

Analysts on Wednesday said that the U.S. House of Representatives bill, which was unveiled Nov. 2, could knock out a federal subsidy applied to billions of dollars of bonds sold by states and local governments in the aftermath of the Great Recession.

The threat to the subsidy was disclosed in correspondence this week between the Congressional Budget Office and Representative Steny Hoyer, a Democrat who was seeking more details about the effects of the House tax bill.

Build America Bonds (BABs) were created under an economic stimulus law that allowed municipal issuers to sell for a limited time taxable debt with the federal government contributing 35 percent of interest costs. Between April 2009 and the end of 2010, $181.5 billion of BABs were sold in 2,351 issues.

The future federal subsidy on the $13.5 billion of BABs sold by California, the biggest issuer of the debt, totals $6.7 billion, according to the state treasurer's office.

"Rather than follow through on an earlier Congressional commitment to reimburse states for the costs of issuing Build America Bonds, which were used to jumpstart our Great-Recession-decimated economy, Congress instead wants to allow our nation's wealthiest tycoons to feed deeper at the public trough," California Treasurer John Chiang said in a statement.

"As a result California taxpayers will be on the hook for $6.7 billion that could otherwise be used for education, public safety, and other vital public programs," he added.

The U.S. government's payment on BABs became subject to federal across-the-board spending cuts known as sequestration, resulting in subsidy cuts that ranged from 8.7 percent in 2013 to 6.6 percent in the current fiscal year, according to the Internal Revenue Service.

The Congressional Budget Office said this week that the estimated $1.5 trillion increase over 10 years in the federal budget deficit under the House tax bill would, in fiscal 2018, wipe out funding for many programs subject to sequestration under federal law.

That would leave BABs issuers without a federal subsidy, according to Bill Daly, governmental affairs director for the National Association of Bond Lawyers.

But Congress has the ability to protect the BABs' subsidy.

"Seems to us it's entirely a budgeting problem and all the Congress has to do is say the deficit will not be subject to sequestration," said Philip Fischer, municipal research strategist at Bank of America Merrill Lynch.

So far in 2017, BABs have notched total returns of 7.17 percent, outpacing other fixed-income classes including U.S. Treasuries and corporate bonds, according to Bank of America Merrill Lynch indexes.

In addition, big increases in federal standard deductions in both the House and Senate bills could cause revenue problems for eight states unless they take preemptive legislative action.

For Colorado, Idaho, Minnesota, Missouri, North Dakota, South Carolina, Utah and Vermont a rise in the federal deduction would automatically increase the state deduction, decreasing tax collections, according to Ron Alt, senior manager of research at the Federation of Tax Administrators.

By REUTERS

NOV. 15, 2017, 8:57 P.M. E.S.T.

(Reporting by Karen Pierog in Chicago and Laila Kearney in New York; Additional reporting by Stephanie Kelly in New York; Editing by Daniel Bases and Leslie Adler)

MSRB: Municipal Securities Provisions of the "Tax Cut and Jobs Act"

Read the MSRB Fact Sheet.

TAX - GEORGIA

Columbus Board of Tax Assessors v. Medical Center Hospital Authority

Supreme Court of Georgia - October 16, 2017 - S.E.2d - 2017 WL 4582405

Hospital authority brought declaratory judgment action against board of tax assessors, city, and county tax commissioner, seeking declaration that its leasehold interest in a continuing care retirement facility was public property exempt from ad valorem taxation.

The Superior Court granted summary judgment in favor of authority. Tax board appealed. The Court of Appeals affirmed. Tax board petitioned for writ of certiorari, which was granted.

The Supreme Court of Georgia held that bond validation proceedings did not conclusively render hospital authority's leasehold interest public property exempt from taxation.

Fact that bonds used to finance construction on property were validated as having a public purpose did not conclusively render hospital authority's leasehold interest in a continuing care retirement facility public property exempt from ad valorem taxation. Question of whether a hospital authority's property interest qualified for ad valorem tax exemption as "public property" was a separate and distinct question from the issues presented in a bond validation proceeding.

TAX - NEW JERSEY

Ciba Specialty Chemicals Corp. v. Township of Dover

Tax Court of New Jersey - August 3, 2017 - 2017 WL 3372554

Tax Court took up the discrete issue of whether on the relevant valuation dates there existed a reasonable probability of a change in zoning for the subject property from industrial/commercial to mixed-use, including residential. "The answer to this question will be a crucial element of the highest and best use analysis used to determine the true market value of the subject property for local property tax purposes."

The municipality argued that a zoning change was reasonably probable on the relevant dates and that the true market value of the subject property should reflect its potential to be developed with a project that includes residential units.

The owner of the subject property argued that a change in zoning was not reasonably probable on the valuation dates and that the parcel should be valued for its potential development only for permitted commercial and industrial uses. Owner argued that because the municipality had not named a licensed real property appraisal expert to offer an opinion on the reasonable probability of a zoning change at the subject property, it was impossible, as a matter of law, for the municipality to meet its burden of proof. Owner also argued that the opinion proffered by the municipality's proposed expert witness is an inadmissible net opinion, providing a separate basis for granting summary judgment in favor of plaintiff on the zoning-change question.

The municipality argued that it may rely on the testimony of a land development planning expert who issued a report and addendum proffering an opinion on how a mixed-use development, including residential units, might be situated on the subject property. The proposed expert's report and addendum included an opinion that a change in zoning at the property to permit such development was likely to occur.

"The court concludes that the motion record does not support a determination that, as a matter of law, the municipality cannot meet its burden of proof with respect to the reasonable probability of a zoning change on the relevant valuation dates. There are no legal precedents in this State holding that only a licensed real estate appraiser can offer an opinion with respect to the reasonably probability of a zoning change. To the contrary, it is well established that the determination of who may provide expert testimony rests with the trial court, which is charged with evaluating the proposed expert's training, knowledge, and experience. It is certainly reasonable to argue that a licensed real estate appraiser is the best professional to offer an opinion on the reasonable probability of a zoning change for purposes of determining the value of real property. However, a witness with training, knowledge, and experience in land development planning may also possess sufficient expertise to offer an opinion on that topic. The most appropriate way for the court to decide whether the municipality's proposed expert is competent to offer opinion testimony on the likelihood of a zoning change at the subject property is for the court to evaluate the evidence adduced at trial regarding the training, knowledge and experience of the witness."

TAX - COLORADO

[HDH Partnership v. Hinsdale County Board of Equalization]

Colorado Court of Appeals, Div. IV - October 19, 2017 - P.3d - 2017 WL 4684139 - 2017 COA 134

Hunting and fishing club members appealed decision of the Board of Assessment Appeals which agreed that members, who each held record title to tracts of land within club, were the owners of the parcels and bore the property tax burden.

The Court of Appeals held that:

- Club, rather than its members, was true owner of tracts of land title in names of members and thus was responsible for paying property tax assessments, and
- Parcels were subject to property tax assessments as fractions of the club grounds as a whole.

Statute providing that each tract or parcel “shall be separately appraised and valued, except when two or more adjoining tracts, parcels, or lots are owned by the same person, in which case the same may be appraised and valued either separately or collectively” does not require tax assessor to assess taxes to the individual record title holders, as statute is silent on how ownership is determined.

Hunting and fishing club, rather than its members, was true owner of tracts of land title in names of members and thus was responsible for property tax assessments. Although memberships were conveyed by deed, members did not have possessory rights to the parcels and did not have control over access and improvements to the tracts, members’ right to access club grounds could be revoked if they did not pay assessments, and club enjoyed traditional benefits of ownership, including the rights to exclude nonmembers or members not in good standing, to erect or remove improvements, to control river and its waters, and to profit from the land.

Hunting and fishing club parcels were subject to property tax assessments as fractions of the club grounds as a whole, rather than based on the personal property value of the members’ licenses to use the club as determined by comparable sales of deeds to other parcels in the past; while individual members were record owners of each parcel, club was the actual owner and members were only licensees.

[S&P: U.S. Tax Reform: Municipal Credit And Market Implications.]

The Tax Cut and Jobs Act legislation proposed in the House of Representatives, in its current form, will likely result in near-term changes to supply and demand dynamics in the municipal market potentially increasing costs, decreasing access, and negatively affecting credit quality for some public finance borrowers over the longer term, in S&P Global Ratings’ view.

[Continue Reading]

Nov. 9, 2017

S&P Request for Comment: Priority-Lien Tax Revenue Debt.

S&P Global Ratings is requesting comments on proposed changes to its methodology for assigning ratings and related credit products to U.S. ratings on priority-lien tax revenue debt issued by municipal governments, state governments, or other U.S. public finance obligors where the pledged revenue stream is limited.

Continue Reading

Nov. 13, 2017

The Senate Gives the House the Byrd and Retains Tax-Exempt Qualified Private Activity Bonds, Tax Credit Bonds, and Tax-Exempt Stadium Financing Bonds. Tax-Exempt Advance Refunding Bonds, However? Not so Much.

We summarized last week the tax-exempt and tax-advantaged bond provisions of the Tax Cuts and Jobs Act (the "Act"), as introduced and referred to the House Ways and Means Committee. As a reminder, these provisions, which came as a shock to state and local governments, 501(c)(3) organizations, and others involved with public finance, would eliminate the ability of state and local governmental units to issue: (1) tax-exempt qualified private activity bonds (including qualified 501(c)(3) bonds); (2) tax-exempt advance refunding bonds; (3) tax-exempt professional sports stadium bonds; and (4) tax credit bonds (regardless of whether the bondholder receives a tax credit or the issuer receives a direct payment subsidy in respect of the tax credit bond).

The foregoing provisions were included in the version of the Act that was approved today by the House Ways and Means Committee. With one notable exception – the prohibition on tax-exempt advance refundings — these provisions, and indeed any tax-exempt bond provisions, are absent from the Senate Finance Committee Chairman's Markup of the Act, which was also released today. More analysis and speculation after the jump.

Continue reading.

The Public Finance Tax Blog

By Michael Cullers and Johnny Hutchinson on November 9, 2017

Squire Patton Boggs

Market Commentary: Yields Drop on Tax Reform Plans, PAB Issuers May Rush to Market.

Tax reform proposals from the House and Senate had a significant impact on the municipal bond market this past week. Generic benchmarks moved anywhere from 5 to 15 basis points into lower yields as the market responded to the push to reform the tax code for the first time in more than 40 years.

Most impactful was a suggestion by the Administration to remove the exemption on advance refundings, which represented about one-third of the entire market issuance of last year. Further, the alternative minimum tax and private activity bonds are on the chopping block.

Continue reading.

This Market and Policy commentary is brought to you by Court Street Group. For a full copy of the report, click here.

Posted 11/10/2017 by George Friedlander

Neighborly Insights

Tax Reform Bill Would Eliminate Future Supply of Nearly 1 Million Affordable Rental Housing Units.

According to Novogradac & Company analysis, the Tax Cuts and Jobs Act, House Ways and Means Committee Chairman Kevin Brady's landmark tax reform legislation would reduce the future supply of affordable rental housing by nearly one million units. That would translate to a reduction of as much as two-thirds of the current production of affordable rental housing provided by the Low-Income Housing Tax Credit (LIHTC) program.

Specifically, the following changes proposed by the bill would negatively affect the number of rental homes built or renovated by the LIHTC:

- Eliminate private activity bonds and associated 4 percent LIHTCs.
- Lower corporate tax rate from 35 percent to 20 percent, and
- Change inflation factor for future LIHTC allocations from CPI-U to "chained CPI."

The following analyzes the effect of each change and provides a rough estimate of the degree to which each change would affect the number of affordable rental housing units supported by the LIHTC over 10 years.

1. Elimination of private activity bonds and associated 4 percent LIHTCs.

The latest data available from the National Council of State Housing Agencies (NCSHA) shows that in 2015, 49,380 tax-exempt multifamily private activity bond-financed homes were awarded 4 percent LIHTCs. However, according to data from the Council of Development Finance Agencies (CDFA), new tax-exempt multifamily bond issuance increased at least 51 percent or more in 2016; based on CDFA data the estimated number of rental homes financed is assumed also to have increased by 51 percent in 2016. Accordingly, repeal of the 4 percent LIHTC for tax-exempt bonds means a loss of roughly 788,000 to 881,000 affordable rental homes over 10 years, or more.

2. Lower corporate tax rate from 35 percent to 20 percent.

The reduction of the top corporate tax rate from 35 percent in 2017 to 20 percent in 2018 would reduce the tax loss benefits of LIHTC investments, since the value of depreciation expense deductions would be reduced. An analysis by Novogradac & Company found that lowering the corporate tax rate to 20 percent would reduce LIHTC equity by about 15 percent, translating to $1.2 billion or more in loss equity annually. This loss of investor equity translates into loss of 85,600 to

93,900 affordable rental homes over 10 years, or more.

Much of this loss could be addressed through a two-step proposal to increase allocable LIHTC and modernize the credit percentage formula.

3. Change inflation factor for future LIHTC allocations from CPI-U to “chained CPI.”

The current draft of tax reform legislation would change the inflation adjustments throughout tax code from a factor based on the consumer price index for all urban consumers (CPI-U) to one based on a “chained” CPI-U. Many economists claim that the chained CPI-U provides a more accurate estimate of changes in the cost of living from one month to the next by accounting for the effects of substitution on changes in the cost of living. This change will decrease inflation adjustments in LIHTC allocations in future years, and would lead to a loss of 8,200 more affordable rental homes over 10 years.

Conclusion

On balance, it appears that Chairman Brady’s tax reform legislation would reduce the total amount of LIHTC-financed affordable rental homes by about 882,000 to 983,000, or more, over 10 years. Furthermore, given the lower financial feasibility under a lowered corporate rate, the changes would also result in rental homes that would likely serve higher average income levels, provide fewer amenities and/or social services.

Published by Michael Novogradac on Friday, November 3, 2017 – 12:00am

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Affordable Housing Advocates Say Trump Tax Reform Bill is 'Devastating'

Elimination of private-activity bonds would lead to steep drop in affordable housing units

Affordable housing advocates were cautiously optimistic that the House tax reform bill would have only modest effects on low-income housing after the Trump administration’s framework explicitly retained the tax credit responsible for virtually all construction and preservation of low-income housing units—the Low-Income Housing Tax Credit (LIHTC).

While the House’s tax reform bill released Thursday does include LIHTCs, the unexpected elimination of private-activity bonds would have devastating effects on the construction and preservation of affordable housing. When combined with other changes the bill proposes, accounting firm Novogradac & Company estimates a loss of nearly 1 million affordable housing units produced over 10 years.

“This was the worst case scenario that we were bracing for,” said Rachel Fee, Executive Director of the New York Housing Conference. “We knew bonds were slated for elimination in previous tax reform proposals so that threat has been out there,” she explained, “However, given that the tax reform framework announced last month explicitly supported the housing credit, we were hopeful that there was sincere interest from the administration and House Republicans in supporting this public-private partnership model with a track record of success.”

The LIHTC program provides two types of credits for developers willing to put affordable housing units in their projects—the 9-percent credit and the 4-percent credit. The 4-percent credit can only be claimed if 50-percent or more of the project is funded using tax-exempt private-activity bonds.

The House tax reform bill, dubbed the Tax Cuts and Jobs Act, proposes eliminating private-activity bonds, so while LIHTCs are explicitly retained in the bill, the elimination of the bonds would eliminate the 4-percent credit and likely lead to a precipitous drop in construction of low-income housing units produced by the program.

“These bonds contribute to 60-percent or more of the affordable rental housing built or renovated every year,” said Michael Novogradac of Novogradac & Company. “Hundreds and hundreds of thousands of units of affordable housing would be lost over the next 10 years.”

The bond elimination compounds a problem that was expected in the bill—the corporate tax rate cut. The bill proposes cutting the rate from 35 to 20-percent. This would ultimately lower the value of LIHTCs and thus the amount of equity available to developers for building low-income housing units.

Novogradac & Company’s analysis measured the effects of the elimination of the 4-percent LIHTC, the corporate tax cut, and change in inflation adjustments through out the tax code and found a reduction in LIHTC-financed units produced somewhere between 882,000 and 983,000 over 10 years.

The New York Housing Conference, in coordination with New York City and the State of New York, estimates that the combination of the corporate tax cut and the elimination of the 4-percent credit would cost New York alone $4.5 billion and 17,128 affordable housing units annually.

It could ultimately lead to as much as a 15-percent drop in the number of new affordable housing units, and that’s before taking into account the effects of eliminating private-activity bonds.

Private-activity bonds are used to fund a number of different public works, in addition to affordable housing units. Trump has actually proposed expanding the use of private-activity bonds in the past, as part of his push for increased spending on infrastructure projects, so this cut comes as a surprise. Treasury Secretary Steven Mnuchin actually advocated for “enhancing” private-activity bonds during his confirmation process.

The Joint Committee on Taxation estimates that elimination of private-activity bonds would save the federal government $38.9 billion over the next 10 years. That’s a drop in the bucket for a bill that the House estimates would add $1.5 trillion to the deficit over 10 years.

CURBED.COM

BY JEFF ANDREWS NOV 3, 2017, 5:00PM EDT

Eliminating Bonds Would Slash Affordable Housing.

Housing advocates say the loss of PABs would devastate LIHTC production by half.

The proposed elimination of private-activity bonds (PABs) would devastate the production and preservation of affordable housing across the country.

Roughly half of all low-income housing tax credit (LIHTC) developments utilize tax-exempt bonds and 4% credits, and losing the use of the bond program could mean roughly 60,000 fewer affordable homes are built or rehabilitated each year, estimate authorities.

Although the Republican House tax reform plan maintains the LIHTC program, the initial Nov. 2 proposal repeals PABs, which are used in conjunction with the 4% housing credit. The plan also seeks to lower the corporate tax rate from 35% to 20%, another move that could significantly reduce LIHTC investment.

“What the private-activity bonds provide is both reasonably priced construction and permanent financing, but they also come with the as-of-right 4% LIHTC,” says Rafael Cestero, CEO and president of the Community Preservation Corp. (CPC), a nonprofit affordable housing and community revitalization finance company based in New York City.

Approximately 50,000 to 60,000 affordable homes are produced with bond-financed 4% credits each year, reports the National Council of State Housing Agencies. Multifamily bonds without credit financing produce about another 10,000 affordable rental homes per year.

As a result, the repeal of tax-exempt bonds could mean the loss of more than 500,000 affordable homes over 10 years.

Novogradac & Co. estimates that all the different measures in the House tax reform legislation would reduce the total amount of LIHTC-financed affordable rental homes by nearly one million over 10 years.

“It would be a catastrophe,” says Bob Moss, principal and national director of governmental affairs at CohnReznick, a national accounting and advisory firm. “In New York alone, housing advocates project that [the state] will lose $4.5 billion in affordable housing investment, 17,000 affordable homes, and 28,000 jobs annually. The national impact of losing 50% of production is devastating, at a time when an estimated 25 million Americans are paying more than 50% of their monthly income in rent. It also eliminates a major tool for rebuilding in disaster-affected areas.”

In California, 4% LIHTC and tax-exempt bond financing was awarded to 182 developments with 19,418 affordable units last year.

In addition, PABs are used to create affordable homeownership opportunities for low- and moderate-income families, says Cestero, estimating that about 2,000 families in New York would not receive the long-term financing needed each year for their homes.

Prior to joining CPC, Cestero served as commissioner of the New York City Department of Housing Preservation and Development, the largest municipal affordable housing development and maintenance code enforcement agency in the nation.

“When the bill writers said, ‘Let’s get rid of private-activity bonds and keep the LIHTC,’ they didn’t understand they would be shutting down about 40% of affordable housing production,” says R. Lee Harris, president and CEO of Cohen-Esrey, a Kansas-based developer. “It was an unintended consequence.”

If the lawmakers truly want to get rid of private-activity bonds, they will come up with another way to deliver 4% LIHTCs, he says.

Other housing leaders were also quick to point out the impact of repealing the bond program.

“The proposed elimination of private-activity bonds jeopardizes the unprecedented commitment of Gov. Cuomo to provide safe affordable housing and combat homelessness across New York state,” says RuthAnne Visnauskas, commissioner of New York State Homes and Community Renewal (HCR). “You can’t take private-activity bonds and the tens of billions of dollars in private investment that they leverage out of New York's economy without negatively affecting our seniors, our veterans, and our rural and urban communities.

Since 2011, HCR has issued over $10.9 billion in low-cost tax-exempt bonds and leveraged another $13 billion in private capital to create and preserve more than 33,000 affordable multifamily units and finance affordable mortgages for more than 9,800 homeowners, according to Visnauskas.

"The current proposal to eliminate tax-exempt private-activity bonds would raise financing costs and devastate the housing market in nearly every community in New York state," she says. "We are continuing to work closely with our congressional delegation to protect this critical federal investment in affordable housing."

The House will begin its markup of the legislation known as the Tax Cuts and Jobs Act, and the Senate still has to release its version.

Advocates are urging affordable housing supporters to contact their members of Congress to support multifamily housing bonds.

Affordable Housing Finance

Donna Kimura

November 07, 2017

Donna Kimura is deputy editor of Affordable Housing Finance. She has covered the industry for more than a decade. Before that, she worked at an Internet company and several daily newspapers. Connect with Donna at dkimura@hanleywood.com or follow her @DKimura_AHF.

GOP's "Tax Cuts and Jobs Act" Trims Renewable Energy and Other Tax Credits.

On November 2, 2017, the House Ways and Means Committee unveiled its much anticipated tax reform bill titled the "Tax Cuts and Jobs Act" (the "House Plan"). The House Plan is a significant step by Republican lawmakers to fulfill a campaign promise to reform the United States tax code. Significantly, for solar, wind, and other renewable energy companies that have been scrambling to predict how proposed tax reform might affect their industries, the House Plan includes substantial modifications to existing renewable energy tax credits including the production tax credit ("PTC") and the investment tax credit ("ITC"). Specifically:

The PTC

The House Plan would permanently reduce the maximum PTC rate from 2.4 to 1.5 cents per kilowatt-hour–with no inflation adjustments going forward–for all projects that did not begin construction prior to the date the House Plan is enacted. It is possible that this reduction may be retroactive for projects that commence construction on or after November 2, 2017, the day on which the House Plan was released. Under current law, the PTC is scheduled to sunset in 2020; this schedule would remain unchanged in the House Plan.

Effective for all tax years–including years beginning prior to, on or after enactment of the House Plan–the House Plan would require a "continuous program of construction" from the date a facility begins construction to the date it is placed in service. The "continuous program of construction" requirement exists under current law and has been interpreted by the Department of the Treasury (the "Department") to permit several "safe harbor" time periods. At present, it is unclear whether the House Plan, if enacted, would effectively eliminate those safe harbors or whether the Department may issue them unchanged or substantially unchanged.

The ITC

The House Plan would align the expiration dates and phase-out schedules for different qualified energy properties and extend the ITC to certain other technologies. Solar energy, fiber-optic solar energy, qualified fuel cell, and qualified small wind energy property would be eligible for a 30% ITC if construction begins before 2020 and would be phased out for construction that begins before 2022 using the same schedule currently applicable to solar energy property. Qualified microturbine, combined heat and power systems, and thermal energy property would be eligible for a 10% ITC if construction begins before 2022. The permanent 10% ITC available for solar energy and geothermal property would be eliminated for all facilities if construction of such facility begins after 2027.

Similar to the PTC, the House Plan would also require a "continuous program of construction" until a facility is placed in service to meet the "beginning of construction" requirement to qualify for the ITC. Existing Department guidance regarding the continuous program of construction is currently applicable only to wind facilities intended to qualify for the PTC. As with regard to the PTC, it is not clear whether the Department will apply the same standard to projects intended to qualify for the ITC if the House Plan is enacted.

The good news for the renewable power industry is that the PTC and ITC survive under the House Plan, albeit with changes that may have a significant impact on the industry. Other tax incentives did not fare as well. For example:

Section 199 Domestic Production Activities Deduction

The Code Section 199 domestic production activities deduction or "DPAD" would be repealed effective for tax years beginning after 2017. This affects a variety of domestic manufacturers of a number of items, including solar panels, construction equipment, and software, as well as oil and gas producers.

New Market Tax Credits

New Market Tax Credits would be eliminated effective for tax years after 2017, but credits that would have already been allocated may be used over the course of up to seven years as contemplated under current law.

Historic Rehabilitation Credit

The rehabilitation credit for expenses incurred to rehabilitate old and/or historic buildings would be repealed. Under a transition rule, the credit would continue to apply to expenditures incurred through the end of a 24-month period of qualified expenditures that would have to begin within 180 days after January 1, 2018.

Enhanced Oil Recovery Credit

The enhanced oil recovery credit would be repealed effective for tax years after 2017.

Credit for Producing Oil and Gas from Marginal Wells

The credit for producing oil and gas from marginal wells would be repealed effective for tax years after 2017.

The House Plan is far from final, but it is moving very quickly. The House Ways and Means Committee Chair, Kevin Brady, has indicated that the House Republicans plan to pass the House Plan by Thanksgiving.

By Mary Burke Baker. Elizabeth C. Crouse, and Rachel D. Trickett

K&L Gates

Friday, November 3, 2017

Fitch: Tax Proposal May Add Fiscal Strain to US Public Finance.

Fitch Ratings-New York-06 November 2017: A tax reform proposal by Republicans in the U.S. House of Representatives could affect some states' and local jurisdictions' revenues if passed, says Fitch Ratings. The likelihood of the passage of this proposed legislation into law remains far from certain and will be subject to potentially key changes as it proceeds through the House and the rest of Congress.

The proposal could limit tax raising flexibility, particularly for the states that charge higher taxes, as it would substantially reduce the federal tax deduction for state and local taxes. This would cause an increase in the impact of state and local taxes, as they would be without an offsetting federal deduction. Residents in states with comparatively high taxes, such as California, Connecticut, Massachusetts, New Jersey and New York, would be more affected and may have less tolerance for higher taxes going forward. The proposed tax cuts for the higher-income taxpayers most likely to benefit from the current deduction for state and local taxes, including rate reductions and elimination of Alternative Minimum Tax, could somewhat offset this effect. Most states are not in a position to lower taxes in response to the federal tax increase due to tepid revenue growth and ongoing spending pressures.

If the proposed changes to the deduction of mortgage interest and the cap on the deduction for property taxes reduce the incentive to buy houses, assessed property values in areas with high average home prices could see lowered growth or even decline and reduce the amount of property tax local governments collect. This change could result in lower revenue growth prospects for local governments absent tax rate increases.

A proposed 1.4% excise tax on net income from the largest private colleges' endowments would be an incremental financial stress but would likely not have significant near-term credit effects on Fitch-rated colleges or universities. The impact would be narrow. For example, only approximately 140 endowments had funds in this range according to 'The Chronicle of Higher Education.' However, it could lower the incentives for donors to fund endowments and raise the possibility of higher and more onerous taxes on endowments in the future.

The potential elimination of private activity bonds (PABs) and 501(c)3 non-profit bonds would likely lower the interest in and feasibility of public-private partnerships, which have increasingly been used to procure transportation projects. Eliminating PABs would raise airport financing costs and possibly cause a reduction in private participation in water projects.

Eliminating the use of these bonds would also mean an incremental increase in borrowing costs and, eventually, slow issuance for the non-profit healthcare sector. Fitch would expect the increase in hospital borrowing costs to add pressure to the sector, but not result in downgrades.

Senate Bill Saves, Enhances PABs, but Eliminates Advance Refundings.

WASHINGTON – The municipal bond market would fare better in the Senate Republicans' tax reform proposal released Thursday, which would preserve private activity bonds and even enhance them. But advance refundings would still be terminated after this year.

Halting advance refundings after Dec. 31, which is also in the House tax reform bill, would generate $16.8 billion in tax revenue over 10 years, according to the Joint Committee on Taxation.

The proposal, which was released by Senate Finance Committee Chairman Orrin Hatch, R-Utah, on Thursday as a conceptual outline and will be debated by the panel in the coming week, would not only preserve private activity bonds but also eliminate the alternative minimum tax. Most PABs, except those issued for nonprofit entities, are subject to the AMT, which makes them less attractive to investors under current law.

Muni market organizations reacted positively to the retention of municipal bonds and PABs while pledging to try to persuade senators to preserve advance refundings, which Thomson Reuters estimated as representing almost 27% of the market last year.

"The fact that the Senate draft bill recognizes that private activity bonds are critical to building and maintaining the nation's infrastructure is good, and we will work to help the Senate reach the same conclusion when it comes to advance refunding bonds," William Daly, director of governmental affairs for the National Association of Bond Lawyers, said in a statement.

Mike Nicholas, CEO of the Bond Dealers of America, expressed a similar view. He applauded the Senate for "preserving the tax exemption on municipal bonds and for protecting private activity bonds which help finance housing, senior living facilities, hospitals, airports and the nation's infrastructure, among many other projects."

But Nicholas urged the Senate Finance Committee to remove its halt to advance refundings because it " simply allows municipal bond issuers the flexibility to reduce their cost of finance and frees up borrowing authority for additional capital improvement projects at a lower cost to the taxpayer."

The Municipal Bonds for America Coalition echoed the same sentiments, thanking the Senate Finance Committee for preserving municipal bonds and PABs while saying work needs to be done to fight the repeal of advance refundings.

MBFA Director Justin Underwood said termination of advance refunding "will only burden taxpayers and is in direct conflict to the stated objective of the Tax Cuts and Jobs Act. The MBFA, and its partners, will continue to make a strong coordinated effort on both sides of the Capitol to ensure the tax treatment of all municipal bonds is protected during tax reform."

The Senate outline also would lower the top income tax rate to 38.6% for high income earners, which is below the current effective top rate of 43.4% and the 39.6% top rate in the House bill. The current tap rate includes a 3.8% Obamacare tax on top of the 39.6% top income tax rate.

The Senate and House bills each would set the income threshold for their top rate at $500,000 for single filers and $1 million for married couples filing jointly. The current threshold is set to be $426,700 for individuals in 2018 and $480,050 for married couples filing jointly.

The Senate proposal also has a proration provision that would make tax-exempt bonds less attractive to property and casualty insurance companies relative to other fixed income investments, like corporate bonds. Insurance companies currently make up about 10% to 15% or the muni market, according to sources.

As expected, the Senate panel's proposal would fully repeal the federal deduction for state and local taxes, which would be harsher than in the pending House bill that would allow the deduction of up to $10,000 of state and local property taxes.

The Senate proposal would preserve the home mortgage interest deduction for loans of up to $1 million unlike the $500,000 loan cap on new borrowing in the House bill. But the Senate would eliminate the mortgage interest deduction for home equity lines.

Both measures pending in the House and Senate would hurt states, especially high-tax states like California, New York and New Jersey.

Emily Brock, director of the Government Finance Officers Association, described the elimination of the SALT deduction and advance refunding as "a one-two punch for state and local governments across the United States."

"It seems counter-intuitive to tear away the opportunity to realize substantial savings on debt service while also promoting the enhancement of public infrastructure," Brock said. "We look forward to helping Congress understand the impact of the plan on communities in both the short- and long-term."

The SALT deduction is used by more than six million California tax returns, California's Finance Director Michael Cohen said in a letter to his state's congressional delegation. The average deduction for state and local income taxes alone is nearly $16,000 per return, while state and local property taxes average less than $6,000 per return.

Seven New York House Republicans who "knew the elimination of SALT would be crippling," recently wrote a letter expressing their opposition to the tax bill, Rep. Joe Crowley, D-N.Y., said during the closing statements of members of the House Ways and Means Committee Thursday.

That committee approved its tax reform bill in a vote along party lines, sending it to the floor for passage that's expected before the congressional Thanksgiving recess.

Senate staffers who briefed reporters Thursday said their proposal was the result of five years of bipartisan work. "We feel this is a pretty middle of the road bill, "a senior staff member said.

The Senate bill is not yet in legislative language, which will be worked out during the Finance Committee's deliberations.

The Bond Buyer

By Brian Tumulty

November 09 2017, 11:52pm EST

Should Hospitals and Universities Be Able to Borrow Tax-Free? A $750 Billion Market Waits for the Answer.

Officials have contemplated ending tax exemption on private-activity bonds for several years to raise revenue

A team of private and public officials prepared a routine offer for investors last week: Buy tax-exempt bonds to pay for the widening of an interstate outside Washington, D.C.

But demand for the debt swelled after Republicans unveiled a proposal to end the tax-free benefits of these so-called private-activity bonds, according to an investor who participated in the offering. Prices on the interstate bonds have jumped 3% since the $353 million offering closed Friday morning, according to Municipal Securities Rulemaking Board data.

It didn’t take long for the House Republican tax plan to roil a roughly $750 billion corner of the municipal-debt market.

“Over the last three trading days, the types of bonds that are scheduled for potential elimination are being gobbled up,” said John Miller, co-head of Global Fixed Income at Nuveen Asset Management. “People are paying higher prices with some nervousness that these bonds will be very scarce going forward.”

For decades, nonprofits and certain for-profit firms have been able to raise money the same way that state and local governments do: by issuing tax-exempt bonds for projects perceived to have a public benefit. The proceeds from these private-activity bonds—which have averaged about $110 billion a year over the past decade—help pay for everything from hospitals, nursing homes, college dorms and lecture halls to charter schools, housing and highways.

Elected officials have been contemplating ending this tax exemption on private-activity bonds for several years as a way of raising additional revenue. Former House Ways and Means Committee Chairman Dave Camp floated the idea in 2014, and the current proposal states that $40 billion in additional tax revenue would be made available over the next decade if the exemption were removed.

It is possible private-activity bonds could remain tax free if changes are made to the Republican House plan as it makes its way through Congress. But now that an actual proposal is on the table, those who follow the municipal-bond market are predicting that market will shrink if the exemption is gone and it will be more difficult to attract private investment to infrastructure—a key goal of President Donald Trump’s 2016 campaign.

Analysts also expect a surge of tax-exempt borrowing by private companies and nonprofits rushing to take advantage of the exemption before it is gone.

“The whole thing is quite shocking,” said George Friedlander, managing partner at Court Street Group Research and a four-decade municipal-market veteran who has been tracking tax policy since the 1980s.

There was a time when private-activity bonds could be used to fund any project as long as a local-government official approved. Congress first established rules for private-activity bonds in 1968, offering a specific list of approved projects including airports and low-income housing. In the 1980s, Congress added new types of private-activity bonds and capped how much nonprofits could issue, but the cap was lifted in the 1990s.

The use of private-activity bonds has attracted criticism from some who argue that certain borrowers shouldn't be able to benefit from the exemption. A Congressional Budget Office report in December found that some projects financed with private-activity bonds "probably would take place without a subsidy" and others likely would not be worth the cost.

"We should question whether large hospitals and universities that take in hundreds of millions of dollars in revenues should able to borrow at tax-exempt rates," said Greg LeRoy, executive director of Good Jobs First, a research group on economic-development incentives.

Dennis Zimmerman, a former Congressional Budget Office analyst and the author of a book about private-activity bonds, said that having a federal tax benefit largely administered by state and local officials invites waste. If government directly subsidized these projects, he said "it would concentrate the mind of state officials about whether there were real social benefits here."

Others say smaller nonprofits such as museums or charter schools might have trouble accessing the corporate-bond market and have to rely on bank loans. "Or just let the roof leak," said Natalie Cohen, a senior analyst with Wells Fargo Securities,

"If we had to pay any additional interest on debt in the taxable market, that would eat into our pretty slim margins," said Randy Safady, chief financial officer at CHRISTUS Health. The company operates Catholic hospitals in six U.S. states and is hoping to issue more than $250 million in tax-exempt bonds in the coming year to rebuild patient rooms and a cooling system at its hospital in Corpus Christi, Texas.

A letter to the House Ways and Means Committee on Monday, signed by trade associations of hospitals, universities, engineers, airports, bond lawyers and public officials, said ending the tax exemption for private-activity bonds would "undermine vital projects."

Christopher Meister, executive director of the Illinois Finance Authority, which facilitated $3.6 billion in private-activity bonds in fiscal year 2017, said he and other officials are ready to expedite deals for nonprofits and other private-activity borrowers that want to get them done by Dec. 31.

"We are prepared to hold special meetings if there is that need," Mr. Meister said.

The Wall Street Journal

By Heather Gillers

Nov. 8, 2017 5:30 a.m. ET

[Hatch's Tax Proposal Seen Saving PABs and Advance Refundings, Killing SALT Deduction.]()

WASHINGTON – Senate Finance Committee chairman Orrin Hatch's tax reform proposal, which could be released as soon as Thursday, is expected to be kinder to municipal bonds and tougher on state and local governments, legislative and other sources said Wednesday.

As it stands now, the tax proposal from the Republican from Utah would not terminate private activity bonds, as has been proposed by House Republicans, Senate sources said. The proposal also might not end advance refundings, as is also proposed by the GOP bill pending before the House Ways and Means Committee.

But lobbyists and muni market participants cautioned that it is unwise to take anything for granted until the proposal is released and these provisions are in print. And legislative sources say nothing is final until the proposal — called the chairman's "mark" — is released.
At the same time, Sen. David Perdue, R-Ga., said during an interview on CNBC Wednesday that the chairman's tax proposal will completely repeal the federal deduction for state and local taxes. This would be a blow to state and local governments, especially high-tax states. The deduction is believed to the key to governments' ability to raise taxes.

A complete repeal of the deduction would be harsher than the provision in the bill in the House Ways and Means Committee, which would allow the deduction of up to $10,000 in annual property taxes. That bill would eliminate the deduction for state and local income and sales taxes. The committee is expected to complete voting on its tax reform bill on Thursday.

Meanwhile, Hatchsaid on Wednesday that Republican losses in the midterm elections could have an impact on tax reform legislation. "I mean, it could, because the elections went against the Republicans," the Washington Post quoted Hatch from a brief morning interview.

Democrats won a number of state and local seats. In gubernatorial races, Democrat Lt. Gov. Ralph Northam beat Ed Gillespie in Virginia and in Philip Murphy bested Republican Lt. Gov. Kim Guadagno in New Jersey.

Legislative experts said the tax reform bill in the Senate will be more critical than the one in the House, which could be good for muni bond supporters if PABs and advance refundings are maintained.

"At the end of the day, if there's a final bill, the Senate will have more influence in the outcome," said the source, who did not want to be identified.

Hatch and other Senate Republicans must carefully craft their tax reform proposal and ultimate bill to get 50 votes, assuming Vice President Mike Pence would cast a vote to break a tie. They cannot afford to lose more than two Republicans. The House would probably have to accept whatever bill, if any, the Senate passes in order to keep votes in the Senate.

BY SOURCEMEDIA | MUNICIPAL | 11/08/17 07:22 PM EST

Could the GOP Tax Plan be a Game Changer for Raiders' Las Vegas Stadium?

First, it would have to pass.

Only after the Trump tax plan completes a run through the congressional gauntlet — a tossup possibility at best, according to experts — would the finances for the Raiders stadium in Las Vegas significantly change.

A provision in the original version of the bill would prohibit the use of tax-exempt bonds to finance public stadium projects. Such bonds would make up the bulk of the $750 million in public funding approved by the Nevada Legislature in October 2016 to build the $1.9 billion project.

At its Thursday meeting, the Las Vegas Stadium Authority board will hear scenarios prepared by Clark County consultants on how the provision could affect the stadium project. Board Chairman Steve Hill dismissed chatter that the need to pay federal interest on stadium bonds could jeopardize the viability of the project.

“It matters, it’s meaningful,” Hill said. “But it is not debilitating.”

Hill said the authority might need to redirect about $3 million per year to pay federal interest if the law changed. That money otherwise would go toward paying interest on issued bonds or into the bond waterfall — a reserve fund. If that somehow led to the room tax funds designated for stadium construction coming up short, the Raiders would need to make up any shortfall.

“The way the law is written, we have one commitment, which is simply to provide the bond capacity that (the) 0.88 percent (tax) can bond,” Hill said. “If it isn’t $750 million, then the developers — the Raiders — would be responsible for closing that gap.”

Through a combination of loans from Bank of America and the NFL, as well as personal seat license and naming rights revenue from the stadium project, the Raiders plan to put $1.15 billion toward the construction of the stadium and a practice facility.

Had the Raiders and the stadium authority completed their required agreements by October as originally planned, they might have mitigated the impact of the provision by beginning bond issues before the law potentially takes effect. The four-month holdup, necessitated by a delay in completing the construction contract between the Raiders and contractors Mortenson and McCarthy, means bond issues will not begin until well into 2018.

The Raiders also must put in the first $100 million of their contribution toward the stadium before they can access any public money. Hill said the authority first will make a cash contribution from room tax revenues before using the rest of the funds toward bonds.

“Every month that we don’t issue bonds, we’re collecting room tax that could be used to buy down the bonding it would take to get to the $750 million,” Hill said. “If we collect $50 to $60 million in room tax, then we only need to bond $690 million. We’re not actually bonding $750 million.”

Room tax revenue fell short of projections for a second consecutive month after exceeding expectations in the first five months of collections. The seven-month total of $29.3 million outpaces anticipated revenue by just under $3 million.

While the tax proposal would create an estimated $200 million for the federal government over a 10-year period, its introduction could be related to the recent dustup between the president and the NFL over players kneeling during the national anthem.

“Why is the NFL getting massive tax breaks while at the same time disrespecting our Anthem, Flag and Country?” President Donald Trump tweeted last month. “Change tax law!”

Responding to a follow-up question at a press briefing later, White House press secretary Sarah Huckabee Sanders expounded on the president’s tweet.

“While the NFL may have given up its tax-exempt status a few years ago, it’s been well documented that billions of dollars continue to subsidize the construction and renovation of professional sports stadiums,” Sanders said. “If this industry is going to use money from American taxpayers to build the very fields they play on, then is it really too much to ask that they show respect for the American flag at the beginning of the game?”

No major action will be taken at the board's first meeting in two months. The planned October meeting was canceled in the wake of the Oct. 1 massacre.

The board will receive an update on the much-discussed community benefits plan being developed by the Raiders and community leaders. While the board does not hold formal approval power of the plan, it appeared as an item up for a vote on the October agenda. It is listed as an informational item this time.

"We just decided that there was enough that was new that we didn't want to put the board in a position of having to take any action on it," Hill said.

The board meets at 1 p.m. Thursday at the Clark County Government Center.

The Las Vegas Sun

By Adam Candee

Wednesday, Nov. 8, 2017 | 2 a.m.

There's One U.S. Market That Loves the GOP Tax Bill.

- **Ending private activity bonds may reduce supply as much as 40%**
- **Calendar bulks up as issuers rush prohibited deals to market**

Yesterday a man called and asked why it was so hard to find California municipal bonds.

He referred to himself not as an investor but a collector, which isn't the first time someone has likened the municipal market to numismatics or philately, where you have to know a lot about the subject at hand. I told him the objects of his affection were going to get simpler, but rarer, too.

It's all the result of the tax deliberations in Congress. The lower-house version of the GOP tax reform plan would effectively throttle muni-bond sales in years ahead, and buyers — or "collectors" like my caller yesterday — are scooping up the existing securities in anticipation of this shortage. That has triggered a torrid rally for the sector, now up 0.61 percentage points month-to-date, a move that stands in stark contrast with the sell-offs in stocks and the dollar that the tax debate has stoked.

"If this plan is implemented in its current form," wrote analysts led by Vikram Rai at Citigroup in a piece published on Nov. 8, of the House GOP tax reform plan, "municipal issuance could shrink and tax-exempt issuance will shrink dramatically thus increasing its scarcity value."

The House version of tax reform calls for an end to tax credit bonds, tax-exempt stadium finance, advance refundings and private activity bonds. Which means at least one-third and perhaps as much as 40 percent of the municipal market issuance would end with it.

The Senate version of tax reform, released Thursday night, is silent on everything except advance refundings, which it wants to abolish, too.

How much might municipal bond sales fall? Mikhail Foux, Clare Pickering and Mayur Patel at Barclays were the first ones to make a prediction in their report on November 8: "If curtailing tax-exempt issuance becomes permanent, the total 2018 supply drops to $250 billion to $270 billion and the tax-exempt portion of it gets even smaller, due to a dramatic increase in taxable muni issuance to $70 billion-$80 billion."

To put this in perspective, the last time long-term municipal sales were anywhere near $250 billion was 2001, when they totaled $261 billion, according to data compiled by Bloomberg. For this year so far, about $313 billion has been issued.

The falloff in new sales may occur even without tax reform being enacted. If the House passes H.R. 1, its version of tax reform, the effective dates for doing away with advance refundings and private activity bonds is Jan. 1, 2018. After that date, bond lawyers won't be able to give unqualified opinions about the tax-exempt status of new advance refundings and private activity bonds.

It's no wonder that the problem is especially acute in high-tax states like California and New York, where investors face the loss of their state and local tax deductions. The municipal market, or what remains of it, will be one of the only ways to shelter cash from taxes.

Over the short-term the rally in municipals may be delayed a bit. The new deal calendar seems to be fattening up as more issuers rush private activity and advance refunding deals to market before the end of the year.

Bloomberg Markets

By Joe Mysak

November 10, 2017, 8:01 AM PST

BDA and ASA Urge Congressional Leadership to Preserve Vital Financing Tools.

Read the letter.

NOVEMBER 7, 2017

Public Finance Network Opposes Bond Provisions in H.R. 1

The Public Finance Network, of which NASACT is a member, recently sent a letter to House Ways and Means Committee Chairman Kevin Brady (R-TX) to express opposition to provisions in H.R. 1 that eliminate financing tools used to provide critical investments in infrastructure and save taxpayer money.

The group urged the committee to reconsider two specific provisions:

- The repeal of the ability to advance refund municipal bonds.
- The termination of the ability to use private activity bonds (PABs).

View the full letter.

To learn more, contact NASACT's Washington office at (202) 624-5451.

The following organizations make up the Public Finance Network:

- Government Finance Officers Association
- United States Conference of Mayors
- National Association of State Treasurers
- National Association of Counties
- National League of Cities
- American Hospital Association
- Airports Council International – North America
- National Community Development Association
- American Public Power Association
- International Public Management Association for Human Resources
- National Association of College and University Business Officers
- American Society of Civil Engineers
- National Association of Health and Educational Facilities Finance Authorities
- Large Public Power Council
- National Association for County Community and Economic Development
- National Association of Local Housing Finance Agencies
- National Association of Bond Lawyers
- National Association of Municipal Advisors
- National Council of State Housing Agencies
- National School Boards Association
- Association of American Medical Colleges
- International Municipal Lawyers Association
- American Public Works Association
- National Association of Towns and Townships
- National Association of State Auditors, Comptrollers and Treasurers
- National Association of Regional Councils

Monday, November 6, 2017

Say Goodbye to Muni Deals Like These If Tax Bill Is Enacted.

Take a look at the municipal fixed rate calendar this week and mark off the deals that would no longer be done on a tax-exempt basis, if the House Republicans have their way. It is a melancholy exercise.

Of the $301 billion in long-term, fixed-rate municipal bonds sold so far this year, I estimate that at least one-third would no longer be allowed, between advanced refundings, stadium bonds, private-activity bonds and tax-credit bonds. I'd like to be more precise, but I don't believe any of the numbers I've seen, which is very muni.

There's Clark County, Nevada, selling $107.8 million in general obligation bonds. The proceeds would "advance crossover refund the county's series 2009B GO limited-tax flood control bonds," according to S&P Global Ratings. I really wanted to explain the intricacies of a crossover refunding, but sorry, Clark County. No more advance refunding.

Then there's the Louisiana Public Finance Authority. The authority wants to sell $50.8 million in tax-exempt bonds for Tulane University in New Orleans to current refund some bonds it sold back in

2007. Denied! As a nonprofit 501c3 institution, Tulane will no longer be allowed to borrow in the tax-exempt market.

Those $36 million in taxable bonds the university wants to sell for improvements? Those are okay.

The Oregon Facilities Authority is selling $66.7 million in revenue bonds for Reed College, the liberal arts school in Portland, Oregon, to build a new dorm and refund some bonds whose first redemption date is in 2020. Sorry! Reed College is a nonprofit, and these would not be allowed to be sold on a tax-exempt basis in the new year.

South Dakota's Housing Development Authority is selling $75 million in mortgage bonds. The authority purchases mortgage loans from lenders at the time the lender makes a commitment to a purchaser or builder of a home. Since its founding in 1974, it has purchased 72,113 qualified mortgage loans totaling $4.5 billion. These would seem to be swept up in the elimination of private activity bonds, no?

The Ohio Air Quality Development Authority plans to sell $210 million in tax-exempt revenue bonds to help the Pratt Paper company build a mill to recycle waste paper and corrugated containers in Wapakoneta, Ohio.

The unrated deal is being sold in minimum denominations of $100,000, reflecting just how hard it is to build mills that turn one thing into another thing. All I can say is, if you can stomach the risk factors, better get these now, because this sort of deal will disappear on Jan. 1. Private activity bonds!

Bloomberg Markets

By Joe Mysak

November 7, 2017

The Tax Bill Would Take Big Bite Out of the Muni Market.

- Private activity bond prohibition would hit nonprofits hard
- Reform could reduce annual sales by up to 40 percent

To appreciate the enormity of the Republicans' assault on the municipal debt market, you have to go to the Municipal Securities Rulemaking Board's glossary and look at the definition of "Private Activity Bond."

And there you'll find bonds sold for airports, docks and "certain other transportation-related facilities; water, sewer and certain other local utility facilities," single- and multi-family mortgages, blight redevelopment and student loans.

And then: 501c3s, which means museums, hospitals, colleges and universities.

There had been at least some confusion on this point. On Friday I read a research note that questioned whether 501c3 nonprofits were included. After all, the list of bond "reforms" in the new tax bill only listed prohibitions on tax credit bonds, stadiums, private activity bonds and advance refundings, without specific definitions. But the statutes alluded to in the text make it clear that it would affect all of the above.

When the bill was unveiled on Thursday, I estimated that it would eliminate between 20 percent and one-third of the market. That was an unscientific calculation, because munis resist categorization.

There are advance refundings, and then there are issues that combine advance and current refundings. There's higher education, but you can't combine that with advance refundings, because some of those higher ed deals were advance refundings, so there'd be some double counting. I wasn't the only one to encounter this difficulty.

But what I will say now is that the new tax proposal would appear to blow up at least one-third of the municipal market, and possibly as much as 40 percent, depending on the direction of interest rates.

And then I couldn't help but thinking of Santiago's fish in "The Old Man and the Sea."

Bloomberg Markets

By Joe Mysak

November 6, 2017, 9:21 AM PST
