

HAWKINS ADVISORY

TAX-EXEMPT BOND PROVISIONS INCLUDED IN THE INFRASTRUCTURE INVESTMENT AND JOBS ACT

The Infrastructure Investment and Jobs Act (the “Act”) was signed by President Biden on November 15, 2021. The Act adds two categories of tax-exempt bonds that may be issued for exempt facilities and increases the amount of tax-exempt bonds authorized to be issued for one existing category of tax-exempt bond.

1. Private Activity Bonds for Qualified Broadband Projects.

This provision allows certain broadband projects to be financed with the proceeds of private activity bonds, specifically in rural areas where a majority of households lack access to broadband.

A “qualified broadband project” is one that results in internet access at speeds of not less than 100 megabits per second for downloads and 20 megabits per second for uploads. Such access is to be provided to residential and commercial locations in which, prior to the project, at least 90 percent of such residential and commercial locations were either not served by a provider of broadband services or were served by a broadband provider at speeds of less than “minimum speeds”, as defined herein. The project must serve areas that comprised one or more census block groups in which less than 50 percent of the households had fixed terrestrial broadband service which delivered internet access at less than “minimum speeds”.

“Minimum speeds” are speeds of at least 25 megabits per second for downloads and at least 3 megabits per second for uploads.

Prior to the issuance of a tax-exempt private activity bond for a qualified broadband project, the issuer must (1) notify each broadband service provider providing service in the area to be served by the project of the project and its intended scope and (2) request the provider to supply, within 90 days of the request, information regarding the provider’s ability to deploy, manage, and maintain a broadband network capable of providing gigabit capable internet access to residential and commercial locations.

If the qualified broadband project involves a private business use, 75 percent of the bond is exempt from the volume cap requirement. If all of the property of a qualified broadband project is owned by a governmental unit, no volume cap is required.

These provisions apply to bonds issued after December 31, 2021.

2. Private Activity Bonds for Carbon Dioxide Capture Facilities.

This provision allows carbon capture and direct air capture technologies to be financed with the proceeds of tax-exempt private activity bonds. Carbon capture removes carbon dioxide from an emissions stream at a power plant or industrial facility, reducing emissions from energy-intensive industries. Direct air capture is an innovative emerging technology that removes carbon dioxide directly from the atmosphere. These technologies are expected to reduce emissions and protect the environment while continuing the use of natural resources. The cost of first generation facilities is significant; the applicable provisions of the Act are intended to encourage commercial deployment by allowing such facilities to be financed with the proceeds of tax-exempt private activity bonds, thus bringing costs down.

Sales of carbon dioxide produced by governmentally owned qualified carbon dioxide facilities will not constitute a private business use.

75 percent of a tax-exempt bond issued to finance qualified carbon dioxide capture facilities is exempt from the volume cap requirement.

These provisions apply to bonds issued after December 31, 2021.

3. Increase in National Limitation Amount for Qualified Highway or Surface Freight Transportation Facilities.

This provision increases the current cap of tax-exempt highway or surface freight transfer facility bonds from \$15 to \$30 billion. Currently, \$14,989,529,000 of the \$15 billion cap has been issued or allocated. Increasing the cap will allow state and local governments to enter into additional public-private partnerships to supplement future surface transportation projects with private investment.

This provision is effective for bonds issued after November 15, 2021.

Any questions regarding the foregoing may be directed to a member of the Hawkins Delafield & Wood LLP Tax Department.

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