Ballard Spahr LLP

KEY PUBLIC FINANCE PROVISIONS OF THE HOUSE AND SENATE TAX REFORM BILLS

Proposal	Senate Bill	House Bill	Revenue Effect
Private Activity Bonds	-No change to rules for Qualified Private Activity Bonds (PABs) -Repeal of Alternative Minimum Tax (AMT) (i) may make private activity bonds (other than 501(c)(3) bonds) more valuable because income derived from such bonds will no longer be included in computing AMT and (ii) may make 501(c)(3) bonds comparatively less valuable, compared to other private activity bonds, because their status as AMT-exempt will no longer impact investor decisions	-Tax Exemption for PABs eliminated for bonds issued after 2017 -No transition relief so interest on PABs issued after 2017 would be taxable to bondholders, including (1) outstanding PABs that are subsequently deemed reissued because of significant modifications to the terms of the bonds, (2) bonds issued to refund outstanding tax-exempt PABs, and (3) draws made after 2017 on outstanding PABs issued as bonds draw-down bonds Effective Date: Bonds issued on or after January 1, 2018	$38.9 billion over 10 years for House bill

Observations: Section 103 of the Internal Revenue Code establishes two broad categories of tax-exempt bonds: governmental bonds issued by a state or political subdivision thereof to finance government facilities; and qualified private activity bonds (PABs) in which the proceeds of a governmental issue are loaned to a private entity or 501(c)(3) organization for specific capital projects, including facilities of 501(c)(3) organizations, affordable housing projects, airports, docks, wharves and high-speed intercity rail facilities, among others, or loaned to individuals to finance student loans or single-family mortgages. Nearly $2 out of every $3 derived from private activity bonds finances 501(c)(3) organizations, including hospitals, colleges and universities, according to IRS data.

The elimination of PABs would have a detrimental effect on the municipal market and important public purpose projects. While the Senate Finance Committee's proposal does not propose termination of private activity bonds, in its initial tax-reform bill, the Tax Cuts and Jobs Act (H.R. 1), approved by the House Ways and Means Committee, terminates private-activity bonds after 2017 to pay for tax cuts elsewhere in the bill (most notably, a 43% top-line corporate tax cut). The Senate has chosen other "pay-fors," including elimination of all state and local tax (SALT) deductions, and it remains to be seen how the House and Senate will reconcile their different budget priorities. If Senators are forced to accept the House compromise on SALT deductions or other deficit busters, they will need to look for other "pay-fors" elsewhere and private activity bonds could once again be on the table.

Proposal	Senate Bill	House Bill	Revenue Effect
Advance Refunding Bonds	Eliminated Effective for bonds issued after December 31, 2017	Same	(1) $17.3 billion under the House bill; and (2) $16.8 billion under the Senate bill

Observations: A refunding is an issuance of bonds for the purpose of redeeming outstanding bonds and a refunding is an advance refunding if the refunding bond is issued more than 90 days before the redemption of the bond it refunds. Advance refunding allows governmental issuers and 501(c)(3) organizations (and no other obligors on private-activity bonds) to restructure eligible tax-exempt debt by refinancing outstanding debt at a lower rate or spreading debt service payments over a longer period of time. This technique allows governmental and 501(c)(3) organizations to obtain the benefit of lower interest rates when the outstanding bonds are not currently callable but may be redeemed prior to maturity with proceeds of bonds issued at a lower interest rate. The federal tax expenditure arises from the fact that both the refunded bonds and the refundings are outstanding and generating interest income that is exempt from federal taxation for the same project.

Since savings from advance refunding are a function of prevailing interest rates and the particular redemption features of an obligor's outstanding debt, the ability of governmental and tax-exempt entities to quickly change advance refunding schedules in response to tax policy is fairly limited. But issuers and borrowers planning on advance refundings in early 2018 should at least consider the economics of a late 2017 issuance, given that both House and Senate tax reform bills would

repeal advance refundings after 2017.			
Proposal	**Senate Bill**	**House Bill**	**Revenue Effect**
Tax-Credit Bonds	-No change to authority to issue certain types of taxable bonds providing a tax credit to holders or an interest subsidy payment to the issuer from the federal government in cases where statutory authority still exists to issue bonds and there is still unused volume cap	-Termination of authority to issue any new tax credit bonds. Tax credits and direct subsidy payments on outstanding tax credit bonds continue to be available. Effective for tax credit bonds issued after 2017	$500 million for the House bill
Stadium Bonds	-No change to existing treatment of tax exempt status of interest on bonds issued to build sports stadiums	-Repeals tax exemption for all bonds, the proceeds of which are used to build "professional sports stadiums." -Defines a "professional sports stadium," subject to the rule, as any facility that is used as a stadium or arena for professional sports exhibitions, games or training	$200 million for the House bill

		for at least five days in any calendar year. Effective for bonds issued after November 2, 2017	

Observations: The House bill's retroactive effective date of November 2, 2017, for otherwise tax-exempt bonds used to build sports stadiums is unusual. Under this provision, tax-exempt bonds would no longer be available to build any facility, including a state or private college athletic stadium, used for professional sports exhibitions, games, or training for five days in any calendar year. This is a broad provision, encompassing not only governmental bonds issued with general taxes repaying the debt, but also apparently picking up facilities financed by 501(c)(3) bonds issued by colleges and universities to finance their athletic facilities that may rent the facilities to professional sports organizations on days when they are not being used for college athletic events.

The Senate's bill does not currently include this prohibition, which has a cumulative revenue effect of only $700 million over 10 years, in a $1.5 trillion bill.

Other Proposals Indirectly Affecting Public Finance

Proposal	Senate Bill	House Bill	Revenue Effect
Low-Income Housing Tax Credits (LIHTC)	-LIHTC ceiling would continue to be available for low-income housing projects at least 50% financed with the proceeds of tax-exempt private activity bonds.	-No 4% LIHTC would be available to projects at least 50% financed by § 142(d) exempt facility bonds. -No increase in LIHTC ceilings allocated to states and the District of Columbia, which would be the only method of obtaining tax credits to pay for affordable-housing projects	JCT provides no revenue effect from this curtailment of LIHTCs

Observations: Low-income housing tax credits (LIHTCs) under section 42 of the Internal Revenue Code generally are accessed in one of two ways. First, each state and the District of

Columbia has an LIHTC ceiling, which, as of 2017, was equal to the greater of (a) $2.35 multiplied by the state's population or (b) $2.71 million. Second, low-income housing projects automatically qualify for a 4% LIHTC allocation over 10 years (the 4% LIHTC) without regard to the state housing credit ceiling if at least 50% of the project's aggregate basis is financed by tax-exempt residential rental facility bonds under section 142(d). For calendar year 2017, each state and the District of Columbia had a tax-exempt private activity bond cap for all private activity bonds of at least $100 per person (or 42 times the LIHTC ceiling for credits allocated through the housing authority). As a result, many jurisdictions met their affordable housing needs by relying on the 4% LIHTC available to developers using private activity bonds to finance projects, which the House bill would make unavailable. The Senate bill would retain private activity bonds and would not affect this important means for jurisdictions to obtain a federal subsidy for low-income housing projects through the tax credits and the reduced borrowing cost.			
Proposal	**Senate Bill**	**House Bill**	**Revenue Effect**
Repeal of alternative minimum tax (AMT)	Repeal of AMT for individuals and corporation for taxable years beginning after December 31, 2017	Same	(1) $695.5 billion for individuals and $40.3 billion for corporations over 10 years for the House bill; and (2) $706.7 billion for individuals and $40.3 billion for corporations over 10 years for the Senate bill
Observations: Repeal of the Alternative Minimum Tax (AMT) may (i) make outstanding PABs (other than 501(c)(3) bonds) more valuable because income derived from such bonds will no longer be included in computing AMT and (ii) may produce lower interest rates on newly issued PABs (assuming they survive tax reform) more competitive because the market will not add an automatic increase to the rate because of the potential a holder may be subject to AMT.			