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Tax Reform Could Indirectly Eliminate Direct Pay Subsidy For Outstanding Tax Credit Bonds

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*By: **R. Todd Greenwalt**, **Victoria N. Ozimek** and **Brian P. Teaff***

An article released by *The Bond Buyer* on November 14, 2017, reports that, if Congress were to pass the proposed legislation released by the ***Committee on Ways and Means*** of the U.S. House of Representatives on November 2, 2017 (the "House Bill"), issuers of outstanding tax credit bonds that receive direct subsidy payments could lose the entire amount of such payments due to the sequestration requirements that would result from the estimated increase in the federal deficits. This indirect gutting of the benefits associated with direct pay tax credit bonds (including build America bonds, qualified school construction bonds, qualified zone academy bonds and qualified energy conservation bonds, among others) comes in addition to the House Bill's elimination of any tax credit bonds after the end of 2017.

The Bond Buyer points to a ***letter*** sent by the Congressional Budget Office Director (the "CBO Letter") concluding that, if the House Bill is enacted, amounts required to be sequestered under the "Pay-As-You-Go Act of 2010" will exceed the amounts available to be sequestered. This seems to indicate that all of the available amounts, which include the direct subsidies paid to issuers of tax credit bonds, may be "zeroed out" and not paid.

Irrespective of whether the House Bill is passed in its proposed form, the CBO Letter is a reminder of how tax reform may indirectly affect issuers of outstanding tax-advantaged debt. It is impossible to predict the effect that any final tax reform efforts will have on tax-advantaged debt, including the amount of direct pay subsidies, as it depends on what tax reform package, if any, passes and, in the case of amounts subject to sequestration, the effect it has on the deficit or any legislative efforts to ameliorate the effects of the Pay-As-You-Go Act. However, issuers should be aware that not all of the consequences will be spelled out within the four corners of the legislation.

Bracewell will continue to closely monitor and communicate new developments relating to Congressional tax reform efforts. It continues to be up to issuers and other beneficiaries of municipal bonds to raise awareness of the negative effect of these proposals. In that regard, our Public Finance team, as well as the members of Bracewell's D.C.-based ***Policy Resolution Group***, are ready to assist.

For more information, please contact any of Bracewell's Public Finance Tax Attorneys (***Charlie Almond***, ***Steve Gerdes***, ***Todd Greenwalt***, ***Victoria Ozimek***, or ***Brian Teaff***).