

INSIGHTS

Senate Finance Committee Mark Eliminates Advance Refundings, Silent on Private Activity Bonds

November 10, 2017

By: [R. Todd Greenwalt](#), [Victoria N. Ozimek](#) and [Brian P. Teaff](#)

Overview

On November 9, 2017, the [U.S. Senate Finance Committee](#) released the [Description of the Chairman's Mark of the "Tax Cuts and Jobs Act"](#) (the "Senate Finance Committee Mark"), which sets forth a summary of the proposed tax reform legislation to be marked up during the week of November 13, 2017. Like 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"), ***the Senate Finance Committee Mark would prohibit the tax-exempt advance refunding of governmental bonds and qualified 501(c)(3) bonds after December 31, 2017.*** Unlike the House Bill, however, the Senate Finance Committee Mark does not specifically address the elimination of tax-exempt private activity bonds and tax credit bonds or the ability to finance professional sports stadiums on a tax-exempt basis.

The Senate Finance Committee Mark's silence regarding private activity bonds, tax credit bonds and bonds to finance professional stadiums may be an indication that they are "safe" from repeal (at least from the Senate's perspective). Nevertheless, it is important for issuers and other beneficiaries of tax-exempt and tax-advantaged financing that oppose the provisions of either or both the House Bill and Senate Finance Committee Mark to continue their vigorous efforts to work together to let members of Congress and the current administration know their opposition and the impact of these proposed measures. In the political process, as in sports, the words of Yogi Berra ring true - "it ain't over 'til it's over."

The mark-up process is likely to move fast, as members of Congress and the current administration have expressed a strong desire for the President to sign final tax reform into law by the end of the year. Thus, the time is now to let members of Congress and the current administration know the impact that these measures would have on public infrastructure projects and to voice opposition to provisions of the Senate Finance Committee Mark and the House Bill.

Summary of Certain "At Risk" Tax-Exempt Bond Provisions

Advance Refundings

Both the Senate Finance Committee Mark and the House Bill would eliminate 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 after December 31, 2017. Eliminating advance refundings would significantly limit the flexibility of issuers and borrowers to lock-in debt service savings, restructure debt service, or to achieve relief from unfavorable financing terms.

Advance refundings are most often used to realize interest rate savings when market rates go down. For tax-supported debt, those interest rate savings can be passed on to local citizens, decreasing their overall tax burden. For revenue supported debt, the interest rate savings allows the issuers to devote savings to other needs. As reported by *The Bond Buyer* on November 9, advance refundings generated over \$3 billion in savings for governmental issuers (and, thus, taxpayers) in just the State of Florida over the past ten years. This single-state number shows how important advance refundings can be to state and local governments that are providing essential infrastructure to their citizens.

Private Activity Bonds

Unlike the House Bill, which would entirely eliminate tax-exempt private activity bonds issued after December 31, 2017, the Senate Finance Committee Mark is silent on the issue. If the Senate's silence is to be interpreted as implicit support for private activity bonds, this development is encouraging. However, it is not the time to breathe a sigh of relief because anything can happen as the legislative process moves forward. Issuers and other beneficiaries of tax-exempt debt must continue to emphasize the importance of private activity bonds in bringing essential infrastructure projects to the public.

Private activity bonds finance infrastructure projects that **directly** benefit the general public on daily basis, including nonprofit hospitals, nonprofit educational institutions (including charter schools), affordable multifamily and single family housing, and airports. Without private activity bonds, all of these projects would be more expensive and, in many cases, would result in the projects becoming economically unfeasible. That state and local governments have leveraged private participation in the infrastructure projects – a goal that has been promoted by the current administration – should not diminish the importance these infrastructure projects have for the general public.

Stay Tuned and Continue to Express Importance of Tax-Exempt Bonds

Bracewell will continue to closely monitor the Senate Finance Committee Mark and the House Bill and communicate new developments. Members of Congress are unlikely to drop the provisions in the Senate Finance Committee Mark and the House Bill on their own initiative. 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. There are still opportunities in the process to remove these provisions, but things are poised to move quickly.

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