

Congressional Tax Bills Threaten Tax-Exempt Bonds for Non-Profit Hospitals

November 15, 2017

As the Senate continues to work to modify the House version of a sweeping tax reform bill, non-profit hospitals face having to pay higher interest rates to borrow if certain types of tax-exempt bonds are eliminated.

The U.S. House of Representatives on Nov. 2, 2017, introduced its Tax Cuts and Jobs Act (the "House Bill") proposing to eliminate all issuances of tax-exempt "private activity bonds," effective Dec. 31, 2018.

As presently drafted, the Internal Revenue Code permits certain types of "private activity bonds," including bonds issued for the benefit of 501(c)(3) entities, to be issued on a tax-exempt basis, despite use of the proceeds of those bonds by non-governmental entities. If "private activity bonds" are eliminated, non-profit hospitals will lose their ability to borrow at lower, tax-exempt interest rates. This includes refinancings or "refundings" of outstanding tax-exempt bonds. Additionally, even if private activity bonds were not eliminated, the House Bill would not allow any issuers to advance refund existing debt on a tax-exempt basis (i.e. refundings with an escrow period over 90 days).

The U.S. Senate Finance Committee on Nov. 9, 2017, released its proposed tax bill (the "Senate Bill"), which is not as harmful to non-profit hospitals. The Senate Bill would not eliminate "private activity bonds," however, like the House Bill, the Senate Bill would no longer permit "advance refundings." When interest rates are low, the ability to advance refund existing bonds at lower interest rates saves issuers significant debt service costs. Many of our hospital clients have taken advantage of this refinancing tool in recent years, and have realized important savings as a result.

Although there will undoubtedly be changes to both bills as they move through legislative process, and the outlook on a comprehensive tax reform package is highly uncertain at this point, we are encouraging our non-profit hospital clients to contact their lobbyists and Congressional representatives to make the case for the preservation for "private activity bonds" and "advance refundings."

We also encourage you to contact any member of our Healthcare Finance Team with questions relating to the proposed legislation, and the impact of the legislation on your outstanding tax-exempt bonds and future debt issuances.