

HAWKINS ADVISORY

TAX ADVANTAGED BOND PROVISIONS IN HOUSE AND SENATE TAX BILLS

On November 9, 2017, the Ways and Means Committee of the United States House of Representatives approved a bill containing, among other things, sweeping changes to the provisions of the Internal Revenue Code (the "Code") affecting tax-advantaged bonds issued after December 31, 2017, including the elimination of the tax-exemption for interest on private activity bonds and advance refunding bonds and the elimination of tax credit bonds (the "House Bill"). On the same date, the Senate Finance Committee released a description of the bill it plans to consider, which contains significant, but less sweeping, provisions affecting tax-advantaged bonds (the "Senate Bill"). The following table sets forth the provisions of the House Bill and the Senate Bill affecting such bonds:

House Bill	Senate Bill
<p>PRIVATE ACTIVITY BONDS</p> <p>Terminates the ability to issue private activity bonds after December 31, 2017 by repealing:</p> <ul style="list-style-type: none"> • Code Section 142: exempt facility bonds (including airports, docks and wharves and multifamily residential housing) • Code Section 143: qualified mortgage bonds and qualified veterans mortgage bonds • Code Section 144: qualified small issue bonds; qualified student loan bonds; and qualified redevelopment bonds • Code Section 145: qualified 501(c)(3) bonds (used to fund property for not-for-profit hospitals, nursing homes, colleges, universities, cultural institutions and charter schools) • No transitional rule is included • Repeal would preclude issuance of currently qualified private activity bonds to fund new money projects or refund outstanding bonds • Changes after December 31, 2017 to bonds or security provisions that result in a reissuance would cause outstanding private activity bonds to be considered refundable and therefore taxable 	<p>PRIVATE ACTIVITY BONDS</p> <p>No corresponding provision</p>
<p>REPEAL OF \$15 MILLION CAP</p> <p>Repeals requirement that governmental bonds obtain private activity bond volume cap in respect of private business use in excess of \$15 million of the proceeds of the issue where more than \$15 million of such bonds are payable from or secured by property used in a private business use</p> <p>Applies to large issues of governmental bonds</p>	<p>REPEAL OF \$15 MILLION CAP</p> <p>No corresponding provision</p>
<p>ADVANCE REFUNDINGS</p> <p>Terminates issuance of advance refunding bonds after December 31, 2017 (current law permits advance refundings of governmental bonds and qualified 501(c)(3) bonds)</p> <ul style="list-style-type: none"> • No transitional rule is included 	<p>ADVANCE REFUNDINGS</p> <p>Same as House Bill</p>

House Bill	Senate Bill
<p align="center">STADIUM FINANCINGS</p> <p>Terminates issuance after November 2, 2017 of bonds if all or any part of an issue is used to finance or refinance a professional sports stadium</p> <ul style="list-style-type: none"> Professional sports stadium is defined as property (and any appurtenant real property) if used during at least five days in any calendar year as a stadium or arena for professional sports exhibitions, games or training This prohibition would apply even to bonds, if any, that were sold prior to, but not issued until after, November 2, 2017; and would include bond issues any portion of the proceeds of which were applied to finance any stadium if the 5-day professional use rule described above is met. No transitional rule is included 	<p align="center">STADIUM FINANCINGS</p> <p>No corresponding provision</p>
<p align="center">TAX CREDIT BONDS</p> <p>Terminates issuance of tax credit bonds after December 31, 2017, including clean renewable energy bonds, new clean renewable energy bonds, qualified forestry conservation bonds, qualified energy conservation bonds, qualified school construction bonds and qualified zone academy bonds</p> <ul style="list-style-type: none"> No transitional rule is included 	<p align="center">TAX CREDIT BONDS</p> <p>No corresponding provision</p>
<p align="center">ALTERNATIVE MINIMUM TAX</p> <p>Repeals the alternative minimum tax and applies to taxable years beginning after December 31, 2017</p> <p>Under current law, interest on private activity bonds issued after 1986, other than qualified 501(c)(3) bonds, certain housing bonds and bonds issued in 2009 and 2010, is subject to the individual and corporate alternative minimum tax. In addition, interest on governmental bonds and 501(c)(3) bonds may be included in the adjusted current earnings of corporations for purposes of computing a corporation's alternative minimum tax liability.</p>	<p align="center">ALTERNATIVE MINIMUM TAX</p> <p>Repeals the alternative minimum tax for taxable years beginning after December 31, 2017</p>

Ancillary Effects of Elimination of Private Activity Bonds and Advance Refunding Bonds

The provisions eliminating private activity bonds, tax credit bonds and advance refundings would prohibit the issuance of any such category of bonds after December 31, 2017. This would include new money issues, current refundings, advance refundings and reissuances. While under current law, modifications to bond documents that result in a reissuance are treated as a current refunding of such bonds, document changes after December 31, 2017 that result in a reissuance of private activity bonds will cause interest accruing on such bonds after the reissuance to be taxable. Interest on draws made after December 31, 2017 in respect of outstanding drawdown obligations would be treated as taxable. See Notice 2010-81 limiting the use of such borrowing vehicles in connection with the expiring provisions of the American Recovery and Reinvestment Act of 2009.

Interaction with other provisions

The Low Income Housing Tax Credit program provides two types of credits for developers willing to put affordable housing units in their projects—a 9 percent credit and a 4 percent credit. In general, the 4 percent credit can only be claimed for a project if 50 percent or more of the aggregate basis of the project is funded with proceeds of tax-exempt multi-family housing bonds to which private activity volume cap is allocated. Termination of the ability to issue qualified private activity bonds for multi-family housing projects would effectively terminate the 4 percent Low Income Housing Tax Credit.

The elimination of private activity bonds, including 501(c)(3) bonds, also impacts the ability to use the “deemed reissuance” remedial action of section 1.141-12(g) of the Treasury Regulations, which would allow a governmental bond to be recharacterized as a private activity bond under certain circumstances.

Effective Dates and Transitional Relief

The House Bill and the Senate Bill each contain a general effective date of January 1, 2018*. Although the effective date in a bill as introduced or approved by a congressional committee can be, and often is, modified prior to enactment, the pendency of the House Bill and the Senate Bill may disrupt, and possibly halt, the marketing of private activity bonds and advance refunding bonds after December 31, 2017, regardless of whether the provisions in such bills are ultimately enacted. Bond counsel opinions as to the exclusion of interest from gross income of private activity bonds and advance refunding bonds issued after December 31, 2017 would need to be qualified to address the potential retroactive application of restrictions on such bonds.

Congress has historically included transitional provisions in tax bills to provide relief to issuers and other market participants that have already acted in reliance on existing law. Such transitional provisions often contained restrictions, such as limitations on increased principal amounts or maturity extensions to limit the cost of such provisions to the U.S. Treasury. Prior tax acts have also customarily contained transitional provisions that allow existing law to apply to some projects that were in progress and had achieved a certain level of readiness to be financed at the time of enactment of more restrictive tax provisions. Neither the House Bill nor the Senate Bill currently contains any transitional rules and there is no assurance that such transitional rules will be forthcoming.

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

Faust Bowerman fbowerman@hawkins.com

Peter Lam plam@hawkins.com

Sharon Brown sbrown@hawkins.com

Russ Miller rmiller@hawkins.com

Jennifer Cordova jcordova@hawkins.com

Brian Organ borgan@hawkins.com

Michela Daliana mdaliana@hawkins.com

Kathleen Orlandi korlandi@hawkins.com

James Eustis jeustis@hawkins.com

Robert Radigan rradigan@hawkins.com

Neil Kaplan nkaplan@hawkins.com

Kam Wong kwong@hawkins.com

*Note the earlier November 2, 2017 effective date banning financings for “professional sports arenas”.

About Hawkins Advisory

The Hawkins Advisory is intended to provide occasional general comments on new developments in Federal and State law and regulations that we believe might be of interest to our clients. Articles in the Hawkins Advisory should not be considered opinions of Hawkins Delafield & Wood LLP. The Hawkins Advisory is not intended to provide legal advice as a substitute for seeking professional counsel; readers should not under any circumstance act upon the information in this publication without seeking specific professional counsel. Hawkins Delafield & Wood LLP will be pleased to provide additional details regarding any article upon request.

New York
7 World Trade Center
250 Greenwich Street
New York, NY 10007
Tel: (212) 820-9300

Washington, D.C.
601 Thirteenth Street, N.W.
Washington, D.C. 20005
Tel: (202) 682-1480

Newark
One Gateway Center
Newark, NJ 07102
Tel: (973) 642-8584

Hartford
20 Church Street
Hartford, CT 06103
Tel: (860) 275-6260

Ann Arbor
2723 South State Street
Ann Arbor, MI 48104
Tel: (734) 794-4835

Sacramento
1415 L Street
Sacramento, CA 95814
Tel: (916) 326-5200

Los Angeles
333 South Grand Avenue
Los Angeles, CA 90071
(213) 236-9050

San Francisco
One Embarcadero Center
San Francisco, CA 94111
Tel: (415) 486-4200

Portland
200 SW Market Street
Portland, OR 97201
Tel: (503) 402-1320

Hawkins
DELAFIELD & WOOD LLP