THE BOND BUYER

Tax legislation not expected until late 2020 at earliest

By

Brian Tumulty

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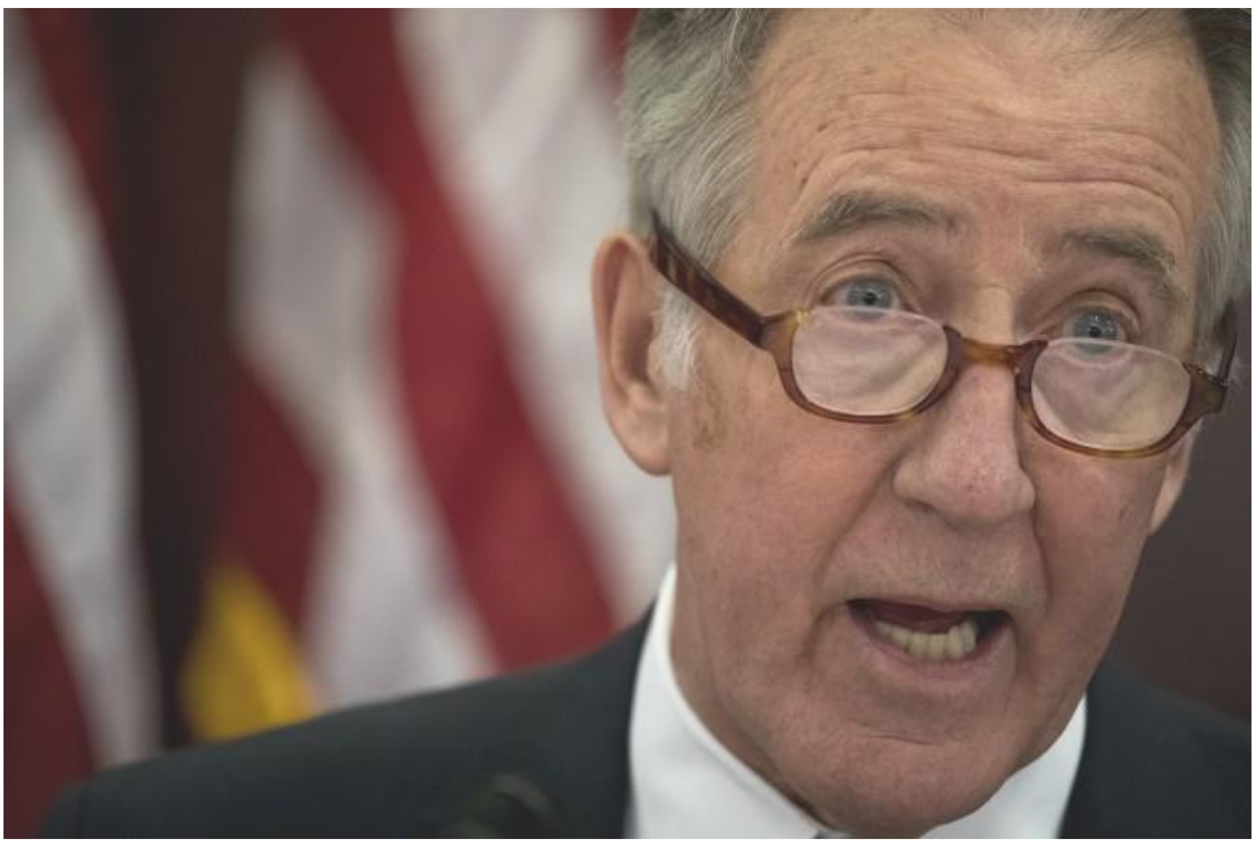
Municipal market advocates are playing a long game in their effort to persuade Congress to enhance the uses for tax-exempt bonds in 2020.

That's because another round of tax legislation is not expected to emerge until the very end of the year after the presidential election or in 2021 after a new Congress is sworn in.



House Ways and Means Committee Chairman Richard Neal, D-Mass. **Bloomberg News**

Late year action on taxes has happened in two out of the last three years. The

December 2017 Tax Cuts and Jobs Act terminated advance refundings. And most recently, Congress enacted a December 2019 package of tax extenders that nearly included provisions to boost the use of multifamily housing bonds.

And separately, the House voted along mostly Democratic lines to suspend the $10,000 cap on the federal deduction for state and local taxes for two years. The revenue loss would be paid for by a permanent reinstatement of a top individual tax rate of 39.6%.

The SALT repeal bill has no chance of being considered in the Republican controlled Senate in 2020, but it's a marker of what Democrats might do if they gain control of both chambers.

Public finance advocates say their priorities in 2020 remain to first maintain the current tax-exemption for municipal bonds followed by efforts to reinstate tax-exempt advance refundings.

Opportunities for legislation in 2020 are expected to be scarce or nil for most of the year, but the coming months will present an opportunity to broaden support for bond-centric bills to promote new infrastructure construction.

Sept. 30 will mark the expiration of a major surface transportation bill signed into law in December 2015. A Senate committee has already approved a successor to the 2015 Fixing America's Surface Transportation Act, but the major unresolved question remains how to finance it with tax law changes.

The political climate of a presidential election removes any possibility of Congress approving new revenue to pay for infrastructure before the election, but there could be a window of opportunity during a lame duck session after Thanksgiving.

The municipal bond industry wants provisions that would add to the price tag.

Congress, however, ignored the cost of tax changes in its latest package of tax extenders and also added the repeal of three health-related tax provisions that were used for financing the Affordable Care Act in 2010.

Ways and Means Committee Chairman Richard Neal, D-Mass., recently told The Bond Buyer he has remained in contact with Treasury Secretary Steve Mnuchin about doing an infrastructure package and remains hopeful an agreement can be reached in 2020.

The bipartisan Building United States Infrastructure and Leveraging Development (BUILD) Act in the House and the Senate would raise the federal cap on PABs for surface transportation and freight improvement projects by $5.8 billion.

Ken Bentsen, president and chief executive officer of the Securities Industry and Financial Markets Association **Bloomberg News**

The current volume cap on PABs issued for highways and freight improvement only has about $2 billion remaining of its $15 billion authorization that can be allocated by the U.S. Department of Transportation.

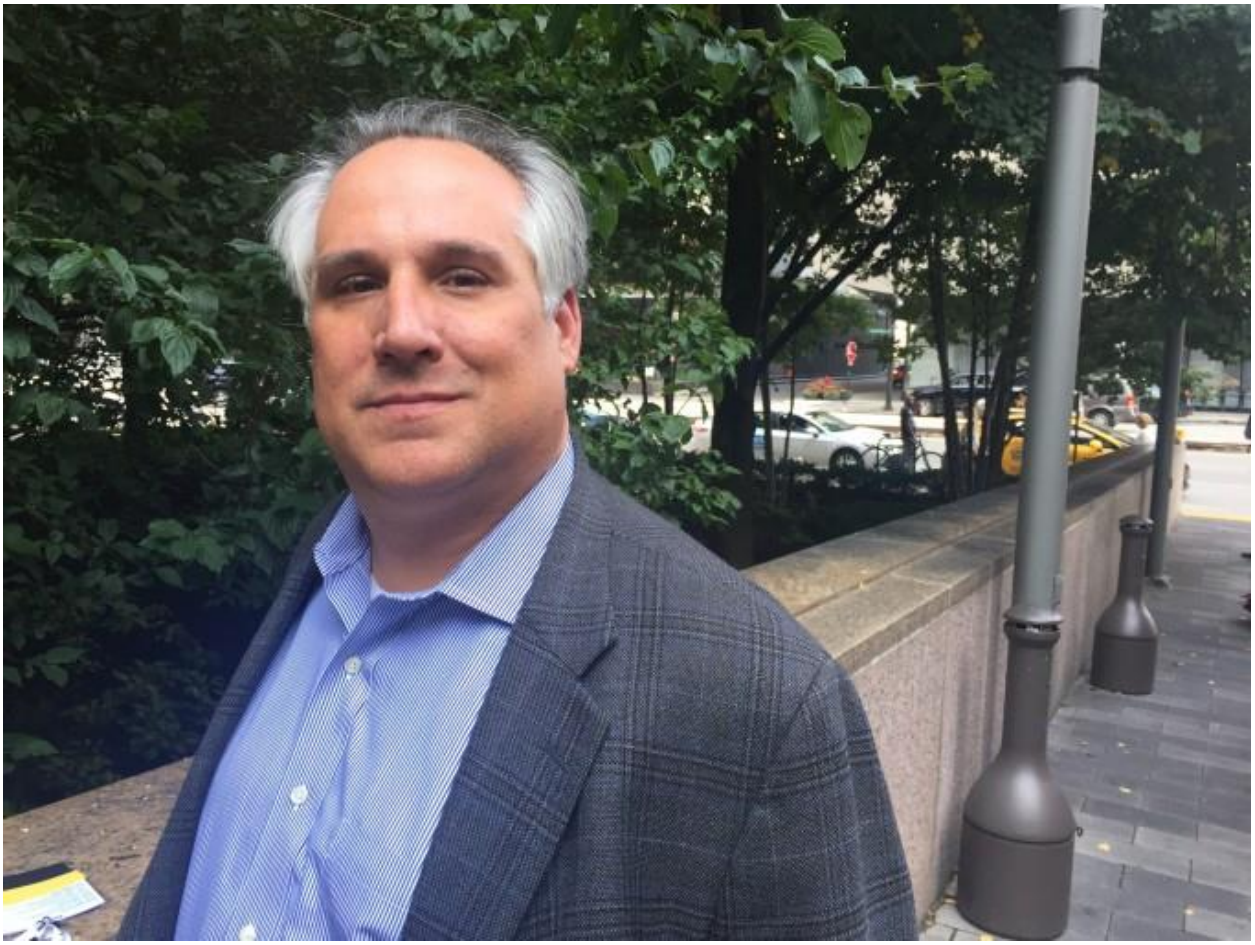
Ken Bentsen, president and CEO of the Securities Industry and Financial Markets Association, said reinstatement of advance refundings is SIFMA's priority followed by an expansion of PABs.

“We're ready when the moment comes, we're in the hunt,” said Bentsen.

Jamie Wall, SIFMA's executive vice president for advocacy, said the next opportunity is most likely to come after the presidential election in November.

“Maybe it's in the lame duck, although I think in recent history lame ducks tend to be more lame than not,” said Wall, adding “if there's a change in power post-2020 election, people would be incentivized to do big things.”

Richard Moore, president of the National Association of Bond Lawyers and a tax partner at Orrick Herrington & Sutcliffe in San Francisco, is pessimistic any tax legislation will be enacted in 2020. But that does have an upside.



Richard Moore, president of the National Association of Bond Lawyers and a tax partner at Orrick Herrington & Sutcliffe in San Francisco **Brian Tumulty, The Bond Buyer**

“Nothing being done does beat what we saw in 2017 where bond provisions were being attacked,” said Moore. “We have lots of great ideas for bond-friendly proactive legislation but our most recent experience was not with things heading in that direction.”

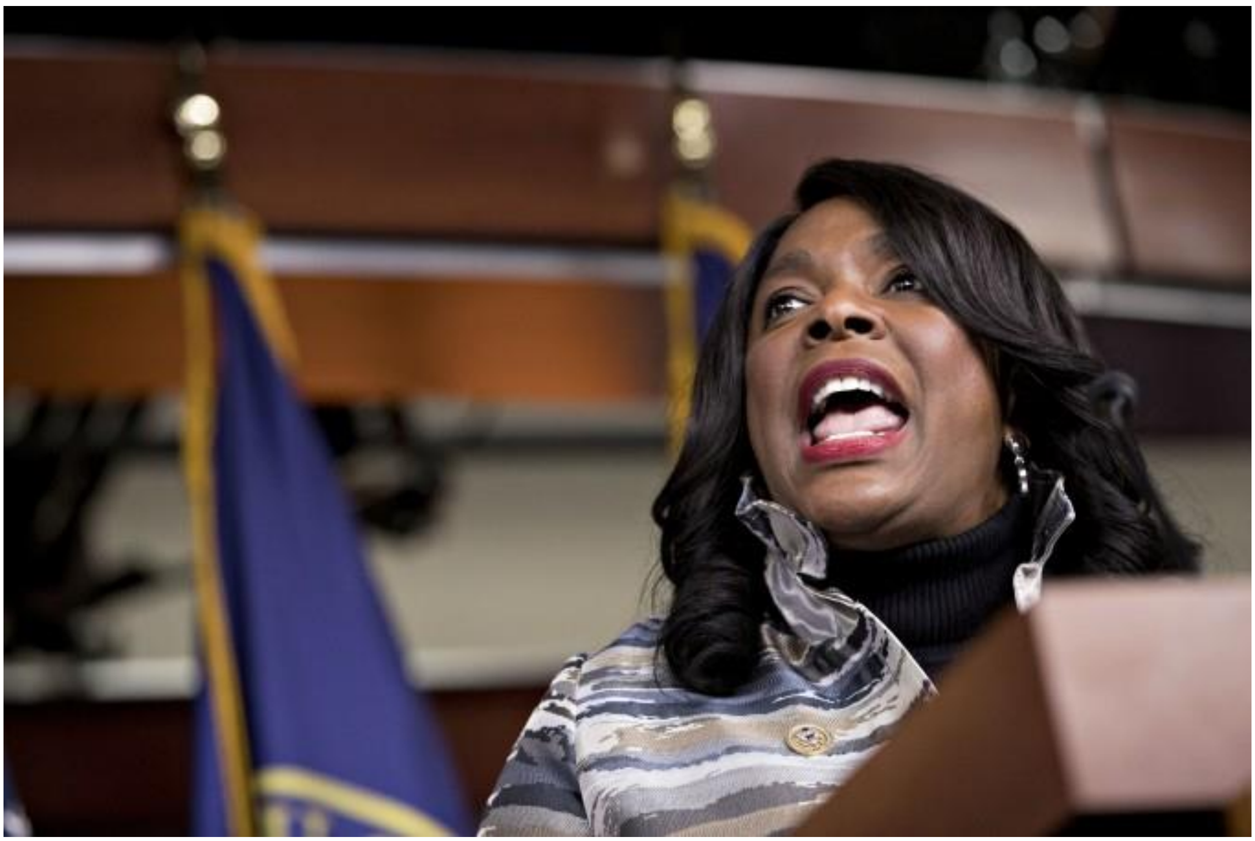
The near victory on the December tax extenders package involved possible inclusion of the bipartisan Affordable Housing Credit Improvement Act, which would have provided an indirect boost to muni bonds.

Senate Finance Committee Ranking Member Ron Wyden, D-Ore., released a statement Dec. 17 saying President Trump “killed a proposal to permanently extend incentives for affordable housing, leaving children out in the cold amidst a nationwide housing crunch."

The bill would have expanded the federal Low-Income Housing Tax Credit that has been widely used for bond-financed multifamily housing construction and rehabilitation in addition to renaming it as the Affordable Housing Tax Credit.

About half of the multifamily housing units built nationally that use the federal 4% Low Income Housing Tax Credit are financed with tax-exempt PABs.

Multifamily housing advocacy groups have estimated the bill would increase affordable rental rental housing production by 384,000 units over 10 years with 66,000 of that coming from projects that use tax-exempt multifamily PABs.



Rep. Terri Sewell, D-Ala., is a member of the House Ways and Means Committee and a Harvard Law School graduate who has worked as a public finance attorney in Alabama and earlier as a securities lawyer on Wall Street **Bloomberg News**

That year-end defeat has not deterred municipal bond industry advocates.

"If you think about municipal bonds, they are by far the best way we can get public projects, especially infrastructure projects, done," said Rep. Terri Sewell, D-Ala., a member of the tax policy making Ways and Means Committee.

Sewell, a bond attorney who worked on Wall Street as a securities lawyer before returning to her home state to focus on public finance, is the lead sponsor of legislation that would increase to $30 million from the current $10 million the amount of tax-exempt bonds that individual local governments or nonprofits can issue per calendar year and still qualify to sell debt to banks under favorable terms as bank-qualified.

Bank-qualified debt, also known as BQ debt and bank eligible, allows banks to deduct most of the carrying cost of that debt as a business cost.

The tax reform law of 1986 set the bank-qualified limit at $10 million and it's remained there except for a two-year period in 2009-2010 when the American Recovery and Reinvestment Act raised the limit to $30 million.

ARRA also applied the limitation to individual borrowers rather than conduit issuers, which the law snapped back to afterward.

Small colleges, rural hospitals, long-term care facilities and small schools would be among the primary beneficiaries of the legislation.

Sewell's bill is bipartisan with Rep. Tom Reed, R-N.Y., another member of Ways and Means, as the lead cosponsor.

"I think it's just a matter of finding a vehicle," Sewell said in an interview. "We'll be pushing for it."

Sewell has the background to make persuasive arguments on behalf of the legislation. Her work as a bond attorney in Alabama included a focus on historically black colleges and universities.

Obtaining financing with tax-exempt bonds meant the difference between "them being able to renovate dorms, or build new dorms," Sewell said. "They were able to build new dorms when interest rates went down and they were able to get their credit rating up. We were able to build new dorms for these universities that have been around for a hundred plus years."

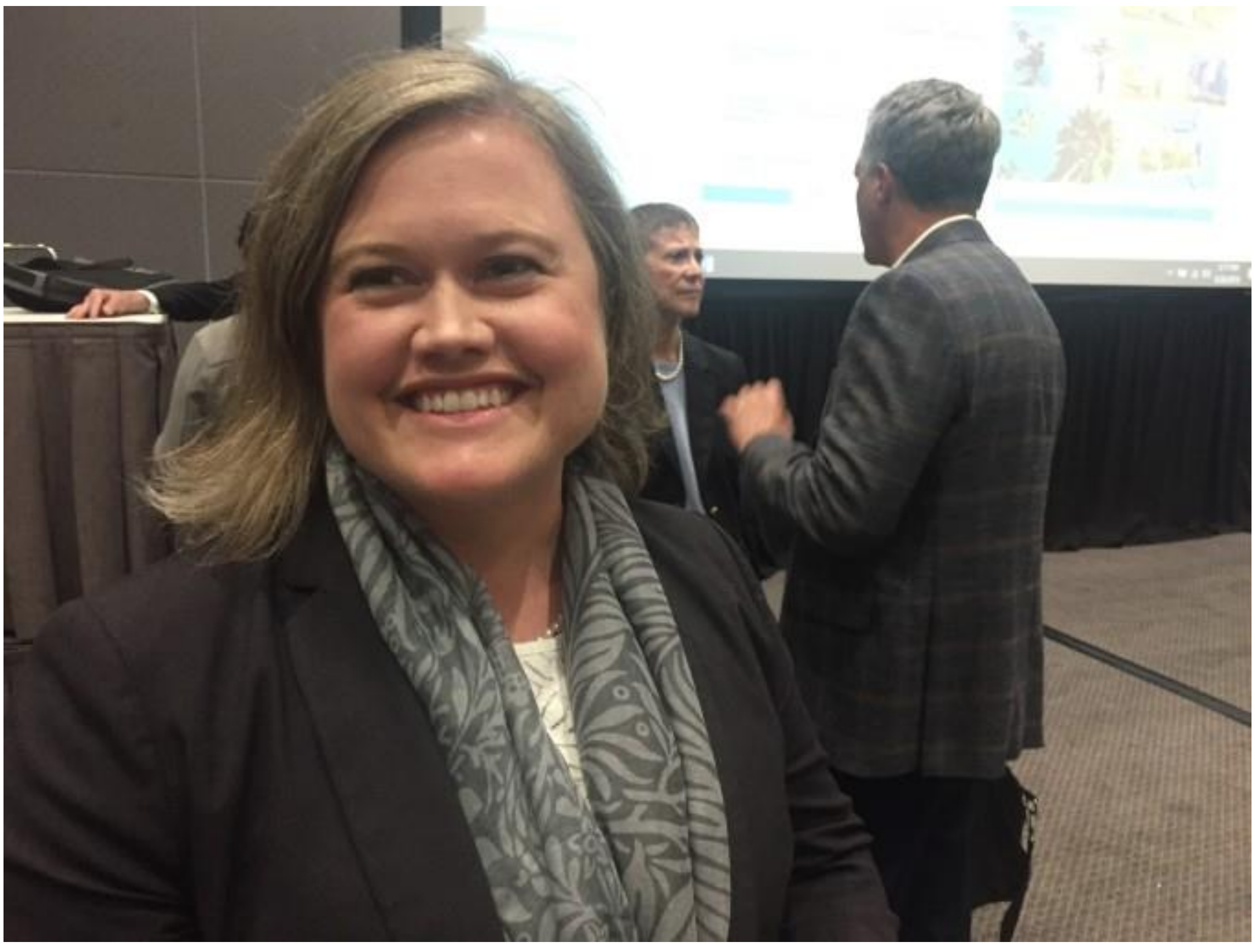
Sewell said, "There was no prouder project for me than being able to do a football stadium for Alabama State University. My dad was captain of the football team in 1969. And to have the opportunity to help my parent's alma mater in such a profound way and to be able to not just renovate something, but actually build a brand new stadium on the campus of a historically black college in Alabama was not only beneficial for generations to come for that university, but was profoundly personal and an honor for me to do."

Her work also included bond refinancing for Tuskegee University refinance and for Stillman College to renovate dorms and build an athletic practice facility.

One project involving Talladega College was able to leverage the valuation of tapestries donated by the Rockefeller family that were hanging in a non-air conditioned library to finance library improvements and a student center.

“It was great to be able to use what I learned in New York City on Wall Street to really help home,” said Sewell.

There are other proposals to expand the use of PABs in environmentally positive ways.



Emily Brock, director of the federal liaison center for the Government Finance Officers Association **Brian Tumulty, The Bond Buyer**

“I think there is energy poised on making those types of things happening after the election happens,” said Emily Brock, director of the federal liaison center at the Government Finance Officers Association.

One example is the bipartisan Carbon Capture Improvement Act sponsored by Sens. Rob Portman, R-Ohio and Michael Bennet, D-Colo. If more than 65% of carbon dioxide emissions from a given facility are captured and injected underground, 100% of the eligible equipment could be financed with PABs. If less than 65% is captured and sequestered, then tax-exempt financing is permitted on a prorated basis.

The Preventing Pollution through Partnerships Act, or the P3 Act, introduced by Reps. Derek Kilmer and Denny Heck, both Democrats from Washington state, would expand PABs to include so-called green bonds not subject to state volume caps to develop green infrastructure projects.

A third environmentally related bill to expand PABs would allow their use for financing for new charging stations for zero-emission vehicles under a bill proposed by Sen. Catherine Cortez Masto, D-Nev., with cosponsors Sen. Kirsten Gillibrand, D-N.Y., and Tina Smith, D-Minn.

Other proposed bills would allow the use of PABs for financing the construction of rural broadband, construction of government buildings and fire stations and raise the lending limit for so-called aggie bonds.

The Modernizing Agriculture and Manufacturing Bonds Act expands the definition of manufacturing facility and would raise the limit on Industrial Development Bonds to $30 million per issuance from the current $10 million.