Summary of the Impact of the Proposed Tax Cuts and Jobs Act on State and Local Bonds

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On November 2, 2017, the Tax Cuts and Jobs Act (the “Bill”) was introduced in the United States House of Representatives and is currently before the House Ways and Means Committee. The Bill proposes both direct and indirect consequences for the future issuance of certain tax-advantaged bonds including tax-exempt bonds and tax credit bonds. The direct consequences would be:

• Elimination of ALL private activity bonds issued after December 31, 2017, including, but not limited to: qualified 501(c)(3) bonds for hospitals, colleges and universities, and other exempt organizations; single family mortgage bonds; multifamily housing bonds; solid waste disposal facility bonds; industrial development bonds; water and sewage exempt facility bonds; and exempt facility airport and seaport bonds.
• Elimination of all advance refundings issued after December 31, 2017, for any purpose, governmental and non-governmental.
• Elimination of all tax credit bonds issued after December 31, 2017, including Qualified Zone Academy Bonds (QZABs), New Clean Renewable Energy Bonds (NCREBs), and Qualified Energy Conservation Bonds (QECBs).
• Elimination of tax-exempt financing of professional sports facilities as of November 2, 2017.
• As currently drafted, the Bill does not permit the refunding (or reissuance) of any outstanding bonds in the categories that are eliminated by the Bill.
• As currently drafted, the Bill does not have any transition rules for projects and financings already in process.
• As currently drafted, the Bill does not permit any draws of a draw down bond or rolls of a commercial paper program after November 2, 2017 for stadium or arena financings and after December 31, 2017 for private activity bonds and tax credit bonds.

The indirect consequences would be:

• Repeal of the Alternative Minimum Tax (AMT) means the interest on certain private activity bonds currently outstanding would no longer be subject to the AMT. Because the Bill eliminates private activity bonds and refundings of currently outstanding private activity bonds after December 31, 2017, this provision would have no effect on future tax-exempt bonds.
• An annual excise tax of 1.4% would be levied on the net investment income of certain colleges and universities whose endowment values are large relative to the number of students enrolled (as currently proposed, an endowment value of more than $250,000 per student).
• The reduction in the supply of tax-exempt bonds may affect the value and pricing of tax-exempt bonds.
• The Bill reduces the number of tax brackets and raises the income thresholds before higher brackets apply. This may also affect the value and pricing of tax-exempt bonds.
• The Bill limits the deduction of state and local taxes from federal taxable income. This may affect the demand for tax-exempt bonds in certain high tax states and may also affect state revenues in those high tax states.
• The elimination of advance refundings may change the way borrowers structure the optional redemption provisions for their tax-exempt bonds.
• The Bill could negatively impact the financing/construction of infrastructure projects that depend on a variety of capital sources, such as airports and seaports.
• The Bill may delay or curtail certain projects currently in progress.
• The Bill subjects certain earnings of public pension funds to unrelated business income tax. This could change the net investment performance of public pension funds and that could affect the credit standing of states and local governments.

• The Bill eliminates a number of tax credits including the New Markets Tax Credit and the Historic Tax Credit. The elimination of these tax credits may negatively impact the financing of certain economic development projects.

The introduction of the Bill and its consideration in the House Ways and Means Committee is the first step in a process that may result in revisions and amendments to the Bill as it is considered by Congress. The timing of this process and the likelihood of enactment of the Bill in its current form or otherwise is uncertain at this time.

For more information on the matters discussed in this Locke Lord QuickStudy, please contact the author.

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