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Updates on the 2017 Federal Tax Bills: Draw-down Bonds, Commercial Paper, and the Lack of Transition Rules

This GT Alert updates our previous Alert, "H.R. 1 and Private Activity Draw-down Bonds, Commercial Paper, and the Lack of Transition Rules" which discusses certain implications of the 2017 House Tax Bill in depth.

The Senate Plan

On Nov. 9, 2017, the Joint Committee on Taxation released a description of the chairman's mark of the Senate's tax plan ("Senate Plan") that, for tax-exempt bonds, differs significantly from the House Bill, discussed in our previous Alert. The Senate plan is silent on private activity bonds, the use of tax-exempt bonds to finance sports stadiums, and tax-credit bonds. The Senate plan, like the House Bill, however, would prohibit advance refunding bonds issued after 2017, with no transition rule. The silence in the current Senate Plan does not mean that the problems discussed in our previous Alert are no longer a concern. The Senate may choose to add limits on private activity bonds as it moves forward, or the House provisions may prevail in a Conference Agreement.

Sequestration

Additionally, sequestration impacts of the House Bill and Senate Plan continue to emerge. A potential impact on direct-pay bonds could arise because these proposals are expected to increase the net projected federal government deficit and therefore, under the Pay-As-You-Go Act of 2010 ("PAYGO"), could result in additional sequestration cuts on non-exempt mandatory spending programs, including direct-pay bonds. Generally, PAYGO requires congressional new spending to be offset by cuts or added revenues. If

Congress adjourns for the year with net deficit increases still noted on the Office of Management and Budget's (OMB's) PAYGO "scorecard," offsetting sequester of non-exempt mandatory programs is required. The Congressional Budget Office has indicated that as things currently stand (and are proposed), "OMB would be unable to implement the full extent of outlay reductions required by the PAYGO law." While based on projections and deficit estimates (that vary widely depending on the source), this could mean that sequester reduces the subsidy on direct-pay-bonds to zero.

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