The Infrastructure Investment and Jobs Act Adds New Categories of Qualified Private Activity Bonds

Description

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On November 15, 2021, the Infrastructure Investment and Jobs Act was signed into law and will provide over $1 trillion in funding for a wide array of infrastructure projects. The act also includes certain provisions affecting tax-exempt bonds, including the addition of two new categories of qualified private activity bonds for broadband projects and carbon dioxide capture facilities.

Generally, private activity bonds are those that are issued by a governmental entity and the proceeds of which are used by a nongovernmental entity above certain percentages allowed by the Internal Revenue Code. However, certain enumerated categories of private activity bonds can still be issued on a tax-exempt basis, including those issued to finance exempt facilities, such as airports, docks and wharves. The infrastructure act adds two new categories of exempt facility bonds, which can be issued on a tax-exempt basis beginning in 2022.

The act allows private activity bonds to be issued for "qualified broadband projects," which are those designed to provide broadband service to areas where a majority of residents do not have access to such service. The act requires notice of the scope of the project to be provided to broadband providers in the area as a prerequisite for issuing bonds. These private activity bonds are subject to state volume cap under Internal Revenue Code Section 146 with a 75 percent exemption, unless the project is government-owned, in which case the volume cap will not apply.

A second new type of qualified exempt facility bonds established by the act are those issued for qualified carbon dioxide capture facilities. These facilities include direct air capture facilities, as well as certain eligible components of industrial carbon dioxide facilities that are designed to have a capture and storage percentage of 65 percent or greater. If the facility is designed to have a capture and storage percentage of less than 65 percent, the portion of such facility that may be financed with tax-exempt bonds may not be greater than the designed capture and storage percentage. These private activity bonds are subject to state volume cap with a 75 percent exemption. The act also clarifies that the sale of carbon dioxide produced by a qualified carbon dioxide capture facility that is owned by a governmental unit does not constitute private business use under the Internal Revenue Code.

Finally, the act also doubles the national limit on tax-exempt qualified highway or surface freight transfer facility bonds—an existing category of exempt facility bonds—from $15 billion to $30 billion.

Please contact Eugene G. Bernardo II or David M. DiSegna at Partridge Snow & Hahn LLP if you have questions about the Infrastructure Investment and Jobs Act. For additional information and resources visit the firm's Public Finance Group page.

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