

SPECIAL REPORT

Presented by the Public Finance Law Team of Whyte Hirschboeck Dudek S.C.

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IMPACT OF JOBS ACT ON TAX-EXEMPT BONDS

On September 12, 2011, President Obama submitted to Congress a legislative proposal, the American Jobs Act of 2011 (the “Jobs Act”), containing a series of spending programs and tax incentives designed to stimulate job growth. There has been a lot of debate in the bond community regarding whether it is necessary to disclose the impact of section 401 of the Act. Section 401 would limit the tax benefit from the exemption for tax-exempt interest (plus a lot of other exclusions and deductions, including the deduction for home mortgage interest) by limiting the value of the exemption to the amount of tax benefit that would be realized by 28% bracket taxpayers, for tax years 2013 and 2014. The impact of this provision, if enacted, would be at the taxpayer’s level. It does not appear to impact the nature of the bond and it certainly is not intended to impact all taxpayers equally in connection with the issuance of the debt (unlike original issue discount). In other words, it is a liquidity issue that may affect the market price of bonds that may or may not become an issue beginning in 2013. It doesn’t appear to provide an exemption for bonds currently outstanding. The provision would affect “high-income taxpayers,” which generally captures taxpayers with adjusted gross income of \$250,000 or more for married couples filing jointly (or \$200,000 for single taxpayers).

Some firms with deals going to market now are opting in an abundance of caution to include disclosure of the Jobs Act in their offering document.

Not all tax proposals are disclosed in offering documents. In the past, the decision to

disclose a potentially negative proposal turned on who introduced the provision—with little or no attention or weight given to proposals by no-name members of Congress not on one of the tax-writing committees and more attention given to proposals by chairmen or senior members of the House Ways and Means Committee or the Senate Finance Committee. Ultimately, the decision whether to disclose is a combination of the significance of the proposal and the likelihood of its passage. Since the proposer is the President, it will naturally get more attention. However, the introduction of this provision is a far cry from its enactment and we believe at this time that it is unlikely that this provision would be enacted as written.

In this case, we don’t believe it is necessary to disclose anything regarding the proposal at this time. We believe that standard disclosure (something like what is in brackets below) should be effective disclosure of the potential impact of the Jobs Act.

[Legislation affecting the exclusion from gross income of interest on bonds is regularly under consideration by the U.S. Congress. No assurance can be given that legislation enacted or proposed after the date of issuance of the Bonds will not have an adverse effect on the tax-exempt status or the market price of the Bonds.]

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