HUSCH BLACKWELL

FINANCIAL SERVICES UPDATE

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Legislation Reintroduced to Modernize American Manufacturing Bonds

The Modernizing American Manufacturing Bonds Act (MAMBA) has been reintroduced in Congress to modernize Qualified Small Issue Manufacturing Bonds, more commonly known as Industrial Development Revenue Bonds (IRBs). MAMBA was also introduced in Congress in 2016 but was not enacted before the end of the session.

Historically, IRBs have been instrumental in building the manufacturing landscape in America. They are a valuable financing option for manufacturers that seek to expand or construct facilities and purchase new equipment. More importantly, IRBs create local jobs, foster economic growth and enable manufacturers to invest in their communities.

How IRBs Are Issued

IRBs offer borrowers lower-interest, more flexible financing for a longer term compared to conventional financing. State and local governments are authorized by statute to issue IRBs for the benefit of a private user, such as a manufacturing company, by acting as a "conduit" and passing along the benefits associated with tax-exempt IRBs. This "conduit" element of the financing means that the governmental issuer is not responsible for payment on the bonds. Rather, a lending institution directly purchases the bonds or issues its letter of credit if the bonds are sold publicly, and the private user is solely responsible for payments of principal and interest on the bonds. Today, the majority of IRBs in our public finance transactions utilize the bank-held structure described above.

The federal government allocates the maximum amount of tax-exempt IRBs that each state can issue, known as "volume cap." An allocation of volume cap must be obtained before the tax-exempt IRBs can be issued.

Outdated Rules

In recent years, the number of IRBs has declined due to outdated rules that make it difficult for small manufacturers to qualify. For example, the current definition of a "manufacturing facility" limits the pool of manufacturers that are eligible for IRB financing by excluding the manufacture of intangible property. Furthermore, although the capital expenditures limit for a six-year period was increased to $20 million in 2007, no corresponding change was made to the maximum IRB limit of $10 million. Under current law, a maximum of $10 million of tax-exempt IRBs can be issued for a single project. This amount has not changed for decades and does not account for inflation or the increased costs of doing business in the global market. A manufacturing company cannot have more than $40 million of tax-exempt IRBs outstanding, nationwide, at any one time.

Proposed Changes

To align current trends in manufacturing practices with improved access to capital for the modern manufacturer, MAMBA proposes these reforms for IRBs:

- Expand the definition of “manufacturing facility” to include a facility that is used in the creation or production of intangible property. This includes high-tech companies that produce intangible property such as software, patents and similar intellectual property.
- Expand the definition of “manufacturing facility” to include a facility that is functionally related, subordinate to, and located on the same site as a facility used in the manufacture or production of tangible personal property or in the creation or production of intangible property.
- Increase the maximum bond limit for a single project from $10 million to $30 million.
- If the current maximum bond limit of $10 million for a single project is increased, a corresponding increase will be made to the current $20 million capital expenditures limit.

Timeline

- February 16, 2017 – MAMBA reintroduced in House (H.R. 1115) and sponsored by Rep. Randy Hultgren (R-IL); referred to the Committee on Ways and Means.
- March 29, 2017 – MAMBA introduced in Senate (S. 773) and sponsored by Sen. Sherrod Brown (D-OH); referred to the Committee on Finance.

Past Stimulus Legislation

In our experience, prior stimulus or reforming legislation intended to make IRBs more accessible to manufacturers has proven to be very effective. Two notable examples are the American Recovery and Reinvestment Act, which was in effect during 2009 and 2010 and included Recovery Zone Facility Bonds, and the Heartland Disaster Tax Relief Act of 2008, which was in effect until the end of 2012 and included Midwestern Disaster Area Bonds. The past stimulus legislation contained very favorable provisions for IRBs. During the effective period for these stimulus bonds, the number of IRB transactions for our Public Finance team nearly tripled, which is a testament that the positive changes included in MAMBA will provide welcome relief and make IRBs more attainable for our manufacturers.

Next Steps

MAMBA has received bipartisan support. MAMBA, if enacted, will revitalize IRBs by providing manufacturers with expanded access to IRBs. We will keep you updated on the status of the legislation.

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