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National Association of Bond Lawyers

November 6, 2017

VIA Electronic Mail

The Honorable Mitch McConnell
Majority Leader
U.S. Senate

The Honorable Charles Schumer
Minority Leader
U.S. Senate

The Honorable Paul Ryan
Speaker
U.S. House of Representatives

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives

Dear Majority Leader McConnell, Speaker Ryan and Minority Leaders Schumer and Pelosi:

As you embark upon the monumental and historic task of tax reform, the National Association of Bond Lawyers (NABL) respectfully but strongly urges you to be mindful of the importance of retaining the current federal income tax treatment of state and local government bonds, including private activity bonds (PABs) and advance refunding bonds. NABL's support of all tax-exempt bonds is grounded in the harsh reality that a loss of the exemption would immediately increase the cost to state and local governments and nonprofit organizations (such as nonprofit hospitals, universities, and schools), in financing the vital infrastructure that supports the economy and needed public services. This increase in cost will ultimately be borne by taxpayers, homeowners, renters, students, healthcare patients, commuters, air travelers and businesses relying on seaports, and other constituents.

The exemption of interest on state and local government bonds dates back to 1913, the inception of the federal income tax. Tax-exempt bonds provide local control, with state and local governments setting the priorities for building infrastructure and economic development. Unlike federal debt, which finances operating deficits, state and local governments and tax-exempt nonprofit organizations use these bonds, with minor exceptions, to finance capital projects.

State and local government bonds finance necessary capital projects, such as schools, roads and highways, bridges, hospitals, universities, airports, seaports, low-income housing, and water and sewer facilities. A loss of the tax exemption on important categories of state and local bonds would increase borrowing costs and result in an increase in local taxes, tolls, fees, low-income housing rent and mortgage payments, and hospital charges to pay that higher cost or in a reduction in the amount of infrastructure that could be undertaken.

The elimination of the ability to issue private activity bonds means a repeal of qualified 501(c)(3) bonds (which finance nonprofit hospitals, universities and schools, among other things), single-family mortgage bonds, low-income multifamily housing bonds, bonds for exempt facilities such as airports, seaports and solid waste infrastructure projects, bonds for state-run student loan programs, bonds used in public-private partnerships, and more. Private activity bonds provide funding for very specific and crucial elements of society, benefiting your constituents by offering affordable options for those most vulnerable. A loss of the tax exemption for private activity bonds would affect a large number of hospital, airport, seaport, housing, university and other projects immediately, including projects ready for or under construction, jeopardizing jobs and economic growth.

The current federal income tax laws and regulations include extensive restrictions on the use of tax-exempt bonds for private business concerns, including a cap on the amount of bonds that may be issued in a single calendar year. The rules are strict (some might say draconian) in defining what constitutes a "private activity bond" and include many public projects where paid private use, including use by non-profit organizations such as the local YMCA or Girl Scouts, may be sufficient to categorize these projects as private use. Private activity bonds largely exist to enable tax-exempt financing of assets often thought of as part of the public infrastructure, but subject to private use, even if the "private user" is merely a nonprofit organization described in Section 501(c)(3) of the Code. For example:

- Most financings for airports across the country are considered private activity bonds due to the lease or use agreements with airlines, yet most people would consider an airport a vital part of public infrastructure.
- Most financings for nonprofit hospitals across the country are considered private activity bonds due to ownership and/or operation of the hospital by a nonprofit organization.
- The House bill preserves low-income housing tax credits, an effective tool for encouraging private investment in affordable housing, but eliminates tax-exempt financing for low-income rental housing. The House bill's prohibition of private activity bonds would, as a result, eliminate the use of the 4% low income housing tax credit, which is linked to tax-exempt financing and

represents approximately 45% of the low-income housing tax credit program.

Advance refundings, which the House bill would eliminate, are a vital tool for governmental issuers to take advantage of favorable interest rates and market conditions to lower their overall interest costs. The ability for issuers to reduce their interest costs directly benefits taxpayers and ratepayers. The current federal income tax laws already limit advance refundings of governmental bonds and 501(c)(3) bonds to a single advance refunding (other types of bonds cannot be advance refunded), and most of these refunding escrows recently have been less than 3 years. There are sufficient safeguards in current law to prevent (and punish) abuse.

We appreciate the complexity in reforming the tax code, but we urge you not to weaken the value the municipal market provides to the overall economy of the United States. The revenue numbers cited to be raised by the elimination of private activity bonds and advance refundings tell an incomplete story by failing to take into account the increased costs to be borne by taxpayers, homeowners, renters, students, healthcare patients, commuters and others at the local level.

Founded in 1979, NABL exists to promote the integrity of the municipal market and provides commentary and recommendations at the federal, state, and local levels with respect to legislation, regulations and rulings affecting state and municipal bonds. We would like to be a resource to you and your staff as you engage in conversations about this very important tool for our local, state and national economy, namely tax-exempt municipal bonds. You may contact Bill Daly, NABL's Director of Governmental Affairs, at 202-503-3303 or Jessica Giroux, Deputy Director of Governmental Affairs, at 202-503-3290.

Sincerely,

Alexandra M. MacLennan

CC: House Committee on Ways & Means
Senate Finance Committee