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How We Got Here

- State and Municipal Railroad Bonds in the Late 1800s
- Led to the Development of the Bond Counsel Role
- Federal Income Tax Adopted in 1913
 - Interest on obligations of a state, territory or possession of the United States and political subdivisions thereof were exempted
- Exemption Appeared in Section 103 of the Internal Revenue Code of 1954
- Utilization of Conduit Issuer Developed in the 1950s and 1960s
 - Facilitated by Rev. Rul. 57-187 (Industrial Development Bond held to be “a local government issue” for Section 103 purposes where bonds were paid only from the sale or lease of financed projects)

How We Got Here

- “On Behalf of Issuers” Were Given Similar Treatment by Rev. Rul. 63-20
 - 63-20 Financings for not for profit entities proved cumbersome due, among other things, to the requirement that title to the financed facilities had to be transferred to a governmental entity when the bonds were paid
 - Led to development of Conduit Issuers for Not for Profit Health and Education Facilities and the addition of such facilities to existing IDB Acts
- IRS Gets Cold Feet
 - In 1966, issues TIR-972 (announcing it was re-examining its position on IDBs) and TIR-80 (announcing it will decline to issue rulings regarding whether IDBs qualify under Section 103(a)) – IRS Proposed Regulation issued in March, 1968 would have reversed its position
- Aluminum Smelter Financing Kills the Goose
 - Congress in 1968 suspends the IRS Proposed Regulations and limits the types of IDB’s that will be tax-exempt
 - Legislation does not limit Not for Profit Conduit Financing



How We Got Here

- TEFRA's Reporting Requirements (Form 8038) Were Applied to Not for Profit Conduit Financings in 1982
- Deficit Reduction Act of 1984 Did Not Subject Not for Profit Conduit Financings to its Volume Caps
- Tax Exempt Financings for All Conduit Borrowers Came to a Halt on January 1, 1986
 - Tax Reform Legislation called into question the Federal tax exemption of such financings
- Internal Revenue Code of 1986 Preserved Tax Exemption for Not for Profit Conduit Issues
 - A \$150 million cap was put on non-hospital borrowers, which was removed in 1997
 - TEFRA approval provisions were extended to Not for Profit Conduit Financing



How We Got Here

- U.S. Supreme Court in *South Carolina vs. Baker* 485 U.S. 505 (1988) Ruled That Tax Exemption of Interest on Municipal Obligations Is Not a Constitutional Right But A Privilege Granted By The Federal Government That Can Be Withdrawn At Any Time
- Conclusion: Tax Exemption for Not for Profit Conduit Financings Will Survive Current “Reform” Initiatives Only If Its Supporters Effectively Remind the Legislative and Executive Branches of the Sound Policy Arguments Supporting Its Continuation Which Have Prevailed in the Past

Where We Are

NATIONAL ASSOCIATION OF BOND LAWYERS

The Deficit Reduction and Tax Reform Debate: Potential Impacts on the Tax Exempt Bond Market (Updated Sept 15, 2011)

Proposal	Short Title	Impact on Tax Exempt Bonds	Overview and Notes	Status
LEGISLATION				
<i>American Jobs Act of 2011</i> , S.1549, introduced September 13, 2011	Obama Jobs Plan	The proposal would limit certain deductions and exclusions for high income taxpayers, including the exclusion on tax-exempt bond interest, to 28% and extend to 2012 the exemption for interest on tax-exempt private activity bonds from the Alternative Minimum Tax.	The proposal by the President seeks to provide tax relief for American workers and business, to put workers back on the job while rebuilding and modernizing America, and to provide pathways back to work for Americans looking for work. Similar proposals to limit the tax rate at which high income taxpayers can take itemized deductions at 28% were set forth in President Obama's budget for fiscal year 2010 and 2012. The proposal would also create the American Infrastructure Financing Authority, which would provide direct loans and loan guarantees to facilitate infrastructure projects.	Transmitted to Congress on September 12, 2011.
<i>Budget Control Act of 2011</i> , S. 365, August 1, 2011, Pub. L. No 11225	Deficit Reduction Bill, or Debt Ceiling Compromise	No tax exempt changes specified, but the bill calls for the creation of a congressional "Super Committee" with a broad mandate to find \$1.5 trillion in deficit reductions over ten years. Deficit reduction measures could include spending cuts and tax changes, including comprehensive tax reform or the elimination of tax expenditures.	The bill increases the federal debt limit by up to \$2.1 trillion and directs cuts of \$917 billion from federal spending over ten years, with a mandate for the creation of a congressional "Super Committee" to identify an additional \$1.5 trillion of deficit reduction over ten years, potentially from spending cuts, tax reform, and entitlement reform. The bill also requires Congress to vote on a balanced budget amendment.	Signed into law August 2, 2011.

Source: National Associate of Bond Lawyers, www.nabl.com



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<i>Establishing the Budget for the United States Government for Fiscal Year 2012 and Setting Forth Appropriate Budgetary Levels for Fiscal Years 2013-2021</i> , H. Con. Res. 34, introduced April 11, 2011	House Republican Budget, Ryan Plan, or The Path to Prosperity	No tax exempt changes specified, but the plan calls for the elimination of unspecified tax expenditures.	The proposal by House Budget Committee Chairman Paul Ryan (R-WI) seeks to reduce government spending by more than \$6 trillion over the next ten years, while maintaining current revenue levels. Budget resolutions are nonbinding; specific tax proposals would be developed by the Ways & Means Committee.	Passed the House on April 15. Failed to pass the Senate on May 25, 2011.
<i>Bipartisan Tax Fairness and Simplification Act</i> , S. 727, introduced April 5, 2011	Wyden-Coats Bill	The bill would end traditional tax exemption for newly-issued municipal bonds; replaced for municipal bonds issued after December 31, 2011, with taxable bonds providing a 25% tax credit only for non-corporate holders. It would also eliminate advance refundings for outstanding tax-exempt bonds.	The bipartisan bill by Senators Dan Coats (R-IN) and Ron Wyden (D-OR) is intended to reduce the federal budget deficit by growing the economy. The bill would simplify the tax system, hold down rates for individuals and families, provide tax relief to the middle class and create incentives for businesses to grow and invest in the United States.	Referred to the Senate Finance Committee. It has two cosponsors.
<i>Tax Equity and Middle Class Fairness Act</i> , H.R. 2495, introduced July 11, 2011	Tierney Bill	Would end traditional tax exemption after December 31, 2011, and require all new municipal bonds, including private activity bonds, to be issued as taxable direct-pay bonds at a 28% federal subsidy rate.	The bill by Representative John Tierney (D-MA) seeks to save the federal government nearly \$483 billion over five years by repealing 30 tax expenditures.	Referred to the House Ways & Means Committee.
<i>Building American Jobs Act of 2011</i> , H.R. 992, introduced March 10, 2011	Levin Bill	The bill would reauthorize Build America Bonds (BABs) through 2012 at a 31% subsidy rate, exempt water and sewer facility private activity bonds from the volume cap, eliminate the Alternative Minimum Tax and adjusted current earnings (ACE) adjustment on private activity bonds through 2011, extend small issuer rules for allocation of tax-exempt interest expenses under Section 265 through 2011, and reauthorize Recovery Zone Bonds based on state unemployment statistics through 2011. The bill would also permit tribal governments to issue private activity bonds to provide water and sewer facilities and allow the issuance of BABs to refund BABs.	The bill by House Ways & Means Committee Ranking Member Sander Levin (D-MI) seeks to create jobs through investment in infrastructure.	Referred to the House Ways & Means Committee. NABL Letter of support for H.R. 992.

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<i>Public Employee Pension Transparency Act</i> , H.R. 567 and S. 347, introduced February 9, 2011, and February 15, 2011, respectively	Nunes Bill	Conditions any federal subsidy for municipal bonds, including tax exemption and direct subsidy/tax credits, on certain disclosure by issuers of public pension liabilities calculated with a "riskless rate" based on the Treasury rate.	The bill by Representative Devin Nunes (R-CA) seeks to reform public pension disclosure.	H.R. 567 was referred to the Ways & Means Committee and was discussed in a Ways & Means Subcommittee on Oversight hearing on public pension disclosure. S. 347 was referred to the Senate Finance Committee. The House bill has 51 cosponsors and the Senate bill has 7 cosponsors.
<i>The Moment of Truth: Report of the National Commission on Fiscal Responsibility and Reform</i> , December, 2010	Deficit Commission or Simpson-Bowles Commission	The proposal, if enacted in the form of the "zero plan" described in the report, would eliminate the exclusion for interest on municipal bonds. Otherwise, the report calls for the elimination of unspecified tax expenditures.	The final report of President Obama's bipartisan commission on deficit reduction co-chaired by former Senator Alan Simpson (R-WY) and former Chief of Staff to President Clinton Erskine Bowles seeks to balance the budget, excluding interest payments on debt, by 2015, setting forth 3 alternative options.	Did not achieve the 14 of 18 vote threshold to force a vote in Congress under the terms of the original mandate.
<i>President's Framework for Shared Prosperity and Shared Fiscal Responsibility</i> , April 13, 2011	President Obama's Plan	Would eliminate unspecified tax expenditures.	President Obama's plan seeks to cut the deficit by \$4 trillion in 12 years through spending cuts and tax reform, including the elimination of tax expenditures.	Vice President Biden is leading bipartisan talks on deficit reduction.
"Gang of Six"	Gang of Six		A bipartisan group of six senators that seek to develop an acceptable compromise on the various recommendations for deficit reduction. Members include Dick Durbin (D-IL), Kent Conrad (D-ND), Mark Warner (D-VA), Tom Coburn (R-OK), Saxby Chambliss (R-GA) and Mike Crapo (R-ID). At least four of the Gang of Six were on the Deficit Commission.	The group has not introduced any legislation or endorsed any other proposals. On May 17, 2011, Senator Tom Coburn (R-OK) announced that he believes that the negotiations had reached an impasse and that he temporarily withdrew from the Gang of Six.

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<i>Restoring America's Future: Reviving the Economy, Cutting Spending and Debt, and Creating a Simple, Pro-Growth Tax System</i> , Bipartisan Policy Center, November 17, 2010	Rivlin-Domenici	The plan retains the tax exemption for "interest on public purpose state and local bonds."	The plan co-chaired by former Senator Pete Domenici (R-NM) and former Budget Director to President Clinton Dr. Alice Rivlin seeks to balance the budget, less debt interest payments, by 2014 using spending cuts and tax increases.	
<i>Budgeting for Growth and Prosperity: A Long-Term Plan to Balance the Budget, Grow the Economy, and Strengthen the Middle Class</i> , Center for American Progress, May 2011	CAP Deficit Plan	The Center for American Progress (CAP) has developed a deficit reduction proposal that proposes the following changes: reinstate the Build America Bonds program at a subsidy rate to be determined by Congress, eliminate or place volume cap on governmental purpose tax-exempt bonds, and eliminate new issue private activity bonds. Since January, CAP has released various policy proposals setting forth these basic, but not exact, recommendations depending on the audience, for example see Bring Back BABs: A Proposal to Strengthen the Municipal Market with Build America Bond , April 2011, and Cut Spending in the Tax Code: Wasteful Spending in the Tax Expenditure Budget is Fertile Ground for Deficit Reduction, March 2011 .	The CAP Deficit Plan seeks to fully balance the budget by 2030 by slowing the growth of health care costs, cutting \$13 trillion in spending over the next 25 years from the current projections, and implementing a new tax code.	
<i>Saving the American Dream: The Heritage Plan to Fix the Debt, Cut Spending, and Restore Prosperity</i> , Heritage Foundation, May 25, 2011	The Heritage Plan	The plan would eliminate most tax expenditures.	The plan by The Heritage Foundation, a conservative think tank, seeks to balance the budget within 10 years and to shrink government by half by implementing a single rate flat tax that would replace the income, corporate, and payroll tax rates.	

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<i>The Future is Now: A Balanced Approach to Stabilize the Public Debt and Promote Economic Growth</i> , The Brookings Institution and The Committee for a Responsible Federal Budget, September 10, 2010	Galston-MacGuiness	The plan calls for a 10% reduction in unspecified tax expenditures, which may include tax exemption on municipal bonds.	The proposal introduced by two prominent center-left think tanks recommends bringing debt to GDP ratio down to 60% by the end of the decade by using an even split between spending cuts and tax increases, with additional savings coming from reforming tax expenditures.	
<i>Estimates of Federal Tax Expenditures for Fiscal Years 2010-2014</i> , JCS-3-10, Joint Committee on Taxation, December 15, 2010	Annual Report on Tax Expenditures	The nonpartisan Joint Committee on Taxation (JCT) report contains estimates of the cost of tax-exempt bonds, including private activity bonds and various tax credit bond programs.	The JCT is a congressional committee that provides cost estimates and tax expertise to Congress. Tax expenditures are defined under the <i>Congressional Budget and Impoundment Control Act of 1974</i> , Pub. L. No. 93-334, Section 3(3).	
<i>Reducing the Deficit: Spending and Revenue Options</i> , Congressional Budget Office, March 2011	CBO Deficit Report	The nonpartisan Congressional Budget Office (CBO) suggests replacing the exclusion of interest on state and local government bonds and qualified private activity bonds with a direct-subsidy payment equal to 15% of the interest paid on the bonds, with an option to increase the subsidy payment rate if it deters investment, including various subsidy rates based on policy goals, for all bond issues in 2012 or after.	The CBO provides analyses to Congress to aid economic and budgetary decisions on programs covered by the federal budget. The CBO Deficit Report is a compendium of budget options for altering federal spending and revenues. The baseline projections in the CBO Deficit Report are those published in the CBO report <i>The Budget and Economic Outlook: Fiscal Years 2011 to 2021</i> , January 2011.	

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