The Move America Act

Section-by-Section Summary

Move America Bonds

Current Law:

Under current law, if more than 10 percent of the proceeds of a bond are used for a private business use, or if more than 10 percent of the payments on the principal and interest of the proceeds are paid or secured by payments from private businesses, the bonds are deemed private activity bonds, and interest income from the bonds is included as taxable income.

There are several exceptions, notably for qualified private activity bonds, which include exempt facility bonds. Qualified private activity bonds are treated similarly to traditional state and local tax-exempt bonds, with a few notable exceptions. Most categories of qualified private activity bonds are subject to an annual state volume cap, and the interest income, while exempt from income taxes, is subject to the alternative minimum tax.

Exempt facility bonds include airports, docks and wharves, mass commuting facilities, facilities for furnishing water, sewage facilities, solid waste disposal facilities, qualified residential rental projects, facilities for the local furnishing of electricity or gas, local district heating or cooling facilities, qualified hazardous waste facilities, high-speed intercity rail facilities, environmental enhancements of hydro-electric generating facilities, qualified green building and sustainable design projects, and qualified highway or surface freight transfer facilities.

Airports, docks and wharves, and mass commuting facilities must be owned by the government. All exempt facility bonds are subject to similar arbitrage and issuance restrictions as traditional state and local tax-exempt bonds. The amount of qualified private activity bonds available for various facilities is not uniform, as some facilities, such as airports, are not subject to any cap, while others, such as mass commuting facilities, are subject to an annual state volume cap, set equal to $100 multiplied by the State's population, with a $300 million minimum cap. The minimum cap and the $100 multiplier are both indexed to inflation. Other bonds, such as the qualified highway and surface freight transfer facility bonds, are subject to separate, national caps. Highway bonds, for example, have a national $15 billion limitation.

No more than 25 percent of proceeds from an issue of exempt facility bonds can be used for land acquisition, and, if the bonds are being used on existing property, 100 percent of the cost of acquiring the property must be used on rehabilitation expenses, or the bonds lose their tax-exemption. Any rehabilitations must also be completed within two years of acquisition of the property. Additionally, several rehabilitation expenditures are disallowed, including enlargements of property and the extent to which property is owned by a tax-exempt partner.

Proposal:

The bill creates Move America Bonds, which are generally be treated as exempt facility bonds under current law, with several exceptions. So long as facilities are generally available for public use, the government ownership requirements for exempt facility bonds do not apply to Move

America Bonds, allowing more flexible ownership and management arrangements for public-use infrastructure. It also allows private partners to benefit from depreciation deductions, should they take ownership of the facility either directly or through a long-term leasing arrangement.

The interest income on Move America Bonds is excluded from the alternative minimum tax. This eliminates the interest rate penalty placed on states for public projects with private partners.

As the 25 percent land acquisition rule restrains development in higher-cost urban areas, Move America Bonds allows up to 50 percent of proceeds to be spent on land acquisition in connection with a qualified project.

For rehabilitations, the rules requiring that rehabilitation expenditures equal at least 100 percent of the cost of acquisition are retained. However, as the purpose of Move America is to encourage partnerships among private parties and the government, the restrictions on tax-exempt partners is repealed for Move America Bonds. Additionally, enlargements are included as qualified rehabilitations, and taxpayers are allowed up to five years to complete rehabilitations.

Qualified facilities for Move America Bonds are limited to publicly-available transportation infrastructure, including airports, docks and wharves, mass commuting facilities, freight and passenger rail, highways and freight transfer facilities, flood diversion projects, inland and coastal waterway improvements, facilities for furnishing water, sewage facilities, and rural broadband infrastructure. Qualifying expenditures for docks and wharves are expanded to include waterborne mooring infrastructure and landside road and rail improvements that integrate modes of transportation.

Move America Bonds are subject to a uniform volume cap, equal to 50 percent of a State's current private activity bond volume cap. As some projects have long lead times or may require more bond volume than a State receives in a single year, States may carryforward volume cap for up to five years. Any carried over volume cap not used after five years is reallocated to States that have fully utilized their cap, ensuring that the program is fully utilized. States are required to report to the U.S. Treasury Department the amount of unused volume cap that is being carried forward each year.

Move America Credits

Current Law:

Under current law, there are several tax credits provided to encourage investment in property or services that might otherwise struggle to attract private investment. These include the historic rehabilitation tax credit, the low-income housing tax credit, and production and investment tax credits for renewable energy. The New Markets Tax Credit provides tax credits to equity investors in Community Development Entities (CDEs), allowing these CDEs the ability to provide low-cost financing to businesses in high-poverty areas.

These credits have seen tremendous success in attracting private investment to help rehabilitate historic main street corridors, develop affordable housing and clean energy, and provide start-up capital to businesses in economically distressed areas. By reducing costs associated with these investments, these incentives also help maintain affordable rents, low electricity prices, and reduced interest costs.

Proposal:

The bill creates Move America Credits, which can be used as equity credits or qualified infrastructure fund credits. States may elect to exchange all or a portion of their annual Move America Bond volume cap for an allocation of Move America Credits, at an exchange rate of 25 percent. In other words, a state receives $0.25 of credit allocation for each $1 of Move America Bond volume cap that is exchanged.

Move America Credits can be claimed against the Alternative Minimum Tax and, like the credit for research and experimentation, are fully excluded from the Base Erosion Anti Abuse Tax through December 31, 2025.

Allocation of Credits

The exchange of Move America Bonds for Move America credits must be made under a Qualified Allocation Plan, where each state designates the amount of volume cap being exchanged, and whether the credits will be allocated to qualified infrastructure facilities as equity credits, or to qualified infrastructure funds as qualified infrastructure fund credits. These allocations must also specify the projects or funds to which the credits are being allocated, and, for purposes of the qualified infrastructure funds, which investments the fund intends to make.

If a state exchanges Move America Bond volume cap for a Move America Credit allocation, and then fails to allocate credits either to qualified projects or qualified infrastructure funds by the end of the calendar year in which the exchange was made, the credit allocation reverts to bond volume cap as though the exchange was never made.

Move America Equity Credit

Under the equity credit, a state may allocate Move America Credits to taxpayers making investments in qualified facilities. Qualified facilities are those that would qualify for purposes of Move America Bonds. The Move America equity credit is equal to 100 percent of the eligible basis that a state allocates to the taxpayer.

Eligible basis is the lesser of the taxpayer's investment in the depreciable costs of the facility, or 20 percent total depreciable costs. Eligible basis does not include any portion of depreciable costs attributable to government assistance, whether it be grants or credit assistance. A final determination of eligible basis must be made by the end of the calendar year in which the facility is placed in service.

The amount of eligible basis (and, accordingly, Move America equity credits) allocated to the taxpayer cannot exceed the minimum amount the state determines is necessary for the project's financial feasibility. In making this determination, states must undertake a life cycle cost analysis of the project, examining the total financing planned for the project, including tax benefits, developmental and operational costs, ancillary costs such as right-of-way and procurement, financing costs, and transferred and retained risk.

Move America equity credits are claimed over a 10 year period, beginning when the qualified facility is placed in service. If at any point during the 10 year credit period the facility ceases to be a qualified facility, the credits are recaptured for those years.

If a state allocates Move America equity credits to a facility, and that facility is not placed in service within three years of the allocation, the state may reallocate the credits to another qualified facility, or to a qualified infrastructure fund. If the credits are not reallocated, or the facility to which the credits were reallocated is not placed in service within three years, the credit allocation reverts to the Move America Bond volume cap as though it had never been exchanged.

Move America Qualified Infrastructure Fund Credit

Under the qualified infrastructure fund credit, states may allocate credits to qualified infrastructure funds, which include state infrastructure banks, clean water or drinking water revolving loan funds, or any other equivalent funds established by a state, so long as the primary purpose of the fund is to finance infrastructure projects. These funds may offer the credits to taxpayers investing in the fund. The credit is equal to 50 percent of a taxpayer's equity investment, paid at a rate of 5 percent a year for 10 years, beginning when the investment is made.

The fund must use any proceeds from the investment to invest in qualified facilities within three years, otherwise the credits are recaptured. Credits may also be recaptured if the fund uses investment proceeds for uses other than investments in qualified facilities or if the fund redeems a taxpayer's investment before the end of the credit period.

If a qualified infrastructure fund receiving a credit allocation does not utilize the credits within the calendar year they are allocated, the credits are rescinded to the state. The state may reallocate the credits to another qualified infrastructure fund or facility. If the credits are not reallocated, they revert to the Move America Bond volume cap as though they had never been exchanged. Credits may only be reallocated from a qualified facility or qualified infrastructure fund once.

Reporting

Each year, states are required to report to the Department of the Treasury the amount of Move America Bond volume cap exchanged, the amount of Move America Credits allocated to qualified facilities or qualified infrastructure funds, and the taxpayers holding the investments in either qualified facilities or qualified infrastructure funds.