

# **Annual Report 2011 State Volume Cap**

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**STATE OF NEW JERSEY  
Department of Treasury  
Office of Public Finance  
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## Annual Report on 2011 New Jersey State Volume Cap

### **I. Background Information**

The federal government, as authorized through the Internal Revenue Service (“IRS”) and under the Internal Revenue Code of 1986, as amended (the “Code”), grants state and local governments the ability to issue tax-exempt private activity bonds for qualified purposes on behalf of entities other than the governmental agency issuing the bonds. These bonds are known as Tax-Exempt Private Activity Bonds (“TEPABs”). The qualified purposes for which these bonds can be issued are defined under Sections 142-144 and 1394 of the Code. The issuance of TEPABs by states for these qualified purposes is formulaically limited to a defined maximum amount during a calendar year. This limit is known as the state volume cap limit and is defined under Section 146 of the Code.

Historically, the state volume cap limit has consisted solely of TEPABs defined under Section 146 of the Code (“General State Volume Cap”). However, the Code was amended and supplemented by the American Recovery and Reinvestment Act of 2009, P.L. No.111-5 (“ARRA”). This federal assistance Act authorized the issuance of certain tax-exempt, tax-credit and tax subsidy bonds, including "Qualified Energy Conservation Bonds," "Qualified School Construction Bonds," "Qualified Zone Academy Bonds," "Recovery Zone Economic Development Bonds" and "Recovery Zone Facility Bonds" and provided for volume cap limitations on such bonds. Under ARRA, some allocations of the annual volume limits on certain bonds have been made directly to the State, while others have been made directly to local issuers, including municipalities and counties.

As outlined above, each component of the currently available federal allocations was created under a separate authorization governing its distinct bonding capacity, usage and carryforward limitations. A brief overview of the components listed, are described below.

#### Federal Allocations:

- General State Volume Cap
- American Recovery and Reinvestment Act of 2009 - Authorized bonds with cap limits:
  - Qualified Energy Conservation Bonds
  - Qualified School Construction Bonds
  - Qualified Zone Academy Bonds
  - Recovery Zone Economic Development Bonds (Expired)
  - Recovery Zone Facility Bonds (Expired)

## ***General State Volume Cap***

### Usage Limitations:

The State's General State Volume Cap was authorized in 1986 under Section 146 of the Code. As defined by Section 146, the State can use General State Volume Cap to finance a limited range of activities. Among the uses that qualify for General State Volume Cap are the sale of exempt facilities bonds, which encompass a variety of projects including among others, qualified residential projects, sewage and solid waste disposal facility projects, and electric energy and gas facility projects. Also, the sale of qualified student loan bonds, qualified redevelopment bonds, qualified mortgage bonds, and small issue industrial development bonds comply with these rules.

### Capacity Limitations:

Per Section 146, the established federal formula for determining general volume cap limits per State by calendar year is an amount equal to \$75, plus an annual cost of living adjustment, multiplied by the State population according to the U.S. Census Bureau.

In the case of the State of New Jersey for calendar year 2011, the volume cap ceiling was set at \$835,299,930. This amount was based on the formula outlined above at an amount equal to the product of \$95 per person and the U.S. Census Bureau population estimate for New Jersey in 2010 of 8,791,894.

### Carryforward Limitations:

Section 146 sets forth a carryforward mechanism for any unused General State Volume Cap. These carryforward rules require that an issuing authority must identify the usage category and the corresponding amount of unused cap for which the carryforward is being elected. The issuing authority then has the three (3) following calendar years to issue bonds, not to exceed the stated amount, for the elected purpose.

## ***ARRA Volume Cap Programs***

### ***Qualified Energy Conservation Bonds***

#### Usage Limitations:

Qualified Energy Conservation Bonds ("QECCBs") are authorized under Section 54D of the Code for the purpose of financing projects for qualified conservation purposes. "Qualified conservation purposes" are defined in more detail in section 54D(f) of the Code. QECCBs are federal tax credit bonds.

Capacity Limitations:

Code Section 54D(d), as amended by ARRA, authorizes a maximum national volume cap limitation for the QECB program of \$3.2 billion.

The QECB volume cap allocation for the State is \$90,078,000. There is currently no time limit on the use of this volume cap allocation. On April 29, 2011, pursuant to Code Section 54(e)(2), the State reallocated this volume cap to large local governments within the State. After making these allocations, the remaining cap (\$1,651,397.65) was allocated to the State.

Carryforward Limitations:

The QECB program will end after each state allocation of the national volume cap for the program is exhausted, if no action is taken by the federal government to reauthorize the program.

***Qualified School Construction Bonds***

Usage Limitations:

Qualified School Construction Bonds (“QSCBs”) are a new type of federal tax credit bond authorized under Section 54F of the Code to finance qualified school construction projects. QSCBs are federal tax credit bonds. The QSCBs must be issued by the state or local government within the jurisdiction in which the school is located. The issuer must designate the bonds as QSCBs for purposes of Code Section 54F.

Capacity Limitations:

Pursuant to Section 54F(c) of the Code, the national bond limitation authorization was \$11 billion for calendar year 2009 and \$11 billion for calendar year 2010.

The annual \$11 billion QSCB allocation was allocated among the states in proportion to the respective amounts each state is eligible to receive under section 1124 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333) for the most recent fiscal year ending before such calendar year. Each state will allocate this amount to issuers within that state. The State of New Jersey received a total of \$439,183,000.

Carryforward Limitations:

Under Section 54F(e) of the Code, a state may carryforward its unused QSCB volume cap for 2009 or 2010 to the next calendar year. QSCB volume cap allocated to a state does not expire. Large local educational agencies are not authorized to carryforward their unused QSCB volume cap. However, pursuant to Section 54F(d) of the Code, a large local educational agency may reallocate any unused volume cap for a calendar year to the state in which it is located for use during such calendar year.

## ***Qualified Zone Academy Bonds***

### Usage Limitations:

Qualified Zone Academy Bonds (“QZABs”) are authorized under Section 54E of the Code for the purpose of financing qualified zone academies. “Qualified zone academies” are defined in more detail in section 54E(d) of the Code. QZABs are federal tax credit bonds.

### Capacity Limitations:

Pursuant to Code Section 54E(c)(2), the volume cap limitation for QZABs is allocated by the United States Treasury Secretary among the states on the basis of their respective populations of individuals below the poverty line (as defined by the federal Office of Management and Budget). The amount allocated to the State is allocated by the State Commissioner of Education to qualified zone academies within the State pursuant to Code Section 54E(c)(2).

The QZAB volume cap allocation for the State for calendar year 2009 was \$25,535,000 and for calendar year 2010 was \$25,271,000. Pursuant to Code Section 54E(c)(1), as amended by ARRA, the QZAB program ended on December 31, 2010.

### Carryforward Limitations:

If a state does not use its entire QZAB allocation for a calendar year, the unused allocation is carried forward to the following calendar year, resulting in an increase in such state’s allocation for the following calendar year by the carryforward amount. Pursuant to Code Section 54E(c)(4)(B), the allowable carryforward duration is limited to a two-year period following the unused allocation year. Therefore, the State’s 2009 allocation of \$25,535,000 expired on December 31, 2011, and the State’s 2010 allocation of \$25,271,000 will expire on December 31, 2012.

## **II. The New Jersey Bond Volume Cap Allocation Act**

The New Jersey Bond Volume Cap Allocation Act, L. 1987, c. 393, as amended by L. 2009, c. 76 (the “Act”) addresses the treatment and allocation of the State Volume Cap Limits, including the ARRA Volume Cap Limits, granted each calendar year or as otherwise provided in the Code. As summarized in N.J.S.A. 49:2A-2(h), the Legislature recognized that “[t]here is a Statewide need to assure that the limited amount of tax exempt private activity bond financing and other types of tax-exempt, tax-credit or tax subsidy bond financings which are now authorized under the Code or may be authorized under the Code in the future, is used in the most effective manner by issuers of bonds in the State in order to provide the greatest benefits to the State, and that need can best be met by authorizing the Governor to continue to allocate portions of the State's volume cap among issuers.”

The Act also provides, in N.J.S.A. 49:2A-4(a), the Governor with the authority to establish a procedure for allocation of the State Volume Cap. According to the statute, any allocation procedure the Governor establishes requires the entire State Volume Cap to be allocated to the Department of the Treasury for reallocation by the State Treasurer. Executive Order No. 185 (Kean 1985) (Executive Order 185) allocated the entire State Volume Cap for 1988 and for each year thereafter to Treasury as required by L. 1987, c. 393 and remains in effect. Executive Order No. 167 (Corzine 2010) (Executive Order 167) allocates the ARRA Volume Cap received by the State directly from the federal government to the Department of the Treasury to be held by the State Treasurer. It further provides that the State Treasurer may allocate all or any part of the ARRA Volume Cap among State Entities (as defined in Executive Order No. 147 (Kean 1986) (“Executive Order 147)) or Local Government Units authorized to issue ARRA Tax-Credit Bonds or ARRA Tax Subsidy Bonds (all as defined in Executive Order 167). The State Treasurer will set the terms and conditions for receiving an allocation of ARRA Volume Cap, reallocating ARRA Volume Cap and carryforward of ARRA Volume Cap.

### **III. Procedures for the Allocation of the State Volume Cap Limits**

#### ***General State Volume Cap***

The Office of Public Finance, a division of the New Jersey Department of the Treasury, on behalf of the State Treasurer, manages the State Volume Cap program. At the start of each calendar year, the Office of Public Finance determines the annual State Volume Cap Limits in accordance with the applicable Code provisions. The Office of Public Finance then conducts an informal survey of certain State and local agencies that are frequent issuing entities for the eligible purposes defined by the Code as to their expected issuing needs for the calendar year. As the agency’s needs are made known, the Office of Public Finance begins accepting requests for allocations of portions of the State Volume Cap Limit.

Applications or requests for allocations of the State Volume Cap are generally drafted by counsel and/or an executive in charge of financial matters within the requesting issuing entity. These requests typically outline the issuing agency’s anticipated financing needs, including, as applicable, the intended borrower and the specific project toward which the cap will be used, the anticipated par amount/issue price of bonds to be sold and an affirmation of the tax-exempt status of the project. Upon receipt of such requests, the Office of Public Finance reviews them and makes a recommendation to the State Treasurer regarding their approval.

At the end of each calendar year, the Office of Public Finance conducts a brief survey with each agency that accepted a portion of State Volume Cap during the calendar year. This survey serves to inform Treasury of the amount of the State Volume Cap allocation that will be used by the end of that year and what, if any, foreseeable issuing needs agencies may have in the upcoming calendar year. Upon receipt of the survey responses, the Office of Public Finance prepares an Annual Report summarizing this

usage, grants carryforward approvals where applicable, and directs the issuing agencies to file the appropriate IRS forms as to their volume cap usage.

### Award Methodology for General State Volume Cap

In some cases, certain State issuers of TEPABs with large issuing needs are awarded, upon written request, a large allocation of General State Volume Cap at the beginning of the calendar year. During the year, an agency in this category will draw upon the large allocation to satisfy its many smaller issuing obligations throughout the year. State entities in this category are the New Jersey Economic Development Authority (“EDA”), the Higher Education Student Assistance Authority (“HESAA”) and the New Jersey Housing and Mortgage Finance Agency (“HMFA”) (collectively the “State Agencies”). These entities issue a high volume of TEPABs, particularly small issue industrial development bonds, qualified student loan bonds, qualified mortgage bonds and exempt facility bonds, respectively.

The EDA board meets on a monthly basis and considers approval of the sale of various small issue industrial development bonds, among others, that require the use of its upfront allocation. Upon the EDA board’s approval, Treasury is notified of the pending sales through certifications prepared by the EDA which are then reviewed for the State Treasurer’s approval. Typically, HESAA uses its upfront allocation to issue qualified student loan bonds on behalf of citizens of the State in a single annual bond issue. Similarly, HMFA uses its allocation to issue either qualified mortgage bonds or exempt facility bonds for the purpose of qualified residential rental projects on behalf of the citizens of the State in one or more series of bond issues.

With the exception of the upfront allocations for these entities, all other allocations of State Volume Cap are awarded based on a review of submitted written requests from other issuers that outline the specific project and intended use of the allocation. In keeping with Treasury’s policy of the last several years, the current allocation award policy is to award volume cap on a first-come, first-serve basis. Allocations of State Volume Cap among the various issuing entities are recorded and monitored carefully throughout the year.

All State Volume Cap allocated during the calendar year is issued with specific notification of the calendar year-end expiration. Notification is also given that if the bonds are not sold in the full amount of the allocation, or at all, within the period beginning the day the allocation is awarded and the last calendar day of that same year, the entity will lose its authorization to issue bonds under that allocation. In these cases, the State Treasurer rescinds the allocation and either reallocates it or grants carryforward allocations to other State Agencies.

### ***ARRA Volume Cap Programs***

Executive Order No. 167 (Corzine 2010) (Executive Order 167) allocated the ARRA Volume Cap received by the State directly from the federal government to the Department of the Treasury to be held by the State Treasurer for reallocation of all or any part of the ARRA Volume Cap among State Entities or Local Government Units authorized to issue ARRA Tax-Credit Bonds or ARRA Tax Subsidy Bonds.

#### **IV. Carryforward Policies**

If the bonds that have been allocated State Volume Cap are not sold by the expiration deadline, the IRS, in certain instances, affords the State the right to permit extensions or carryforward elections of certain types of unused State Volume Cap.

##### ***General State Volume Cap***

The State's carryforward policy for General State Volume Cap ("General State Volume Cap Carryforward" policy) allows the State Agencies that have not sold all of the bonds pursuant to their allocations, to carryforward that amount of unused General State Volume Cap for a three-year period, as authorized by the Code.

State policy does not allow county and municipal issuers to carryforward any amount of unused General State Volume Cap allocated to them. If a county or municipal issuer does not use its General State Volume Cap allocation by year-end, the State Treasurer rescinds the allocation and reallocates it to a State Agency with regular TEPAB issuing needs. If local issuers have projects pending that require allocation of General State Volume Cap, the local issuers are invited to apply for allocations of General State Volume Cap from the upcoming year. Priority is given to these issuers for General State Volume Cap allocations from the upcoming year.

##### ***ARRA Volume Cap***

**Qualified School Construction Bonds:** Under Section 54F(e) of the Code, a state may carryforward its unused QSCB volume cap for 2009 or 2010 to the next calendar year. QSCB volume cap may be brought forward indefinitely. Large local educational agencies are not authorized to carryforward their unused QSCB volume cap. However, pursuant to Section 54F(d) of the Code, a large local educational agency may reallocate any unused volume cap for a calendar year to the state in which it is located for use during such calendar year.

**Qualified Zone Academy Bonds:** Under the Code, as amended by ARRA, the State can carryforward any unused QZAB allocation for two years. As noted above, Pursuant to Code Section 54E(c)(1), as amended by ARRA, the QZAB program ended on December 31, 2010.

**Qualified Energy Conservation Bonds:** The Code does not impose a time limit on the issuance of the QESBs.

V. **Usage of State Volume Cap in 2011**

*General State Volume Cap Limit for New Jersey*

- The federal formula for calculating general volume cap limits per state in calendar year 2011 was \$95 (plus a cost of living adjustment) per person using population estimates released by the U.S. Census Bureau.
- The 2011 General State Volume Cap limit for New Jersey was based on this formula, incorporating a cost of living adjustment, with the U.S. Census Bureau population estimate for 2010 being 8,791,894.
- Determined by the formula given above, the total dollar amount of General State Volume Cap for the State of New Jersey for calendar year 2011 was **\$835,229,930**.
- 2011 General State Volume Cap usage is summarized in **Attachment I**.

*ARRA Volume Cap Limit for New Jersey*

- ***Qualified School Construction Bonds***  
For calendar year 2011, the State had an aggregate \$439,183,000 of QSCB volume cap available.  
  
On January 6, 2011, the State allocated \$35 million of QSCB volume cap to the EDA for the benefit of charter schools. Of that amount, the EDA had used \$20,367,097 as of December 30, 2011. The unused balance (\$14,632,903) was returned by EDA to the State on that date.
- ***Qualified Zone Academy Bonds***  
The State was allocated \$25,271,000 of QZAB volume cap for calendar year 2010.

**VI. State Volume Cap Allocations for 2012**

*General State Volume Cap*

- The State has been awarded, based on a revised federal formula of \$95 per person using the U.S. Census Bureau population estimate from 2011 (8,821,155), a General State Volume Cap limit for calendar year 2012 in the amount of **\$838,009,725**.
- As of February 1, 2012, \$167,326,314 of 2012 General State Volume Cap allocations have been awarded.

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