

April 14, 2009

MEMORANDUM TO: R. David Rousseau
State Treasurer

FROM: Catherine Singer, Manager
Office of Public Finance

SUBJECT: Annual Report on 2008 New Jersey State Volume Cap
Usage

Attached please find the final copy of the State's Annual Report on the usage of Volume Cap in calendar year 2008. Pursuant to our statutory requirement, this Report needs to be submitted to the Governor and to the members of the State Legislature. Please let me know if you would like me to prepare letters for your execution for the submission of this Report to the Governor, Senate President and the Speaker of the Assembly.

If you require additional information or wish to discuss this, please let me know.

Attachments

Annual Report on 2008 New Jersey State Volume Cap

I. Background Information

The federal government, as authorized through the Internal Revenue Service (“IRS”) Internal Revenue Code (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 (“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”). As of July 30, 2008 however, a second category of private activity bond volume cap was introduced by the federal government for use by States. The new category, enacted as H. R. 3221, The Housing and Economic Recovery Act of 2008 (P.L. 110-289), authorized a temporary increase in the private activity bond volume cap in 2008 through 2010 for States, specifically with respect to certain qualified housing issues (“2008 Housing Act Cap”). For purposes of this report and in summation of the 2008 usage of New Jersey private activity bond volume cap allocations, the distinction between the two categories of cap (collectively, “State Volume Cap”) is described below.

General State Volume Cap

The State’s use of General State Volume Cap, or TEPABs defined under Section 146 of the Code, is subject to the rules and regulations set forth by the IRS and the United States Department of the Treasury. As defined by Section 146, State’s can use General State Volume Cap to finance a limited range of activities. Also authorized under this Section is a three year declarative carryforward mechanism for any unused General State Volume Cap.

Among the uses that comply with the General State Volume Cap rules as defined under the Code 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 in compliance with these rules are the sale of qualified student loan bonds, qualified redevelopment bonds, qualified mortgage bonds, and small issue industrial development bonds. Accordingly, the General State Volume Cap is allocated among various State agencies and county and municipal issuers with issuing needs in these areas.

2008 Housing Act Volume Cap

The 2008 Housing Act Cap TEPAB bonding capacity authorized by H. R. 3221, The Housing and Economic Recovery Act of 2008 (P.L. 110-289), is statutorily limited to purposes relating to qualified housing issues and qualified mortgage revenue bonds. This legislation amends certain sections of the Code and applies only to those qualified bonds issued subsequent to the effective date of the legislation in 2008 and through the end of calendar year 2010.

Specifically, the 2008 Housing Act Cap is a temporary \$11 billion increase in private activity bond volume cap to be allocated among each of the states for 2008. Amended Section 146(d)(5)(A) of the Code defines the allocation methodology for each state as equal to \$11,000,000,000 multiplied by a fraction: (i) the numerator of which is the State Volume Cap Limit for calendar year 2008 (determined without regard to the increase in § 146(d)(5)(A), and (ii) the denominator of which is the aggregate Volume Cap Limit for all States. In accordance with the defined formula for this purpose, the supplemental 2008 Housing Act Cap allocated for New Jersey is equal to \$271,975,917.

The authorizing legislation and Code amendments for the 2008 Housing Act Cap also define certain distinctions between the supplemental 2008 Housing Act Cap and General State Volume Cap. Among these, Section 146(f)(6) of the Code stipulates a carryforward mechanism of only two years, for bonds not issued by the close of calendar year 2008. For this reason, 2008 Housing Act Cap is tracked separately from General State Volume Cap.

II. The New Jersey Private Activity Volume Cap Allocation Act

The New Jersey Private Activity Bond Volume Cap Allocation Act (P.L. 1987, Ch. 393) addresses the treatment and allocation of the State Volume Cap Limit granted each calendar year. As summarized in N.J.S.A. 49:2A-2(f), the Legislature recognized the “statewide need to assure that the limited amount of tax-exempt private activity bond financing available 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(b)(1), the Governor with the authority to establish a procedure for allocation of the State Volume Cap. According to the statute, any allocation procedure established by the Governor requires that the entire State Volume Cap be allocated to the Department of Treasury to be held and administered by the State Treasurer. Executive Order 185 (1988) allocates the entire State Volume Cap for 1988 and for each year thereafter to Treasury as required by the Act.

III. Procedures for the Allocation of the 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, according to the effective formula, the Office of Public Finance determines the annual State Volume Cap Limit. 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 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 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 their anticipated financing need, including the intended borrower and the specific project toward which the cap will be used, as well as the anticipated par amount/issue price of bonds to be sold as well as an affirmation of the tax-exempt status of the project.

Upon receipt, the requests are reviewed by the Office of Public Finance and a recommendation is made 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 usage status of the Cap allocations granted by the end of that year and what, if any, foreseeable issuing needs agencies may have through the upcoming calendar year. Upon receipt of the survey responses the Office of Public Finance finalizes an Annual Report summarizing this usage, grants carryforward approvals where applicable and directs the issuing agencies to file the appropriate forms required by the IRS as to their usage.

Award Methodology

In some cases, certain State issuers of TEPABs with prolific issuing needs are awarded, upon written request, a large allocation of 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 that fall under 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 their upfront allocation. Upon approval by the EDA board, Treasury is notified of the pending sales through certifications prepared by the EDA which are then reviewed for approval by the State Treasurer. 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 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 the policy of Treasury for the last several years, the current allocation award policy is done 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 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 loses its authorization to issue bonds under that allocation. In these cases the allocations are rescinded by the State and reallocations can be made or carryforward allocations granted to other State Agencies.

IV. Carryforward Policy

In the event that bonds are not sold by the expiration deadline, the IRS affords the State the right to permit extensions or carryforward elections of unused State Volume Cap (“Carryforward”).

General State Volume Cap

The Carryforward policy developed by the State for General State Volume Cap (“General State Volume Cap Carryforward” policy) allows the State Agencies who have not sold all the bonds pursuant to their allocations, to carryforward that amount of unused General State Volume Cap for a three-year duration, 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 not used by year-end, their allocation of General State Volume Cap is instead rescinded by the State and reallocated to a State Agency with regular TEPAB issuing needs. In the event that these local issuers have a project pending that requires an allocation of General State Volume Cap, the local issuer is invited to apply for an allocation of General State Volume Cap from the upcoming year. Priority on General State Volume Cap from the upcoming year is given to those issuers that fall into this category.

2008 Housing Act Volume Cap

The Carryforward policy relating to the 2008 Housing Act Volume Cap (“2008 Housing Act Volume Cap Carryforward” policy) differs from that of General State Volume Cap Carryforward as a result of certain distinctions imposed by the authorizing legislation.

As dictated by these statutory distinctions, 2008 Housing Act Volume Cap Carryforward election(s) must be designated and used solely for qualified housing issues. Further, the legislation limits the allowable carryforward duration to a two-year period, so that no bonds eligible for issuance under the 2008 Housing Act Volume Cap may be issued after the end of calendar year 2010.

V. Usage of State Volume Cap in 2008

1. General State Volume Cap Limit for New Jersey

- The federal formula for calculating general volume cap limits per state in calendar year 2008 was \$85 (plus a cost of living adjustment) per person using population estimates released by the U.S. Census Bureau.
- The 2008 General State Volume Cap limit for New Jersey is based on this formula, incorporating a cost of living adjustment, with the U.S. Census Bureau population estimate for 2007 being 8,685,920.
- Determined by the formula given above, the total dollar amount of General State Volume Cap for the State of New Jersey for calendar year of 2008 was **\$738,303,200**.

2. 2008 Housing Act Cap Limit for New Jersey

- The federal formula for calculating 2008 Housing Act Cap limits per state in calendar year 2008 was \$11,000,000,000 multiplied by the fraction: (i) the numerator of which is the State Volume Cap Limit for calendar year 2008 (\$738,303,200); and (ii) the denominator of which is the aggregate Volume Cap Limit for all States (\$29,024,700,000).
- Determined by this formula the total dollar amount of 2008 Housing Act Cap for New Jersey for calendar year 2008 was **\$271,975,917**.
- The entire allocation of 2008 Housing Act Cap available to the State of New Jersey was allocated to HMFA. A portion of that allocation has been approved for carryforward for their use through the end of calendar year 2010.

3. Summary of total allocations and usage of 2008 General State Volume Cap and 2008 Housing Act Cap is attached.

VI. General State Volume Cap Allocation for 2009

1. The State of New Jersey has been awarded, based on a revised federal formula of \$90 per person using the U.S. Census Bureau population estimate from 2008 (8,682,661), a General State Volume Cap limit for calendar year 2009 in the amount of **\$781,439,490.**
2. As of April 7, 2009, four allocations of 2009 General State Volume Cap have been awarded, with more expected to follow:

<u>Agency</u>	<u>2009 Volume Cap Allocation as of 2/26/09</u>
Economic Development Authority:	\$150,000,000
NJ Higher Education Student Assistance Authority:	\$211,696,800
City of Trenton:	\$9,904,000
Township of Hillsborough	\$800,000

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State of New Jersey Allocation and Use of 2008 General State Volume Cap																	
	2008 Cap Allocated	2008 Cap Used	2008 Cap Allocation Expires	2005 Carryforward	Used 2005	2006 Carryforward	Used 2006	2007 Carryforward	Used 2007	Available Cap	Used	Unused	Returned	To be Reallocated to Other Projects	Carryforward to 2009	Forfeited Cap	Notes
HMFA	-	-		-	-	111,965,703	111,965,703	316,455,600	316,455,600	428,421,303	428,421,303	-	-	-	-	-	
EIT	300,000	-	12/31/2008	-	-	-	-	-	-	300,000	-	300,000	300,000	300,000	-	-	
EDA	248,500,000	50,387,500	12/31/2008	27,633,649	-	66,233,110	1,717,950	66,037,104	-	408,403,863	52,105,450	356,298,413	98,500,000	98,500,000	99,612,500	27,633,649	
HCCFA	-	-		40,000,000	-	-	-	-	-	40,000,000	-	40,000,000	-	-	-	40,000,000	
HESAA	350,000,000	350,000,000	12/31/2008	-	-	-	-	-	-	350,000,000	350,000,000	-	-	-	238,303,200	-	
Twp. of Hillsborough	1,300,000	-	12/31/2008	-	-	-	-	-	-	1,300,000	-	1,300,000	1,300,000	1,300,000	-	-	
TOTAL	600,100,000	400,387,500		67,633,649	-	178,198,813	113,683,653	382,492,704	316,455,600	1,228,425,166	830,526,753	397,898,413	100,100,000	100,100,000	337,915,700	67,633,649	-
Total 2008 Cap (IRS Limit)	738,303,200																
Total Carryforward 2005-2007 Cap	628,325,166																
Total Available Cap	1,366,628,366																
Less: 2008 Cap Allocated	(600,100,000)																
Less: 2007 Cap Allocated	(628,325,166)																
Total 2008 Cap UnAllocated	138,203,200																
Plus: Returned Cap	100,100,000																
Remaining Available Cap for Allocation	238,303,200																

Allocation and Use of 2008 Housing and Economic Recovery Act Cap				
	Total HERA Cap Available	HERA Cap Used in 2008	HERA Cap Unused in 2008	HERA Cap Carriedforward to 2009-2010
HMFA	271,975,917	90,318,697	181,657,220	181,657,220