

## **Annual Report on the Usage of 2007 State Volume Cap by the State of New Jersey**

### **I. The New Jersey Private Activity Volume Cap Allocation Act**

The New Jersey Private Activity Bond Volume Cap Allocation Act (P.L. 1987, Ch. 393) provides for the allocation of the State's volume cap on tax-exempt private activity bonds and the private activity portion of governmental bonds issued 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 volume cap for 1988 and for each year thereafter to Treasury as required by the Act.

### **II. General Background Information**

The use of the State's volume cap is subject to the rules and regulations set forth by the Internal Revenue Service ("IRS") and the United States Department of the Treasury. As set forth by these rules, the cap can be used to finance a limited range of activities. Among the uses that comply with these rules 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 volume cap is allocated among various State agencies and county and municipal issuers with issuing needs in these areas.

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

At the end of each calendar year, the Office of Public Finance, a division of the New Jersey Department of the Treasury, conducts a brief survey with each issuing entity in the State that accepted a portion of the State's volume cap from the previous calendar year. This survey serves to inform Treasury of each entity's cap usage by the end of that year and what, if any, foreseeable issuing needs each may have through the upcoming calendar year. Upon receipt of the survey responses Treasury begins accepting

applications for allocations of State volume cap from various State and county issuing entities.

Applications or requests for allocations of volume cap are generally drafted by counsel and/or an executive in charge of financial matters within the issuing entity. These applications or requests typically outline the issuing entity's anticipated financing need and the specific project toward which the cap will be used, including the anticipated par amount/issue price of bonds to be sold as well as an affirmation of the tax-exempt status of the project.

### **Award Methodology**

In some cases, certain State issuers of tax-exempt private activity bonds 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, each particular entity 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 Housing and Mortgage Finance Agency ("HMFA"), (collectively the "State Agencies"). These entities issue a high volume of tax-exempt private activity bonds, 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. 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 upfront 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 volume cap allocated during the calendar year is issued with notification that the cap expires on the last calendar day of that same year. In other words, if bonds are not sold 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.

## **Election of Carryforward Volume Cap**

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 private activity bond volume cap ("Carryforward"). The Carryforward policy developed by the State allows the State Agencies who have not sold all the bonds pursuant to their allocations, to carryforward that amount of unused volume cap for a three-year duration, as determined by the Internal Revenue Code.

State policy, however, does not allow local issuers to carryforward any amount of unused volume cap allocated to them. If not used by year end, the cap is instead rescinded by the State and reallocated to a State Agency with regular private activity bond issuing needs. In the event that these local issuers have a project pending that requires an allocation of volume cap, the issuer is invited to apply for an allocation of cap from the upcoming year. Priority on State volume cap from the upcoming year is given to those issuers that fall into this category.

## **IV. Usage of the State's Volume Cap in 2007**

### **1. Total Dollar Amount of Volume Cap for New Jersey**

- The Federal formula for calculating volume cap per state is currently \$85 (plus a cost of living adjustment) per person using population estimates released by the U.S. Census Bureau.
- The 2007 cap allocated to New Jersey is based on this formula, incorporating a cost of living adjustment, with the U.S. Census Bureau population estimate for 2006 being 8,724,560.
- Determined by the formula given above, the total dollar amount of volume cap awarded to the State of New Jersey for the calendar year of 2007 was **\$741,587,600**.

### **2. Upfront allocations to State agencies made in 2007:**

- In January of 2007, two upfront allocations were made to State Agencies:
  - a. \$150,000,000 for use by the EDA
  - b. \$275,000,000 for use by HESAA

### **3. Summary of total allocations and volume cap usage in 2007:**

**(PLEASE SEE ATTACHED SPREADSHEET)**

**V. Volume Cap Allocation for 2008**

1. The State of New Jersey has been awarded, based on a revised Federal formula of \$85 (plus a cost of living adjustment) per person using the U.S. Census Bureau population estimate from 2007 of 8,685,920, a total volume cap limit for the calendar year of 2008 in the amount of **\$738,303,200**.
2. As of April 29, 2008, four allocations of 2008 volume cap have been awarded, and more are expected to follow:

<u>Agency</u>	<u>2008 Volume Cap Allocation as of 4/29/08</u>
Economic Development Authority:	\$248,500,000
NJ Higher Education Student Assistance Authority:	\$350,000,000
Environmental Infrastructure Trust:	\$300,000
Township of Hillsborough:	\$1,300,000

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