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Executive Department



State of South Carolina

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STATE DOCUMENTS

EXECUTIVE ORDER NO. 87-01

WHEREAS, the United States Congress through passage of the Tax Reform Act of 1986, Public Law 99-514 (the Act), has imposed a new volume limitation on the number of tax exempt private activity bonds that can be issued in each state; and

WHEREAS, the Governor of each state is given interim authority by the Act to proclaim a different formula than that provided in the Act for allocating the State's volume limitation among its governmental units which have authority to issue private activity bonds; and

WHEREAS, the Act provides that the Governor's interim authority terminates, inter alia, on the effective date of any State legislation with respect to the allocation of the State ceiling; and

WHEREAS, I have been requested to issue an Executive Order which sets forth a plan to allocate the State's volume limitation under the Act among its governmental units which have authority to issue private activity bonds.

NOW, THEREFORE, pursuant to the authority vested in me as Governor of the State of South Carolina by the Constitution and laws of this State and by the Act, I hereby proclaim the following plan for allocating the State Ceiling on the issuance of tax exempt private activity bonds:

Section 1. Calculation and Certification of State Ceiling

The State Ceiling on the issuance of private activity bonds (as defined in the Section 146 of the Internal Revenue Code of 1986, referred to herein as the Code) established in the Tax Reform Act of 1986 (the Act), must be certified annually by the Budget and Control Board (Board) Secretary based upon the provisions of the Act. The Board Secretary must make this certification as soon as practicable after the estimates of the population of the State of South Carolina to be used in the calculation are published by the U. S. Bureau of the Census but in no event later than February 1 of each calendar year; provided that, if necessary because of changes made by the Act, the Board Secretary must calculate and certify a revised State Ceiling within not more than fifteen (15) calendar days following the issuance of the Executive Order containing these regulations.

Section 2. Allocation of Bond Limit Amounts

(a) **Allocations in Response to Authorized Requests.** The private activity bond limit for all issuing authorities will be allocated by the Board in response to Authorized Requests (described in Section 4) by such issuing authorities.

(b) **Limit allocated to State Initially.** The aggregate private activity bond limit amount for all South Carolina issuing authorities is allocated initially to the State for further allocation within the limits prescribed herein.

(c) **Allocations on First-come, First-served Basis.** Except as is provided in Section 5, all allocations from the Local Pool or from the State Government Pool (the Pools are described in Section 3) will be made by the Board on a first-come, first-served basis, to be determined by the date and time sequence in which complete Authorized Requests are received by the Board Secretary.

Section 3. Private Activity Bond Limits and Pools

(a) **State Government Pool.** The private activity bond limit for all State Government issuing authorities now or hereafter authorized to issue private activity bonds as defined in the Act, to be known as the "State Government Pool," is forty per cent (40%) of the State Ceiling less any amount

shifted to the Local Pool (described in paragraph (b), below) or plus any amount shifted from that Pool.

(b) **Local Pool.** The private activity bond limit for all issuing authorities other than State Government agencies, to be known as the "Local Pool," is sixty per cent (60%) of the State Ceiling plus any amount shifted from the State Government Pool or less any amount shifted to that Pool.

(c) **Pool Shifts.** The Board, with review and comment by the Joint Bond Review Committee (Committee), may shift unallocated amounts from one Pool to the other at any time.

Section 4. Authorized Requests for an Allocation

(a) **Other Than State Government Issuing Authorities.** For private activity bonds proposed for issue by other than State Government issuing authorities, an Authorized Request is a request included in a petition to the Board that a specific amount of the State Ceiling be allocated to the bonds for which the petition is filed. The petition must be accompanied by a copy of the Inducement Contract, Inducement Resolution, or other comparable preliminary approval, if any, relating to the bonds entered into or adopted by the issuing authority. The Board must forward promptly to the Committee a copy of each petition received.

(b) **State Government Issuing Authorities.** For private activity bonds proposed for issue by any State Government issuing authority, an Authorized Request is a request included in a petition to the Board that a specific amount of the State Ceiling be allocated to the bonds for which the petition is filed. The petition must be accompanied by a bond resolution or comparable action by the issuing authority authorizing the issuance of the bonds. The Board must forward promptly to the Committee a copy of each petition received.

(c) **Allocation Requested is Total Contemplated.** Each Authorized Request must demonstrate that the allocation amount requested constitutes all of the private activity bond financing contemplated at the time for the project and any other facilities located at or used as a part of an integrated operation with the project.

Section 5. Limitation on Allocations

(a) The Board, with review and comment by the Committee, may disapprove, reduce or defer any Authorized Request. If it becomes necessary to exercise this authority due to lack of funds in either Pool, the Board and the Committee must take into account the public interest in promoting economic growth and job creation.

(b) Authorized Requests for State Ceiling allocations of more than \$10 million for a single project are deferred until after July 1 unless the Board, after review and comment by the Committee, determines in any particular instance that the positive impact upon the State of approving an allocation of an amount greater than \$10 million is of such significance that approval of such an allocation is warranted.

Section 6. Certificates by Issuing Authority and by Board

(a) **Board Tentative Allocation Certificate.** An allocation of the State Ceiling approved by the Board is made formal initially by a certificate which allocates tentatively a specific amount of the State Ceiling to the bonds for which the allocation is requested. This tentative allocation certificate must specify the State Ceiling amount allocated, the issuing authority and the project involved, and the time period during which the tentative allocation is valid. This certificate must remind the issuing authority that the tentative allocation is made final after the issuing authority chairman or other duly authorized official or agent of the issuing authority, before the issue is made, certifies the issue amount and the projected date of issue, as is required by paragraph (b) of this Section. It also may include other information deemed relevant by the Board Secretary.

(b) **Issuing Authority Issue Amount Certificate.** The chairman or other duly authorized official or agent of an issuing authority issuing any private activity bond for which a portion of the State Ceiling has been allocated tentatively must execute and deliver to the Board Secretary an issue amount certificate setting forth the exact amount of bonds to be issued and the projected bond issue date which date must not be more than ten (10) business days after the date of the issue amount certificate and it must be before the State Ceiling allocation involved expires. The issue amount certificate may be an executed copy of the completed Internal Revenue Service

Form 8038 to be submitted to the Internal Revenue Service on the issue or it may be in the form of a letter which certifies the exact amount of bonds to be issued and the projected date of the issue.

(c) **Board Final Allocation Certificate.** In response to the issuing authority's issue amount certificate required by paragraph (b) of this Section, the Board Secretary is authorized to issue and, as may be necessary, to revise a certificate making final the ceiling allocation approved previously by the Board on a tentative basis, if the Secretary determines that: (1) the issuing authority's issue amount certificate specifies an amount not in excess of the approved tentative ceiling allocation amount; (2) the issue amount certificate was received prior to the issue date projected and that the certificate is dated not more than ten (10) days prior thereto; (3) the issue date projected is within the time period approved previously for the tentative ceiling allocation; and (4) the bonds when issued and combined with the total amount of bonds requiring a ceiling allocation included in issue amount certificates submitted previously to the Board by issuing authorities will not exceed the State Ceiling for the calendar year. Except under extraordinary circumstances, the Board Secretary will issue this certificate within two (2) business days following the date the issue amount certificate is received.

(d) **Board Secretary Designated to Certify Ceiling Allocations.** In accord with Section 149(e)(2)(F) of the Code, the Secretary of the Budget and Control Board is designated as the State official responsible for certifying, if applicable, that certain bonds meet the requirements of Section 146 of the Code relating to the volume cap on private activity bonds.

(e) **Status of Ceiling Allocations Approved Before Executive Order Issued.** Any tentative or final State Ceiling allocation granted by the Board before the date this Executive Order was issued remains valid under this Executive Order as an allocation of a portion of the volume cap for South Carolina provided under Section 146 of the Code. Such allocations will expire in accord with the regulations under which they were granted or extended and their validity may be extended or reinstated in accord with the provisions of this Executive Order.

Section 7. Time Limits on Allocations

(a) **Allocations Valid in Calendar Year Approved; Exceptions.** Any State Ceiling allocation approved by the Board is valid only for the calendar year in which it is approved, unless eligible and approved for carryforward election or unless specified differently in the Board certificates required by Section 6.

(b) **Expiration of Allocations.** Unless eligible and approved for carryforward election or unless specified differently in Board certificates required by Section 6, each State Ceiling allocation expires automatically if the bonds for which the allocation is made are not issued within ninety (90) calendar days from the date the allocation is approved by the Board. As provided in paragraph (c) of this Section, the Board may extend the period in which an allocation is valid by up to thirty-one (31) calendar days.

(c) **Allocation Extension.** In response to a written request by the chairman or other duly authorized official or agent of an issuing authority, the Board, acting during the period an approved allocation is valid, may extend the period in which an allocation is valid in a single calendar year by thirty-one (31) calendar days to a total of not more than one hundred twenty one (121) calendar days.

(d) **Allocation Reinstatement.** In response to a written request by the chairman or other duly authorized official or agent of an issuing authority, the Board may reinstate for a period of not more than thirty-one (31) calendar days in any one calendar year part or all of an allocation approved previously in that same calendar year which has expired. The reinstatement request must certify that the authorized request submitted previously is still true and correct or a new authorized request must be submitted.

(e) **Allocation Cancellation.** A tentative ceiling allocation is cancelled automatically if the chairman or other duly authorized official or agent of the issuing authority involved fails to deliver the issue amount certificate required by Section 6 to the Board Secretary before the bonds for which the allocation is made are issued.

(f) **Allocation Relinquishment.** The chairman or other duly authorized official or agent of an issuing authority must advise the Board Secretary in writing as soon as is practicable after a decision is made not to

issue bonds for which a portion of the State Ceiling has been allocated. Such notices of relinquishment of ceiling allocations must be entered promptly in the Board's records by the Board Secretary.

(g) **Carryforward Elections.** Ceiling allocations which are eligible and approved for carryforward election are not subject to the validity limits of this Section. The Board will join with the issuing authorities involved in carryforward election statements to meet the requirements of the Internal Revenue Service.

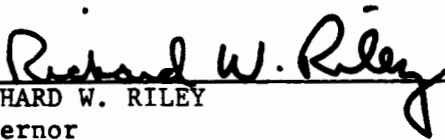
Section 8. Termination of This Regulation

These Regulations shall be of no force and effect upon the earlier of the rescission by Congress or declaration of unconstitutionality of the Act, or any portion thereof, by the U. S. Supreme Court.

Section 9. Executive Order #86-20 Amended

It is intended that this Executive Order be considered an amendment of Executive Order #86-20 which I executed and issued on October 22, 1986, and which, as so amended, reads as presented above.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, AT COLUMBIA, SOUTH CAROLINA, THIS 7th DAY OF JANUARY 1987.


RICHARD W. RILEY
Governor

ATTEST:


JOHN T. CAMPBELL
Secretary of State