Chapter Comm 113

ALLOCATION OF VOLUME CAP ON TAX–EXEMPT PRIVATE ACTIVITY BONDS

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Note: Chapter DOD 13 was repealed and recreated as an emergency rule effective December 30, 1996. Chapter DOD 13, as it existed on June 30, 1997, was repealed and recreated as chapter Comm 113, effective July 1, 1997. Chapter Comm 113, as it existed on December 31, 1997, was repealed and a new chapter Comm 113 was created effective January 1, 1998.

Comm 113.01 Purpose. The purpose of this chapter is to establish a procedure relating to the annual allocation of volume cap for tax–exempt "private activity bonds" that may be issued by Wisconsin issuers pursuant to the internal revenue code of 1986, 26 USC 146.

History: Cr. Register, December, 1997, No. 504, eff. 1–1–98; emerg. am. eff. 2–15–99; am. Register, August, 1999, No. 524, 9–1–99.

Comm 113.02 Definitions. In this chapter:

(1) "Beginning farmer bonds" means bonds or notes authorized under s. 234.66, Stats.

(2) "Brownfields" has the meaning assigned to that term in s. 560.13 (1) (a), Stats.

(3) "Carry forward purpose" has the meaning assigned to that term in 26 USC 146 (f)(5).

(4) "Code" means the internal revenue code of 1986, as amended.

(5) "Council" means the advisory volume cap allocation council established by the department under s. 15.04 (1) (c), Stats. and s. Comm 113.05.

(6) "Department" means the department of commerce.

(7) "Economic development bonds" means bonds described in 26 USC 142(a), 144(a) and 144(c). "Economic development bonds" does not include multi–family housing bonds.

(8) "Issuer" means:

(a) Any municipality.

(b) Any agency, authority or political subdivision of the state of Wisconsin that is empowered to borrow money, including WHEDA and any other public corporation or commission established by or on behalf of these entities.

(c) For purposes of s. Comm 113.06 (2), any person acting for or on behalf of the entities listed in par. (a) or (b).

Note: Comm 113.06 (2) was repealed eff. 12–1–01.

(9) "Issuer–owned project bonds" means bonds issued for a facility that is owned by an issuer, would be treated as owned by the issuer pursuant to 26 USC 142 (b) (1) (B), and is described in 26 USC 142 (a) (1) to (11). It does not include single–family housing bonds but does include multi–family housing bonds.

(10) "Multi–family housing bonds" means bonds issued for a qualified residential rental project, as defined in 26 USC 142 (a) (7) and 142 (d).

(11) "Municipality" has the meaning assigned to that term in s. 67.01(5), Stats.

(12) "Other private activity bonds" means private activity bonds other than those certified to the department as issuer owned project bonds, multi–family housing bonds or single–family housing bonds.

(13) "Private activity bonds" has the meaning assigned to that term in 26 USC 141 (a).

(14) "Project" means any issuer–owned project, multi–family housing project, or economic development project for which private activity bonds may be issued under applicable federal law.

(15) "Qualified redevelopment bonds" has the meaning assigned to that term in 26 USC 144 (c).

(16) "Single–family housing bonds" means qualified mortgage bonds as defined in 26 USC 143 (a).

(17) "Small economic development bonds" means any economic development bond issue where the aggregate face amount to be issued is $2 million or less.

(18) "Unified volume cap" means the annual state ceiling for the issuance of private activity bonds applicable to the state of Wisconsin.

Note: The "unified volume cap" is determined according to 26 USC 146 (d) (1) and (2).

(19) "WHEDA" means the Wisconsin Housing and Economic Development Authority.

History: Cr. Register, December, 1997, No. 504, eff. 1–1–98; **emerg. r. (1), renum. (2) to be (1) and cr. (2) and (19) eff. 4–26–01; CR 01–070: r. (1), renum. (2) to be (1), cr. (2) and (19), and am. (8) (b), Register November 2001 No. 551, eff. 12–1–01.**

Comm 113.03 Allocation to WHEDA. (1) There is allocated annually to WHEDA 50% of the base level established by the total amount of unified volume cap for the year 2000, less the $10 million set aside for the building commission, plus a percentage of the total increase above that base in volume cap as follows: 2001 (75%), 2002 (70%), 2003 (65%), 2004 (60%). In the year 2005, and thereafter, WHEDA shall be allocated 50% of the total amount of unified volume cap less the amount allocated to the building commission under s. Comm 113.04.

(2) The volume cap allocated to WHEDA shall be further allocated to local issuers by WHEDA under sub. (3) or utilized by WHEDA for single–family housing bonds, multi–family housing bonds and beginning farmer bonds. WHEDA shall certify to the department promptly after issuance of any private activity bonds the total amount of the bonds issued pursuant to this allocation.

(3) From the volume cap allocated under sub. (2), WHEDA shall, until October 1 each year, set aside $15 million in volume cap for local issuers of multi–family housing bonds pursuant to guidelines established by WHEDA and approved by the department. WHEDA shall consider requests in excess of the set aside until October 1 each year.

History: Cr. Register, December, 1997, No. 504, eff. 1–1–98; **emerg. r. & recr. eff. 4–26–01; CR 01–070: r. and recr., Register November 2001 No. 551, eff. 12–1–01.**

Comm 113.04 Building commission allocation. There is allocated annually to the state building commission $10 million of the unified volume cap to be further allocated by the building commission and utilized for any private activity bonds as the building commission in its discretion shall determine are needed. Any amount of the allocation for which bonds have not been issued by September 1 each year shall be automatically transferred to the department to be further allocated as provided in ss. Comm 113.06, 113.07 and 113.08. The building commis-

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sion shall promptly certify to the department, on September 1 each year, the amount of unused allocation.

History: Cr. Register, December, 1997, No. 504, eff. 1–1–98.

Comm 113.041 Commerce rapid response set aside volume cap. History: Emerg. cr. eff. 2–15–99; cr. Register, August, 1999, No. 524, eff. 9–1–99; **emerg. r. eff. 4–26–01; CR 01–070: r., Register November 2001 No. 551, eff. 12–1–01.**

Comm 113.05 Volume cap allocation council. (1) Pursuant to s. 15.04 (1) (c), Stats., there is created the volume cap allocation council attached to the department consisting of all of the following:

(a) The secretary of the department or the secretary's designee.

(b) The executive director of WHEDA or the executive director's designee.

(c) Up to 5 additional members appointed by the secretary of the department for 2–year terms.

(2) The council shall evaluate applications and make recommendations to the secretary of the department relating to the allocation of volume cap among applicants pursuant to s. Comm 113.07. The secretary of the department shall make final decisions on the allocation of volume cap.

History: Cr. Register, December, 1997, No. 504, eff. 1–1–98; emerg. am. (1) (c), eff. 2–15–99; am. (1) (c), Register, August, 1999, No. 524, eff. 9–1–99; **CR 01–070: am. (1) (b), Register November 2001 No. 551, eff. 12–1–01.**

Comm 113.06 Department's allocation; allocation process. (1) (a) There is allocated to the department the remainder of the annual unified volume cap, including any amount that is surrendered, transferred or terminated under s. Comm 113.04 or 113.06 (6), which shall be allocated for issuer–owned project bonds, economic development bonds and other private activity bonds, but not for single family housing bonds or multi–family housing bonds. In the year 2005 and thereafter, for any unified volume cap transferred under s. Comm 113.04, the department shall allocate 50% of the volume cap to WHEDA. The department will annually develop an allocation plan, which may include but not be limited to specific set–asides for exempt environmental projects and specific targeted industries identified in the allocation plan.

Note: The allocation plan is available from the department at the Community Development Division, P.O. Box 7970, Madison, WI 53707–7970, telephone (608) 267–2045.

(b) The department shall conduct a review and evaluation of each project in accordance with the annual allocation plan. The business shall submit through a commerce area development manager a completed prospect data sheet.

Note: The prospect data sheet is available from the department at the Community Development Division, P.O. Box 7970, Madison, WI 53707–7970, telephone (608) 267–2045.

Note: Information relating to the Commerce Area Development Manager is available on the Commerce website at www.commerce.state.wi.us/MT/MT–COM–2000.html or by contacting the department at 1–800–435–7287.

(c) The department shall evaluate the project based upon the following:

1. The project serves a public purpose.

2. The project will likely retain or increase employment in this state.

3. The project will likely positively affect an area's economic distress.

(d) In making a determination, the council and the department shall consider all of the following:

1. The extent of poverty, unemployment or other factors contributing to general economic hardship in the area.

2. The prospects for new investment and economic development in the area.

3. The amount of investment that is likely to result from the project.

4. The number of jobs that are likely to be retained or created as a result of the project.

5. The competitive effect of the allocation of unified volume cap on other businesses in the area.

6. Whether the project will result in dislocation of a business from one municipality to another.

7. Whether the project will result in the redevelopment of a brownfield site.

8. Whether the project is likely to occur or continue without allocation of the unified volume cap.

9. The financial soundness of the business.

10. The ability of the eligible recipient to repay the bond.

11. Any other factors that the department considers relevant.

(e) If a determination is made to recommend the project for an allocation of volume cap, the department will send a proposal letter to the business indicating the amount of volume cap and any other conditions that the department has determined must be met. If the business accepts the proposal in writing, the business may then proceed with the volume cap allocation process on behalf of the issuer in accordance with s. Comm 113.07.

(3) If the department approves an application under this section, the department shall promptly certify a portion of its allocation of the unified volume cap that has not been allocated to an issuer and shall allocate the approved portion of the amount requested to the issuer. The allocation shall be valid for a period equal to the lesser of 90 calendar days or the remainder of the calendar year. The amount of the allocation shall not exceed the maximum amount authorized for issuance under the official action taken by the issuer with respect to the obligation. Certain allocations are subject to earlier termination pursuant to subs. (6) and (7). Any allocation under this section shall be valid only with respect to bonds issued in the same calendar year. Any allocations for a carry forward purpose shall be obtained under the provisions of s. Comm 113.08.

(4) (a) Each issuer shall notify the department in writing as to the amount of obligations issued pursuant to the allocation within 5 business days after the issuance of the bonds and as part of the notification, make a payment by cash or cashiers check to the department equal to 10 one hundredths of one percent of the amount of the obligations issued pursuant to the allocation.

(b) Upon notification and payment under par. (a), the allocation in the amount issued shall, subject to par. (c), become permanent and irrevocable.

(c) The department shall treat any notice received pursuant to this subsection more than 5 business days after the issuance of the bonds as a reapplication pursuant to this chapter.

(5) An application shall be made only within 90 calendar days prior to the planned issuance of the bond.

(6) An issuer may surrender to the department all or any part of its rights to a particular allocation under any section of this chapter prior to its expiration. Upon surrender of all or any part of an issuer's allocation, the allocation shall expire.

(7) (a) Unless the department has received notice of the issuance of bonds pursuant to sub. (4) or a deposit of cash or a certified or cashier's check in an amount equal to .5% of the allocation requested, if requested prior to October 1, and one percent if requested on October 1 or thereafter, any allocation shall terminate on the earlier of 30 days after the allocation is made or December 1. No additional deposit may be required with respect to an allocation made upon reapplication if the required deposit has already been made, and not refunded, with respect to the project.

(b) 1. Subject to subd. 2., the deposit shall be refunded, without interest, if prior to January 1 of the succeeding year bonds are issued by the issuer pursuant to the allocation or to an allocation made upon reapplication.

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2. A ratable portion of the deposit proportionate to the amount by which the allocation exceeds the face amount of the bonds may not be refunded.

3. Any deposits, or portions of the deposits, which have not become refundable pursuant to subds. 1. and 2. as of the fifth business day of the succeeding year shall remain in the department and be used as determined by the department.

4. Any refund shall be made within 30 days after a request for refund, together with any evidence as the department may reasonably require, is furnished to the department.

(8) Notwithstanding any other provision, the deposit required with respect to any issuer−owned project bonds or qualified redevelopment bonds shall be $1,000 for each $5 million of allocation or portion of $5 million of allocation requested, and no deposit shall be required with respect to any allocation to the state building commission.

(9) If a project is located in the territory of more than one municipality, a municipality in which a portion of the project will be located may apply for volume cap and then assign its volume cap to the municipality which will act as issuer for the bonds relating to the project.

History: Cr. Register, December, 1997, No. 504, eff. 1−1−98; emerg. am. (1), (2) and (7) (b) 3., eff. 2−15−99; am. (1), (2), (7) (b) 3., Register, August, 1999, No. 524, eff. 9−1−99; **emerg. am. (1) and (4) (a), r. (2), eff. 4−26−01; CR 01−070: renum. (1) to be (1) (a) and am., cr. (1) (b) to (e), r. (2) and am. (4) (a), Register November 2001 No. 551, eff. 12−1−01.**

Comm 113.07 Application process: criteria for volume cap. (1) An application to the department for an allocation of the unified volume cap shall include all of the following:

(a) The name and address of the issuer.

(b) A description of the project.

(c) The name and address of the person that proposes to invest in the project.

(d) The amount that the person proposes to invest in the project.

(e) The total investment in the project.

(f) The total number of jobs that will be created, retained or substantially upgraded in connection with the project.

(g) The average wages and benefits that will be provided to persons hired as a result of the project.

(h) The person's plans to make reasonable attempts to hire employees who are recipients of unemployment compensation under ch. 108, Stats., or relief funded by a relief block grant under ch. 49, Stats.

(i) Evidence that official action has been taken by the issuer with respect to the issuance of the obligation which, for obligations issued pursuant to s. 66.1103, Stats., shall be the initial resolution previously filed with the department with respect to the obligation.

(j) A written, signed opinion of the issuer's legal counsel or bond counsel, certifying that the obligations qualify as private activity bonds subject to the unified volume cap and stating whether the bonds qualify as issuer−owned project bonds, qualified redevelopment bonds, or other private activity bonds.

(k) A written, signed commitment letter from a financial institution indicating a commitment to purchase or place the obligations upon delivery by the issuer.

(L) Any other information required by the department.

(1m) Documents or material submitted with an application that contain trade secret information, social security or federal employer identification numbers, private financial information, or tax documents or information shall have that information deleted before public disclosure.

(2) Upon receipt of a completed prospect data sheet, the department shall evaluate whether it meets the requirements of sub. (3).

(3) The council and the department may approve an allocation of the unified volume cap if they determine all of the following:

(a) The project serves a public purpose.

(b) The project will likely retain or increase employment in this state.

(c) The project will likely positively affect an area's economic distress.

(4) In making a determination under sub. (3), the council and the department shall consider all of the following:

(a) The extent of poverty, unemployment or other factors contributing to general economic hardship in the area.

(b) The prospects for new investment and economic development in the area.

(c) The amount of investment that is likely to result from the project.

(d) The number of jobs that are likely to be retained or created as a result of the project.

(e) The competitive effect of the allocation of unified volume cap on other businesses in the area.

(f) Whether the project will result in dislocation of a business from one municipality to another.

(g) Whether the project will result in the redevelopment of a brownfield site.

(h) Whether the project is likely to occur or continue without allocation of the unified volume cap.

(i) Any other factors that the department and the council consider relevant.

(5) If the council and the department approve an application under this section, the department shall promptly certify a portion of its allocation of the unified volume cap that has not been allocated to an issuer and shall allocate the approved portion of the amount requested to the issuer. The allocation shall be valid for a period equal to the lesser of 90 calendar days or the remainder of the calendar year. The amount of the allocation shall not exceed the maximum amount authorized for issuance under the official action taken by the issuer with respect to the obligation. Certain allocations are subject to earlier termination pursuant to s. Comm 113.06 (6) and (7). Any issue under this section shall be valid only with respect to bonds issued in the same calendar year.

(6) The council and the department may not approve an allocation in excess of $5 million for any project unless they determine that the utilization is in the best interests of the people of the state of Wisconsin. In making a determination under this subsection, the council and the department shall consider all of the following:

(a) The needs of other areas of the state.

(b) The amount of unified volume cap requested by and available to other issuers.

(c) Any other factors that the department and the council consider relevant.

History: Cr. Register, December, 1997, No. 504, eff. 1−1−98; emerg. am. (1) (a), r. and recr. (3) (c), eff. 2−15−99; am. (1) (a), r. and recr. (3) (c), Register, August, 1999, No. 524, eff. 9−1−99; emerg. renum. (1) (k) to be (1) (m) , cr. (1) (k) and (L), and am. (2) to (4) eff. 4−26−01; CR 01−070: renum. (1) (k) to be (1) (L) and (4) (f) to (j) to be (4) (e) to (i), cr. (1) (k), (1m), am. (2), and r. (3) (c) 1. to 7. and (4) (e), Register November 2001 No. 551, eff. 12−1−01; **correction in (1) (i) made under s. 13.93 (2m) (b) 7., Stats**.

Comm 113.08 Carry forward allocation process. (1) (a) On the department's next to last working day of the year, the department shall determine the portion of its allocation of the unified volume cap that has not been allocated to issuers and shall then make allocations only for carry forward purposes. No allocation for carry forward purposes may be made pursuant to this subsection prior to that date. Any requests shall be considered by the department in the order received, and a request shall be deemed not to have been received if an allocation has been made and not surrendered with respect to the same project or portion of the proj-

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ect. An allocation may be made by the department to any issuer that has done all of the following:

1. Requested an allocation for a carry forward purpose.

2. Provided the department with information as is requested by the department and approved by the department as showing that an effective election can be made by the issuer under the federal tax reform act of 1986 and any applicable income tax regulations promulgated pursuant to 26 USC 146.

3. Paid to the order of the department a deposit of immediately available funds or a certified or cashier's check in an amount equal to one percent of the amount of the allocation requested.

(b) The deposit paid under par. (a) 3. shall be refunded, without interest, if bonds are issued by the issuer on or before December 31 of the third succeeding year, for the carry forward purpose indicated in the application for the allocation, provided that an amount of a deposit equal to one percent of the amount by which the allocation exceeds the face amount of bonds actually issued shall not be refunded. Any refund shall be made within 30 days after a request for refund, together with any evidence as the department may reasonably require, is furnished to the department.

(c) Any deposits under s. Comm 113.06 shall not be credited toward the deposit under this subsection.

(d) Any deposits or portions of the deposits which have not become refundable pursuant to par. (b) as of January 1 of the preceding year shall remain in department and be used as determined by the department.

(e) Notwithstanding any other provision, the deposit required with respect to any issuer−owned project bonds or qualified redevelopment bonds shall be $1,000 for each $5 million of allocation or portion of $5 million of allocation requested, and no deposit shall be required with respect to any allocation to the state building commission.

(2) On the department's last working day of the year, the department shall determine the portion of its allocation of the unified volume cap that has not been allocated to issuers. The department shall assign that portion to WHEDA with direction to WHEDA to make an election, pursuant to any applicable income tax regulations promulgated pursuant to 26 USC 146, to carry forward the portion for any carry forward purpose.

History: Cr. Register, December, 1997, No. 504, eff. 1−1−98; emerg. am. eff. 2−15−99; am., Register, August, 1999, No. 524, eff. 9−1−99; **CR 01−070: r. (1) (a) 3., renum. (1) (a) 4. to be (1) (a) 3., and am. (2), Register November 2001 No. 551, eff. 12−1−01; correction in (1) (b) was made under s. 13.93 (2m) (b) 7., Stats., Register November 2001, No. 551.**

Comm 113.09 Department certification. At the request of an issuer that has complied with all of the provisions of this chapter and that received an allocation, the department shall certify that the bond issue meets the requirements of 26 USC 146.

History: Cr. Register, December, 1997, No. 504, eff. 1−1−98.

Comm 113.10 Designation of interest earned. Any interest earned upon investment of amounts deposited under this chapter shall inure to the state of Wisconsin for the benefit of the people of the state of Wisconsin, to be used as provided by law.

History: Cr. Register, December, 1997, No. 504, eff. 1−1−98.