

Executive Orders

EXECUTIVE ORDER No. 185

WHEREAS, The Tax Reform Act of 1986 (the Act) imposes an annual limitation on the issuance of tax-exempt private activity bonds as defined in the Act by all issuers within the State; and

WHEREAS, The Act includes a provision that it applies to bonds issued after August 15, 1986; and

WHEREAS, The Act limits the annual volume of tax-exempt private activity bonds (State volume cap) for the State of New Jersey to \$50 per resident annually for 1988 and the years thereafter, based on the most recent population estimate provided by the Bureau of the Census before the beginning of the year to which the limitation applies; and

WHEREAS, The State tax-exempt obligations that would be tax-exempt private activity bonds and subject to the State volume cap under the Act include those obligations which assist in the financing of projects necessary to improve the quality of New Jersey's environment, to stimulate economic development in the State, and to provide low-to-moderate income housing for New Jersey's citizens; and

WHEREAS, In accordance with the Act and by Part II of Executive Order No. 147, I had allocated the State volume cap among the issuers in the State for 1986 and 1987; and

WHEREAS, In accordance with the Act, Part II of Executive Order No. 147 expired on December 31, 1987; and

WHEREAS, In accordance with the Act, the Legislature has passed and, on January 13, 1988, I have signed into law the "New Jersey Private Activity Bond Volume Cap Allocation Act," which gives the Governor the authority to establish a procedure for allocation of the State volume cap, which procedure may provide a reallocation formula that differs from the federal formula and authorizes the Governor by Executive Order or otherwise to allocate the entire State volume cap to the Department of the Treasury for reallocation by the State Treasurer; and

WHEREAS, It is desirable to establish a procedure for allocating the State volume cap among issuers to ensure an equitable and prudent allocation that is beneficial for the citizens of New Jersey; and

WHEREAS, The Act imposes a reporting requirement on all issuers of tax-exempt obligations, in accordance with which issuers are required to file certain information with the Internal Revenue Service with respect to obligations issued after December 31, 1986; and

WHEREAS, The Act requires that issuers of obligations that are subject to the State volume cap attach to each information statement to be filed with the Internal Revenue Service with respect to their obligations a certification by a State official designated by State law, or when there is no such official, the Governor, that such obligation meets the State volume cap; and

WHEREAS, No State law designates a State official for purposes of making the required certification;

NOW, THEREFORE, I, Thomas H. Kean, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and statutes of this State, do hereby ORDER and DIRECT:

Part I—Definitions

As used in this Act:

A) “Bond” means a revenue obligation, security, bond, note debenture, certificate or other evidence of indebtedness of an issuer.

B) “Carryforward” means that portion of the State volume cap for any calendar year which is unused during that calendar year and which is available to be carried forward to be used in later years pursuant to the Code.

C) “Federal formula” means the formula or formulas for allocation of the State volume cap now or hereafter established pursuant to the Code.

D) “Governmental bond” means any tax-exempt bond which is not a private activity bond.

E) “Issuer” means the State or any political subdivision of the State or any entity issuing bonds on behalf of the State or any political subdivision of the State.

F) “Private activity bond” and “private activity portion of governmental bonds” mean a bond or portion thereof subject to any allocation of State volume cap pursuant to the Code.

G) “State entity” means any agency, department, subdivision, authority, or corporation of the State authorized to issue tax-exempt bonds.

H) "State obligation" means: (a) any obligation directly or indirectly payable from or secured in part by State General Fund monies, even if subject to annual appropriation by the State Legislature; or (b) any obligation creating a moral obligation on the part of the State.

I) "Tax-exempt bond" means a bond, note or other obligation the interest on which is not includable in federal gross income pursuant to section 103 of the Code.

Part II—Allocation to the Department of the Treasury

1. A) The entire State volume cap for 1988 and for each year thereafter is allocated to the Department of the Treasury to be held by the State Treasurer. The State Treasurer may allocate all or any portion of the State volume cap among State entities or local units of government authorized to issue tax-exempt private activity bonds and to the New Jersey Department of Environmental Protection (DEP), in accordance with the requirements of the Act.

B) The State Treasurer shall set forth the terms and conditions for receiving an allocation to issue tax-exempt private activity bonds. Further, the State Treasurer may set forth the terms and conditions under which the New Jersey Housing and Mortgage Finance Agency (HMFA), the New Jersey Economic Development Authority (EDA), and DEP may reallocate their allocation received pursuant to the Treasurer's Order. The State Treasurer also may set forth the terms and conditions under which State entities may carry forward their allocations.

2. I hereby designate the State Treasurer as my delegate for the purpose of certifying compliance by issuers with the annual State volume cap requirement set forth in the Act.

3. This part of the Executive Order shall take effect immediately and applies to all private activity bonds and the private activity portion of governmental bonds issued after January 13, 1988.

Part III—Executive Order No. 147

Executive Order No. 147 shall remain in full force and shall in no way be affected by this Executive Order.

Issued February 4, 1988.