
EXECUTIVE ORDER PROVIDING FOR THE ALLOCATION OF
MONTANA'S UNIFIED VOLUME CAP BONDS PURSUANT
TO THE TAX REFORM ACT OF 1986

WHEREAS, the United States Congress has enacted the Tax Reform Act of 1986 (hereinafter the Tax Act).

WHEREAS, pursuant to Section 1301 thereof, a unified volume cap is established for each state limiting the aggregate principal amount of certain private activity bonds (PABs, as therein defined), the interest on which is exempt from federal income taxation, that may be issued annually within the state.

WHEREAS, the Tax Act is effective with respect to PABs issued after August 15, 1986.

WHEREAS, by the provisions of the Tax Act, the governor of each state is authorized to establish an interim allocation procedure to be effective until January 1 immediately following the next regular session of the state legislature meeting after December, 1986.

NOW, THEREFORE, I, TED SCHWINDEN, Governor of the State of Montana, by the power and authority vested in me by the State Constitution, by the laws of the State of Montana and the Tax Act, do hereby order and decree that the following procedures be used to allocate Montana's Unified Volume Cap Bonds subject to the Tax Act which may be issued by State Issuers or Local Issuers prior to the effective date of any state legislation providing for a different allocation procedure.

Section 1. DEFINITIONS

As used in this Order, unless the context clearly requires otherwise, the following terms shall have the meanings assigned them:

- (1) Allocation means an allocation of a part of the Volume Cap to an Issuer pursuant to this Order.
- (2) Board means the Montana Board of Examiners.
- (3) Bonds mean bonds, notes or other interest bearing obligations of an Issuer.
- (4) Cap Bonds means those PABs and that portion of Governmental Bonds for which a part of the Volume Cap is required to be allocated pursuant to the Tax Act.
- (5) Department means the Department of Administration.
- (6) Governmental Bonds mean bonds other than PABs.
- (7) Issuer means a State Issuer or Local Issuer.
- (8) Local Issuer means a city, town, county, or other political subdivision of the State authorized to issue PABs or Governmental Bonds.
- (9) Local Portion means that portion of the Volume Cap reserved for Local Issuers.
- (10) MALA means the Montana Agricultural Loan Authority.
- (11) MBH means the Montana Board of Housing.
- (12) MEDB means the Montana Economic Development Board.
- (13) MHESAC means the Montana Higher Education Student Assistance Corporation.
- (14) MHFA means the Montana Health Facilities Authority.
- (15) Mortgage Bond means a qualified mortgage bond or qualified veteran's mortgage bond as defined in the Tax Act.
- (16) Order means this Executive Order No. 19-86.
- (17) PABs mean private activity bonds within the meaning of Section 1301 of the Tax Act.
- (18) State means the State of Montana.
- (19) State Issuer means the state and any agency thereof authorized to issue PABs. For this purpose

only, the Montana Higher Education Student Assistance Corporation shall be deemed an agency of the State.

- (20) State Portion means that portion of the Volume Cap reserved for State Issuers.
- (21) Student Loan Bond means a qualified student loan bond as defined in the Tax Act.
- (22) Tax Act means the Tax Reform Act of 1986 enacted by the United States Congress.
- (23) Volume Cap means, with respect to each calendar year, the principal amount of Cap Bonds that may be issued in the State in such calendar year as determined under the provisions of the Tax Act.

Section 2. VOLUME CAP AND RESERVATIONS

For each of the calendar years 1986 and 1987, the State's Volume Cap is \$250 million. In each of the calendar years 1986 and 1987, subject to the provisions of Sections 3 and 4 hereof, \$175 million of the Volume Cap shall be reserved for Cap Bonds issued by State Issuers (the State Portion) and \$75 million of the Cap Volume shall be reserved for Cap Bonds issued by Local Issuers (the Local Portion).

Section 3. ALLOCATION TO STATE ISSUERS

The State Portion shall be allocated to State Issuers pursuant to Section 6 hereof except as hereinafter provided. Of the State Portion, the following set asides shall be made in each of the calendar years 1986 and 1987 for the State Issuers indicated:

<u>State Issuer</u>	<u>Calendar Year</u>	
	<u>(in millions)</u>	
Board	<u>1986</u> \$ 5	<u>1987</u> \$ 10
MALA	5	5
MBH	125	70
MEDB	40	40
MHESAC	0	40
MHFA	0	10
Total	<u>\$175</u>	<u>\$175</u>

In 1986, each set aside shall expire on December 1, 1986, and in 1987, each set aside shall expire on September 1, 1987. Prior to the set aside expiration dates in each year, Allocations shall be made only to each State Issuer from its respective set aside by the Department pursuant to Section 6 hereof and no State Issuer shall be entitled to an Allocation except from its set aside unless otherwise provided by the governor pursuant to a supplement to this Order. After the expiration date in each year, the amount of the set aside remaining unallocated shall be available for allocation by the Department to a State Issuer or Local Issuer pursuant to Section 6, without preference or priority.

Section 4. ALLOCATION TO LOCAL ISSUERS

The Local Portion shall be allocated by the Department pursuant to Section 6 hereof. During calendar year 1987, not more than \$20 million of the Local Portion may be allocated for a single project or purpose prior to September 1, 1987. After December 1, 1986, and September 1, 1987, the Local Portion may be allocated by the Department to a State Issuer or Local Issuer pursuant to Section 6 without preference or priority.

Section 5. CARRY FORWARD ELECTIONS

Between December 1 and the second Wednesday of December in each of the years 1986 and 1987, a State Issuer or Local Issuer may file with the Department an application for a carry forward election with respect to any unallocated portion of the Volume Cap for such year. Applications for carry forward elections may only be filed with respect to carry forward purposes authorized by the Tax Act. Each application for a carry forward election shall contain the information required of an application for Allocation by Section 6 and such additional information as the Tax Act and Department shall require. If, as of the second Wednesday of

December in each of such years, the aggregate amount of applications for carry forward elections does not exceed the amount of the unallocated and unused Volume Cap, each such application shall constitute a valid carry forward election within the meaning of the Tax Act. If as of the second Wednesday of December in each of such years, the aggregate amount of applications for carry forward elections does exceed the unallocated and unused Volume Cap, the Governor shall determine which applications shall constitute a valid carry forward election within the meaning of the Tax Act.

Section 6. ALLOCATIONS BY THE DEPARTMENT

The Department shall administer the Allocation of Cap Bonds to be allocated to Local Issuers and State Issuers in accordance with this Section 6. Applications for an Allocation for each issue of Bonds shall be made to the Department, in form acceptable to the Department, and shall contain, to the extent applicable, the following information:

- (a) the name of the Issuer;
- (b) a description of the purpose or purposes for which the proceeds of the Cap Bonds will be used, including, if appropriate, a description of the project or projects to be financed;
- (c) the location of the project or projects;
- (d) the name and address of each project owner and user;
- (e) a certified copy of the inducement resolution adopted or official action taken by the Issuer pursuant to the Tax Act, approving the project or purpose and granting preliminary authorization for the issuance of the Cap Bonds therefor;
- (f) the preliminary opinion of a qualified bond counsel to the effect that the proposed purpose for which the Cap Bonds are to be issued qualifies under applicable State law and the Tax Act and, if

the Cap Bonds are issued, that the interest thereon will not be included in gross income for purposes of federal income taxation;

- (g) evidence that all public hearing requirements concerning the proposed purpose and project have been met;
- (h) a copy of a letter from an underwriter, bank, or other financial institution stating in effect that in its opinion the proposed financing is feasible and the Cap Bonds may be successfully sold under current market conditions and that it has reviewed all of the information necessary to form its opinion;
- (i) the amount of Allocation requested; and
- (j) such other information as the Department shall deem necessary.

Allocations to Issuers shall be made by the Department on the basis of the chronological order of the receipt of their completed applications. Completed applications received on the same day by the Department must be ranked according to the earliest inducement or resolution official action date.

Section 7. NOTIFICATION OF APPROVAL OR DISAPPROVAL BY THE
DEPARTMENT

Upon receipt of an application for an Allocation, the Department shall notify the applicant, in writing, of the approval of the Allocation or the reasons for disapproval as soon as possible.

Section 8. TERMS OF ALLOCATION

(1) Unless terminated earlier by the Issuer, an Allocation shall be valid for 90 days from the date the Department's notice of approval is mailed. The Department may extend the period of validity for an additional 30 days upon presentation of evidence to it prior to the expiration of

the 90-day period that an agreement to purchase the Cap Bonds for which the Allocation was given has been obtained from an entity legally authorized to purchase them.

(2) If the Cap Bonds are not issued within the period of validity, as determined under subsection (1), the Allocation shall automatically expire.

(3) All Allocations shall expire on December 31 of the year in which they were made, however, this subsection does not limit the term of an Allocation for which a valid carry forward election has been made.

Section 9. ALLOCATIONS NOT TRANSFERABLE

Allocations may not be transferred between projects or purposes.

Section 10. REAPPLICATION

If the Department shall disapprove an application for an Allocation, or if an Allocation shall expire under Section 8, the Issuer may reapply for an Allocation. The reapplication shall be reviewed as any other application by the Department, according to the chronological order of its receipt. No priority or preference shall be given to a reapplication because of the prior application.

Section 11. RECORD KEEPING

The Department shall maintain complete records of all applications for Allocations and all Allocations made pursuant thereto to assure that the requirements of the Tax Act with respect to the Volume Cap are observed.

Section 12. EFFECTIVE DATE

This Order shall become effective November 12, 1986, and shall govern Allocations for Cap Bonds to be issued after August 15, 1986.

GIVEN under my hand and the GREAT SEAL of the State of Montana, this 13 day of November, in the year of our Lord, one thousand nine hundred and eighty

Ted Schwinden
TED SCHWINDEN, GOVERNOR

ATTEST:

Jim Waltermire
JIM WALTERMIRE, SECRETARY OF STATE