

# **ALLOCATION PLAN for Private Activity Bonds in Tennessee**

## **INTRODUCTION**

Tennessee Code Annotated 9-20-102 authorizes the Commissioner of the Department of Economic and Community Development (hereinafter referred to as Commissioner and ECD respectively) to prepare and implement a plan for the allocation of the state's volume limitation (hereafter referred to as state cap or cap) of private activity bond authority authorized under federal tax legislation. The purpose of this document is to promulgate this plan.

If federal tax laws regarding private activity bonds are amended, or economic conditions within the state change, this plan may be modified to accommodate these changed circumstances. This plan will remain in affect, however, until modified, and such modifications, if they occur, will be widely publicized to those interested in and impacted by the use of bond cap in Tennessee.

## **STATE CAP, ELIGIBLE USES, PROGRAM GOALS**

The state cap of private activity bond authority is equal to \$80 per capita based upon the last estimate of population by the U.S. Bureau of the Census prior to January 1 of the year in question, and is for a calendar year. The state will obtain the applicable population estimate, and will calculate the annual cap allocation on January 1 of each year.

The state will recognize the full range of eligible uses of bond cap that is provided by the federal government. For purposes of the Tennessee Allocation Plan, these uses are categorized as follows:

Small Issue Bonds (currently limited by federal law to manufacturing)

Housing Bonds (multi and single family)

Student Loan Bonds

Exempt Facility Bonds

Tennessee will utilize its annual allocation of bond authority with the following goals in mind:

Maximum beneficial use for the residents of Tennessee, with a priority on economic development.

Full utilization of the bond authority afforded by the federal government.

Maximum benefit for all areas of the state.

## ALLOCATION PRIORITIES

In order to achieve the above listed goals, the allocation of the state's bond authority will follow the following process:

1. On January 3, a sum of \$25 million will be set aside for state projects that may require a share of the state cap, or other projects having a high state priority. State projects will be approved by the Commissioner of ECD in consultation with the State Funding Board. Bond authority unused from this set-aside will be reallocated to other uses.
2. On January 3, an allocation of \$150 million will be made to the Tennessee Housing Development Agency (THDA) for multi and single family housing bonds. This allocation may be used directly by THDA, or may be reallocated by THDA to other users for housing purposes.
3. On January 3, an allocation of \$75 million will be made to Educational Funding of the South, Inc. (EdSouth) for the purpose of capitalizing a student loan program.
4. From January 3 through June 30, allocations for small issues for manufacturing will be approved up to \$10 million, and exempt facility issues will be approved for up to \$20 million. Requests for allocations for exempt facilities bonds received between January 3 and June 30 will be held until June 30, and a decision will be made at that time whether to approve an allocation in excess of \$20 million. In making this decision, the Commissioner may, at his discretion, consult with others within and without state government.

From July 1 through November 30, allocations for small issues for manufacturing will be approved up to \$10 million, and exempt facility issues will be approved for up to \$20 million. Requests for allocations for exempt facilities bonds received between July 1 and November 30 will be held until November 30, and a decision will be made at that time whether to approve an allocation in excess of \$20 million. In making this decision, the Commissioner may, at his discretion, consult with others within and without state government.

5. On December 1, the Commissioner will consider request(s) that have been received in excess of \$20 million, including standing requests that may have been received from THDA and EdSouth for housing bonds and student loan bonds, and will allocate the balance of the state cap, including any residual from the \$25 million reserved for state projects. In making these decisions, the Commissioner will be guided by the goals of the allocation plan, and may, at his discretion, consult with others within and without state government in making these decisions.
6. If a situation develops where allocations different from those specified above are warranted in order to achieve the goals of the allocation plan, the Commissioner, with the approval of the State Funding Board, may exceed specified allocations, where such is authorized by federal law.

7. Bonds approved through this process must be closed within 90 days of the date of their approval by ECD, or by December 15. A later date may be authorized at the discretion of the Commissioner. The Commissioner may, if requested by the issuing authority, authorize allocations to be carried forward under the provisions of Section 146(f) of the Internal Revenue Code.

The required closing period will not be extended. However, applications may be resubmitted **one time** subject to the following conditions.

- a. The second closing period will be 60 days from the date of the second approval.
- b. A resubmitted application will be treated as newly submitted and will have no chronological priority over other applications that have been received.

In accepting the reservation of bond authority, issuers must certify that they are cognizant of the applicable closure deadline.

## **ADMINISTRATIVE PROCEDURES**

### **Structure of Application**

Applications for reservation of bond authority must contain the following elements. **Applications with missing elements will be returned to applicants with no action being taken on them.**

1. **Application for Bond Reservation**

An application form must be submitted which will provide basic information about the proposed issue. A copy of the application form is included as Appendix 1.

2. **Legal Statement**

The application must contain a statement by a qualified attorney to the effect that a) the issue does not appear to be in conflict with applicable State and Federal legislation, b) is the type of issue that must be counted against the State's private activity bond volume limitation, c) a proper bond inducement instrument explaining the relationship between the issuer and the borrower/user has been executed, d) a proper public notice of the bond issue has been made under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) has been made, e) public approval of the bond issues has been received as required by TEFRA. A copy of a recommended Legal Statement is included as Appendix 2.

3. **Financial Commitment Letter**

The application must contain a tentative commitment to purchase the bonds. The form of a commitment letter is included as Appendix 3.

Applications should be submitted to the following address:

Tennessee Department of Economic and Community Development  
**Bond Reservation Section**  
Wm. R. Snodgrass TN Tower, 10<sup>th</sup> Floor  
312 Eighth Avenue North  
Nashville, Tennessee 37243-0405

## **Bond Reservation**

Applicants which are authorized to receive a reservation of a portion of the state's cap will receive a Letter of Reservation. **This letter will be the only document that should be accepted by bond counsels in determining tax exempt bond status for issues based on the volume limitation requirement.**

The Letter of Reservation will contain the following elements:

1. The amount of bond authority being reserved.
2. The uses which must be made of the bond proceeds.
3. A requirement that unused bond authority must be returned to the state allocation.
4. A requirement that the Borrower's Acceptance must be **received** by the Bond Reservation Section no later than 14 days after the date of the Letter of Reservation.
5. The period within which bond closure must be achieved.
6. A requirement that a Confirmation of Issuance must be **received** by the Bond Reservation Section no later than 7 days after the required closure date in the Letter of Reservation.
7. The penalty for failure to achieve bond closure by the required deadline.
8. A certification that there is sufficient cap to cover the allocation being made.

A sample Letter of Reservation is included as Appendix 4.

## **Recapture of Bond Reservation**

In the event that the bond closure is for a lesser amount than that reserved for the issuer in the Letter of Reservation, the unused portion of the reservation will be recaptured by the state upon receiving notice of the closure, and will be returned to the state's allocation. The purpose of this provision is to ensure that bond authority is not being unnecessarily reserved, thus denying its use to other issuers.

## **PLAN AMENDMENTS**

This Bond Allocation Plan will be effective on January 1, 2006, and will remain effective until, in the opinion of the Commissioner, federal tax legislation, state policies, or experience in utilizing the Plan suggest that the goals of the Plan can be better achieved through a Plan amendment. If this occurs, the Commissioner will amend the Plan, and will provide proper publication of the amendment(s). If not prevented by Departmental Rules, the amendment(s) will take effect upon publication. If such amendment(s) require changes in Departmental Rules, such rule changes will be implemented, and the Plan amended after the new Rules become effective.

## **APPENDIX**

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The Appendix contains documents that will become part of the bond reservation process. Listed in sequence these documents are:

1. APPLICATION FOR BOND RESERVATION
2. LEGAL STATEMENT
3. FINANCIAL COMMITMENT LETTER
4. LETTER OF RESERVATION
5. BORROWER'S ACCEPTANCE
6. CONFIRMATION OF ISSUANCE

It is important that the Borrower's Acceptance and Confirmation of Issuance be submitted on time. This is the only way that adequate records can be maintained. It is also necessary to insure protection of the reservation of bond authority.

**APPENDIX 1**

**APPLICATION  
FOR  
BOND RESERVATION**

# APPLICATION FOR BOND RESERVATION

## ISSUER

Board Name: \_\_\_\_\_  
Board Chairman: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: (     ) \_\_\_\_\_

## BORROWER/USER

Company Name: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: (     ) \_\_\_\_\_

## BOND COUNSEL

Firm Name: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: (     ) \_\_\_\_\_

RESERVATION REQUESTED \$ \_\_\_\_\_

EXPLAIN THE IMPACT ON THE PROJECT IF THE TOTAL ALLOCATION IS NOT RECEIVED.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## TYPE OF BOND (Check one)

Small Issue IDB  Other   
Exempt Facility  Specify: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

DESCRIBE THE PRODUCT OR SERVICE TO BE PRODUCED, PROBABLY IMPACT ON THE LOCAL ECONOMY, AND OTHER PERTINENT INFORMATION PERTAINING TO THE APPROVAL OF THIS ALLOCATION.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PROJECT SIC CODE: \_\_\_\_\_

EMPLOYMENT INFORMATION:

Permanent New Jobs Created (*within two years*) \_\_\_\_\_  
Existing Jobs Retained \_\_\_\_\_

BOND USES (*Check one or more*)

- Building
- Equipment
- Land Purchase
- Site Development

WILL YOUR BONDS BE PUBLICLY  OR PRIVATELY  PLACED?

UNDERWRITER  PURCHASER  OR PLACEMENT AGENT

Company Name: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: (     ) \_\_\_\_\_



**BORROWER / ISSUER CERTIFICATION**

The information contained in this Application for Bond Reservation and related attachments is, to the best of our knowledge, true and accurate.

_____ Authorized Signature <i>(BORROWER)</i>	_____ Authorized Signature <i>(ISSUER)</i>
_____ Title	_____ Title
_____ Date	_____ Date

**TOTAL APPLICATION CHECK-OFF LIST**

- 1. Application for Bond Reservation:
- 2. Financial Commitment Letter:
- 3. Legal Statement:

## **APPENDIX 2**

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# **LEGAL STATEMENT**

*(Bond Counsel's Letterhead)*

*(Date)*

Tennessee Department of Economic and Community Development  
Bond Reservation Section  
Wm. R. Snodgrass TN Tower, 10<sup>th</sup> Floor  
312 Eighth Avenue North  
Nashville, Tennessee 37243-0405

Dear Sir or Madam:

We are familiar with the proposed issue of revenue bonds by *(name of issuer)* to finance *(type of project)* for *(name of borrower/user)*. We are also familiar with the sections of the Internal Revenue Code of *(applicable year)*, and the regulations thereunder, that apply to such revenue bonds and with the Tennessee statutes pursuant to which such revenue bonds are proposed to be issued.

We are of the opinion ❶ that under Federal and Tennessee law, a project of the type described above can be financed by revenue bonds issued by the issuer identified above, ❷ we have no actual knowledge of any facts that would cause interest on such proposed revenue bonds to be included in gross income for Federal income tax purposes pursuant to the Internal Revenue Code of *(applicable year)*, as amended, ❸ that the use of proceeds of revenue bonds to finance a project of the type described above would not, by itself, cause interest on such bonds to be included in gross income for Federal income tax purposes pursuant to the Internal Revenue Code of *(applicable year)*, ❹ that such revenue bonds would be subject to the Volume caps provided for in Section 141 and/or 146 of the Internal Revenue Code of *(applicable year)*, ❺ that a bond inducement instrument has been properly executed between the issuer and borrower/user, and ❻ that the public notice and public approval as required by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) have been completed in accordance with the applicable requirements.

In giving the foregoing opinions, we have relied, without further investigation, upon representations, both oral and/or in writing, of one of more of the following: the various entities referred to above, their officers and representatives, their lawyers, accountants and others.

Except as expressly stated above, we express no opinion with respect to the exemption from Federal income taxation of such proposed revenue bonds.

This opinion is solely for your benefit pursuant to the requirements in connection with your allocation of the "volume caps" referred to above, and this opinion is not to be quoted, circulated, or delivered to any other person without our prior written consent.

Sincerely yours,

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*(Name)*

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*(Law Firm)*

## **APPENDIX 3**

# **FINANCIAL COMMITMENT LETTER**

*(Purchaser's Letterhead)*

*(Date)*

Tennessee Department of Economic and Community Development  
Bond Reservation Section  
Wm. R. Snodgrass TN Tower, 10<sup>th</sup> Floor  
312 Eighth Avenue North  
Nashville, Tennessee 37243-0405

Dear Sir or Madam:

We are delivering this commitment to purchase in compliance with the requirements of the Tennessee Allocation Plan for Private Activity bonds.

This commitment is to accompany the Application for Bond Reservation for the Issuer and bonds described as follows:

Issuer: \_\_\_\_\_ *(Please use proper legal name.)*

Aggregate principal amount of bonds: \$ \_\_\_\_\_  
*(Dollar amount should correspond to the amount specified in the application.)*

Borrower: \_\_\_\_\_ *(Please use proper legal name.)*

In connection with your consideration of the bonds described above, we hereby advise you that we have made a commitment to purchase or place the obligations upon delivery by the Issuer for our own account, for the account of others, or for resale. Such commitment is subject to the satisfaction of certain conditions (i.e., determination of interest rate at or about the time of closing; final forms of documents, instruments, certificates and things satisfactory to Purchaser and its counsel; receipt of satisfactory legal opinions; satisfaction of state and federal requirements with respect to the obligations; no adverse factual or legal changes prior to closing).

Sincerely yours,

\_\_\_\_\_  
*(Name of Purchaser)*

By: \_\_\_\_\_

Title: \_\_\_\_\_

## **APPENDIX 4**

# **LETTER OF RESERVATION**

# LETTER OF RESERVATION

(Date)

\_\_\_\_\_

Chairman

\_\_\_\_\_

Issuer

\_\_\_\_\_

Address

Dear \_\_\_\_\_:

You have made application to the State of Tennessee for the reservation of a portion of Tennessee's private activity bond authority as provided in the Internal Revenue Code of (*applicable year*) for the following:

Borrower/User: \_\_\_\_\_

Date of Inducement: \_\_\_\_\_

Date of Application: \_\_\_\_\_

Project Name: \_\_\_\_\_

Description of Project: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

This letter is to inform you that your application has been approved and you are authorized to issue private activity bonds under the following conditions:

1. Allocation Number: \_\_\_\_\_
2. Amount of Reservation: \$ \_\_\_\_\_
3. This bond is authorized for sale only during the following period \_\_\_\_\_ to \_\_\_\_\_.
4. The Borrower's Acceptance must be **received** by the Bond Reservation Section no later than \_\_\_\_\_.
5. A Confirmation of Issuance must be **received** by the Bond Reservation Section no later than \_\_\_\_\_.
6. Unused bond reservation (the difference between the amount of bond reservation and bond sale) will automatically be returned to the state's bond allocation.

Failure to close this issue by \_\_\_\_\_ will result in forfeiture of the allocation. The application may be resubmitted one time, but will have no chronological priority over other applications that have been received.

**FAILURE TO RECEIVE THE BORROWER'S ACCEPTANCE OR CONFIRMATION OF ISSUANCE BY THE REQUIRED DATE WILL CAUSE THE RESERVATION OF BOND AUTHORITY TO BE SUBJECT TO IMMEDIATE RECAPTURE WITHOUT NOTICE FROM THE BOND RESERVATION SECTION.**

Also, I hereby certify that with the approval of this reservation, the balance of the Tennessee volume cap remaining after all Letters of Reservation have been issued under the Allocation Plan for Private Activity Bonds in Tennessee, for the calendar year that includes the period of issuance of bonds authorized hereunder, excepting those Letters of Reservation that have expired without bonds being issued thereunder, is sufficient to cover this reservation. This amount does not consider any changes in federal law affecting the volume limitation currently contained in the Internal Revenue Code of (*applicable year*) which is \$80 multiplied by the resident population of Tennessee on the basis of the most recent census estimates released by the Bureau of the Census before the beginning of the calendar year in which this allocation is made.

Sincerely,

Commissioner

## **APPENDIX 5**

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# **BORROWER'S ACCEPTANCE**

## **BORROWER'S ACCEPTANCE**

I hereby signify my acceptance of a reservation of Tennessee's (*applicable year*) private activity bond authority as offered in the Letter of Reservation dated \_\_\_\_\_, for Allocation Number \_\_\_\_\_, on the terms and conditions incorporated by reference therein.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

MAIL TO: Tennessee Department of Economic and Community Development  
Bond Reservation Section  
Wm. R. Snodgrass TN Tower, 10<sup>th</sup> Floor  
312 Eighth Avenue North  
Nashville, Tennessee 37243-0405

**APPENDIX 6**

**CONFIRMATION  
OF  
ISSUANCE**

## CONFIRMATION OF ISSUANCE

I, \_\_\_\_\_, acting on my authority and on behalf of the undersigned Issuer, hereby certify that on \_\_\_\_\_, 20\_\_\_\_, the undersigned issuer issued its revenue bond(s) in the aggregate principal amount of \$\_\_\_\_\_ pursuant to the Letter of Reservation for Allocation Number \_\_\_\_\_, dated \_\_\_\_\_. In making this certification, I understand that any remaining bond reservation not utilized in this issue is automatically returned to the state allocation.

Name of Issuer: \_\_\_\_\_

Signature of Officer: \_\_\_\_\_

Name and Title of Officer: \_\_\_\_\_

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

Date: \_\_\_\_\_

MAIL TO: Tennessee Department of Economic and Community Development  
Bond Reservation Section  
Wm. R. Snodgrass TN Tower, 10<sup>th</sup> Floor  
312 Eighth Avenue North  
Nashville, Tennessee 37243-0405