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D0028 84



State of Colorado

EXECUTIVE CHAMBERS

DENVER

RICHARD D. LAMM  
Governor

EXECUTIVE ORDER

ESTABLISHING AN ALLOCATION PROCESS

FOR THE STATE CEILING ON PRIVATE ACTIVITY BONDS

- WHEREAS, on July 18, 1984, the President of the United States signed H.R. 4170, the Deficit Reduction Act of 1984, also known as the Tax Reform Act of 1984 (the "Federal Act");
- WHEREAS, Section 621 of the Federal Act limits the total principal amount to certain Private Activity Bonds (as hereinafter defined), the interest on which is exempt from federal income taxation under Section 103 of the Internal Revenue Code of 1954, as amended, which may be issued by any state and its political subdivisions during each calendar year;
- WHEREAS, Section 621 of the Federal Act provides a method of allocating among issuing authorities of a state the total principal amount of Private Activity Bonds which may be issued during each calendar year, unless the legislature or the governor, on an interim basis, provides for an alternative method of allocation;
- WHEREAS, the Governor of the State of Colorado recognizes that the provisions of Section 621 of the Federal Act for allocating among issuing authorities of the State of Colorado the amount of Private Activity Bonds is inequitable and cumbersome, and could result in a decrease in industrial, agricultural and commercial development within the State of Colorado, a decrease in financing available for agricultural and business loans, and a decrease in financial aid provided for higher-education to students;
- WHEREAS, the Governor of the State of Colorado deems the best interest of the citizens of the State of Colorado will be served by an executive order, pursuant to Section 621 of the Federal Act, that will permit, on an interim basis, an orderly and equitable allocation of Private Activity Bonds which may be issued by issuing authorities of the State of Colorado during calendar year 1984 (or until such time as the Federal Act is amended if prior to December 31, 1984).

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NOW, THEREFORE, I, Richard D. Lamm, Governor of the State of Colorado, by virtue of the authority vested in me under the Constitution and the laws of the State of Colorado and under Section 621 of the Federal Act, hereby proclaim the following to be the process to allocate the total principal amount of Private Activity Bonds which may be issued by issuing authorities of the State of Colorado in accordance with the Federal Act:

Section 1

Purpose

The purpose of this Executive Order is threefold: to maximize utilization of the State of Colorado's total authority to issue Private Activity Bonds during calendar year 1984; to describe an orderly and equitable process of allocation of this authority among issuing authorities of the State of Colorado; and to provide the department which will allocate such authority with information with respect to Private Activity Bonds.

Section 2

Definitions

As used herein, these definitions shall apply:

- A. "Code" means the Internal Revenue Code of 1954, as amended, and the regulations issued pursuant to the Code.
- B. "Department" means the Colorado Department of Local Affairs.
- C. "Federal Act" means that public law enacted on July 18, 1984, known as the "Deficit Reduction Act of 1984" and any regulations promulgated thereunder.
- D. "Inducement Resolution" means a resolution, ordinance, or similar action adopted by an Issuing Authority for the purpose of taking "official action" (as required by Section 103 of the Code) with respect to the issuance of industrial development bonds (as defined in the Code) to finance a specific project or purpose or for the purpose of stating the intent of the Issuing Authority to issue student loan bonds (as defined in the Federal Act).
- E. "Issuing Authority (ies)" means any political subdivision, governmental unit, authority, or other entity of the State of Colorado which is empowered to issue Private Activity Bonds.
- F. "Private Activity Bonds" means private activity bonds as defined in Section 621 of the Federal Act issued by an Issuing Authority which are not exempt from the State Ceiling under the provisions of the Federal Act.

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- G. "Statewide Balance" means any portion of the State Ceiling that remains after the allocations made to certain Issuing Authorities in Section 3, Paragraph B, of this Executive Order.
- H. "State Ceiling" means the amount of Private Activity Bonds that may be issued by Issuing Authorities during calendar year 1984 in compliance with Section 621 of the Federal Act.

Section 3

Allocation of State Ceiling

- A. The State Ceiling for calendar year 1984 (currently estimated to be \$456,750,000) shall be allocated as described in this Section 3.
- B. The following Issuing Authorities shall receive the following allocation of the State Ceiling as of the effective date of this Executive Order:

Colorado Student Obligation Bond Authority	\$120,000,000
Colorado Agricultural Development Authority	20,000,000
Colorado Health Facilities Authority	10,000,000
Colorado Housing Finance Authority	20,000,000

The allocation of the State Ceiling or any portion thereof granted to the above listed Issuing Authorities shall automatically be relinquished to the Statewide Balance on November 1, 1984, unless:

- 1. The Private Activity Bonds are issued by such Issuing Authority prior to November 1, 1984, or
- 2. The Issuing Authority furnishes to the Department prior to November 1, 1984, a written commitment from a financial institution, an underwriter or other entity to purchase the Private Activity Bonds in 1984, which commitment specifies the terms on which the Bonds will be purchased, or
- 3. The Issuing Authority notifies the Department in writing prior to November 1, 1984, that the allocation is with respect to a carryforward project, as defined in Section 621 of the Federal Act, and that the Issuing Authority desires to elect to treat its allocation as an allocation for a carryforward project.

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Any amount of the allocation of the State Ceiling granted to the above-listed Issuing Authorities which is in excess of the amount of Private Activity Bonds of such Issuing Authority issued, committed to be purchased or elected as a carryforward project in compliance with subparagraphs 1, 2, or 3 above shall be relinquished to the Statewide Balance on November 1, 1984. Any of the above listed Issuing Authorities may voluntarily relinquish all or any part of their allocation to the Statewide Balance at any time by notifying the Department in writing.

- C. The Statewide Balance will be allocated among all the Issuing Authorities of the State of Colorado on the basis of chronological order of receipt by the Department of an Issuing Authority's completed application for an allocation submitted pursuant to Section 5 hereof except as follows:
1. Applications with respect to projects which are entitled to priority allocation pursuant to Section 631 (3) of the Federal Act and which are carryforward projects under Section 621 of the Federal Act will receive priority allocations from the Statewide Balance.
  2. Except as provided in subparagraph 1 of this Paragraph, no application for an allocation of more than \$30,000,000 will be considered until September 28, 1984, and such application then will receive allocations of the Statewide Balance, if any, only in the discretion of the Department. The Department reserves the right to consider two or more applications from an Issuing Authority for the same project or purpose as constituting one application for the purpose of determining whether applications are for allocations of more than \$30,000,000.
  3. Applications for allocations of the Statewide Balance for carryforward projects under Section 621 of the Federal Act which are not entitled to priority allocation pursuant to Section 631(3) of the Federal Act will not be considered until after November 1, 1984 and such applications then will receive allocations of the Statewide Balance, if any, only in the discretion of the Department.

Allocations from the Statewide Balance shall be effective for the time periods specified in Section 6 of this Executive Order.

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Section 4

Reporting Requirements

- A. Each Issuing Authority shall provide to the Department by October 1, 1984, the following information, in writing:
1. A description of all obligations issued in 1981, 1982, and 1983 which would have been Private Activity Bonds if they had been issued in 1984,
  2. A description of all projects and their projected or actual costs (as the case may be) for which an Inducement Resolution was adopted prior to June 19, 1984 to be financed by obligations issued or expected to be issued in 1984 which would have been Private Activity Bonds if the Inducement Resolution had been adopted on or after June 19, 1984,
  3. The amount of Private Activity Bonds, on a project-specific basis, for which an Inducement Resolution was adopted on or after June 19, 1984 and prior to the effective date of this Executive Order, which have been issued by the Issuing Authority prior to the effective date of this Executive Order,
  4. The amount of Private Activity Bonds, on a project-specific basis, that the Issuing Authority expects to issue between the effective date of this Executive Order and prior to January 1, 1985 and, if applicable, the date of adoption of the Inducement Resolution relating thereto,
  5. The amount (on a project specific-basis) of Private Activity Bonds (other than any amounts listed in subparagraph 6 of this section) expected to be carried forward into calendar year 1985 (to the extent permitted by Section 621 of the Federal Act), whose allocation will be applied against the State Ceiling for calendar year 1984,
  6. The amount of Private Activity Bonds for each project with an applicable Inducement Resolution adopted prior to October 19, 1983, for which a priority has been claimed pursuant to the Federal Act, and
  7. The amount of Private Activity Bonds, on a project-specific basis, including eligible carry forward projects referred to in Section 621 of the Federal Act, anticipated to be issued in calendar year 1985.

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Section 5

Application for Allocation from Statewide Balance

- A. Any Issuing Authority may request an allocation from the Statewide Balance by filing an application for each allocation with the Department. An application shall contain the following information and documents:
1. The name, address, and telephone number of the Issuing Authority, and the name of the official of the Issuing Authority charged with responsibility for the Private Activity Bonds,
  2. The name, address, and telephone number of an appropriate person from whom information regarding the application can be obtained,
  3. The name and location (by mailing address or other definitive description) of the project for which an allocation of the Statewide Balance is requested or if such information is not applicable, a description of the purpose for which such allocation is requested,
  4. The date of adoption by the Issuing Authority of the applicable Inducement Resolution,
  5. A preliminary opinion of bond counsel that the obligations proposed to receive the allocation of the Statewide Balance constitute "private activity bonds", as defined in the Federal Act, which are not exempted from the effective date provisions of Section 631(a)(1) of the Federal Act by virtue of Section 631(a)(2) of the Federal Act,
  6. The amount of the Statewide Balance which the Issuing Authority is requesting be allocated for the project or purpose,
  7. If applicable, the facts evidencing that the project or purpose is entitled to a priority allocation under Section 631(a)(3) of the Federal Act and a request to carry forward the allocation specified into calendar years subsequent to 1984, and
  8. If applicable, a request to carry forward the allocation specified into calendar years subsequent to 1984.

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Section 6

Notification and Validity of Allocations

- A. Upon receipt by the Department of the completed application required by Section 5 hereof, the Department shall immediately notify the Issuing Authority in writing of the amount from the Statewide Balance allocated to the proposed project or purpose.
- B. Any initial allocation of the Statewide Balance shall be valid for 60 days from the date on which notice of the allocation is given to the Issuing Authority (the "Initial Allocation Period") or until noon, December 31, 1984, whichever is sooner, unless one of the following conditions has occurred:
  1. The Private Activity Bonds are issued and delivered within the Initial Allocation Period, in which event the allocation will be subtracted from the Statewide Balance on the date of issuance and delivery of the Private Activity Bonds; or
  2. The Department receives prior to the expiration of the Initial Allocation Period a written commitment from a financial institution, an underwriter or other entity to purchase the Private Activity Bonds in 1984, which commitment specifies the terms on which the Bonds will be purchased. If the commitment is received with the application, the allocation shall be valid until noon, December 31, 1984. If the commitment is received by the Department prior to the expiration of the Initial Allocation Period, the allocation will be extended until noon, December 31, 1984.
- C. Allocations of the Statewide Balance for carryforward projects under Section 621 of the Federal Act shall be valid until expiration of validity to the extent permitted by the Federal Act.
- D. Except as provided above with respect to carryforward projects, if the Private Activity Bonds are not issued within the Initial Allocation Period or the additional period described in Section 6, Paragraph B, Subparagraph 2, the Issuing Authority's allocation will expire at noon, December 31, 1984.
- E. In the event an allocation of the Statewide Balance expires as provided in this Section 6, the Issuing Authority may resubmit its application for an allocation of a portion of the Statewide Balance. Applications resubmitted under such conditions will be reviewed in chronological order of receipt with no preference or priority being given as a result of prior application.



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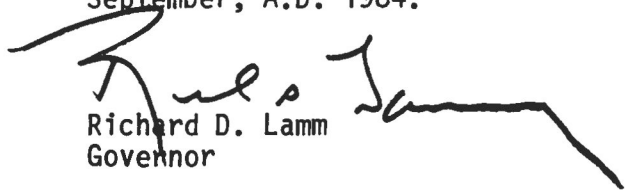
- F. In the event the last day of the Initial Allocation Period is a Saturday, Sunday, or any day on which offices of the State of Colorado are closed, then the time for expiration of the Initial Allocation Period shall be the first business day thereafter.
- G. Any Issuing Authority may voluntarily relinquish all or any part of its allocation to the Statewide Balance at any time by notifying the Department in writing.
- H. Each Issuing Authority shall file the relevant, completed copy of Internal Revenue Service Form 8038 with the Department immediately upon the issuance and delivery of each Private Activity Bond issue. All Forms 8038 must be filed with the Department not later than 4:00 p.m., December 27, 1984, including those for Private Activity Bonds to be issued and delivered for the period from December 27, to and including December 31, 1984. All allocations for which a Form 8038 has not been received by 4:00 p.m. on December 27, 1984, other than with respect to carryforward projects, shall expire and be relinquished to the Statewide Balance.

Section 7

Right to Modify Allocation Method

The Governor reserves the right to modify the allocation method set forth in Section 3 of this Order, so as to comply with any provision of the Federal Act and regulations issued pursuant thereto, which require that certain projects or purposes be given priority over other projects or purposes in the allocation of the State Ceiling; provided however, no allocation already made pursuant to the provisions of this Executive order prior to any modification hereof shall be affected by such modification unless the same is determined to have been made in violation of the Federal Act.

GIVEN under my hand and the  
Executive Seal of the State of  
Colorado, this fifth day of  
September, A.D. 1984.

  
Richard D. Lamm  
Governor