



State of Wisconsin \ Department of Commerce

RULES in FINAL DRAFT FORM

Rule No.: Chapter Comm 113

Relating to: Allocation of Volume Cap on Tax-Exempt
Private Activity Bonds

Clearinghouse Rule No.: 01-070

The Department of Commerce proposes an order to repeal ss. Comm 113.02(1), Comm 113.041, Comm 113.06(2), Comm 113.07(3)(c)1. to 7. and (4)(e), and Comm 113.08(1)(a)3.; to renumber ss. Comm 113.02(2), Comm 113.07(1)(k), Comm 113.07(4)(f) to (j), and Comm 113.08(1)(a)4.; to renumber and amend s. Comm 113.06(1); to amend ss. Comm 113.02(8)(b), Comm 113.05(1)(b), Comm 113.06(4)(a), Comm 113.07(2), and Comm 113.08(2); to repeal and recreate s. Comm 113.03; and to create ss. Comm 113.02(2), Comm 113.02(19), Comm 113.06(1)(b) to (e), Comm 113.07(1)(k), and Comm 113.07(1m), relating to the allocation of volume cap on tax-exempt private activity bonds.

Analysis of Proposed Rules

Statutory Authority: ss. 560.02(4) and 560.032, Stats.

Statutes Interpreted: s. 560.032, Stats.

Pursuant to section 560.032, Stats., the Department of Commerce is responsible for administering the allocation of volume cap on tax-exempt private activity bonds. The proposed rule has been adopted as an emergency rule to incorporate into the administrative code recent changes to the Internal Revenue Code which increase state volume cap limits on tax-exempt private activity bonds. The year 2000 limit in the Internal Revenue Code was \$50 per resident of the state. For the year 2001 the limit has been raised to \$62.50; for the year 2002 the limit will be \$75.00; and thereafter the limit will be indexed to inflation. The rule outlines the distribution of the volume cap between the State Building Commission, the Wisconsin Housing and Economic Development Authority, and the Department of Commerce. The current rules are also being revised to provide an allocation process that will allow the Department of Commerce to be more responsive to the needs of businesses as changes occur in the state's economy.

SECTION 1. Comm 113.02 (1) is repealed.

SECTION 2. Comm 113.02 (2) is renumbered (1).

SECTION 3. Comm 113.02 (2) is created to read:

Comm 113.02 (2) "Brownfields" has the meaning assigned to that term in s. 560.13 (1) (a), Stats.

SECTION 4. Comm 113.02 (8) (b) is amended to read:

Comm 113.02 (8) (b) Any agency, authority or political subdivision of the state of Wisconsin that is empowered to borrow money, including ~~the authority~~ WHEDA and any other public corporation or commission established by or on behalf of these entities.

SECTION 5. Comm 113.02 (19) is created to read:

Comm 113.02 (19) "WHEDA" means the Wisconsin Housing and Economic Development Authority.

SECTION 6. Comm 113.03 is repealed and recreated to read:

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.

SECTION 7. Comm 113.041 is repealed.

SECTION 8. Comm 113.05 (1) (b) is amended to read:

Comm 113.05 (1) (b) The executive director of ~~the authority~~ WHEDA or the executive director's designee.

SECTION 9. Comm 113.06 (1) is renumbered Comm 113.06 (1) (a) and amended to read:

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), or 113.07 (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.

SECTION 10. Comm 113.06 (1) (b) to (e) are created to read:

Comm 113.06 (1) (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.

SECTION 11. Comm 113.06 (2) is repealed.

SECTION 12. Comm 113.06 (4) (a) is amended to read:

Comm 113.06 (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 bonds and as a part of the notification, make a payment by cash or cashiers check to the department equal to ~~3~~ 10 one hundredths of one percent of the amount of the obligations issued pursuant to the allocation.

SECTION 13. Comm 113.07 (1) (k) is renumbered Comm 113.07 (1) (L).

SECTION 14. Comm 113.07 (1) (k) is created to read:

Comm 113.07 (1) (k) A written, signed commitment letter from a financial institution indicating a commitment to purchase or place the obligations upon delivery by the issuer.

SECTION 15. Comm 113.07 (1m) is created to read:

Comm 113.07 (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.

SECTION 16. Comm 113.07 (2) is amended to read:

Comm 113.07 (2) Upon receipt of a completed prospect data sheet ~~an application~~, the department shall evaluate whether it meets the requirements of sub. (3) ~~and score the application based upon a comparative ranking with other applications received. Comparative rankings shall be based upon the department's consideration of the factors in subs. (3) and (4). The department may establish a cutoff score for applications submitted to the council and the secretary for consideration and approval.~~

SECTION 17. Comm 113.07 (3) (c) 1. to 7. are repealed.

SECTION 18. Comm 113.07 (4) (e) is repealed.

SECTION 19. Comm 113.07 (4) (f) to (j) are renumbered Comm 113.07 (4) (e) to (i).

SECTION 20. Comm 113.08 (1) (a) 3. is repealed.

SECTION 21. Comm 113.08 (1) (a) 4. is renumbered Comm 113.08 (4) (a) 3.

SECTION 22. Comm 113.08 (2) is amended to read:

Comm 113.08 (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 ~~the authority~~ WHEDA with direction to ~~the authority~~, 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.

(END)

EFFECTIVE DATE

Pursuant to s. 227.22 (2)(intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.
