

**STATE OF DELAWARE**



**EXECUTIVE DEPARTMENT  
DOVER**

**EXECUTIVE ORDER  
NUMBER TWENTY-FIVE(A)**

Amending and Restating Executive Order Number Twenty-Five

TO: HEADS OF ALL STATE DEPARTMENTS, AGENCIES AND AUTHORITIES, AND ALL POLITICAL SUBDIVISIONS AND GOVERNMENTAL UNITS OF THE STATE OF DELAWARE

RE: ALLOCATION OF STATE CEILING AND SPECIAL TRANSACTION EXEMPTION FOR PRIVATE ACTIVITY BONDS; METHOD OF REALLOCATION

WHEREAS, Section 103(n) of the Internal Revenue Code of 1954, as amended (hereinafter referred to as the "Prior Law"), imposed a limit on the volume of "private activity bonds" which could be issued in the State of Delaware (the "State") in any one year and which could qualify for tax-exempt status under Section 103(a) of the Prior Law; and

WHEREAS, pursuant to Section 103(n) of the Prior Law and Section 5091, Title 29 of the Delaware Code, the volume limit on tax-exempt "private activity bonds" annually issued in this State has been allocated among various State and local governmental issuers of such bonds; and

WHEREAS, Section 103A(g) of the Prior Law imposed a limit on the volume of "qualified mortgage bonds" which could be issued in the State and which could qualify for tax-exempt status under Section 103(a) of the Prior Law; and

WHEREAS, pursuant to Section 103A(g) of the Prior Law and Chapter 14, Volume 65 of the Delaware Laws, the volume limit on tax-exempt "qualified mortgage bonds" annually issued in this State has been allocated among various State and local governmental issuers of such bonds; and

WHEREAS, H.R. 3838, "The Tax Reform Act of 1985," as passed by the United States House of Representatives on December 18, 1985 ("H.R. 3838"), would have repealed the aforesaid volume limit provisions for "private activity bonds" and "qualified mortgage bonds" and instead would have imposed, generally effective January 1, 1986, an annual unified volume cap of \$200,000,000 on certain tax-exempt obligations of the State and local governmental issuers within the State; and

WHEREAS, subject to an overriding State statute or, in the interim, an overriding gubernatorial proclamation, H.R. 3838 would have allocated the proposed unified volume cap among the State and local governmental issuers according to a specified formula; and

WHEREAS, by May 22, 1986, the possibility of the unified volume cap under H.R. 3838 becoming retroactively

effective, and the possibility of overriding State legislation or gubernatorial proclamation allocating such a unified volume cap, had created uncertainty among State and local issuers of obligations which could have been affected by H.R. 3838, and such uncertainty had hampered the ability of such issuers to proceed with plans to issue such obligations; and

WHEREAS, to deal with such uncertainty, Executive Order Number Twenty-Five was approved on May 22, 1986, to establish a system for allocating the proposed unified volume cap under H.R. 3838; and

WHEREAS, H.R. 3838 as revised and enacted on October 22, 1986, in the form of The Tax Reform Act of 1986, revising, amending and redesignating the Prior Law as the Internal Revenue Code of 1986 (the "Code"), has repealed the aforesaid volume limit provisions of the Prior Law and has imposed, generally effective for obligations issued in 1986 after August 15, 1986, and for obligations issued in 1987, an annual, unified volume limitation (the "State Ceiling") of \$250,000,000 on certain "private activity bonds" (as defined in the Code) and certain other tax-exempt obligations issued by the State, agencies of the State, and local governmental issuers within the State; and

WHEREAS, subject to an overriding State statute or, in the interim, an overriding gubernatorial proclamation, Section 146 of the Code would allocate the State Ceiling

among the State and local governmental issuers within the State according to a specified formula; and

WHEREAS, the provisions of Section 146 of the Code are different from the corresponding provisions of H.R. 3838 so that it is necessary to amend Executive Order Number Twenty-Five to reflect the provisions of Section 146 of the Code; and

WHEREAS, Section 265 of the Code, as amended by Section 902 of the Tax Reform Act of 1986, provides that certain financial institutions are denied deductions for interest expense that is treated as being allocable to interest on certain tax-exempt obligations acquired after August 7, 1986; and

WHEREAS, Section 902(f)(4) of the Tax Reform Act of 1986 provides that, for purposes of Section 265 of the Code, up to \$200,000,000 of obligations issued pursuant to the allocation of the State's volume limitation for private activity bonds made by Executive Order Number Twenty-Five (as it may be amended prior to January 1, 1987) shall be treated as having been acquired on or before August 7, 1986 (the "Section 902 Exemption"); and

WHEREAS, it is desirable to amend Executive Order Number Twenty-Five to establish a system of allocating the Section 902 Exemption amount among the obligations to which an allocation of the State's volume limitation for private

activity bonds may be made by Executive Order Number Twenty-Five as hereby amended; and

WHEREAS, to facilitate the continuing economic development initiatives and housing initiatives of the State, it is necessary and desirable to establish a system for allocating the State Ceilings for calendar years 1986 and 1987 under Section 146 of the Code and the Section 902 Exemption amount in a manner which will least impair the ability to issue governmental obligations and which will ensure that the State Ceiling and the Section 902 Exemption are available for use to the maximum extent permitted.

NOW, THEREFORE, I, Michael N. Castle, by the authority vested in me as Governor of the State, do hereby declare and order that Executive Order Number Twenty-Five, approved May 22, 1986, is hereby amended and restated in its entirety to read as follows:

1. For purposes of this Executive Order the following words and phrases shall be defined as indicated:

(a) "Code" means the Internal Revenue Code of 1986, as amended;

(b) "Private Activity Bond," "State Ceiling," "Volume Cap" and "Qualified 501(c)(3) Bond" have the meanings ascribed to those terms in the Code;

(c) "Chief Elected Official" means the highest elected official of any political subdivision of the State, including, but not limited to, the County Executive of

New Castle County, the President of the Sussex County Council, the President of the Levy Court of Kent County and the Mayor of the City of Wilmington;

(d) "Secretary of Finance" means the Secretary of Finance of the State.

(e) "Section 902 Exemption" means the special transition exemption from the application of Section 265(b) of the Code provided by Section 902(f)(4) of the Tax Reform Act of 1986.

2. The \$250,000,000 State Ceiling applicable to the State for calendar years 1986 and 1987 is hereby allocated, and the Volume Caps for calendar years 1986 and 1987 for the State and local governmental issuers shall be, as follows:

	<u>1986 Volume Cap</u>	<u>1987 Volume Cap</u>
State	\$165,646,000	\$125,000,000
New Castle County	42,207,100	43,750,000
City of Wilmington	15,232,900	31,250,000
Kent County	13,504,300	25,000,000
Sussex County	<u>13,409,700</u>	<u>25,000,000</u>
	<u>\$250,000,000</u>	<u>\$250,000,000</u>

3. (a) The \$165,646,000 Volume Cap of the State for calendar year 1986 is hereby further allocated \$30,000,000 to the Delaware State Housing Authority and \$85,646,000 to The Delaware Economic Development Authority; the remaining \$50,000,000 (the "Reserve Fund") shall be retained by the State for future allocation by the Secretary of Finance, by an instrument or instruments in writing, in

such a manner that, in the discretion of the Secretary of Finance, will permit optimum use of the State's \$250,000,000 State Ceiling for calendar year 1986 in conjunction with the \$200,000,000 Section 902 Exemption amount as described in Paragraph 6 hereof.

(b) The entire \$125,000,000 Volume Cap of the State for calendar year 1987 shall be retained by the State for future allocation by the Governor among the Delaware State Housing Authority, The Delaware Economic Development Authority and other governmental issuers within the State.

4. (a) The \$200,000,000 Section 902 Exemption amount is hereby allocated to each issuer with respect to its Volume Cap for calendar year 1986 as follows:

Delaware State Housing Authority	\$ 30,000,000
The Delaware Economic Development Authority	85,646,000
New Castle County	42,207,100
City of Wilmington	15,232,900
Kent County	13,504,300
Sussex County	<u>13,409,700</u>
	\$200,000,000

(b) Subject to the provisions of Paragraph 6 hereof, each issuer may allocate all or any portion of its share of the Section 902 Exemption amount to any obligations issued by it pursuant to an allocation of its Volume Cap for calendar year 1986 made by this Executive Order.

(c) Up to an aggregate of \$30,000,000 of the \$200,000,000 Section 902 Exemption amount may be allocated to Qualified 501(c)(3) Bonds issued during 1986. Such

\$30,000,000 limitation is hereby allocated among the various issuers as follows:

The Delaware Economic Development Authority	\$ 15,114,000
New Castle County	7,448,312
City of Wilmington	2,688,159
Kent County	2,383,112
Sussex County	2,366,417
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	\$ 30,000,000

(d) If any issuer allocates a portion of its share of the Section 902 Exemption amount to a Qualified 501(c)(3) Bond issued by it during 1986, such issuer shall be deemed to have also allocated to such Qualified 501(c)(3) Bond an equal dollar amount of its Volume Cap for calendar year 1986 to the extent (but not in excess of the extent) required by Section 902(f)(4) of the Tax Reform Act of 1986 in order to obtain the benefit of the Section 902 Exemption for such Qualified 501(c)(3) Bond. No issuer shall be required to allocate any portion of its share of the Section 902 Exemption amount to any Qualified 501(c)(3) Bond, and, except as provided in the immediately preceding sentence, no issuer shall be required to allocate any portion of its Volume Cap for calendar year 1986 to any Qualified 501(c)(3) Bond.

(e) Notwithstanding anything herein to the contrary, an issuer may allocate any portion of its share of the Section 902 Exemption amount to any obligation issued by it after August 7, 1986, and prior to August 16, 1986. If an issuer allocates a portion of its share of the Section 902

Exemption amount to such an obligation, such issuer shall be deemed to have also allocated to such obligation an equal dollar amount of its Volume Cap for calendar year 1986.

5. Notwithstanding Paragraphs 2 and 4 hereof, (i) the \$13,504,300 Volume Cap of Kent County for calendar year 1986 under Paragraph 2 hereof, (ii) Kent County's \$13,504,300 share of the Section 902 Exemption amount under Paragraph 4(a) hereof, and (iii) Kent County's \$2,383,112 limitation under Paragraph 4(c) hereof for Qualified 501(c)(3) Bonds issued during 1986 are hereby reallocated to The Delaware Economic Development Authority for application and allocation to obligations issued by The Delaware Economic Development Authority for the sole purpose of financing projects located or to be located within Kent County. The provisions of this Paragraph 5 shall have no application to the \$25,000,000 Volume Cap of Kent County for calendar year 1987 or to any obligations issued after December 31, 1986.

6. Before allocating any portion of its Volume Cap for calendar year 1986 to any obligation that an issuer, in the exercise of due diligence, determines will be acquired by a purchaser who will not benefit from the Section 902 Exemption, such issuer shall first apply in writing to the Secretary of Finance for an increase in its Volume Cap for calendar year 1986 by an allocation by the Secretary of Finance from the Reserve Fund of an amount equal to the amount of such obligation. If the Secretary of Finance, in

his discretion, declines to make such an allocation from the Reserve Fund, such issuer, in the exercise of its own discretion, may thereafter allocate any portion of its Volume Cap for calendar year 1986 to such obligation.

7. Subject to the provisions of Paragraphs 4(d) and 6 hereof, each issuer's Volume Cap for calendar years 1986 and 1987 may be used for any type of Private Activity Bond and other tax-exempt obligations to which Section 146 of the Code applies.

8. The Governor retains the right, by further executive order, to modify the allocations made under Paragraphs 2, 3 and 4 of this Executive Order; provided, however, that no such modification shall cause any obligation issued prior to the date of such modification to lose its qualification for tax-exempt treatment under the Code or its eligibility for the Section 902 Exemption. This modification authority retained by the Governor shall be exercised with due regard to any actions taken by any person in reliance upon any existing allocation to any issuer.

9. An issuer's application and allocation of any portion of its Volume Cap and its share of the Section 902 Exemption amount to any obligations of such issuer shall be considered effective upon such issuer's delivery to the Secretary of Finance of a notice of the issuance of the obligations identifying the issuer, the proposed purchaser of such obligations, the amount of its Volume Cap allocated to

such obligations, the amount of the Section 902 Exemption amount allocated to such obligations (and whether or not such obligations are Qualified 501(c)(3) Bonds), and the purpose of the financing, and providing such other information as the Secretary of Finance may require. Upon the request of any issuer, the Governor will certify that such issuer's obligations meet the requirements of Section 146 of the Code.

10. Subject to the provisions of Paragraphs 8 and 12 hereof, any issuer (other than the State or any of its agencies or instrumentalities) may reassign all or any portion of its Volume Cap for calendar years 1986 and 1987 to any other issuer, including the State or any of its agencies or instrumentalities. Any such reassignment shall be made by a written instrument and may be made upon such terms and conditions as may be specified in such written instrument. In the absence of any other procedure established by any political subdivision of the State, a reassignment by such political subdivision shall be made by its Chief Elected Official. Any such reassignment shall be effective upon receipt by the assignee and receipt of a copy of the written instrument by the Secretary of Finance. Any such reassignment of all or any portion of an issuer's Volume Cap for calendar year 1986 shall automatically result in a reassignment of an equal dollar amount of the share of the Section 902 Exemption amount allocated to such issuer under Paragraph

4 hereof. The Secretary of Finance shall maintain a record of all reassessments made pursuant to this Paragraph 10.

11. On or before the last day of each month in 1986 and 1987 following the date of this Executive Order, each issuer allocated a Volume Cap for calendar year 1986 or 1987 shall file with the Secretary of Finance and with each other issuer such reports as the Secretary of Finance may deem necessary to carry out the purposes of this Executive Order. Each such report shall contain at least the following information with respect to each obligation issued or planned to be issued by such issuer:

- (a) A brief description of the project financed or to be financed by such obligation;
- (b) The amount of such obligation that is subject to such issuer's Volume Cap, and, to the extent that any portion of such obligation is claimed to be not subject to its Volume Cap, an opinion of bond counsel to that effect;
- (c) The date of issuance of such obligation or the date of preliminary approval if such obligation has not yet been issued; and
- (d) A status report on the issuance, including the anticipated date of issue, if not yet issued.

12. (a) On or before December 10, 1986, each issuer, other than the Delaware State Housing Authority, allocated a Volume Cap for calendar year 1986 shall file with the Secretary of Finance a statement setting forth (i) the

amount of such issuer's Volume Cap for calendar year 1986 theretofore allocated to such issuer's obligations, (ii) the amount of such Volume Cap that will be required for all obligations that such issuer, in the exercise of due diligence, has determined will be issued by such issuer thereafter in calendar year 1986 or will be required for a specific project with respect to which such issuer intends to make a carryforward election under Section 146 of the Code, and (iii) information specifically identifying each project to be financed with obligations to be issued by such issuer thereafter in calendar year 1986 (or with respect to which a carryforward election will be made) and the projected dollar amount of each such obligation. Upon receipt by the Secretary of Finance of such statement, any remaining portion of such issuer's Volume Cap for calendar year 1986 not identified in such statement as being required for obligations issued or to be issued by such issuer during calendar year 1986 (or to be carried forward), along with an equal dollar amount of the Section 902 Exemption amount allocated to such issuer under Paragraph 4 hereof, shall be automatically reallocated to the Delaware State Housing Authority without the need for any further action.

(b) In the event the amount of Volume Cap that would automatically be reallocated to the Delaware State Housing Authority under Paragraph 12(a) hereof is less than \$30,000,000, no issuer shall be entitled to any Volume Cap

for the purpose of electing to carry forward such Volume Cap under Section 146 of the Code except with the written consent of the Secretary of Finance. If any such issuer has made or purports to make a carryforward election of any such Volume Cap without the written consent of the Secretary of Finance, such Volume Cap shall automatically be deemed to have been, or to be, reallocated to the Delaware State Housing Authority. In considering the request of an issuer for consent to a carryforward election under the preceding sentence, the Secretary of Finance shall consider the recommendation of a committee (the "Committee") consisting of the Chairman of The Delaware Economic Development Authority, the Director of the Delaware State Housing Authority, and the Chief Elected Officials of New Castle County, Kent County, Sussex County and the City of Wilmington. The Chairman of The Delaware Economic Development Authority shall be the Chairman of the Committee and shall convene the Committee as necessary to carry out the purposes of this Paragraph 12(b). Any member of the Committee may designate a representative to act in his or her place.

(c) In the event any portion of an issuer's Volume Cap for calendar year 1986 that is identified in the December 10, 1986, statement referred to in Paragraph 12(a) hereof as being required for obligations to be issued thereafter in 1986 (or to be carried forward) by such issuer is not in fact allocated to obligations issued by such issuer

(or carried forward by an election of such issuer) on or before December 30, 1986, such portion of such issuer's Volume Cap for calendar year 1986, along with an equal dollar amount of the Section 902 Exemption amount allocated to such issuer under Paragraph 4 hereof, shall automatically be reallocated to the Delaware State Housing Authority at the close of business on December 30, 1986, without the need for any further action.

(d) The Secretary of Finance shall maintain a record of any reallocation made to the Delaware State Housing Authority under this Paragraph 12.

13. At the close of business on December 30, 1986, any portion of the Reserve Fund not theretofore allocated by the Secretary of Finance in accordance with Paragraphs 3 and 5 hereof shall automatically be allocated to the Delaware State Housing Authority without the need for any further action. The Secretary of Finance shall maintain a record of any such reallocation.

14. This Executive Order shall be construed and applied consistently with the terms of the Code (including particularly Section 146) and Section 902 of the Tax Reform Act of 1986, with a view toward protecting the tax-exempt status of obligations issued in reliance upon this Executive Order and maximizing the use of the State Ceiling of the State for calendar years 1986 and 1987 and the Section 902 Exemption amount.

15. This Executive Order is not intended to have any effect, and shall have no effect, upon the allocation of the state ceiling under 29 Del.C. §5091 or the allocation of the volume limit on qualified mortgage bonds under Chapter 14, Volume 65 of the Delaware Laws.



APPROVED this 30<sup>th</sup> day of October, 1986

Michael N. Castle  
Governor

ATTEST:

Mulk  
Secretary of State