

**ALLOCATION PLAN
for Recovery Zone Economic Development
Bonds and Recovery Zone Facility Bonds
in Tennessee**

INTRODUCTION

Tennessee Code Annotated 9-21-105, 9-21-107, and 7-53-101 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 recovery zone economic development bonds and recovery zone facility bonds authorities authorized under federal tax legislation. The purpose of this document is to promulgate this plan.

If federal tax laws regarding recovery zone 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 recovery zone bond cap in Tennessee.

STATE CAP, ELIGIBLE USES, PROGRAM GOALS

The state cap of recovery zone economic development bonds and recovery zone facility bonds authorities are provided by the U.S. Treasury based on relative declines in employment in 2008. Attachment I is provided for use for the eligible counties and cities.

The state will recognize the full range of eligible uses of recovery zone bond cap that is provided by the federal government and the "American Recovery and Reinvestment Act of 2009". For purposes of the Tennessee Allocation Plan, these uses are categorized as follows:

Recovery Zone Economic Development Bonds

Recovery Zone Facility Bonds

Tennessee will utilize this 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 that have been designated by the local government as a recovery zone.

For recovery zone economic development bonds, the Federal Davis-Bacon prevailing wage regulation will apply.

For recovery zone facility bonds, may be used for depreciable assets located in a recovery zone, some restrictions will apply such as no financing for golf courses, country clubs, massage parlors, suntan facilities, race tracks or other gambling facilities, nor stores for the sale of off-premises alcohol.

ALLOCATION PRIORITIES

In order to achieve the above listed goals, the allocation of the state's recovery zone economic development bonds and recovery zone facility bonds authorities will follow the following process:

1. The Commissioner of the Department of Economic and Community Development will follow the allocation plan provided by the U.S. Treasury as it relates to recovery zone economic development bonds and recovery zone facility bonds which are \$231,417,000 and \$347,126,000, respectively. The breakdown for cities and counties in Tennessee is provided in Attachment I.
2. Communities may return their allocated amount to the State and the Commissioner of ECD will re-allocate such amounts to other recovery zone projects. Cap for recovery zone economic development bonds must be used for recovery zone economic development bonds and cap for recovery zone facility bonds must be used for recovery zone facility bonds.
3. If there is unused cap allocation and it has not been reserved by a community for recovery zone economic development bonds or recovery zone facility bonds, on March 10, 2010 the Commissioner of ECD will review new applications for recovery zone bond cap. Approvals will be provided on or before August 1, 2010.
4. All recovery zone bonds approved through this process must be completed and closed by December 31, 2010. There is not a method for extension or carryover at this time. In accepting the reservation of recovery zone bond authority, issuers must certify that they are cognizant of the applicable closure deadlines.

ADMINISTRATIVE PROCEDURES

Structure of Application

Applications for reservation of recovery zone 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 recovery zone bond volume limitation, c) a proper bond inducement instrument explaining the relationship between

the issuer and the borrower/user has been executed, d) for recovery zone facility bonds only, 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, 10th Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243-1102

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 qualifications of recovery zone bonds based on the volume limitation requirement.**

The Letter of Reservation will contain the following elements:

1. The amount and type of recovery zone bond authority being reserved.
2. The uses which must be made of the bond proceeds.
3. A requirement that unused bond authority will be returned to the state allocation on March 10, 2010, if not reserved by the community or requesting an additional reservation for unused cap.
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. 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 on March 10, 2010 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 Recovery Zone Bond Allocation Plan will be effective on September 1, 2009, 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

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. Please complete all necessary applications, forms, and letters as are applicable or the type of recovery zone bond cap being requested.

APPENDIX 1

**APPLICATION
FOR
RECOVERY ZONE
BOND RESERVATION**

APPLICATION FOR RECOVERY ZONE 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*)

Recovery Zone Economic Development Bond

Recovery Zone Facility Bond

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*)

Recovery Zone Facility Bonds		Recovery Zone Economic Development Bonds	
Building	<input type="checkbox"/>	Public Facilities	<input type="checkbox"/>
Equipment	<input type="checkbox"/>	Public Infrastructure	<input type="checkbox"/>
		Job Training in Educational Programs	<input type="checkbox"/>
		Capital Expenditures for Real Property	<input type="checkbox"/>

WILL YOUR BONDS BE PUBLICLY OR PRIVATELY PLACED?

UNDERWRITER PURCHASER OR PLACEMENT AGENT

Company Name: _____
Contact Person: _____
Address: _____
Telephone: () _____

The local government has designated the area of this community where this project will locate as a recovery zone.

- Yes
- No
- Pending date of designation _____

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 (BORROWER)	_____ Authorized Signature (ISSUER)
_____ Title	_____ Title
_____ Date	_____ Date

TOTAL APPLICATION CHECK-OFF LIST

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

APPENDIX 2

LEGAL STATEMENT

(Bond Counsel's Letterhead)

(Date)

Tennessee Department of Economic and Community Development
Bond Reservation Section
Wm. R. Snodgrass TN Tower, 10th Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243-1102

Dear Sir or Madam:

We are familiar with the proposed issue of recovery zone 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 recovery zone bonds and with the Tennessee statutes pursuant to which such recovery zone 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 recovery zone bonds issued by the issuer identified above, ❷ we have no actual knowledge of any facts that would cause interest on such proposed recovery zone 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 recovery zone 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 recovery zone bonds would be subject to the caps provided for in Section 1400U-1 of the ARRA, 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 (for recovery zone facility bonds only).

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 recovery zone 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,

(Name)

(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, 10th Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243-1102

Dear Sir or Madam:

We are delivering this commitment to purchase in compliance with the requirements of the Tennessee Allocation Plan for Recovery Zone 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 recovery zone bond authority as provided in the Internal Revenue Code and the American Recovery and Reinvestment Act of 2009 for the following:

Type of Recovery Zone Bond _____

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 recovery zone bond reservation and bond sale) should be returned to the state's recovery zone bond allocation, if the community has no other uses planned for the recovery zone allocation and will not ask for additional reservation of cap.

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 RECOVERY ZONE 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 Recovery Zone Bonds in Tennessee, 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*).

Sincerely,

Commissioner

APPENDIX 5

BORROWER'S ACCEPTANCE

BORROWER'S ACCEPTANCE

I hereby signify my acceptance of a reservation of Tennessee's (*applicable year*) recovery zone 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, 10th Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243-1102

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 recovery zone 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, 10th Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243-1102