Gary Richard Herbert

Governor

EXECUTIVE ORDER

Establishing a System For Allocating Volume Cap For Recovery Zone Bonds in the State Consistent With the Provisions of the United States Internal Revenue Code of 1986

WHEREAS, Sections 1400U-1 through U-3 of the Internal Revenue Code of 1986, as amended (the "Code") provide that until December 31, 2010 certain bonds can be issued to finance projects in "recovery zones" and subjects such bonds to volume limitations (the "Volume Cap"); and

WHEREAS, the Code provides a formula for the allocation of such Volume Cap and in order to provide for the implementation and administration of the formula for allocation of the Volume Cap among the State of Utah and its issuing authorities, it is prudent to issue this Executive Order;

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, by the power vested in me by the Constitution and laws of the State of Utah do hereby order and proclaim:

Section 1: As used in this Executive Order:

(1) "Allocation Dollars" means the dollar amount of the Volume Cap expressed in terms of dollars. Each Allocation Dollar equals one dollar of Volume Cap that may be allocated under this Executive Order.

(2) "Board" means the Private Activity Bond Review Board of the State, created by Section 9-4-503, Utah Code Annotated 1953, as amended.

(3) "Bonds" means the Recovery Zone Bonds for which an allocation of the Volume Cap is required by the Code.

(4) "Code" means the Internal Revenue Code of 1986, as amended, including the American Recovery and Reinvestment Act of 2009, and any related regulations, including without limitation, the Notice, all as may be amended or supplemented.

(5) "Form 8038" means the IRS form 8038, 8038-G or any other federal tax form or other method of reporting required by the Department of the Treasury under Section 149(e) of the Code.

(6) "Initial Allocations" means the sum of the Initial Allocations established under the Notice and referred to in Section 2 hereof.

(7) "Issuing Authority" shall have the meaning set forth in section 9-4-502(7) Utah Code Annotated 1953, as amended.

(8) "Notice" means IRS Notice 2009-50, as amended.

(9) 'Recovery Zone" means an area so designated as provided in the Code and Notice.

(10) "Recovery Zone Bonds" means Recovery Zone Economic Development Bonds and Recovery Zone Facility Bonds.

(11) "Recovery Zone Economic Development Bonds" means bonds, notes or other obligations issued for one or more "qualified economic development purposes" as provided in the Code and the Notice.

(12) "Recovery Zone Facility Bonds" means bonds, notes or other obligations issued to finance "recovery zone property" as provided in the Code and Notice.

(13) "State" means the state of Utah.

(14) "Subsequent Allocation" means an allocation of Volume Cap by the Board acting for the State of all or a portion of Initial Allocations returned to the State by waiver under the Code and Notice.

(15) "Ultimate Beneficiary" means the ultimate beneficiary of the Volume Cap as provided in the Code and Notice.

(16) "Volume Cap" means the volume cap for Recovery Zone Bonds for the State as computed under Sections 1400U-1 through U-3 of the Code, the Notice and related regulations.

Section 2.

The Initial Allocations of Volume Cap for Recovery Zone Bonds for the State have been made to State counties and municipalities in the amounts set forth on Exhibit "A". Such amounts were determined by the Internal Revenue Service under the Notice and are intended to be further allocated by said entities to Ultimate Beneficiaries as provided in the Notice. The Initial Allocations do not expire unless all or a portion is returned to the State by waiver or deemed waiver as provided in the Code and Notice.

Section 3.

If, and to the extent all, or a portion of, the Initial Allocations is returned to the State by waiver or deemed waiver as provided in the Code and Notice, Subsequent Allocations of Recovery Zone Volume Cap shall be allocated in accordance with the procedures set forth in this Executive Order. The Board shall seek waivers of Initial Allocations prior to December 31, 2009, and again, prior to April 1, 2010, from applicable counties or municipalities that choose not to make their own allocations under the Code and Notice and allow the Board to make Subsequent Allocations.

Section 4.

(1) In order to obtain a Subsequent Allocation of Volume Cap, an Issuing Authority or Ultimate Beneficiary shall, prior to the issuance of such Bonds, submit an application to the Board in a form acceptable to the Board and containing all information reasonably required by the Board. Information so obtained is subject to the Government Records Access and Management Act (GRAMA) of the State and may be classified as protected records if the requirements relating hereto are determined to apply by the Chair of the Board.

(2) The Board shall be under no obligation to process any application that is incomplete. Any application submitted by an Issuing Authority or Ultimate Beneficiary that the Board does not process shall be returned within a reasonable time with a brief explanation as to why the application was not processed.

(3) Subsequent Allocations shall be made on the basis of need, economic impact and efficient distribution of resources in the State as determined by the Board. Subsequent Allocations for Recovery Zone Economic Development Bonds may be made only from Volume Cap related to Initial Allocations for Recovery Zone Economic Development Bonds returned to the State by waiver or deemed waiver and Subsequent Allocations for Recovery Zone Facility Bonds may be made only from Volume Cap related to Initial Allocations for Recovery Zone Facility Bonds returned to the State by waiver or deemed waiver. Subsequent State Allocation may be made for an amount equal to or less than the amount requested as determined by the Board.

Section 5.

(1) A certificate of allocation evidencing the granting of a Subsequent Allocation of Volume Cap shall be issued by the Chair of the Board to the requesting Issuing Authority or Ultimate Beneficiary.

(2) Every Subsequent Allocation of the Recovery Zone Volume Cap shall remain effective until, and including, the earlier of: (a) the date determined by the Board but not to exceed 180 days after the date on which such allocation was made, or (b) 12:00 o'clock midnight on December 31, 2010. Any allocation for which Bonds are issued on, or prior to, the applicable date specified in this subsection shall be irrevocably allocated to such Bonds.

(3) The expiration date of an allocation of Volume Cap under this Executive Order may be extended upon prior written approval of the Board, as evidenced by an amended certificate of allocation.

Section 6.

(1) After the effective date of this Executive Order, each Issuing Authority shall advise the Board on or before the fifteenth day after the issuance of any Bonds of the principal amount of Bonds issued under an Initial Allocation or under a Subsequent Allocation by delivering to the Board a copy of the Form 8038 which was delivered to the Internal Revenue Service in connection with such Bonds.

(2) If all or a stated portion of Bonds, for which a Subsequent Allocation was made, were not, or will not be, issued, the related Issuing Authority shall advise the Board in writing of such fact on or before the earlier of: (A) the fifteenth day after the final decision not to issue all or a stated portion of such Bonds, or (B) the expiration date of the Subsequent Allocation.

Section 7.

In addition to the duties otherwise specifically set forth in this Executive Order, the Chair of the Board shall:

(1) maintain a record of all applications filed by Issuing Authorities or Ultimate Beneficiaries and all certificates of allocation issued hereunder;

(2) maintain a record of all Bonds issued by Issuing Authorities;

(3) maintain a record of material information filed by Issuing Authorities or Ultimate Beneficiaries under this Executive Order;

(4) make available, upon reasonable request, a certified copy of all or any part of the records maintained by the Board under this Executive Order or a summary thereof, including information regarding the Volume Cap allocated and any amounts remaining available, for allocation under this Executive Order; and

(5) establish an allocation process, including a form of application, not inconsistent with this Executive Order, deemed necessary or expedient to allocate the Volume Cap hereunder.

Section 8.

If any provision of this Executive Order shall be held to be, or shall, in fact, be invalid, inoperative or unconstitutional, the defect of the provision shall not affect any other provision of this Executive Order or render it invalid, inoperative, or unenforceable. To the extent this Executive Order shall be held or shall, in fact, be invalid inoperative, or unconstitutional, all allocations of the Volume Cap previously made under this Executive Order shall be treated as allocations made by the Governor of the State in accordance with this Executive Order.

EXHIBIT A TO EXECUTIVE ORDER

Area	Residual	Recovery Zone Economic Development Bond	Recovery Zone Facility Bond
Utah		90,000,000	135,000,000
Provo city, UT		8,675,000	13,013,000
Salt Lake City city, UT		0	0
West Jordan city, UT		0	0
West Valley City city, UT		0	0
Beaver County, UT		0	0
Box Elder County, UT		0	0
Cache County, UT		0	0
Carbon County, UT		0	0
Daggett County, UT		0	0
Davis County, UT		8,266,000	12,398,000
Duchesne County, UT		0	0
Emery County, UT		0	0
Garfield County, UT		0	0
Grand County, UT		0	0
Iron County, UT		0	0
Juab County, UT		512,000	768,000
Kane County, UT		0	0
Millard County, UT		0	0
Morgan County, UT		228,000	342,000
Piute County, UT		0	0
Rich County, UT		0	0
Salt Lake County, UT	Residual	0	0
San Juan County, UT		0	0
Sanpete County, UT		0	0
Sevier County, UT		0	0
Summit County, UT		0	0
Tooele County, UT		0	0
Uintah County, UT		0	0
Utah County, UT	Residual	19,560,000	29,340,000
Wasatch County, UT		4,531,000	6,797,000
Washington County, UT		41,818,000	62,727,000
Wayne County, UT		0	0
Weber County, UT		6,410,000	9,615,000

Section 9.

The State pledges and agrees with the owners of Bonds, to which an allocation of the Volume Cap has been granted under this Executive Order, that the State will not retroactively alter the allocation of the Volume Cap to such Bonds after the issuance date of such Bonds.

Section 10.

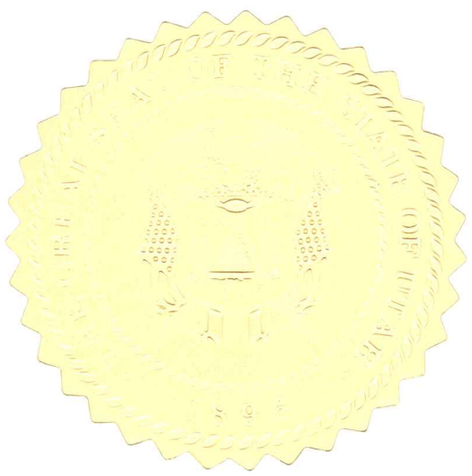
No action taken pursuant to this Executive Order shall be deemed to create an obligation, debt or liability of the State or be deemed to constitute an approval of any obligation issued or to be issued for the purposes set forth herein.

Section 11.

The purpose of this Executive Order is to maximize the benefits of financing and development through the use of Bonds by providing a system for the implementation and administration of the formula provided under the Code for allocating Volume Cap.

Section 12.

This Executive Order shall be effective immediately and shall continue in effect until such time as it may be repealed or superseded by operation of State or Federal law.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah at the Utah State Capitol in Salt Lake City on this 12th day of January, 2010.

Gary R. Herbert
Governor

Attest:

Greg Bell
Lieutenant Governor