

RULES AND REGULATIONS

Title 12—COMMERCE, TRADE AND LOCAL GOVERNMENT

DEPARTMENT OF COMMUNITY AND
ECONOMIC DEVELOPMENT

[12 PA. CODE CH. 63]

Private Activity Bonds—Allocations

The Department of Community and Economic Development (Department) hereby amends Chapter 63 (relating to private activity bonds—allocations) to read as set forth in Annex A. The regulation is amended under authority of section 7(4) of the Tax-Exempt Bond Allocation Act (act) (73 P. S. § 397.7(4)).

Background

The Federal Internal Revenue Code of 1986 (IRC) imposes a State ceiling on the aggregate amount of private activity bonds that may be issued in each calendar year by or on behalf of the Commonwealth and its political subdivisions.

The General Assembly adopted the act in 1985 to provide for the allocation of the State ceiling. Section 7(4) of the act authorizes the Secretary of Community and Economic Development to promulgate regulations as may be necessary to carry out the purposes set forth in the act.

This amended regulation provides for the 1998 allocation of the State ceiling. The amendment is needed because the current regulation provides allocations only for calendar year 1997.

Amendment

Section 63.1 (relating to allocations) is amended to establish the private activity bond allocations for calendar year 1998.

Notice

Notice of proposed rulemaking has been omitted under section 204(3) of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204(3)) (CDL), which specifies that a regulation may be adopted without notice of proposed rulemaking if proposed rulemaking procedures are "in the circumstances impracticable, unnecessary, or contrary to the public interest." The proposed rulemaking procedures are unnecessary, since the regulation simply establishes the private activity bond allocations for calendar year 1998. Since the allocations are made under the formula set forth in the act, public comments will have no impact upon the allocation.

Fiscal Impact

The amended regulation has no fiscal impact on the Commonwealth, political subdivisions or the public. The amended regulation does not affect the total dollar amount of private activity bonds, as these ceilings are determined by Federal law. No Commonwealth funds are involved in the issuance of private activity bonds. All costs of bond issuance are paid for by bond proceeds or through funds of the issuer or borrower. The amended regulation will result in the use of private activity bonds to the maximum benefit, thereby increasing available resources.

Paperwork Requirements

Additional paperwork requirements are not imposed as a result of the amended regulation.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on February 23, 1998 the Department submitted a copy of this amendment with proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Commerce and Economic Development Committee and the Senate Community and Economic Development Committee. On the same date, the final-omitted regulation was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

In accordance with section 5.1(d) of the Regulatory Review Act, on March 13, 1998, the regulation was deemed approved by the House and Senate Committees. Under section 5.1(c) of the Regulatory Review Act, IRRC approved the final-omitted regulation on March 26, 1998.

Contact Person

For further information regarding the amended regulation, contact Jill Busch, Deputy Chief Counsel, Office of Chief Counsel, Department of Community and Economic Development, Room 530 Forum Building, Harrisburg, PA 17120, (717) 783-8452.

Findings

The Department finds that:

(1) The proposed rulemaking procedures in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202), are unnecessary, since the regulation simply establishes the private activity bond allocations for calendar year 1998. Since the allocations are made under the formula set forth in the act, public comments will have no impact upon the allocation.

(2) Public notice of intention to adopt the final-form regulation has been omitted under section 204 of the CDL and the regulations thereunder, 1 Pa. Code § 7.4.

(3) A delay in implementing the amendment will have a serious adverse impact on the public interest.

Order

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department of Community and Economic Development, 12 Pa. Code Chapter 63, are amended by amending § 63.1 to read as set forth in Annex A.

(b) The Secretary of Community and Economic Development shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary of Community and Economic Development shall certify this order and Annex A and deposit the same with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

SAMUEL MCCULLOUGH,
Secretary

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 1806 (April 11, 1998).)

Fiscal Note: 4-65. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 12. COMMERCE, TRADE AND LOCAL GOVERNMENT

PART III. BUSINESS FINANCING

Subpart B. BONDS

CHAPTER 63. PRIVATE ACTIVITY BONDS—ALLOCATIONS

§ 63.1. Allocations.

(a) *Authority for allocations.* The State unified volume cap for the issuance of qualified private activity bonds provided by section 146(d) of the Internal Revenue Code (26 U.S.C.A. § 146(d)) for calendar year 1998 will be allocated utilizing the authority provided by section 146(e) of the Internal Revenue Code and section 7(4) of the Tax-Exempt Bond Allocation Act (73 P. S. § 397.7(4)) in the manner provided by this chapter.

(b) *Housing related bonds.* An amount equal to \$160 million will be allocated for housing related bonds, including qualified residential rental projects and qualified mortgage bonds as defined by sections 142(d) and 143(a) of the Internal Revenue Code (26 U.S.C.A. §§ 142(d) and 143(a)). Requests to apply the housing related bond allocation to specific projects or uses, including mortgage credit certificate programs, will be reviewed and may be approved or disapproved by the Board of the Pennsylvania Housing Finance Agency. Applications for housing related bond allocations shall be made to the Executive Director of the Housing Finance Agency.

(c) *Qualified student loan bonds.* An amount equal to \$50 million will be allocated to the Higher Education Assistance Agency for qualified student loan bonds provided by section 144(b) of the Internal Revenue Code (26 U.S.C.A. § 144(b)).

(d) *Qualified small issue bonds.*

(1) An amount equal to \$175 million will be allocated for qualified small issue bonds under section 144(a) of the Internal Revenue Code. Of this amount, \$26,800,000 will be used to allocate \$400,000 to each county. The remaining \$148,200,000 will be allocated among the counties in accordance with the following formula:

(i) The Secretary will determine the ratio of the county's total 1996 and 1997 allocation usage to the sum of every county's 1996 and 1997 allocation usage.

(ii) The Secretary will multiply the ratio determined in subparagraph (i) by \$148,200,000.

(2) Requests to apply this allocation to specific projects or uses will be reviewed and may be approved or disapproved by the Secretary. Applications for allocations shall be made to the Private Capital Financing Office in the Department. The Secretary will provide allocations for qualified small issue bonds utilizing the procedures and subject to the requirements imposed by § 61.6 (relating to allocation procedures).

(e) *Other qualified private activity bonds.* An amount equal to \$166 million will be allocated to other qualified private activity bonds, including qualified redevelopment bonds as defined by section 144(c) of the Internal Revenue Code, exempt facility bonds as defined by section

142 (excluding § 142(d)) of the Internal Revenue Code, and enterprise zone bonds as defined by section 1394 of the Internal Revenue Code, all of which are subject to the unified volume cap provided by section 146 of the Internal Revenue Code. Requests to apply this allocation to specific projects or uses will be reviewed and may be approved or disapproved by the Secretary. Applications for allocations shall be made to the Private Capital Financing Office in the Department. The Secretary will provide allocations for qualified private activity bonds utilizing the procedures and subject to the requirements imposed by § 63.3 (relating to procedures). An allotment of at least 25% of the total amount for other qualified private activity bonds is reserved for solid waste disposal projects.

(f) *Special allocation pool.* The Secretary may utilize not more than \$50 million for a special allocation pool for projects which require more bond authority than a given county currently has available to it. To qualify for consideration to use this pool, local issuing authorities shall demonstrate to the Secretary's satisfaction that they have acted responsibly in selecting projects which maximize long-term net new job creation, consistent with the intent of the Tax-Exempt Bond Allocation Act (73 P. S. §§ 397.1—397.8). Decisions regarding use of the special allocation pool for small issue purposes will be based upon the characteristics and merits of individual projects proposed, and upon the record of the issuing authority in utilizing industrial development financing to create or retain jobs. A project may be considered if the entire allocation for the county in which the project is proposed has been obligated. In determining approval or disapproval of allocation requests from this pool, the Secretary will consider the following:

- (1) The amount of the allocation available.
- (2) The size of the project.
- (3) The level of economic distress.
- (4) The number of net new jobs to be created.
- (5) The ability to undertake the project without approval.
- (6) The amount of private funds leveraged.
- (7) The project's consistency with the economic development plans of the Commonwealth and of municipalities and regions.
- (8) The date the bonds are to be issued.

[Pa.B. Doc. No. 98-1490. Filed for public inspection September 11, 1998, 9:00 a.m.]

Title 61—REVENUE

DEPARTMENT OF REVENUE

[61 PA. CODE CH. 162]

Insurance Premiums Tax; Calculation of Foreign Title Insurance Company Gross Premiums

The Department of Revenue (Department), under the authority contained in section 408(a) of the Tax Reform Code of 1971 (TRC) (72 P. S. § 7408(a)), by this order adopts an amendment to § 162.11 (relating to calculation of foreign title insurance company gross premiums).

Purpose of Amendment

The Department is changing the method of calculating the gross premiums tax on title insurance policies for which the issuer charges the insured an all-inclusive fee under the rate schedule approved by the Insurance Department.

Explanation of Regulatory Requirements

There are two methods under which title insurance companies issue policies: the "all-inclusive fee" and the "approved attorney system." Under the all-inclusive fee system, the title insurer charges a fee under a schedule approved by the Insurance Department. In addition to the charge for the policy, this fee includes a charge for ancillary services, such as title searches, abstracts, attorneys' fees and document preparation. The title company performs these ancillary services. Under the approved attorney fee system, an approved attorney performs the ancillary services and the insurer charges a fee for the policy referred to as the "approved attorney" rate.

Depending on the method used, the Department had subjected the gross premiums tax either to the entire all-inclusive fee or the approved attorney rate.

With the adoption of the amendments to § 162.11, the Department will tax a title insurance policy issued under the all-inclusive fee schedule approved by the Insurance Department that portion of the all-inclusive fee that is equivalent to the fee that would be charged under the approved attorney fee schedule for the same policy coverage. See § 162.11(b).

Subsection (c) sets forth the method of calculation and provides a detailed example. Notwithstanding the amount of the fee charged to the insured, subsection (d) provides that a title insurance company must calculate the amount of its taxable premiums relative to the total fee charged on the basis of the number of policies and the total liability covered by these policies with respect to the liability ranges prescribed in the approved attorney fee schedule then in effect. An example details how the schedule should be prepared.

Comment and Response Summary

Notice of proposed rulemaking was published at 27 Pa. B. 4434 (August 30, 1997). This amendment is being adopted with changes to the proposed rulemaking to read as set forth in Annex A.

The Department did not receive any comments during the public comment period. No comments were received from the House Finance Committee or the Senate Finance Committee. The Department did receive comments from the Independent Regulatory Review Commission (IRRC).

The amendments to the proposed rulemaking in response to the comments from IRRC are as follows:

(1) IRRC's initial comment stated that the definition of "excess fee" in subsection (a) lacked clarity in that it did not explain how to derive the all-inclusive fee using the maximum liability coverage specified in the approved attorney fee schedule. To address this comment, the Department has amended the definition to provide that an excess fee is the difference between the all-inclusive fee for the actual liability covered by a title insurance policy and the all-inclusive fee for a hypothetical title insurance policy written to cover the maximum liability specified in the current approved attorney fee schedule.

(2) In subsection (b), IRRC indicated that the proposed language lacked clarity because the substance of the

provision was lost in unnecessary detail. The Department agreed with the comment and amended the proposal to incorporate IRRC's suggested language.

(3) IRRC indicated in its comments that the example in subsection (c)(2) lacked clarity in that the arrangement of information was confusing to the reader. IRRC provided suggested language to clarify the example. The Department agreed with the language suggested by IRRC and has amended the example accordingly.

IRRC's final comment related to whether, in practice, actual attorney fee schedules and all-inclusive fee schedules for an insurer both have the same maximum specified liability coverage as used in the example in subsection (c)(2). IRRC suggested that the example would be clearer and more closely track the industry, if the two fee schedules used in the example have different maximum specified liabilities. Though the Department agreed that the schedules do not mirror those used in practice with regard to the maximum specified liability coverage, the schedules are only included to facilitate the example. Because the schedules change periodically, the Department would not want to present a schedule in this amendment on which the public would rely that would soon be out-of-date.

During its internal review, the Department concluded that for clarity, the title of § 162.11 should be revised to specify that the section relates to the calculation of foreign title insurance company gross premiums.

Fiscal Impact

The Department estimates that the regulation will cause annual revenue losses of \$1.2 million. This figure is based on estimated fiscal year cash payments of the six foreign title insurance companies that are currently appealing or litigating tax liabilities under the all-inclusive fee schedule. Costs in the current fiscal year reflect refunds due the six appellants/litigants, which are estimated to be \$2.7 million, including principal and interest (accrued for periods between 1984 and 1995).

Paperwork

The amendment will have a minimal impact on the paperwork requirements for title insurance companies. The amendment will require a title insurance company to complete and file an additional schedule reporting taxable premiums under the approved attorney rate fee schedule with its annual gross premiums tax report. This schedule, however, is simply completed by information readily available to the title insurance companies because of their own recordkeeping systems.

Effectiveness/Sunset Date

The amendment will become effective upon final publication in the *Pennsylvania Bulletin*. The amendment is scheduled for review within 5 years of final publication. No sunset date has been assigned.

Contact Person

The contact person for an explanation of the final-form regulation is Anita M. Doucette, Office of Chief Counsel, Department of Revenue, Dept. 281061, Harrisburg, PA 17128-1061.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the notice of proposed rulemaking, published at 27 Pa.B. 4434, to IRRC and the Chairpersons of the House Committee on Finance and the Senate Committee on Finance for review and comment. In compliance with section 5(c)

of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of all comments received, as well as other documentation.

In preparing this final-form regulation, the Department has considered all comments received from IRRC, the Committees and the public.

This final-form regulation was deemed approved by the House and Senate Committees on July 14, 1998. IRRC met on July 30, 1998, and approved the amendment in accordance with section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)).

Findings

The Department finds that:

(1) Public notice of intention to adopt the regulations has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The regulation is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Department acting under the authorizing statute, orders that:

(a) The regulations of the Department, 61 Pa. Code, Chapter 162, are amended by amending § 162.11 (relating to calculation of foreign title insurance company gross premiums) to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to form and legality as required by law.

(c) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

ROBERT A. JUDGE, Sr.,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa. B. 4007 (August 15, 1998).)

Fiscal Note: Fiscal Note 15-385 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 61. REVENUE

PART I. DEPARTMENT OF REVENUE

Subpart B. GENERAL FUND REVENUES

ARTICLE VI. CORPORATION TAXES

CHAPTER 162. INSURANCE COMPANIES

SUBJECT TO TAX IN THIS COMMONWEALTH

§ 162.11. Calculation of foreign title insurance company gross premiums.

(a) The following words and terms when used in this section, have the following meanings:

Excess fee—The difference between the all-inclusive fee for the actual liability covered by a title insurance policy and the all-inclusive fee for a hypothetical title insurance policy written to cover the maximum liability specified in the current approved attorney fee schedule.

(b) Except as provided in subsection (c), gross premiums for all title insurance policies, including policies issued under an all-inclusive fee schedule, shall be calculated by applying the liability coverage to the insurer's approved attorney fee schedule approved by the Insurance Department.

(c) The taxable premium for policies that are written in excess of the maximum liability coverage amount specified in the approved attorney fee schedule shall be calculated as follows:

(1) If the title insurance policy is written under the approved attorney system, the taxable premium is the entire fee.

(2) If the title insurance policy is written under the all-inclusive system, the taxable premium is the sum of the following:

(i) The approved attorney fee for the maximum liability coverage specified in the approved attorney fee schedule.

(ii) The excess fee.

Example:

A title insurance policy is written with a liability coverage of \$20 million. A fee of \$38,583 is charged under the all-inclusive system. The approved attorney fee schedule is consulted, which for purposes of illustration, only, is as follows:

<i>Unit of Insurance or Fraction Thereof</i>	<i>Fee</i>
\$0.00 to \$15,000	\$45
\$15,001 to \$100,000	Add \$3 per \$1,000
\$100,001 to \$500,000	Add \$2.50 per \$1,000
\$500,001 to \$1,000,000	Add \$2 per \$1,000
\$1,000,001 and greater	Subject to negotiation

The \$20 million liability of the policy exceeds the maximum liability specified in the approved attorney fee schedule of \$1 million. Under paragraph (2), the taxable premium is the sum of two components. First, under subparagraph (i), the maximum liability coverage specified is \$1 million and the corresponding fee totals \$2,300. Second, the excess fee needs to be calculated utilizing fees in the all-inclusive fee schedule, which for purposes of illustration, only, is as follows:

<i>Unit of Insurance or Fraction Thereof</i>	<i>Fee</i>
\$0.00 to \$15,000	\$303
\$15,001 to \$35,000	Add \$7 per \$1,000
\$35,001 to \$50,000	Add \$6 per \$1,000
\$50,001 to \$100,000	Add \$5 per \$1,000
\$100,001 to \$500,000	Add \$4.50 per \$1,000
\$500,001 to \$1,000,000	Add \$3.50 per \$1,000
\$1,000,001 and greater	Subject to negotiation

Using the maximum liability coverage of \$1 million, the corresponding fee totals \$4,333. The excess fee under subparagraph (ii) is \$34,250 (\$38,583 - \$4,333). The taxable premium for the policy is the sum of the two components which is \$36,550 (\$2,300 + \$34,250).

(d) A title insurance company shall calculate the amount of its taxable premiums on the basis of the number of policies and the total liability covered by the policies within the liability ranges as prescribed in the approved attorney fee schedule then in effect. A title insurance company shall submit a schedule setting out the relevant data by policy coverage ranges and calculat-

ing the taxable gross premiums as indicated. (Refer to the schedule in the following example.) This schedule shall be attached to the title insurance company's gross premiums tax report. Copies of the applicable approved attorney fee schedule and the all-inclusive fee schedule in effect for the title insurance company also shall be attached to the gross premiums tax report.

Example:

A title insurance company writes 3,201 title insurance policies covering a total liability of \$391,000,000 under the all-inclusive system during the tax year. The distribution of policies, utilizing the ranges set forth in the fee schedule is as follows:

A	B	C	D	E	F	G	H	I
Range	Number of Policies	Total Liability for Policies in Range	Premium on first \$15,000 of Coverage [Col B × \$45]	Premium on next \$85,000 per Policy @ \$3 per 1,000	Premium on next \$400,000 per policy @ \$2.50 per 1,000	Premium on next \$500,000 per policy @ \$2 per 1,000	Excess Fee for Negotiated Policies	Total [Col.D +Col. E +Col.F +Col.G +Col. H]
0 to 15,000	100	1,000,000	4,500	—	—	—	—	4,500
15,001 to 100,000	2,000	90,000,000	90,000	180,000 (60,000,000 @ \$3 per 1,000)	—	—	—	270,000
100,001 to 500,000	1,000	200,000,000	45,000	255,000 (85,000,000 @ \$3 per 1,000)	250,000 (100,000,000 @ \$2.50 per 1,000)	—	—	550,000
500,001 to 1,000,000	100	80,000,000	4,500	25,500 (8,500,000 @ \$3 per 1,000)	100,000 (40,000,000 @ \$2.50 per 1,000)	60,000 (30,000,000 @ \$2 per 1,000)	—	190,000
1,000,001 or more	1	20,000,000	45	255 (85,000 @ \$3 per 1,000)	1,000 (400,000 @ \$2.50 per 1,000)	1,000 (500,000 @ \$2 per 1,000)	34,250	36,550
TOTAL	3,201	391,000,000	144,045	460,755	351,000	61,000	34,250	1,051,050

Under this section, and utilizing this illustrative fee schedule, the title insurance company's taxable gross premiums are \$1,051,050.

[Pa.B. Doc. No. 98-1491. Filed for public inspection September 11, 1998, 9:00 a.m.]