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Chapter DOD 13

ALLOCATION OF VOLUME CAP ON PRIVATE ACTIVITY BONDS

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Note: Chapter DOD 13 was created as an emergency rule effective January 2, 1989; Chapter DOD 13 was repealed and recreated as an emergency rule effective March 16, 1990; Chapter DOD 13 as it existed on December 31, 1990 was repealed and a new Chapter DOD 13 was created effective January 1, 1991.

DOD 13.01 Purpose. The purpose of this chapter is to set forth a procedure for the annual allocation, pursuant to s. 560.032, Stats., of the amount of tax-exempt "private activity bonds" that may be issued by Wisconsin issuers pursuant to the internal revenue code of 1986, 26 U.S.C. s. 146.

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.

DOD 13.02 Definitions. In this chapter:

(1) "Carryforward purpose" has the meaning assigned to that term in 26 U.S.C. s. 146 (f) (5).

(2) "Code" means the internal revenue code of 1986, as amended.

(3) "Department" means the department of development.

(4) "Issuer" means any county, city, town, village or other public body described in s. 67.01 (5), Stats., or agency, authority or political subdivision of the state of Wisconsin, including any public corporation or commission established by or on behalf of any of these entities, that is empowered to borrow money.

(5) "Issuer-owned project bonds" means bonds issued for a facility that is owned by an issuer, would be treated as owned by the issuer pursuant to 26 U.S.C. s. 142 (b) (1) (B) and is described in 26 U.S.C. s. 142 (a) (1) to (11). It does not include single-family housing bonds but does include multi-family housing bonds.

(6) "Multi-family housing bonds" means bonds issued for a qualified residential rental project, as defined in 26 U.S.C. s. 142 (d) (1).

(7) "Other private activity bonds" means private activity bonds other than those certified to the department as issuer-owned project bonds, multi-family housing bonds or single-family housing bonds.

(8) "Private activity bonds" has the meaning assigned to that term in 26 U.S.C. s. 141 (a).

(9) "Qualified redevelopment bonds" has the meaning assigned to that term in 26 U.S.C. s. 144 (c).

(10) "Single-family housing bonds" means qualified mortgage bonds as defined in 26 U.S.C. s. 143 (a).

(11) "Unified volume cap" means the annual state ceiling for the issuance of private activity bonds applicable to the state of Wisconsin.

Note: The "unified volume cap" is determined according to 26 U.S.C. s.146 (d) (1) and (2). It is an amount equal to the prior year census estimate of the resident population of the state of Wisconsin released by the bureau of census multiplied by $50 per person.

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.

DOD 13.03 Initial allocation to the Wisconsin housing and economic development authority. There is allocated annually to the Wisconsin housing and economic development authority $105 million of the unified volume cap to be utilized for those purposes that the authority in its discretion shall determine are needed. The authority shall certify to the department promptly after issuance of any private activity bonds the amount of the bonds issued pursuant to this allocation. Any amount of the allocation that remains unused on September 1 shall be automatically transferred to the department, to be further allocated as provided in s. DOD 13.06. The authority shall certify to the department, on September 1, the amount of the unused allocation.

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.

DOD 13.04 Allocation to the Wisconsin housing and economic development authority. Any application by the Wisconsin housing and economic development authority for an allocation under s. DOD 13.06 may be made no earlier than September 1 and shall contain a certification by the issuer that the allocation under s. DOD 13.03 and any unused allocation from a prior year carried forward and available to the issuer for that purpose has been or, as part of the bond issuance, will be fully utilized. If the allocation is for single-family housing bonds, the application shall contain a separate certification from the secretary of the department approving the bond issue. The secretary of the department shall provide the certification only after being advised of the current status of the allocation to the department made under s. DOD 13.06 (1) (a) and after giving due consideration to alternative uses of the allocation. The certification shall state that the secretary of the department has decided that the utilization of the allocation for the issue of single-family housing bonds is in the best interests of the people of the state of Wisconsin.

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.

DOD 13.05 Building commission allocation. There is allocated annually to the building commission $10 million of the unified volume cap to be further allocated by the building commission and utilized for any private activity bonds as the building commission in its discretion shall determine are needed. The building commission shall certify to the department promptly after issuance of any private activity bonds the amount of the bonds issued pursuant to this allocation. Any amount of the allocation that remains unused on September 1 shall be automatically transferred to the department, to be further allocated as provided in s. DOD 13.06. The building commission shall promptly certify to the department, on September 1, the amount of the unused allocation.

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.

DOD 13.06 Department allocation and allocation process. There is allocated to the department on behalf of the issuers the remainder of the annual unified volume cap, to be further allocated as follows:

(1) (a) Prior to September 1, the allocation to the department shall be set aside and accounted for in 2 categories, as follows:

1. Forty-five million dollars for multi-family housing bonds. An allocation made out of this subdivision may not be for more than $6 million and shall meet the following requirements:

a. At least 10% of the housing units shall be barrier free as defined by United States department of housing and urban development rules.

b. Any firm involved in construction of a project for which an allocation is requested shall meet applicable affirmative action plan requirements.

c. A project for which an allocation is requested prior to September 1 shall either be new construction or an adaptive reuse of an existing building unless at least 95% of the completed project units are to be occupied or held for occupancy during the qualified project period as defined in 26 U.S.C. Section 142 (d) (2) by individuals or families whose income is 50% or less of county median gross income, determined in a manner consistent with Section 8 of the United States Housing Act of 1937, with adjustments for family size.

2. The remainder, including any amount that has been surrendered or terminated pursuant to subs. (7) and (8), for issuer-owned project bonds, qualified redevelopment bonds and other private activity bonds, but not for single-family housing bonds.

(b) On and after September 1, the allocation to the department shall be aggregated into a single category and available for issuer-owned project bonds, qualified redevelopment bonds, multi-family housing bonds, single-family housing bonds issued by the Wisconsin housing and economic development authority and other private activity bonds.

(2) (a) Any issuer, or any person acting on its behalf, may make an application to the department for an allocation of the unified volume cap. Each application shall provide:

1. Evidence that official action has been taken by the issuer with respect to the issuance of the obligations which, for obligations issued pursuant to s. 66.521, Stats., shall be the initial resolution previously filed with the department with respect to the obligation, and

2. A written, signed opinion of the issuer's legal counsel, or of bond counsel, to the effect that a reasonable basis exists to conclude that the obligations would be private activity bonds subject to the unified volume cap and indicating whether the bonds would be issuer-owned project bonds, qualified redevelopment bonds, multi-family housing bonds or other private activity bonds.

(b) Any application with respect to a federally-assisted project shall also contain a statement that the application is for a federally-assisted project and shall include a copy of:

1. The application, on the form prescribed by the United States department of housing and urban development, for an urban development action grant pursuant to 42 U.S.C. s. 5318 with respect to the project, or

2. An application, on the form prescribed by the respective federal agency, for insurance or guarantee in connection with the bonds issued by the federal housing administration, the government national mortgage association or the department of housing and urban development pursuant to the National Housing Act, as amended, or the United States Housing Act of 1937, as amended.

(c) Any application for other private activity bonding shall also contain the number of jobs created by the project for which other private activity bonding is being requested, the total dollar investment in the project, the taxable real property created by the project, the unemployment rate in the county in which the project is located and the average income of persons residing in the county in which the project is located in such form as the department shall prescribe.

(3) Upon receipt of any application, the department shall record it by date and time of receipt. The department shall promptly certify the portion of the relevant category of its allocation of the unified volume cap that has not been allocated to an issuer and shall allocate the available portion of the amount requested to the issuer. The allocation shall be valid for a period equal to the lesser of 90 calendar days or, in the case of an application for a federally-assisted project, 120 calendar days or the remainder of the calendar year. The amount of the allocation shall not exceed the maximum amount authorized for issuance under the official action taken by the issuer with respect to the obligations. Certain allocations are subject to earlier termination pursuant to sub. (8). Any allocation received under this section shall be valid only with respect to bonds issued in the same calendar year. Any allocations for a carryforward purpose shall be obtained under the provisions of s. DOD 13.07.

(4) (a) In making an allocation, except allocations made for multi-family housing bonds, allocations for other private activity bonds after one-half of the initial sub. (1) (a) 2. allocation has been allocated and allocations of $5 million or more made under sub. (10), the department shall only consider compliance with the requirements of sub. (2), the dollar amount of the request and the portion of the relevant category of its allocation of the unified volume cap that has not been allocated to an issuer. When making an allocation for a multi-family housing bond, the department shall also consider the requirements in sub. (1) (a) 1. a., b., and c. When making allocations for other private activity bonds after one-half of the initial sub. (1) (a) 2. allocation has been allocated, the department must determine that a project proposed for other private activity bonding receives a score of at least 12 based upon the standards contained in pars. (b) to (f).

(b) A project that is expected to create a net increase of jobs within the state shall receive up to 5 points under this paragraph as follows:

1. For 2 or fewer jobs for each $500,000 allocation requested, one point.

2. For 3 to 6 jobs for each $500,000 of allocation requested, 2 points.

3. For 7 to 10 jobs for each $500,000 of allocation requested, 3 points.

4. For 11 to 14 jobs for each $500,000 of allocation requested, 4 points.

5. For 15 or more jobs for each $500,000 of allocation requested, 5 points.

(c) A project in which there is expected to be a total investment equal to or greater than the allocation requested shall receive up to 5 points under this paragraph as follows:

1. For a total investment of 100% or less of the allocation request, one point.

2. For a total investment of 101 to 105% of the allocation request, 2 points.

3. For a total investment of 106 to 110% of the allocation request, 3 points.

4. For a total investment of 111 to 115% of the allocation request, 4 points.

5. For a total investment of 116% or more of the allocation request, 5 points.

(d) A project in which there is expected to be taxable real or personal property shall receive up to 5 points under this paragraph as follows:

1. For a project which creates taxable property equal to 25% or less of the allocation request, one point.

2. For a project which creates taxable property of 26 to 50% of the allocation request, 2 points.

3. For a project that creates taxable property of 51 to 75% of the allocation request, 3 points.

4. For a project that creates taxable property of 76 to 100% of the allocation request, 4 points.

5. For a project that creates taxable property in excess of 100% of the allocation request, 5 points.

(e) A project that is located in a county with significant unemployment shall receive up to 5 points under this paragraph as follows:

1. If in a county with an unemployment rate of 2 percentage points or more below the statewide average, one point.

2. If in a county with an unemployment rate of less than 2 percentage points and not more than one percentage point below the statewide average, 2 points.

3. If in a county with an unemployment rate of less than 1 percentage point below and up to the statewide average, 3 points.

4. If located in a county with an unemployment rate above the statewide average and up to 1 percentage point above the statewide average, 4 points.

5. If located in a county with an unemployment rate greater than one percentage point above the statewide average, 5 points.

(f) A project that is located in a county with modest average per capita income shall receive up to 5 points under this paragraph as follows:

1. If in a county with average per capita income that is 5% or more above the statewide average per capita income, one point.

2. If in a county with average per capita income of not more than 5 and not less than 2% above the statewide average, 2 points.

3. If in a county with average per capita income that is less than 2 percentage points above and greater than the statewide average per capita income, 3 points.

4. If in a county with average per capita income of not more than the statewide average and up to one percentage point below the statewide average, 4 points.

5. If in a county with average per capita income of more than one percentage point below the statewide average per capita, 5 points.

(g) The information required under s. DOD 13.06 (2) (c) to respond to pars. (b) to (f) shall be provided in such form as the department shall require.

(5) (a) Each issuer, or a person acting on its behalf, shall notify the department in writing as to the amount of obligations issued pursuant to the allocation on or before 5 business days after the issuance of the bonds. In the case of a federally-assisted project, the notification shall include evidence of the award of:

1. An urban development action grant, or

2. Insurance, guarantee or a grant in connection with the bonds issued by the federal housing administration, the government national mortgage association or the department of housing and urban development pursuant to the National Housing Act, as amended, or the United States Housing Act of 1937, as amended, with respect to the project.

(b) Upon notification under par. (a), the allocation in the amount issued shall, subject to par. (c), become permanent and irrevocable.

(c) The department shall treat any notice received pursuant to this subsection more than 5 business days after the issuance of the bonds as a reapplication pursuant to sub. (6). If an allocation is certified to the issuer pursuant to a reapplication, this subsection shall be deemed to have been complied with as though the notice of issuance had been timely received.

(6) All applications shall be processed in the order received by the department. An application shall be made only within 90 calendar days or, for a federally-assisted project, 120 calendar days, prior to the planned issuance of the bond. Any reapplication shall be effective only upon the day on which the previous allocation expires, except that a notice of issuance which is treated as a reapplication pursuant to sub. (5) (c) shall be effective upon receipt by the department.

(7) An issuer, or a person acting on its behalf, may surrender all or any part of its rights to a particular allocation, in whole or in part, under any section of this chapter prior to its expiration. If this event occurs, the allocation shall expire. An issuer that has received an allocation for a federally-assisted project, or a person acting on its behalf, may alternatively surrender only its right to an extended allocation period of 30

days, whereupon the allocation shall be treated as if it were not for a federally-assisted project.

(8) (a) Unless the department has received notice of the issuance of bonds pursuant to sub. (5) or a deposit of cash or a certified or cashier's check in an amount equal to .5% of the allocation requested, if requested prior to October 1, and 5% if requested on October 1 or thereafter, any allocation shall terminate on the earlier of 30 days after the allocation is made or December 1. Unless the department has received a deposit of cash or certified cashier's check in the required amount, no allocation may be made after December 1. No additional deposit may be required with respect to an allocation made upon reapplication if the required deposit has already been made, and not refunded, with respect to the project.

(b) 1. Subject to subd. 2., the deposit shall be refunded, without interest, if prior to January 1 of the succeeding year bonds are issued by the issuer pursuant to the allocation or to an allocation made upon reapplication.

2. A ratable portion of the deposit proportionate to the amount by which the allocation exceeds the face amount of the bonds issued may not be refunded.

3. Any deposits, or portions of the deposits, which have not become refundable pursuant to subds. 1 and 2 as of the fifth working day of the succeeding year shall vest in the state of Wisconsin to be used as provided by law.

4. Any refund shall be made within 30 days after a request for refund, together with any evidence as the department may reasonably require, is furnished to the department.

(9) Notwithstanding any other provision, the deposit required with respect to any issuer-owned project bonds or qualified redevelopment bonds shall be $1,000 for each $5 million of allocation or portion of $5 million of allocation requested, and no deposit shall be required with respect to any allocation to the state building commission.

(10) Any allocation pursuant to this section in excess of $5 million other than an allocation for single-family or multi-family housing bonds shall be provisional, and may not be used until approved by the secretary of the department. Any application by an issuer for an allocation shall contain a certification by the issuer that any allocation under s. DOD 13.03 or 13.05 available to the issuer for the bond issue has been, or as part of the bond issuance, will be fully utilized. The secretary's approval shall not be effective unless prior notice has been given and an opportunity to comment in writing and at a public hearing has been provided. Notice shall be given by publication in the official state newspaper and by mail to any person who has made a request of the department to receive the notice. The approval shall state that, after consideration of any comments received and after being advised of the current status of the allocation to the department made under sub. (1) and after giving due consideration to alternative uses of such allocation, the secretary has decided that the utilization of the allocation for the bond issue is in the best interests of the people of the state of Wisconsin. The allocation shall be

revoked, and any deposit refunded, unless the secretary approves in writing the allocation within 14 calendar days after the public hearing.

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.

DOD 13.07 Carryforward allocation process. (1) (a) On the department's next to 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 and shall then make allocations only for carryforward purposes. No allocation for carryforward purposes may be made pursuant to this subsection prior to that date. Any requests shall be considered by the department in the order received, and a request shall be deemed not to be received if an allocation has been made and not surrendered with respect to the same project or portion of the project. An allocation shall be made to any issuer that has:

1. Requested an allocation for a carryforward purpose,

2. Provided the department with information as is requested by the department and approved by the department as showing that an effective election can be made by the issuer under the federal tax reform act of 1986 and any applicable income tax regulations promulgated pursuant to 26 U.S.C. s. 146, and

3. Paid to the order of the department a deposit of immediately available funds or a certified or cashier's check in an amount equal to 5% of the amount of the allocation requested.

(b) The deposit paid under par. (a) 3. shall be refunded, without interest, if bonds are issued by the issuer on or before December 31 of the third succeeding year, for the carryforward purpose indicated in the application for the allocation, provided that an amount of a deposit equal to 5% of the amount by which the allocation exceeds the face amount of bonds actually issued shall not be refunded. Any refund shall be made within 30 days after a request for refund, together with any evidence as the department may reasonably require, is furnished to the department.

(c) Any deposit under s. DOD 13.06 (8) shall not be credited toward the deposit under this subsection.

(d) Any deposits, or portions of the deposits which have not become refundable pursuant to par. (b) as of January 1 of the fourth succeeding year shall vest in the state of Wisconsin to be used as provided by law.

(e) Notwithstanding any other provision, the deposit required with respect to any issuer-owned project bonds or qualified redevelopment bonds shall be $1,000 for each $5 million of allocation or portion of $5 million of allocation requested, and no deposit shall be required with respect to any allocation to the state building commission.

(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 and for which it has not received requests for carryforward purposes. The department shall assign that portion to the Wisconsin housing and economic development authority with direction to the authority to make an election, pursuant to any applicable income tax regulations promulgated pursuant to 26 U.S.C. s. 146, to carry forward the portion for any carryforward purpose.

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.

DOD 13.08 Department certification. At the request of an issuer that has complied with all of the provisions of this chapter and that has received an allocation, or of any person acting on its behalf, the secretary of the department, or designee, shall certify that the bond issue meets the requirements of 26 U.S.C. s. 146.

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.

DOD 13.09 Designation of interest earned. Any interest earned upon investment of amounts deposited under this chapter shall inure to the state of Wisconsin for the benefit of the people of the state of Wisconsin, to be used as provided by law.

History: Cr. Register, December, 1990, No. 420, eff. 1-1-91.