

2023 Kansas Statutes

74-5060. Same; computation of state ceiling and allocation among governmental issuers; application, approval or denial; expiration of allocation, extension; certification of compliance with federal internal revenue code; administrative application fee; recovery of certain costs. (a)

The secretary shall determine the state ceiling for each calendar year in accordance with the formula provided therefor in the code and, except as otherwise provided in K.S.A. 74-5063, and amendments thereto, shall allocate the state ceiling among governmental issuers in accordance with the provisions of this section.

(b) The secretary shall reserve until October 15 of each year: (1) An amount equal to \$5,000,000 for allocation in accordance with the provisions of section 141(b)(5) of the code for private activity use of a portion of the proceeds of bonds issued by governmental issuers; (2) an amount equal to \$5,000,000 for allocation for qualified student loan bonds as defined in section 144(b) of the code; and (3) an amount equal to \$25,000,000 for allocation for qualified small issue bonds as defined in section 144(a) of the code. On and after October 15 of each year, any portion of the state ceiling remaining unused or uncommitted shall be available for allocation to governmental issuers by the secretary without regard to the reservations provided for in this subsection.

(c) Prior to any issuance of private activity bonds subject to the state ceiling, a governmental issuer shall submit to the secretary on a form prescribed by the secretary a written application for an allocation of the state ceiling for such issue.

(d) Subject to the provisions of subsection (b), the secretary shall approve each properly filed application for an allocation for qualified small issue bonds of \$5,000,000 or less on the basis of the chronological order of receipt of applications. If an application is for an allocation in excess of \$5,000,000, the secretary may approve the total amount, approve a partial amount or reject the application.

(e) Within five business days after receipt of an application for an allocation, the secretary shall notify the governmental issuer in writing that: (1) The application has been approved and shall specify the amount approved; (2) the application has been denied; or (3) the application has been placed on hold pending receipt of additional information with respect to the application or pending a review of the effect approval of the application will have on the state ceiling.

(f) Unless an extension or a carryforward election is approved by the secretary, an approved allocation, or any portion thereof, that is not utilized by the issuance of the private activity bonds for which the allocation was approved shall expire at the earliest of: (1) The time of 11:59 p.m. on the date which is 60 days after the date the notification of the approved allocation is mailed to the governmental issuer or on such other date as the secretary may specify in the notification; (2) the date upon which the approved allocation is voluntarily surrendered to the secretary by the governmental issuer; or (3) the time of 11:59 p.m. on December 1 of the calendar year in which the allocation was approved.

(g) A governmental issuer may request an extension of the expiration date of an approved allocation by filing a written application therefor with the secretary. Any such application must be received by the secretary not less than two days prior to the expiration date of the approved allocation. In such instances, the secretary may approve an extension for a period ending at the earliest of: (1) The time of 11:59 p.m. on the date which is 30 days after the initial expiration date; (2) the date upon which the approved allocation is voluntarily surrendered to the secretary by the governmental issuer; or (3) the time of 11:59 p.m. on December 1 of the calendar year in which the allocation was approved. The secretary shall notify the governmental issuer within five business days after receipt of the application if the request for extension has been approved or denied. If the private activity bonds for which an extension has been approved are not issued on or before the last day of the extension period approved by the secretary, the approved allocation shall expire unless a carryforward election is approved by the secretary.

(h) Notwithstanding any other provision of this section, if an approved allocation or an approved extension period expires on December 1, the secretary may grant an extension, or a further extension, for any period ending not later than the time of

11:59 p.m. on December 31 of the calendar year in which the allocation was approved.

(i) The secretary shall provide to the governmental issuer on or prior to the date of issuance of any private activity bonds for which an approved allocation has not expired a certification that such bonds meet the requirements of section 146 of the code.

(j) On or after December 16 of each calendar year, the secretary may approve a carryforward election with respect to an approved allocation or any approved extension if the governmental issuer, in writing: (1) Requests such action; and (2) indicates that the private activity bonds for which the allocation was approved cannot be issued during the calendar year in which the allocation was approved. Such approved carryforward election shall be made by the governmental issuer by means of a statement, signed by a duly authorized official of such issuer. Such statement shall be filed with the secretary and with the internal revenue service in accordance with section 146(f) of the code. A governmental issuer may elect to carryforward such issuing authority only for qualified mortgage bonds, mortgage credit certificates, qualified student loan bonds, qualified redevelopment bonds, as defined in sections 142, 143 and 144 of the code, or for bonds to finance a project described in section 141(e)(1)(A) of the code. In no event shall such carryforward be effective for a period longer than permitted by section 146(f) of the code.

(k) If an approved allocation expires, a governmental issuer may submit another application for an allocation of the state ceiling for the same purpose for which the expired allocation was approved. Any such applications shall be reviewed in order of receipt with no preference or priority being given as a result of the prior application and allocation.

(l) (1) For purposes of recovery of program oversight and administrative costs, the secretary may assess an administrative application fee of up to 1%, not to exceed \$200,000, of the private activity bond issuance amount requested. The secretary may also recover any actual costs incurred by the secretary in excess of the fee. At the secretary's discretion, the fee, and any actual costs incurred by the secretary in excess of the fee, may be made payable by the governmental issuer or out of the bond proceeds or both. If assessed in whole or in part upon the governmental issuer, the governmental issuer may require payment of such amount or a portion thereof from the conduit borrower or borrowers if requiring such payment from the conduit borrower or borrowers is approved by the secretary. In no case shall the fee and any actual costs in excess of the fee assessed by the secretary exceed applicable limitations imposed by the code. The secretary may issue rules and regulations to implement the provisions of this subsection.

(2) The secretary shall remit all moneys received by or for the secretary from such administrative application fees, and any actual costs incurred by the secretary in excess of the fee, and collected under this subsection to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the private activity bond administration fee fund, which is hereby established in the state treasury. All expenditures from the private activity bond administration fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or by a person or persons designated by the secretary.

History: L. 1988, ch. 303, § 3; L. 1990, ch. 285, § 1; L. 1996, ch. 205, § 13; L. 2016, ch. 109, § 3; July 1.