

122-4-01

**Definitions and application.**

## (A) Definitions as used in this chapter:

- (1) "Act" means section 146 of the Internal Revenue Code and any other provisions of the federal laws applicable thereto, as amended from time to time and as applicable, setting forth provisions for a state ceiling on the aggregate volume of restricted bonds that may be issued in any year in the state.
- (2) "Amount," with reference to restricted bonds, means the amount taken into consideration for purposes of the state ceiling.
- (3) "Bond counsel" means the attorney or firm of attorneys of nationally recognized standing in the field of law relating to the exemption from federal income taxation on state or local bonds ~~and~~ who has rendered, or is expected to, render at the time of the issuance of bonds, an opinion as to the tax-exempt status of the interest on the bonds.
- (4) "Bonds" means bonds, bond anticipation notes, notes, and any other obligations and other arrangements, including certain lease and installment purchase obligations, which are subject to the state ceiling under the act.
- (5) "Carryforward bonds" means restricted bonds for which a carryforward of allocation of the state ceiling for a given year may be made for issuance of such bonds in any subsequent year during which such bonds may be issued under the act, and includes mortgage credit certificates to be issued in lieu of qualified mortgage bonds under section 25 of the Internal Revenue Code.
- (6) "Confirmation" means a written confirmation by the director of the allocation and assignment of a portion of the state ceiling to an issue of restricted bonds or to that amount of an issue that constitutes restricted bonds.
- (7) "Director" means the director of the Ohio Department of Development~~department of development~~, and also includes such other officers or employees of the Ohio Department of Development~~department of development~~, as may act for or in place of the director under this chapter pursuant to rule 122-4-07 of the Administrative Code.
- (8) "Effective confirmations" means those confirmations, or the amounts thereof, which have not expired or lost effectiveness by reason of (a) the director not having received good payment of the applicable fees at the time required (subject to paragraph (D)(~~67~~) of rule 122-4-06 of the Administrative Code), (b) failure to issue bonds or file notice of issuance within the required period,

or (c) the failure to issue bonds in adequate amount, as applicable.

- (9) "Enterprise zone facility" means an enterprise zone facility as defined in section 1394 of the Internal Revenue Code.
- (10) "Eligible project" means a project that was not placed in service two years prior to the date of issuance of the related bonds. For purposes of this definition, "placed in service" means the date on which, based on all the facts and circumstances, a facility has reached a degree of completion which would permit its operation at substantially its design level and the facility is, in fact, in operation at such level.
- (11) "Escrowed bonds" means bonds the terms of which require: (a) ninety-five per cent or more of the proceeds of such bonds are escrowed until the occurrence of a specified event or events, and (b) if the specified event or events fail to occur, the escrowed proceeds are to be used to pay the principal of, and interest or premium on, the bonds.
- (12) "Exempt facility bonds" means restricted bonds, except restricted bonds issued for multi-family rental housing projects or ; enterprise zone facilities, qualified small issue bonds, ~~and~~ student loan bonds or mortgage revenue bonds, that are exempt facility bonds as defined in section 142 of the Internal Revenue Code.
- (13) "File" or "filing" means, with regard to the filing of a notice of intent, a notice of renewal, a notice of issuance, or a notice of escrow release with the director, the receipt of such notice in the office of the director.
- (14) "Internal Revenue Code" means the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. sections 1 et seq., as amended from time to time, and includes any laws of the United States providing for application of that code and the applicable regulations or rulings thereunder, including temporary and proposed regulations.
- (15) "Issuance" or "issued" means, with respect to restricted bonds, the delivery of the bonds to the original ~~general~~ purchaser in exchange for the agreed payment and deemed to be issued for purposes of section 150 of the Internal Revenue Code; or, in the cases of lease and installment purchases and other arrangements which are subject to the state ceiling under section 146 of the Internal Revenue Code, the execution and delivery of the agreement committing the payment of interest which is sought to be exempted from federal income taxation; and with respect to mortgage credit certificates, ~~means~~ the actual issuance of such certificate to the single family home

mortgagor pursuant to section 25 of the Internal Revenue Code.

- (16) "Issuer" or "issuing authority" means the public body or other authorized body which has authority to issue restricted bonds.
- (17) "Multi-family rental housing project" means a multi-family rental housing project that is a qualified residential project within the meaning of section 142(a)(7) and (d) of the Internal Revenue Code.
- (18) "Notice of escrow release" means a written notice, in form prescribed by the director, properly completed and signed by an authorized officer or representative of the issuer or by bond counsel, stating that the conditions for breaking escrow have been satisfied, proceeds of the escrowed bonds have been released to be used for the purpose of the bonds, and proceeds of the bonds will not be used to pay principal of the bonds except to provide a reasonably required reserve for the bonds that meets the requirements of section 148(d) of the Internal Revenue Code.
- (19) "Notice of intent" means a written notice, in form prescribed by the director, properly completed and signed by an authorized officer or representative of the issuer, stating the intention of the issuer to issue particular restricted bonds and requesting an allocation from a particular set-aside of the state ceiling.
- (20) "Notice of issuance" means a written notice, in form prescribed by the director, properly completed and signed by an authorized officer or representative of the issuer or by bond counsel, stating that particular restricted bonds have been issued.
- (21) "Notice of renewal" means a written notice, in form prescribed by the director, properly completed and signed by an authorized officer or representative of the issuer, or by bond counsel that requests an extension of a confirmation for the issuance of bonds pursuant to rule ~~122-404-0306~~ (C~~D~~) of the Administrative Code.
- (22) "Prior rules" means, collectively, rules 122-4-01 to 122-4-09 of the Administrative Code effective January 26, 1992, emergency rules 122-4-01 to 122-4-08 of the Administrative Code effective January 9, 1998, emergency rules 122-4-01 to 122-4-08 of the Administrative Code effective April 15, 1998, rules 122-4-01 to 122-4-08 of the Administrative Code effective July 9, 1998, rules 122-4-01 to 122-4-08 of the Administrative Code effective March 22, 1999, rule 122-4-02 of the Administrative Code effective December 24, 1999, rules 122-4-01, 122-4-02, and 122-4-06 of the Administrative Code

effective April 9, 2001, ~~and~~ rules 122-4-01 to 122-4-03 of the Administrative Code effective December 27, 2001, rules 122-4-01 and 122-4-02 effective December 31, 2002, and rules 122-4-02, 122-4-03, 122-4-05 and 122-4-06 effective December 12, 2006.

- (23) "Qualified small issue bonds" means restricted bonds that are qualified small issue bonds as defined in section 144(a) of the Internal Revenue Code.
- (24) "Restricted bonds" means those bonds, including part of an issue of bonds, that are chargeable or may be elected to be charged against the state ceiling under the Internal Revenue Code, including qualified mortgage bonds in lieu of which mortgage credit certificates are or are to be issued, and excludes any bonds or parts of issues of bonds which for any reason, including transitional rules or savings clauses, are excepted, exempted, or excluded in any way from the state ceiling under the act.
- (25) "Select committee" means the Joint Select Committee ~~joint select committee~~ on Volume Cap ~~volume cap~~ created under section 133.021 of the Revised Code.
- (26) "State" means the state of Ohio.
- (27) "State ceiling" means the limit of the aggregate amount for the applicable year of restricted bonds (exclusive of carryforward and ~~refunding~~ ~~refunder~~ bonds) that may be issued by all issuers within the state, as prescribed by the act.
- (28) "Student loan bonds" means restricted bonds that are qualified student loan bonds as defined in section 144(b) of the Internal Revenue Code.
- (29) "Year" or a numerical reference to a year means the applicable calendar year.
- (B) Time. In determining the last day for undertaking an act under this chapter, section 1.14 of the Revised Code is applicable, except as otherwise stated in this chapter. References in this chapter to time of day are to the time in the eastern time zone as then in effect in the state.
- (C) Applicability. This chapter applies to all confirmations issued under this chapter. Effective confirmations issued under the prior rules remain fully effective for the duration stated in such confirmations, are charged against the applicable set-asides under this chapter, and the time periods pertinent to such confirmations shall be applied as if such confirmations were at the same status under rule 122-4-03 of the Administrative Code of the prior rules. All carryforwards of state ceilings for years

ending before January 1, ~~2008~~ 2001 continue to be effective to the extent and for so long as permitted under the act, and are not adversely affected by this chapter. All set-asides under the prior rules are terminated on the effective date of this rule, except to the extent continued under this chapter, provided that all such set-asides are preserved for bonds previously issued and confirmations remaining effective on the effective date of this rule.

Effective:

R.C. 119.032 review dates: 10/12/2007

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Certification

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Date

Promulgated Under: 119.03  
Statutory Authority: 133.021 (E)  
Rule Amplifies: 133.021  
Prior Effective Dates: 10/23/1991 (Emer.), 1/26/1992, 1/19/1998 (Emer.),  
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