

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

Refer Reply To:
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PLR-124780-14
Date:
July 29, 2014

LEGEND:

District =

State =

School =

Bonds =

Date 1 =

Date 2 =

Date 3 =

Dear :

This is in response to your request under § 54A(d)(2)(B)(iii) of the Internal Revenue Code for an extension of the expenditure period for the available project proceeds of qualified tax credit bonds.

Facts and Representations

You make the following factual representations. District is a public school district and political subdivision of State.

District issued the Bonds on Date 1 and designated the Bonds as qualified school construction bonds within the meaning of § 54F(a)(3). All available project proceeds of the Bonds were to be spent on financing the construction, acquisition, and equipment of School and to purchase the land for the building site of School (the "Project"), and were expected to be spent before Date 2.

The original three-year expenditure period for the Bonds under § 54A(d)(2)(B)(i) will expire on Date 2 (the "Original Expenditure Period"). Shortly after the Bonds were issued and as part of the open bidding process required by State law, District received bids for the construction of School. All bids received were well in excess of original cost estimates. District thus determined that School design plans should be redesigned to better fit the original budget expectations for the School. District has now approved a redesigned construction plan for School and has accepted a bid to construct School.

The delays caused by the unexpected redesign of School resulted in significant delays in the project schedule upon which District relied in its expectation to spend 100 percent of the Available Project Proceeds by the Original Expenditure Period. Construction of School has commenced and is currently proceeding towards completion. However, District has determined that, as a result of the delays caused by the unanticipated redesign of School, it will not have spent 100 percent of the Available Project Proceeds by the Original Expenditure Date. Based on the construction timeline and drawdown schedules now in place and certain post-construction factors such as a construction review process by District that can take several months to complete, District currently expects to spend 100 percent of the Available Project Proceeds of the Bonds by Date 3.

District submitted this request for a ruling prior to Date 2.

Law and Analysis

Section 54A(d)(1) provides that a qualified school construction bond is treated as a qualified tax credit bond for purposes of Section 54A.

Section 54A(d)(2)(B)(i) provides in part that to the extent that less than 100 percent of the available project proceeds of the issue are expended by the close of the expenditure period for 1 or more qualified purposes, the issuer shall redeem all of the nonqualified bonds within 90 days after the end of such period.

Section 54A(d)(2)(B)(ii) provides that for purposes of this subpart, the term "expenditure period" means, with respect to any issue, the 3-year period beginning on the date of issuance. Such term shall include any extension of such period under clause (iii).

Section 54A(d)(2)(B)(iii) provides that upon submission of a request prior to the expiration of the expenditure period (determined without regard to any extension under this clause), the Secretary may extend such period if the issuer establishes that the failure to expend the proceeds within the original expenditure period is due to reasonable cause and the expenditures for qualified purposes will continue to proceed with due diligence.

Section 54A(d)(2)(C)(iv) provides that for purposes of this paragraph, in the case of a qualified zone academy bond, a “qualified purpose” means a purpose specified in § 54E(a)(1).

Section 54A(e)(4) of the Code defines “available project proceeds” to mean (A) the excess of (i) the proceeds from the sale of an issue, over (ii) the issuance costs financed by the issue (to the extent that such costs do not exceed 2 percent of such proceeds), and (B) the proceeds from any investment of the excess described in subparagraph (A).

The Project was identified prior to the issuance of the Bonds and District reasonably expected to spend all of its allocable available project proceeds within the three-year period. The expected failure to spend all the available project proceeds of the Bonds by the expiration of the three-year period on Date 2 has been caused by events that were not reasonably expected at the time the Bonds were issued and were beyond the control of District. However, District to the extent possible considering the described unexpected external events that resulted in unforeseen delays, has and will continue to exercise due diligence in spending the remaining available project proceeds on the Project. District expects to spend all available project proceeds of the Bonds not later than Date 3.

Conclusion

Under the facts and circumstances of this case, we conclude that District’s expected failure to expend the available project proceeds of the Bonds by Date 2 is due to reasonable cause and that District’s continued expenditure of the proceeds for qualified purposes will proceed with due diligence. Therefore, District is granted an extension of the Original Expenditure Period with respect to the Bonds until Date 3.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a Power of Attorney on file with this office, a copy of this letter is being sent to District’s authorized representative.

The ruling contained in this letter is based upon information and representations submitted by District and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the materials submitted in support of the request for a ruling, it is subject to verification upon examination.

Sincerely,

Associate Chief Counsel
(Financial Institutions & Products)

/S/

By: _____
Timothy L. Jones
Senior Counsel, Branch 5