

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201447023**
Release Date: 11/21/2014
Index Number: 144.02-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:FIP:5
PLR-133996-13

Date:
August 01, 2014

Legend

Authority =

State =

Bonds =

Dear :

This letter is in response to your request for a ruling that loans to be made with proceeds of the Bonds will be student loans under a program described in section 144(b)(1)(B) of the Internal Revenue Code (“Code”).

FACTS AND REPRESENTATIONS

The Authority provides financial assistance, including loans, to enable qualified students to obtain a post-secondary education. The Authority intends to issue the Bonds and use the proceeds of the Bonds in a program to fund loans to refinance outstanding student loans (the “Consolidation Loan Program”). The Consolidation Loan Program will be a program of general application approved by the State to refinance one or more outstanding student loans (“Original Loans”) of a borrower with a single loan. The Consolidation Loan Program will not be a program described in section 144(b)(1)(A). The primary purpose of the Consolidated Loan Program is to reduce the interest rate on the student loan notes of the Authority’s current borrowers (“Current Borrowers”) as the Authority refinances its outstanding bonds at lower interest rates. Also, the Authority and borrowers will benefit from the efficiencies of servicing and paying, respectively, single loans.

The Authority will use the proceeds of the Bonds to refinance certain Original Loans of its Current Borrowers. These Original Loans are loans, as further described below, that the Authority originally financed (“Authority’s Original Loans”) with proceeds of tax-exempt bonds (the “Prior Bonds”). Authority’s Original Loans were made to student borrowers under a program of general application approved by the State and not described in section 144(b)(1)(A). The loans under this program meet the size limitation of section 144(b)(1)(B). Volume cap was allocated by the State to the Prior Bonds. At the time the Authority made Authority’s Original Loans, the Current Borrowers were students that were either State residents or attending institutions of higher education within the State, although the Current Borrowers may no longer be residents of the State. The amounts of the refinancing loans to be made with proceeds of the Bonds (the “Refinancing Loans”) will not exceed the respective Current Borrowers’ outstanding principal amounts of Authority’s Original Loans plus any interest capitalized to or accrued on the Authority’s Original Loans.

LAW

Section 103(a) provides that, except as provided in section 103(b), gross income does not include interest on any state or local bond. Section 103(b) provides, in part, that section 103(a) shall not apply to any private activity bond which is not a qualified bond (within the meaning of section 141) or any arbitrage bond (within the meaning of section 148).

Section 141(e) provides, in part, that a “qualified student loan bond” is a “qualified bond” if such bond is issued as part of an issue which meets the applicable requirements of section 146 and such bond meets the applicable requirements of each subsection of section 147.

Section 144(b)(1) provides, in part, that the term “qualified student loan bond” means any bond issued as part of an issue the applicable percentage or more of the net proceeds of which are to be used directly or indirectly to make or finance student loans under a program described in section 144(b)(1)(B). Section 144(b)(1)(B) describes a program of general application approved by the state if no loan under such program exceeds the difference between the total cost of attendance and other forms of student assistance (not including loans pursuant to section 428B(a)(1) of the Higher Education Act of 1965 (relating to parent loans) or subpart 1 of part C of title VII of the Public Health Service Act (relating to student assistance)) for which the student borrower may be eligible. A program shall not be treated as described in section 144(b)(1)(B) if such program is described in section 144(b)(1)(A) (relating to a program to which the Higher Education Act of 1965 applies).

Section 144(b)(3) provides that a student loan shall be treated as being made or financed under a program described in section 144(b)(1) with respect to an issue only if the student is (A) a resident of the state from which the volume cap under section 146

for such loan was derived, or (B) enrolled at an educational institution located in such state.

Section 146(a) provides that a private activity bond issued as part of an issue meets the requirements of this section if the aggregate face amount of the private activity bonds issued pursuant to such issue, when added to the aggregate face amount of tax-exempt private activity bonds previously issued by the issuing authority during the calendar year, does not exceed such authority's volume cap for such calendar year. Section 146(i) provides that, for purposes of the volume cap imposed by section 146, (1) the term "private activity bond" shall not include any bond which is issued to refund another bond to the extent that the amount of such bond does not exceed the outstanding amount of the refunded bond and (2) in the case of any qualified student loan bond, section 146(i)(1) shall apply only if the maturity date of the refunding bond is not later than the later of (A) the average maturity date of the qualified student loan bonds to be refunded by the issue of which the refunding bond is a part, or (B) the date 17 years after the date on which the refunded bond was issued (or in the case of a series of refundings, the date on which the original bond was issued).

Section 148(a) provides that, for purposes of section 103, the term "arbitrage bond" means any bond issued as part of an issue any portion of the proceeds of which are reasonably expected (at the time of issuance of the bonds) to be used directly or indirectly to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments. For purposes of section 148(a), a bond shall be treated as an arbitrage bond if the issuer intentionally uses any portion of the proceeds of the issue of which such bond is a part in a manner described above.

Section 1.103-7(d)(1) of the Income Tax Regulations provides, in part, that in the case of an issue of obligations issued to refund the outstanding face amount of an issue of obligations, the proceeds of the refunding issue will be considered to be used for the purpose for which the proceeds of the issue to be refunded were used. Section 1.148-9(b)(1) provides, in part, that when proceeds of the refunding issue discharge any of the outstanding principal amounts of the prior issue, proceeds of the prior issue become transferred proceeds of the refunding issue and cease to be proceeds of the prior issue. Section 1.148-9(c)(1) provides rules regarding the allowable allocation methods for the investments corresponding to those transferred proceeds.

ANALYSIS

The Bonds will be refunding bonds of the Prior Bonds. The proceeds of the Bonds, thus, will be considered to be used for the purpose for which the proceeds of the Prior Bonds were used.

The Authority represents that Authority's Original Loans were made under a program of general application approved by the State and not described in section 144(b)(1)(A). The loans under this program meet the size limitation of section 144(b)(1)(B). Further, it represents that volume cap was allocated by the State for the Prior Bonds and that the Current Borrowers were students who were residents of the State or attending institutions of higher education within the State at the time the Authority made Authority's Original Loans. Thus, Authority's Original Loans met the nexus test of section 144(b)(3). Accordingly, Authority's Original Loans are student loans made under a program described in section 144(b)(1)(B).

The Refinancing Loans also will be made under a program of general application approved by the State and not described in section 144(b)(1)(A). The amounts of the Refinancing Loans will not exceed the respective Current Borrowers' outstanding principal amounts of Authority's Original Loans plus any interest capitalized to or accrued on the Authority's Original Loans. The volume cap for the Bonds (as refunding bonds for the Prior Issues) will be derived directly or indirectly from the State, the same state as that from which the volume cap was derived for the Prior Bonds. The Current Borrowers, at the time the Authority made Authority's Original Loans, were students who were residents of the State or attending institutions of higher education within the State, and thus, the nexus test will be met with respect to the Refinancing Loans. As a result, the Refinancing Loans also will be student loans made under a program described in section 144(b)(1)(B).

CONCLUSION

The Refinancing Loans to be made with the proceeds of the Bonds will be student loans made under a program described in section 144(b)(1)(B).

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

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

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

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

Sincerely,

Associate Chief Counsel
(Financial Institutions & Products)

/S/

By: _____
Johanna Som de Cerff
Senior Technician Reviewer
Branch 5