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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:FIP:B05
PLR-108519-14
Date:
April 07, 2014

LEGEND:

District =

State =

City =

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 constructing, rehabilitating, and repairing 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"). The Project entailed (1) construction of a new gymnasium and classroom wing for School, (b) completely rehabilitating School's original building, (3) demolishing an unneeded previous addition to School, and (4) acquiring real estate adjacent to School for use as parking space and an outdoor play area. School is an historic three-story public school facility which is approximately 140 years old and located in City. As of Date 1, District did expect that all of the available project proceeds of the Bonds would be spent on the Project by the expiration date of the Original Expenditure Period.

District is unable to expend all of the available project proceeds by the expiration date of the Original Expenditure Period because several unexpected events have caused unanticipated delays in the programming and design of the Project and in the acquisition, construction, rehabilitation, and repair of the Project. The programming and design phase of the Project was unexpectedly increased from 18 to 24 months because of Project alterations made by each of the governing authorities of the two City historic districts which School borders. These alterations were made over the course of several meetings by the authorities and increased the time it took to design the Project. The programming and design phase of the Project was also unexpectedly lengthened because the magnitude of damage caused by a fire which had occurred prior to the Bonds being issued was greater than anticipated, and required District to develop more extensive rehabilitation and repair plans than it had originally thought necessary.

The acquisition, construction, rehabilitation, and repair phase of the Project was delayed by several unexpected events. First, City was late in issuing a building permit, which caused Project construction delays by pushing the construction of the building envelope and site development for School into a winter season with above average snowfall and uncharacteristically cold temperatures. Second, construction of a new addition to School required that the foundation of the addition and the foundation of School tie-in together. When the existing foundation of School was exposed it was discovered to have deteriorated more than expected and was unusable in some areas. Rehabilitation of this unanticipated condition caused additional Project construction delays. District expects to expend the remaining 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