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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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PLR-136551-15

Date:
December 21, 2015

LEGEND:

Authority =

Borrower =

State =

School =

City =

System =

Bonds =

Facility A =

Facility B =

a =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear :

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

Facts and Representations

Authority is a body corporate and politic constituting an instrumentality of State. One of the functions of Authority is to revitalize communities through redevelopment initiatives. Authority is empowered to issue bonds for any of its corporate purposes.

Authority issued the Bonds on Date 1 and designated the Bonds as qualified zone academy bonds within the meaning of section 54E(a). Authority immediately loaned all sale proceeds of the Bonds to Borrower, a § 501(c)(3) organization. The exempt purpose of Borrower is to establish and manage schools, including School. All available project proceeds of the Bonds were to be spent on rehabilitating, repairing, and equipping various public school buildings located in City (the "Project"). All available project proceeds of the Bonds were expected to be spent not later than Date 2.

The original three-year expenditure period for the Bonds under section 54A(d)(2)(B)(i) will expire on Date 2 (the "Original Expenditure Period"). However, several unexpected events have resulted in an unforeseen delay in the expenditure of the available project proceeds of the Bonds.

Several years prior to Date 1, Borrower began discussions with System to purchase Facility A from System. Borrower intended that, after acquiring Facility A, it would rehabilitate Facility A and then lease it to School. Facility A was a key part of School's expansion plans. Based on Borrower's and School's expectation and System's assurance that an agreement would soon be reached for a sale of Facility A to Borrower, School entered into a short-term lease with System for Facility A.

On Date 3, several months prior to the issuance of the Bonds, Borrower and System began further negotiations for the sale of Facility A. Based on these negotiations, Borrower applied to State for authority to issue the Bonds. Upon issuance of the Bonds, and as negotiations between Borrower and System continued on the sale of Facility A, Borrower began the initial pre-development work necessary for rehabilitation of Facility A.

Several months after the Bonds were issued on Date 1, System asked Borrower and School to delay purchase of Facility A so that System could focus on the sale of another school facility. Because School and Borrower had worked closely with System for many years, they agreed to this delay. School and Borrower remained confident that if the sale of Facility A took place prior to Date 4, or approximately 18 months after the Bonds were issued, all available project proceeds of the Bonds would be spent before the Original Expenditure Period expired. However, approximately one month prior to Date 4, just before Borrower planned to sign construction contracts and start site preparation work in anticipation of acquiring Facility A, System suspended all efforts to sell Facility A pending resolution of statutory interpretation issues between System and State requisite to the sale. Thereafter, Borrower pursued many different facility options for the Project.

When the Bonds were issued on Date 1, Borrower's plan was to reimburse School for its expenditures on Facility A with the available project proceeds. However, as the sale of Facility A became more uncertain, Borrower and School decided not to seek reimbursement because, if Borrower was unable to purchase Facility A, it was unclear whether its expenditures in anticipation of the sale would qualify for qualified zone academy bond financing.

On Date 5, approximately two years after Date 1, Borrower reached an agreement to purchase Facility B. However, several months later and before the sale could be completed, the owner of Facility B ended sale negotiations with Borrower after apparently determining that it could not sell Facility B.

Borrower is now completing due diligence on several facilities to determine the best facility solution for School. Facility A will be replaced with one or two facilities, which will be purchased by Borrower with other funds, and rehabilitated within two years after the Original Expenditure Period expires on Date 2, or by Date 6. Expenditure of the available project proceeds of the Bonds on rehabilitation at any or all of these facilities is permitted under the terms of the qualified zone academy bond allocation received by School from State. Borrower is confident it will spend all of the available project proceeds of the Bonds by Date 6, particularly because the rehabilitation, repair, and equipment costs of the facilities under consideration for the Project will exceed the amount of the available project proceeds of the Bonds by at least $a.

Authority represents that all of the available project proceeds of the Bonds will be spent on the Project by Date 6, which is two years after the Original Expenditure Period expires. Authority submitted this request for a ruling prior to the expiration of the Original Expenditure Period.

Law and Analysis

Section 54A(d)(1) provides that a qualified zone academy 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).

At the time the Bonds were issued, Authority reasonably expected to spend all available project proceeds within the Original Expenditure Period. The expected failure to spend all available project proceeds of the Bonds by the expiration of the Original Expenditure Period was due to reasonable cause. The expected failure was caused by events that were not reasonably expected at the time the Bonds were issued and were beyond the control of Authority. These events caused a significant delay in committing and spending the Bond proceeds.

Authority will continue to spend the remaining available project proceeds on the Project with due diligence. Authority expects to spend all available project proceeds not later than Date 6, which is two years after the Original Expenditure Period expires.

Conclusion

Under the facts and circumstances of this case, we conclude that Authority's expected failure to expend the available project proceeds of the Bonds by Date 2 is due to reasonable cause and that Authority's continued expenditure of the proceeds for qualified purposes will proceed with due diligence. Therefore, Authority is granted an extension of the Original Expenditure Period with respect to the Bonds until Date 6.

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, copies of this letter are being sent to Authority's authorized representatives.

The ruling contained in this letter is based upon information and representations submitted by Authority 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: __________________________
James Polfer
Chief, Branch 5