Internal Revenue Service

Number: **201903015**
Release Date: 1/18/2019
Index Number: 54A.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:FIP:B05
PLR-119667-18
Date:
October 16, 2018

LEGEND:

Authority =

City =

State =

Bonds =

Project A =

Project B =

Date 1 =

Date 2 =

Date 3 =

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 new clean renewable energy bonds.

Facts and Representations

Authority is an enterprise of City and issues debt on behalf of City. Authority issued the Bonds on Date 1 and designated the Bonds as new clean renewable energy bonds within the meaning of § 54C(a). At the time the Bonds were issued, Authority expected all available project proceeds of the Bonds would be spent not later than Date 2 on two solar energy facilities, Project A and Project B (together the "Projects").

Project A consists of the design and installation of a solar-powered electric system with storage batteries on carport structures and other areas in the parking lot of a City police facility. Project B consists of the design and installation of a solar-powered electric system with storage batteries on the roof of a City public school.

The original three-year expenditure period for the Bonds under § 54A(d)(2)(B)(i) (the "Original Expenditure Period") will expire on Date 2. However, unexpected events have resulted in an unforeseen delay in the expenditure of the available project proceeds of the Bonds. As a result of these unexpected events, which are described below, Authority was required to make certain design changes to the Projects and incurred delays as a result. Authority seeks an extension of the Original Expenditure Period.

Upgrades to Project A and construction time estimates were, as of Date 1, based in part on the technical requirements then imposed by the electrical grid system operator (the "Operator"). Sometime after Date 1, Operator raised concerns regarding the timing of electricity input to the grid by the Project A solar system. Taking into account the concerns of Operator, Authority determined that design updates were necessary to Project A to meet the energy timing demands for the police facility and Operator's power grid. Authority adapted the redesign of Project A to include Operator's requirements and expects to spend the Bond proceeds diligently to complete Project A.

Regarding Project B, Authority had planned as of Date 1 to construct the solar improvements based on the existing school facilities. However, subsequent to Date 1, the City school district (the "District") issued general obligation bonds, the proceeds of which will be used to make capital improvements, including new construction, to schools across its jurisdiction, including the Project B school. District and Authority are separate, unrelated governmental entities and Authority was not part of the process of selecting the new improvements to the Project B school. Authority has adjusted the design of Project B to account for new energy load and structural changes to the Project B school and updated its construction schedule to reflect delays caused by the timing of District's upgrades.

Authority submitted this request for a ruling prior to Date 2. Authority expects to spend all available project proceeds of the Bonds not later than Date 3, which is 18 months after the Original Expenditure Period expires.

Law and Analysis

Section 54A(d)(1) provides that a new clean renewable energy 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)(ii) provides that for purposes of this paragraph, in the case of a new clean renewable energy bond, a "qualified purpose" means a purpose specified in § 54C(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 Projects with due diligence. Authority expects to spend all available project proceeds of the Bonds not later than Date 3, which is 18 months after the Original Expenditure Period expires.

Conclusion

Under the facts and circumstances of this case, we conclude that Authority's failure to expend the available project proceeds of the Bonds by Date 2 was due to reasonable cause based on unexpected circumstances 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 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 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)

By: ________________/S/________
Timothy L. Jones
Senior Counsel, Branch 5