

Dear _____ :

This is in response to your request under § 54A(d)(2)(B)(iii) of the Internal Revenue Code¹ (the Code) for an extension of the expenditure period for the available project proceeds of the Bonds.

Facts and Representations

You make the following factual representations. Authority is a constituted authority authorized to issue bonds on behalf of City. Authority issued the Bonds on Date 1 and designated them as new clean renewable energy bonds within the meaning of § 54C(a). The Bonds were issued for the purpose of financing solar equipment (the "Equipment") to produce electricity for the exclusive use of City. Contractor was engaged to provide and install the Equipment on several City sites (the "Project").

The original three-year expenditure period for the Bonds under § 54A(d)(2)(B)(i) (the "Original Expenditure Period") expired on Date 2. As of the issue date of the Bonds, Authority expected all available project proceeds of the Bonds to be spent not later than Date 2.

Subsequent to the issuance of the Bonds, Contractor proceeded with due diligence to provide and install the Equipment. Prior to submitting this request, the District had expended Bond proceeds totaling at least \$a.

Although work on the Project by Contractor and expenditure of Bond proceeds initially proceeded with due diligence, unexpected events have resulted in unforeseeable delays in the expenditure of the remaining \$b of available project proceeds. Authority represents that significant defects in the Equipment and errors by Contractor caused delays in expenditures of Bond proceeds. City and the Contractor have been engaged in litigation regarding these matters. In civil court proceedings, City raised various issues, including Contractor's failure to provide bonding as required by State statute, Contractor's failure to substantiate costs under the contract with the City, defects in a certain subcontractor's construction resulting in Equipment damage, and Contractor's failure to timely complete construction. Lastly, the Coronavirus Disease 2019 pandemic has significantly delayed the civil court proceedings and thus, resolution of the dispute and expenditure of the remaining unspent Bond proceeds.

As of Date 3, Equipment installation has continued and has reached substantial completion. In addition, City and Contractor have agreed to resolve their dispute through mediation.

¹References to §§ 54A and 54C are to those sections of the Code as in effect prior to repeal by the Tax Cuts and Jobs Act, Pub. L. No 115-97, § 13404, 131 Stat. 2138 (2017). The repeal is effective for bonds issued after December 31, 2017, and thus, §§ 54A and 54C still apply to the Bonds.

Authority expects that any remaining issues relating to the Equipment and installation and the dispute with the Contractor will be resolved, and that the remaining available project proceeds of the Bonds will be expended not later than Date 4.

Authority submitted its request for this ruling prior to the expiration of the Original Expenditure Period.

Law and Analysis

Section 54A(d)(1) provides in part that a new clean renewable energy bond is a qualified tax credit bond for purposes of § 54A if it is part of an issue that meets the requirements of §§ 54A(d)(2) through (5).

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 subpart I (that is, §§ 54A through 54F), 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 § 54A(d)(2)(B)(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 § 54A(d)(2), 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) 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 § 54A(e)(4)(A).

As of the issue date of the Bonds, Authority reasonably expected that all the available project proceeds of the Bonds would be spent within the Original Expenditure Period. The failure to spend all the available project proceeds by the expiration of the Original Expenditure Period on Date 2 has been caused by events that were not reasonably expected at the time the Bonds were issued and were outside of the control of Authority or City. These events caused a significant delay in spending the Bond proceeds.

Authority will exercise due diligence in spending the remaining available project proceeds on the Project. Authority expects that all available project proceeds of the Bonds will be spent not later than Date 4.

Conclusion

Under the facts and circumstances of this case, we conclude that Authority's failure to expend all the available project proceeds of the Bonds by Date 2 is due to reasonable cause and that the 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 4.

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, including whether the Bonds are qualified tax credit bonds under § 54A. This ruling is directed only to the taxpayer requesting 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 your authorized representative.

The ruling contained in this letter is based upon information and representations submitted by Authority and accompanied by penalty of perjury statements executed by

the appropriate parties. 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 and Products)

By: _____
Zoran Stojanovic
Assistant to the Branch Chief
Branch 5

cc: