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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:
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Date:
April 2, 2014

LEGEND:

Authority =

State =

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. Authority is a body corporate and politic constituting an instrumentality of State, empowered to issue bonds for any of its corporate purposes. The primary functions of Authority are to design and construct office buildings, quarters, courts, warehouses, shops, schools, health facilities, social welfare facilities, and related facilities for lease to State or any of its departments, agencies, instrumentalities, or municipalities.

Authority 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 a portion of the cost of constructing, renovating, and improving approximately 100 public school facilities and acquiring land together with equipment, furnishings, landscaping, and other site improvements (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”). However, several unexpected events have resulted in an unforeseen delay in the expenditure of the available project proceeds of the Bonds.

With respect to 12 of the approximately 100 public school facilities, the rehabilitation and construction work is expected to be completed by Date 2, but certain unexpected events have caused an unforeseen delay such that the available project proceeds allocated to those 12 schools is not expected to be spent by Date 2. These unexpected events involve either the contractor’s poor performance delaying completion of the work, or resolving disputes over contract claims submitted by the contractor.

With respect to four of the approximately 100 public school facilities, due to unforeseen situations, rehabilitation and construction work will not be completed by Date 2. These unforeseen situations involve projects where either (1) a default notice has been issued to the contractor due to poor performance and negotiations are ongoing with the contractor’s surety company for ratification of a project takeover agreement to complete the project, (2) the scope of the contracted work is being revised, or (3) the start of construction has been delayed because State has not yet granted the land use authorization.

With respect to five of the approximately 100 public school facilities originally identified as part of the Project, the proposed work has been cancelled and the schools removed from the Project. Three new public school facility projects (the “Added Projects”) have been added to the Project. One of the Added Projects has been completed and fully disbursed. At the other two Added Projects, pre-construction activities have begun and construction is expected to start in the near future.

All of the available project proceeds of the Bonds will be spent on the Project by Date 3, or three years after the Original Expenditure Period expires. The Added Projects do not extend the delay in spending all of the available project proceeds of the Bonds. Even without the addition of the Added Projects, all of the available project proceeds of the Bonds would not be spent on the Project until Date 3.

Authority 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 Authority 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 Authority. However, Authority 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. Authority expects to spend all available project proceeds not later than Date 3, or three 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 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 representative.

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: ___________________________
Timothy L. Jones
Senior Counsel, Branch 5