

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Refer Reply To:
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PLR-136100-10
Date:
November 23, 2010

LEGEND:

County =

Date 1 =

Date 2 =

Date 3 =

District =

New Money Bonds =

Prior Bonds =

Refunded Bonds =

Refunding Bonds =

State =

Year =

Dear :

This is in response to a letter dated Date 2, submitted on behalf of the District by your authorized representative, requesting relief under § 301.9100-1 of the Procedure and Administration Regulations. Specifically, the letter requests that District be granted an extension of time to make an election to waive the right to invest the net sale proceeds and investment proceeds of the New Money Bonds in higher yielding investments during the three-year temporary period pursuant to § 1.148-2 of the Income Tax Regulations.

Facts and Representations

District is a political subdivision located in County operating an independent public educational agency under applicable laws and regulations of State.

On Date 1, District issued new money bonds (“New Money Bonds”) to finance the construction, acquisition and equipment of school buildings and the purchase of school sites and refunding bonds (“Refunding Bonds” and together with the New Money Bonds, the “Bonds”) to currently refund the Prior Bonds. In connection with closing on Date 1, District executed a federal tax certificate setting forth its erroneous conclusion that there were no transferred proceeds from the Prior Bonds. Because of the error, on Date 1, District did not make an election under § 1.148-2(h) to waive its right to invest the net sale proceeds and investment proceeds of the New Money Bonds in higher yielding investments during the three-year temporary period described under § 1.148-2(e)(2). Had the election been made, the blending of investments of the sale proceeds of the New Money Bonds, the transferred proceeds and the resulting investment proceeds would have been permissible for purposes of computing the rebate and yield reduction payments under § 148 of the Internal Revenue Code (the “Code”).

A portion of the Prior Bonds was issued to advance refund and defease the Refunded Bonds. In connection with the advance refunding of the Refunded Bonds, District established a refunding escrow to pay the debt service requirements on the Refunded Bonds through Date 3. During the summer of Year, District’s rebate analyst discovered the unspent proceeds, which had become transferred proceeds of the Bonds, in the refunding escrow. Shortly thereafter, on Date 2, District submitted a ruling request for an extension of time to elect a waiver of its right to invest the net sale proceeds and investment proceeds of the New Money Bonds in higher yielding investments during the three-year temporary period under § 1.148-2(e)(2). As of Date 2, the Internal Revenue Service had not discovered District’s failure to timely elect such waiver.

Law and Analysis

Section 103(a) provides, that except as provided in § 103(b), gross income does not include interest on any state or local bond. Section 103(b)(2) provides that § 103(a) does not apply to any arbitrage bond (within the meaning of § 148).

Section 148(a) provides that the term “arbitrage bond” means any bond issued as a part of an issue any portion of the proceeds of which are reasonably expected (at the time of issuance of the bonds) to be used directly or indirectly (1) to acquire higher yielding investments; or (2) to replace funds which were used directly or indirectly to acquire higher yielding investments. For purposes of § 148(a), a bond shall be treated as an arbitrage bond if the issuer intentionally uses any portion of the proceeds of the issue of which such bond is a part in a manner described in (1) or (2) of the previous sentence. Further, § 148(b) provides that the term “higher yielding investments” means any investment property which produces a yield over the term of the issue which is materially higher than the yield on the issue.

Section 1.148-2(e)(2)(i) provides that the net sale proceeds and investment proceeds of an issue reasonably expected to be allocated to expenditures for capital projects qualify for a temporary period of three years beginning on the issue date provided that the issuer also reasonably expects to satisfy the other applicable tests described in § 1.148-2(e)(2)(i). During the temporary period described in the preceding sentence, the proceeds and replacement proceeds of the issue may be invested in higher yielding investments without causing bonds in the issue to be arbitrage bonds.

Pursuant to § 1.148-2(h), on or before the issue date, an issuer may elect to waive the right to invest in higher yielding investments during the temporary period described in the paragraph above.

Section 301.9100-1 provides, in part, that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in § 301.9100-1(b) as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H and I.

Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements for automatic extensions in § 301.9100-2, must be made under the rules of § 301.9100-3. Requests for relief will be granted if the taxpayer provides evidence establishing to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the Government.

In part, § 301.9100-3(b) provides, with certain exceptions that are not applicable hereto, that the taxpayer is generally deemed to have acted reasonably and in good faith if the taxpayer requested relief under that section before the failure to make the regulatory election is discovered by the IRS.

Section 301.9100-3(c)(1)(i) provides, in part, that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability than the taxpayer would have had if the election had been timely (taking into account the time value of money).

Conclusion

Under the facts and circumstances of this case, we conclude that District acted reasonably and in good faith and the granting an extension of time under § 301.9100-1 to make an election under § 1.148-2(h) to waive the right to invest the net sale proceeds and investment proceeds of the New Money Bonds in higher yielding investments during the three-year temporary period described under § 1.148-2(e)(2) will not prejudice the interests of the government. Therefore, District is granted an extension of time to 45 days from the date of this letter ruling to make such election. A copy of this letter should be attached to the election for District's files. A copy is enclosed for that purpose.

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 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 representatives.

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 and Products)

By: _____
Timothy L. Jones
Senior Counsel
Branch 5

cc: