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Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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Telephone Number:

Refer Reply To:

CC:FIP:5

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Date:

October 14, 2016

Legend

Bonds =

Issuer =

City =

Date 1 =

Date 2 =

Date 3 =

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Dear \_\_\_\_\_ :

This letter is in response to your request for a ruling that the existence of unspent available project proceeds of the Bonds on the date that proceeds of the Refunding Bonds (as defined below) are used to redeem the Bonds in a current refunding will not retroactively cause the Bonds to lose their status as “qualified bonds” within the meaning of section 54AA(g)(2) of the Internal Revenue Code (“Code”), and therefore will not cause the Issuer to lose any credit under section 6431 for the Bonds.

#### FACTS AND REPRESENTATIONS

On Date 1, the Issuer issued the Bonds to finance certain capital projects for the City and irrevocably elected to treat the Bonds as Direct-pay Build America Bonds under sections 54AA(d)(1), 54AA(g) and 6431. Consistent with section 54AA(g)(2), the Issuer covenanted to spend 100 percent of the available project proceeds of the Bonds for capital expenditures (excluding available project proceeds deposited in a reasonably required reserve fund for the Bonds) (the “Capital Expenditures Requirement”). On Date 2, a percent of the available project proceeds of the Bonds (excluding amounts in the reasonably required reserve fund) remain unspent (the “Unspent Proceeds”). The Issuer represents that all of the available project proceeds except the Unspent Proceeds and amounts in a reasonably required reserve have been spent for capital expenditures.

The Issuer and the City intend to refinance the Bonds by issuing tax-exempt bonds (the “Refunding Bonds”) to currently refund the Bonds on a date before Date 3. To accomplish the proposed refunding, proceeds of the Refunding Bonds, the proceeds of the Bonds currently held in the reasonably required reserve fund for the Bonds, and revenues, if any, in a bona fide debt service fund for the Bonds will be deposited into an escrow fund to pay principal of and interest on the Bonds at redemption. The Issuer represents that it expects to spend the Unspent Proceeds, and any earnings thereon, on capital expenditures by Date 3.

#### LAW

Section 54AA(d) provides that the term “build America bond” means any obligation (other than a private activity bond) if (A) the interest on such obligation would (but for this section) be excludable from gross income under section 103, (B) such obligation is issued before January 1, 2011, and (C) the issuer makes an irrevocable election to have this section apply.

Section 54AA(g) provides that in the case of a qualified bond issued before January 1, 2011: (1) in lieu of any credit allowed under this section with respect to such bond, the issuer of such bond shall be provided a credit as provided in section 6431 and (2) for purposes of this subsection, the term “qualified bond” means any build America bond

issued as part of an issue if (A) 100 percent of the excess of (i) the available project proceeds (as defined in section 54A) of such issue, over (ii) the amounts in a reasonably required reserve (within the meaning of section 150(a)(3)) with respect to such issue, are to be used for capital expenditures, and (B) the issuer makes an irrevocable election to have this subsection apply. (We refer to bonds described in section 54AA(g) as “Direct-pay Build America Bonds” and the election in section 54AA(g)(2)(B) as the “Election Requirement”.)

Section 54A defines available project proceeds as (1) the excess of the proceeds from the sale of an issue over the issuance costs financed by the issue to the extent such costs do not exceed 2 percent of such proceeds and (2) the proceeds from the investment of such excess.

## ANALYSIS

At issue is whether the proposed current refunding will cause the Bonds to fail to meet the Capital Expenditures Requirement when, at the time of the refunding, proceeds of the Bonds remain unspent. Section 54AA(g)(2) requires that 100 percent of the available project proceeds over the amounts in a reasonably required reserve are to be used for capital expenditures. The phrase “are to be used” appears in many of the Code provisions related to tax-advantaged bonds. For example, an exempt facility bond under section 142 means a bond that is part of an issue of which 95 percent or more of the net proceeds are to be used to provide an exempt facility. Under section 1.142-2(d), a failure to properly use proceeds occurs on the date when the issuer reasonably determines that unspent proceeds will not be used to complete the financed facility or for spent proceeds, when such proceeds are not used for a qualifying purpose.

The Issuer represents that all of the available project proceeds except the Unspent Proceeds and amounts in a reasonably required reserve have been spent for capital expenditures. The Issuer continues to expect that the Unspent Proceeds and the earnings thereon will be spent for capital expenditures after issuance of the Refunding Bonds.

## CONCLUSION

Based on the above representations, we conclude that the existence of the Unspent Proceeds on the redemption date of the Bonds will not retroactively cause the Bonds to lose their status as “qualified bonds” within the meaning of section 54AA(g)(2) and, consequently, will not cause the Issuer to lose any credit under section 6431 for the Bonds for the period prior to the date of redemption. This conclusion is based on the condition that the Issuer does not spend any of the Unspent Proceeds for other than capital expenditures.

Except as provided herein, no opinion is expressed or implied about the tax consequences of any transaction or item discussed in this letter. We specifically express no opinion about whether the Bonds remain qualified bonds if at any point, the Issuer no longer expects to spend remaining Unspent Proceeds on capital expenditures. We specifically express no opinion about whether the Bonds will be reissued upon the deposit of proceeds of the Refunding Bonds into an escrow fund to pay principal of and interest on the Bonds at redemption.

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 the authorized representative of the Issuer.

The ruling contained in this letter is based upon information and representations submitted by the Issuer 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, such materials are subject to verification upon examination.

Sincerely,

Associate Chief Counsel (Financial  
Institutions and Products)

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By: \_\_\_\_\_  
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Senior Counsel  
Branch 5