Bond Case Briefs

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IRS Grants Extension of Expenditure Period for Qualified Zone Academy Bond Proceeds.

The IRS granted a city an extension of the expenditure period for available project proceeds of qualified zone academy bonds on determining that the city's failure to spend its bond proceeds was due to reasonable cause and that the city would spend its remaining proceeds for qualified purposes with due diligence.

Citations: LTR 201326001

This is in response to your request under Section 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. City is a municipal corporation of State and is largely responsible for the financing of local primary and secondary educational expenditures. The Board of Education (the "Board") is the official policy making body of District. Board is composed of members appointed by the Mayor of City, and administers City's school system within District. The school system collectively operates a elementary, middle, and high schools. Board's operations are solely funded through City appropriations, Federal and State aid to education, grants, and locally generated revenues of Board.

The Bonds were issued on Date 1 by City, and were designated by City as qualified zone academy bonds within the meaning of § 54E(a). Pursuant to § 54E (c)(4), State allocated to the Bonds $b of its carryforward allocation of the national zone academy bond limitation from Year 1. In preparing to issue the Bonds, District identified a pool of public school facilities located within District that met the requirements for being treated as qualified zone academies within the meaning of § 54E(d)(1) and were in urgent need of rehabilitation and repair, and equipment. The Bond proceeds were allocated among 17 public school facilities of such previously identified pool of public school facilities located within District (the "Project").

Each of these school facilities was budgeted a specific stated amount of the Bond proceeds. The original three-year expenditure period for the Bonds under § 54A(d)(2)(B)(i) will expire on Date 2. However, several unexpected events have resulted in an unforeseen delay in the expenditure of the available project proceeds of the Bonds. As of Date 3, the date of your request for a ruling, $c of the available project proceeds of the Bonds remains unspent.

With respect to five of the 17 school facilities, although the rehabilitation work has been completed, the State-required "as-built" drawings from electrical contractors installing wiring and electrical equipment at those five schools have not been received by District. District is working with the electrical contractors to receive these drawings. Also, reduced clerical staffing necessitated by budget cutbacks has resulted in unexpected delays in various areas of project administration, including the processing of the documentation for, and payments for, contracts with respect to

another five of the 17 school facilities under which the rehabilitation and repair work had already been completed. District expects to expend the allocated available project proceeds with respect to these 10 school facilities by Date 4.

A lengthy review process by State with respect to the rehabilitation and repair design plans of another one of the 17 school facilities has resulted in a delay in the rehabilitation work with respect to that facility. At the time the Bonds were issued, District did not foresee that this review process, which includes delays associated with the project designer's plans and specifications, would take such an extended period of time. District expects the repair and rehabilitation of this school facility and the expenditure of available project proceeds allocated thereto to be completed by Date 5.

The reduced clerical staffing referenced above has also caused an unexpected delay in title transfer and control of the land and thus rehabilitation work with respect to one of the 17 school facilities. District cannot commence the rehabilitation of the school facility without the ownership and possession of the property. District will reallocate the available project proceeds for this project to the "Rehabilitation Project" described below.

The rehabilitation and repair work at another one of the 17 school facilities has been completed. This project, however, is subject to litigation that arose after the work was completed but before the allocable available project proceeds was expended. This expenditure is delayed until the lawsuit is resolved. District will reallocate the available project proceeds for this project to the Rehabilitation Project described below.

At another one of the 17 school facilities, the rehabilitation and repair work was proceeding towards timely completion until it was discovered that the facility was contaminated with polychlorinated biphenyl ("PCB"). The PCB contamination was unexpected and has significantly expanded the scope of the project at this school, and has also significantly increased its cost (collectively referred to herein as the "Rehabilitation Project") to approximately $d from the $e budgeted for the original rehabilitation and repair project. Both the original portion and the expanded portion of the Rehabilitation Project may not be completed, and the allocable available project proceeds may not be expended, prior to Date 2. District expects to completely spend the available project proceeds allocated to the Rehabilitation Project not later than Date 6.

The actual costs of the rehabilitation and repair of several of the 17 schools, some of which are described above, unexpectedly were less than the original budgeted amounts. The available project proceeds that were originally budgeted for those projects but were not expended, will be reallocated to the Rehabilitation Project.

This unexpected series of events has resulted in an unforeseen delay in the spend-down of the available project proceeds.

City submitted this request for a ruling prior to Date 2.

LAW AND ANALYSIS

Section 54A(d)(1) provides that a qualified zone academy 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 District reasonably expected to spend all of its allocable available project proceeds within the three-year period. The failure to spend all the available project proceeds of the Bonds by the expiration of the three-year period on Date 2 was caused by events that were not reasonably expected at the time the Bonds were issued and were beyond the control of either City or District. However, City and District to the extent possible considering all of the described unexpected external events that resulted in unforeseen delays, have and will continue to exercise due diligence in spending the remaining available project proceeds on the Project. City and District expect to spend all available project proceeds not later than Date 6.

CONCLUSION

Under the facts and circumstances of this case, we conclude that District's failure to expend its allocable portion of the available project proceeds of the Bonds was due to reasonable cause and that District's expenditures of the proceeds for qualified purposes will proceed with due diligence. Therefore, City is granted an extension of the expenditure period with respect to the Bonds until Date 6.

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 City's authorized representative.

The ruling contained in this letter is based upon information and representations submitted by City 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,

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