Bond Case Briefs

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IRS Grants Extension of Expenditure Period for Qualified School Construction Bond Proceeds.

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

Citations: LTR 201330003

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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. District is a political subdivision of State and provides educational services and facilities for grades kindergarten through 12.

District issued the Bonds on Date 1, and designated the Bonds as qualified school construction bonds within the meaning of § 54F(a)(3). The original three-year expenditure period for the Bonds under § 54A(d)(2)(B)(i) will expire on Date 2 (the "Original Expenditure Period").

All available project proceeds of the Bonds were to be spent on construction costs of the School (the "Project"), and were expected to be spent before Date 2. The Project began on Date 3, or shortly before the Bonds were issued. However, both the subcontractor responsible for the School foundation and the subcontractor responsible for the electrical system defaulted on their contracts and District had to pursue remedies and correct the defective work. As a result of these unexpected delays, District does not expect to complete the School by Date 2. Construction of the School is proceeding, and District expects to spend all available project proceeds not later than Date 4.

District 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 District 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 District. However, District 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. District expects to spend all available project proceeds not later than Date 4.

CONCLUSION

Under the facts and circumstances of this case, we conclude that District’s expected failure to expend the available project proceeds of the Bonds by Date 2 is due to reasonable cause and that District’s continued expenditure of the proceeds for qualified purposes will proceed with due diligence. Therefore, City 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.

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 District’s authorized representative.

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 & Products)

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