Bond Case Briefs

Municipal Finance Law Since 1971

IRS LTR: IRS Extends Expenditure Period for Bond Proceeds.

The IRS has agreed to extend the period for expending the proceeds of bonds to finance a school construction project after concluding the borrower's expected failure to meet the original expenditure date was due to reasonable cause.

Citations: LTR 201420016

Third Party Communication: None

Date of Communication: Not Applicable
Person To Contact: * * *
Telephone Number: * * *

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Refer Reply To: CC:FIP:B05 – PLR-147648-13

LEGEND:

Authority = * * *
Borrower = * * *
State = * * *
Bonds = * * *
School Site = * * *
New Facility = * * *
Town = * * *
Date 1 = * * *
Date 2 = * * *
Date 3 = * * *
Date 4 = * * *
Date 5 = * * *
Date 6 = * * *

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 political subdivision of State, organized in part to assist in financing programs or loans to non-profit corporations and political subdivisions in State, including educational organizations described in § 501(c)(3) such as Borrower.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 acquiring the School Site and construction of the New Facility (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) expired on Date 2 (the “Original Expenditure Period”). Borrower started its search for a suitable site for the New Facility approximately two years prior to the issuance of the Bonds, and had been making plans during that two-year period for financing and constructing the New Facility. Borrower identified a site which it intended to acquire approximately one month after the Bonds were issued. However, progress toward completion of both phases of the Project within the original schedule was delayed significantly by unanticipated events which arose before issuance of the Bonds. These events included a prolonged search for an appropriate site for the New Facility after a court-ordered change in location from the initial site. A school at the initial site was not expected to achieve federal desegregation goals in the area.

Immediately upon the court’s determination, Borrower began searching for another site for the New Facility. On Date 3, approximately eight months after the Bonds were issued, Borrower entered into an agreement to purchase a substitute site. However, after Borrower completed plans for development of the substitute site, Town’s engineers determined that Town could not furnish sewer services to the substitute site due to the high cost of sewage treatment facilities. After again conducting a search for an appropriate site, Borrower settled on and acquired the School Site. Construction work began on Date 4 to extend water and sewer lines to the School Site. Borrower expects to complete construction of the New Facility by Date 5, or approximately six months after the Original Expenditure Period expired. Borrower expects to spend all available project proceeds not later than Date 6, or two years after the Original Expenditure Period expired.

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 Borrower 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 Borrower. However, Borrower 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. Borrower expects to spend all available project proceeds not later than Date 6, or two years after the Original Expenditure Period expired.

CONCLUSION

Under the facts and circumstances of this case, we conclude that Borrower’s expected failure to expend the available project proceeds of the Bonds by Date 2 is due to reasonable cause and that Borrower’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 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 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)
- By: Timothy L. Jones
- Senior Counsel, Branch 5