Internal Revenue Service

Number: **202106002**
Release Date: 2/12/2021
Index Number: 54A.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:FIP:B05
PLR-120721-20
Date:
November 18, 2020

LEGEND:

Authority =

Borrowers =

State =

School =

City =

Bonds =

a =

Date 1 =

Date 2 =

Date 3 =

Year =

Dear :

This is in response to your request under § 54A(d)(2)(B)(iii) of the Internal Revenue Code[1] (the Code) for an extension of the expenditure period for the available project proceeds of the Bonds.

Facts and Representations

Authority issued the Bonds on Date 1 and designated the Bonds as qualified school construction bonds within the meaning of § 54F(a). Authority loaned all sale proceeds of the Bonds (directly and indirectly) to Borrowers to build or substantially reconstruct certain public school facilities located in City (the “Project”). Borrowers would then lease the completed facilities to School. Specifically, the Project consists of renovating a facility for kindergarten through eighth grade (“Facility A”) and constructing a new high school facility (“Facility B”).

Borrowers spent most of the available project proceeds of the Bonds on Facility A, which has been completed. The remaining approximately $a of available project proceeds of the Bonds were unspent because fewer construction challenges arose than expected during the renovation of Facility A. Borrowers then planned to use the remaining available project proceeds to purchase the property on which Facility B would be built and to complete initial site and design work for Facility B, upon final approval of Authority of the new site.

The $a of unspent Bond proceeds had been expected to be spent on Facility B by mid-fall of Year. The due diligence on the property had been expected to be completed in the spring of Year. Borrowers had expected to purchase the property for Facility B early in the summer of Year, with necessary remediation and demolition work on the property following shortly thereafter.

The original three-year expenditure period for the Bonds under § 54A(d)(2)(B)(i) (the “Original Expenditure Period”) will expire on Date 2. As of the issue date of the Bonds, Authority and Borrowers expected all available project proceeds of the Bonds to be spent not later than Date 2.

Unexpected events have resulted in unforeseeable delays in the expenditure of the remaining $a of available project proceeds. Specifically, the Coronavirus Disease 2019

[1]References to §§ 54A and 54F are to those sections of the Code as in effect prior to repeal by the Tax Cuts and Jobs Act, Pub. L. No 115-97, § 13404, 131 Stat. 2138 (2017). The repeal is effective for bonds issued after December 31, 2017, and thus, §§ 54A and 54F still apply to the Bonds.

pandemic has caused restrictions that delayed contract negotiations and work related to the due diligence review of Facility B. In addition, the appropriate title office was closed during the spring of Year, which delayed the completion of the required due diligence review of the property. These delays have in turn delayed the purchase of the property for Facility B and the commencement of architectural drawings.

Borrowers will continue to exercise due diligence in spending the remaining available project proceeds of the Bonds on the Project. However, Borrowers currently expect to fail to spend all the available project proceeds by Date 2. Borrowers are confident that all the remaining unspent available project proceeds will be spent by Date 3. Borrowers plan to spend the remaining available project proceeds on the purchase of property on which Facility B will be constructed and the remediation, demolition, and architectural drawings for the construction of Facility B.

Authority submitted its request for this ruling prior to the expiration of the Original Expenditure Period.

Law and Analysis

Section 54A(d)(1) provides in part that a qualified school construction bond is a qualified tax credit bond for purposes of § 54A if it is part of an issue that meets the requirements of §§ 54A(d)(2) through (5).

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 subpart I (that is, §§ 54A through 54F), 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 § 54A(d)(2)(B)(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)(v) provides that for purposes of § 54A(d)(2), in the case of a qualified school construction bond, a “qualified purpose” means a purpose specified in § 54F(a)(1).

Section 54A(e)(4) 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 § 54A(e)(4)(A).

As of the issue date of the Bonds, Authority and Borrowers reasonably expected to spend all the available project proceeds of the Bonds within the Original Expenditure Period. The currently expected failure to spend all the available project proceeds by the expiration of the Original Expenditure 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 Authority and Borrowers. Borrowers will exercise due diligence in spending the remaining available project proceeds on the Project. Borrowers expect to spend all available project proceeds of the Bonds not later than Date 3.

Conclusion

Under the facts and circumstances of this case, we conclude that Borrowers’ currently expected failure to expend all the available project proceeds of the Bonds by Date 2 is due to reasonable cause and that Borrowers’ continued expenditure of the proceeds for qualified purposes will proceed with due diligence. Therefore, Authority is granted an extension of the expenditure period with respect to the Bonds until Date 3.

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, including whether the Bonds are qualified tax credit bonds under § 54A. 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 Authority and accompanied by penalty of perjury statements executed by the appropriate parties. 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: ___________________________
Johanna Som de Cerff
Senior Technician Reviewer
Branch 5

cc: