

**Internal Revenue Service**

Department of the Treasury

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CC:TEGE:EOEG:TEB/PLR-139607-01  
Date:  
September 17, 2001

**LEGEND:**

Authority =

State =

Department =

a =

Year 1 =

Year 2 =

Year 3 =

Dear :

This is in response to a request submitted by the Authority for an extension of time under § 301.9100-1 of the Procedure and Administrative Regulations to file Form 8328 in order to make a carryforward election under § 146(f) of the Internal Revenue Code.

**Facts and Representations**

You make the following factual representations. The Authority is a constituted authority of the State, authorized to issue tax-exempt obligations on behalf of the State. The Department is a division of the State responsible for private activity bond volume cap allocations.

In December of Year 1 the Authority submitted to the Department a request for a carryforward allocation of unused State volume cap in the amount of \$a. In the same month, the Department awarded to the Authority a carryforward allocation in the amount of \$a.

Pursuant to the policy of the Department, it is the responsibility of the issuing authority, and not the Department, to file with the Internal Revenue Service the Form

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8328 (Carryforward Election of Unused Private Activity Bond Volume Cap) by the applicable deadline.

The Authority relied on its general counsel for advice regarding the steps required to carry forward the \$a allocation. However, the general counsel did not timely advise the Authority of the need to file the Form 8328 because the general counsel erroneously believed that the Department was the party responsible for filing the Form 8328 with respect to the \$a of carryforward allocation. As a result of this misunderstanding by the Authority's general counsel, the Form 8328 filing deadline with respect to the \$a of carryforward allocation (February 15 of Year 2) was missed.

In May of Year 3, the Authority became certain that the Form 8328 with respect to the \$a of carryforward allocation had not been filed. The Authority thereupon authorized bond counsel to proceed with the necessary filings and this request was filed as expeditiously as possible. Prior to filing this request, the Authority's failure to timely file the Form 8328 had not been discovered by the IRS.

### **Law and Analysis**

Section 146(f)(1) provides that if an issuing authority's volume cap for any calendar year after 1985 exceeds the aggregate amount of tax-exempt private activity bonds issued during the calendar year (by the authority), the authority may elect to treat all (or any portion) of the excess as a carryforward for one or more carryforward purposes.

The election is made by filing Form 8328 with the Internal Revenue Service Center, Ogden, UT 84201. Under Notice 89-12, 1989-1 C.B. 633, Form 8328 must be filed by the earlier of (1) February 15 of the calendar year following the year in which the excess amount arises, or (2) the date of issue of bonds issued pursuant to the carryforward election.

Section 301.9100-1(c) of the Procedure and Administrative Regulations provides, in part, that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in § 301.9100-1(b) as an election whose due date is prescribed by regulations, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements for automatic extensions in § 301.9100-2, must be made under the rules of § 301.9100-3. Requests for relief will be granted if the taxpayer provides evidence establishing to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the government.

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Section 301.9100-3(b)(1) provides, in part, that the taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requested relief under that section before the failure to make the regulatory election is discovered by the IRS.

Section 301.9100-3(c)(1)(i) provides, in part, that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability than if the election had been made timely (taking into account the time value of money).

Under the facts and circumstances of this case, we conclude that the Authority acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

### **Conclusion**

Based on the facts and representations submitted, we conclude that the Authority acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government. The Authority is granted an extension of time to 45 days from the date of this letter ruling to file the Form 8328 to carry forward unused volume cap in the amount of \$a.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification upon examination.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Pursuant to a Power of Attorney on file with this office, a copy of this letter is being sent to each of the Authority's authorized representatives.

Sincerely yours,  
Assistant Chief Counsel  
(Exempt Organizations/Employment Tax/  
Government Entities)  
By: Rebecca L. Harrigal  
Chief, Tax Exempt Bond Branch