

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **200438025**

Release Date: 9/17/04

Index Number 9100.01-00

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:TEGE:EOEG:TEB – PLR-119847-04

Date:

May 24, 2004

**Legend**

State =

City =

Issuer =

Department =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Year 2 =

a =

Dear

This is in response to your ruling request for an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to file Form 8328, Carryforward Election of Unused Private Activity Bond Volume Cap, to make a carryforward election under § 146(f) of the Internal Revenue Code of \$a in unused

Year 1 private activity bond volume cap for the purpose of issuing qualified residential rental project bonds under § 142(a)(7).

### **Facts and Representations**

You make the following representations. The Issuer is a State nonprofit corporation designated by State law as a political subdivision of State and incorporated with the approval of the governing body of City. The Issuer is empowered under State law to issue bonds to finance certain types of exempt facilities under § 142(a). The Department administers the allocation of State ceiling under § 146(e).

On Date 1 of Year 1, the Department approved an allocation and carryforward of \$a in Year 1 private activity bond volume cap to the Issuer for the purpose of financing a certain qualified residential rental project. The Issuer, under the belief that the Department had done so, failed to file the Form 8328 for \$a in unused Year 1 private activity bond volume cap before the deadline in Year 2. A representative of the Issuer discovered the failure to file Form 8328 on Date 2 of Year 2. On Date 3 of Year 2, contemporaneously with the filing of the Form 8328, the Issuer filed its request for a private letter ruling. Prior to the filing of this request, Issuer's failure to timely file the Form 8328 had not been discovered by the IRS.

### **Law and Analysis**

Section 103(a) provides that, except as otherwise provided in § 103(b), gross income does not include interest on any state or local bond. Section 103(b) provides, in part, that § 103(a) shall not apply to any private activity bond that is not a qualified bond (within the meaning of § 141). Generally, under § 141(e) of the Code, a private activity bond is not a qualified bond unless the bond meets the volume cap requirements of § 146.

Section 146(a) provides that a private activity bond issued as part of an issue meets the volume cap requirements if the aggregate face amount of the private activity bonds issued pursuant to such issue, when added to the aggregate face amount of tax-exempt private activity bonds previously issued by the issuing authority during the calendar year, does not exceed such authority's volume cap for the calendar year.

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. Section 146(f)(2) requires the issuing authority to identify the purpose for which the carryforward is elected and to specify the portion of the carryforward which is to be used for that purpose. Section 146(f)(5) defines "carryforward purpose" to mean four different purposes, including the purpose of issuing qualified residential rental project

bonds. Under § 146(f)(4), any election (including any identification and specification contained therein), once made, shall be irrevocable.

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 of the Procedure and Administration Regulations provides, in part, that the Commissioner of Internal Revenue 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 regulation, 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.

Section 301.9100-3(b)(1) provides, in part, that generally a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests 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).

### **Conclusion**

Under the facts and circumstances of this case, we conclude that the Issuer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government. Issuer is granted an extension of 45 days from the date of this letter to file Form 8328 to carry forward Year 1 unused volume cap in the amount of \$a for the purpose of issuing qualified residential rental project bonds.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter, including whether any such aspect or item meets the requirements of §§ 103, 142, 146, and 147.

This ruling is directed only to the taxpayer 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 Issuer's authorized representatives.

The rulings contained in this letter are 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 rulings, it is subject to verification upon examination.

Sincerely yours,

Assistant Chief Counsel  
(Exempt Organizations/Employment Tax/  
Government Entities)

By \_\_\_\_\_  
Rebecca L. Harrigal  
Chief, Tax Exempt Bonds Branch