

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

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CC:TEGE:EOEG:TEB-PLR-123158-01  
Date:  
June 6, 2001

**LEGEND:**

Issuer =  
State =  
Agency =  
X =  
Year 1 =  
Year 2 =

Dear :

This is in response to your request on behalf of the Issuer for an extension of time under § 301.9100-1 of the Procedure and Administrative 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 (the "Code").

**FACTS AND REPRESENTATIONS**

You make the following factual representations. The Issuer is a public instrumentality and political subdivision of the State, created pursuant to State law and authorized to issue municipal revenue bonds to fund loans for, among other things, solid waste disposal facilities.

The State allocates its private activity bond volume cap through the Agency. In Year 1, the Issuer received volume cap from the Agency but was unable to use X of this volume cap by the end of the year. Under Agency procedures, unused volume cap reverts back to the Agency. However, in December of Year 1, the Agency took action to reallocate this same amount of volume cap, X, to the Issuer to finance solid waste disposal projects in future years, and to authorize the Issuer to carry forward this amount.

Under State law, the Issuer may not make a carryforward election using Form 8328 until it receives written notice from the Agency that volume cap has been transferred to the Issuer for this purpose. Because the paperwork was misrouted, the Issuer did not receive written notice from the Agency until March, Year 2, after the deadline for filing Form 8328. The Issuer contacted bond counsel, who advised that it was too late to file Form 8328 without receiving an extension of time from the Internal Revenue Service. The Issuer thereupon authorized bond counsel to proceed with the

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necessary filings and this request was filed as expeditiously as possible. Prior to filing this request, the Issuer's failure to timely file the election had not been discovered by the IRS.

## LAW AND ANALYSIS

Generally, § 103(a) of the Code provides that gross income does not include interest on any state or local bond. However, interest on a private activity bond is included in gross income unless it is a qualified private activity bond within the meaning of § 141. Section 141(e)(2) requires a bond to meet the volume cap requirements of § 146 to be a qualified bond.

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) 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), such 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 which is to be a carryforward for each such purpose. Section 146(f)(5) defines "carryforward purpose" to mean four different purposes, including the purpose of issuing exempt solid waste disposal facility bonds described in § 142(a)(6). Once an election is made, it is irrevocable.

The § 146(f) 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, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Section 301.9100-3(a) sets forth rules that must be met before the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Section 301.9100-3(a) provides that relief will be granted if the taxpayer provides evidence to establish to the satisfaction of the

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Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

Section 301.9100-3(b) provides in part that if a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the IRS, the taxpayer will be deemed to have acted reasonably and in good faith. Section 301.9100-3(c) provides, in part, that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

## CONCLUSION

Based on all of the facts and circumstances represented in the submission, we conclude that the Issuer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government. The Issuer 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 X.

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 on examination.

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.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

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