

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

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Refer Reply To:

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Date:

March 22, 2002

**LEGEND:**

Agency =

Department =

State =

Year 1 =

Year 2 =

a =

Project =

Dear

This is in response to a request submitted by Agency 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 with respect to \$a of Agency's unused Year 1 volume cap for Project.

**Facts and Representations**

You make the following factual representations. Department is authorized to allocate State's volume cap under § 146 to issuers in State. In Year 1, Department allocated \$a of private activity bond volume cap to Agency for Project and authorized Agency to carryforward any portion of the allocation not used in Year 1.

Agency mistakenly believed that it could file its Form 8328 (Carryforward Election of Unused Private Activity Bond Volume Cap) for the \$a in carryforward volume cap at the same time it issued bonds pursuant to that carryforward allocation, even if the filing date was later than February 15 of Year 2. Because of its mistaken belief, Agency did not timely file the Form 8328.

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Agency did not realize that it had missed the filing deadline for filing the Form 8328, until it was so advised by bond counsel on March 1 of Year 2. Agency thereupon authorized bond counsel to proceed with the necessary filings, and this request was filed as expeditiously as possible. Prior to filing this request, Agency'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.

The election must identify the purpose for which the carryforward is elected, and specify the amount to be carried forward for that purpose. I.R.C. § 146(f)(2). Carryforward elections (and any identifications or specifications stated therein) are irrevocable. I.R.C. § 146(f)(4).

Section 301.9100-1 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.

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

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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 Agency acted reasonably and in good faith, and that granting an extension of time under § 301.9100-1 to file Form 8328 to carryforward \$a of unused volume cap from Year 1 will not prejudice the interests of the government. Agency 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 for Project.

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. Pursuant to a Power of Attorney on file with this office, a copy of this letter is being sent to Agency as well as the authorized representative of Agency listed second in the Power of Attorney.

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