

Rev. Proc. 2005-30

SECTION 1. PURPOSE

This revenue procedure provides that an issuing authority that fails to make a timely carryforward election of unused private activity bond volume cap under § 146(f) of the Internal Revenue Code (the “Code”) is granted under § 301.9100-3 of the Procedure and Administration Regulations an automatic extension of six months from the due date of the carryforward election, to make the carryforward election, provided that the issuing authority meets the requirements of § 4 of this revenue procedure.

SECTION 2. LAW AND ANALYSIS

.01 Under § 103(a), except as 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). Section 141(e) provides, in part, that a qualified bond must meet the applicable requirements of § 146.

.02 Section 146(a) provides that a private activity bond issued as part of an issue meets the requirements of § 146 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 such calendar year.

.03 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 the authority issued during such calendar year, such issuing authority may elect to treat all (or any portion) of such excess as a carryforward.

.04 Section 1.103(n)-4T, A-2, of the temporary Income Tax Regulations provides, in part, that an election to carry forward volume cap must be filed prior to the end of the calendar year with respect to which the issuing authority has the unused volume cap. These regulations, which were issued under the predecessor to § 146, generally continue to apply to the extent that they are not inconsistent with the Tax Reform Act of

1986. See Conf. Rep. 99–841 at II–686, 1986–3 (Vol. 4) C.B. 686. However, Notice 89–12, 1989–1 C.B. 633, which may be relied upon, provides that regulations to be issued under § 146 will require that the issuing authority file the carryforward election 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.

.05 Announcement 87–43, 1987–19 I.R.B. 15, provides that Form 8328 (*Carryforward Election of Unused Private Activity Bond Volume Cap*) should be used by issuers of tax-exempt bonds who wish to make a carryforward election under § 146(f).

.06 Sections 301.9100–1 through 301.9100–3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election (defined in § 301.9100–1(b) to include an election whose due date is prescribed by a regulation or notice). Section 301.9100–1(a) provides that an extension of time is available for elections that a taxpayer is otherwise eligible to make. However, the granting of an extension of time is not a determination that the taxpayer is otherwise eligible to make the election.

.07 Section 301.9100–3(a) generally provides, in part, that requests for relief subject to § 301.9100–3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Federal Government.

.08 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 § 301.9100–3 before the failure to make the regulatory election is discovered by the Internal Revenue Service (the “IRS”).

.09 Section 301.9100–3(b)(3) provides, in part, that for purposes of § 301.9100–3(b), a taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer (1) was informed in all material respects of the required election and related tax consequences, but

chose not to file the election, or (2) uses hindsight in requesting relief. If specific facts have changed since the due date for making the election that make the election advantageous to a taxpayer, the IRS will not ordinarily grant relief. In such a case, the IRS will grant relief only when the taxpayer provides strong proof that the taxpayer’s decision to seek relief did not involve hindsight.

.10 Section 301.9100–3(c) provides, in part, that the interests of the Federal Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable 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). Similarly, if the tax consequences of more than one taxpayer are affected by the election, the Federal Government’s interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made.

.11 The granting of an extension of time to file a Form 8328 under this revenue procedure will not prejudice the interests of the Federal Government.

SECTION 3. DESCRIPTION OF RELIEF

.01 An issuing authority that fails to make a timely carryforward election is granted under this revenue procedure an automatic extension of six months from the due date of the carryforward election (excluding extensions), to make the carryforward election, if that issuing authority meets the requirements of § 4 of this revenue procedure.

.02 The granting of an extension of time to make a carryforward election under this revenue procedure is not a determination that the issuing authority is otherwise eligible to make the election.

.03 If an issuing authority is not eligible for relief under this revenue procedure, such authority may request relief by applying for a letter ruling under § 301.9100–3, Rev. Proc. 2005–1, 2005–1 I.R.B. 1 (or its successor), and Rev. Proc. 96–16, 1996–1 C.B. 630.

SECTION 4. PROCEDURE

.01 An issuing authority is eligible for relief under this revenue procedure if it meets the following requirements—

(1) The issuing authority must file a Form 8328 within six months after the due date of the carryforward election (excluding extensions);

(2) The Form 8328 filed under this revenue procedure must have typed or printed on the top “FILED PURSUANT TO REV. PROC. 2005–30”;

(3) The issuing authority must file the Form 8328 under this revenue procedure before it receives written notice from the IRS that it failed to make the carryforward election timely;

(4) The issuing authority must not have declined to make the carryforward election, after having been informed in all material respects of the required election and related tax consequences, on or before the due date for filing the election, and then have reversed that decision after the due date for filing the election;

(5) The issuing authority must not be filing the carryforward election in reaction to specific facts or circumstances that changed since the due date for making the carryforward election so as to make the filing of a carryforward election advantageous to the issuing authority; and

(6) The issuing authority must satisfy all of the requirements for making the carryforward election (other than the requirement to make the election timely).

.02 For carryforward elections made under this revenue procedure, by signing the Form 8328, the issuing authority is certifying that it has met all of the requirements in § 4.01 of this revenue procedure.

.03 This procedure is in lieu of the letter ruling procedure under § 301.9100–3 that is used to obtain relief for a failure to make a carryforward election timely. Accordingly, an issuing authority is not required to pay a user fee in order to benefit from the relief provided by this revenue procedure.

.04 A Form 8328 filed under this revenue procedure should be sent to the Internal Revenue Service Center, Ogden, Utah, 84201.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Except as expressly provided in this revenue procedure, this revenue procedure has no effect on the application of any other document.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective as of May 11, 2005.

SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Zoran Stojanovic of the Of-

fice of Assistant Chief Counsel (Exempt Organizations/Employment Tax/Government Entities). For further information regarding this revenue procedure, contact Mr. Stojanovic at (202) 622-3980 (not a toll-free call).