

Internal Revenue Service

Department of the Treasury

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LEGEND:

State Authority =

County =

State =

\$I =

Year 1 =

Year 2 =

Dear:

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

FACTS AND REPRESENTATIONS

In October of Year 1, the State Authority responsible for allocating the bond volume cap for State reallocated unused bond cap volume to certain issuers. Of this amount, \$I was allocated to County for issuance of single family mortgage revenue bonds.

Due to the late allocation of State's unused bond volume cap and perceived unfavorable conditions in the bond market during the fourth quarter of Year 1, the County decided to carry forward the Year 1 allocation to the following year, Year 2.

State Authority had expressly authorized County to carry forward its allocation of the bond volume cap.

County had never received bond volume cap allocations from State that were not used by the end of the year of allocation. Consequently, its personnel were unfamiliar with the requirements to carry forward unused volume cap, and County did not timely file a Form 8328.

On June 1 of Year 2, in connection with due diligence for the issuance of bonds utilizing the carried forward volume cap, bond counsel discovered that the Form 8328 was not filed. On June 19 of Year 2, County filed this request for a ruling that the County be granted an extension of time to file a Form 8328 with respect to the \$I volume cap allocation by State. As of the date the ruling request was filed, the failure to make the regulatory election had not been discovered by the Internal Revenue Service.

LAW AND ANALYSIS

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), 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 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 qualified mortgage bonds or mortgage credit certificates.

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 Administration 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 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Sections 301.9100-3(a) through (c)(1)(i) of the regulations set forth rules that the Internal Revenue Service generally will use to determine whether, under the facts and circumstances of each situation, 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 provides that subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonable and in good faith. Section 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower taxpayer liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

CONCLUSION

Based on the facts and representations submitted, County is granted an extension of time to file Form 8328 which includes the \$I volume cap allocation for Year 1 until the earlier of 30 days from the date of this letter ruling or the date of bonds issued to utilize the carried forward amount.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) 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 the Authority's authorized representative.

Sincerely yours,

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