

Internal Revenue Service

Department of the Treasury

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Date:
March 7, 2001

LEGEND:

Authority =

County =

Borrower =

Department =

a =

Year 1 =

Year 2 =

Dear :

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

Facts and Representations

The Authority is a public corporation and instrumentality of the County and is authorized to act as a “conduit issuer” of municipal revenue bonds for the purpose of making loans to finance, among other things, solid waste disposal facilities. The Borrower has asked the Authority to issue \$a principal amount of its revenue bonds for the purpose of financing a portion of the costs of a solid waste disposal facility located in the County (the “Project”).

The Department is the State entity authorized to allocate bond volume cap to issuers. In December of Year 1, the Department awarded the Authority Year 1 volume cap in the amount of \$a for the Project. However, the Authority was unable to complete

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the subject financing before the end of Year 1. The Authority relied on its bond counsel for advice on the steps required to carry the \$a of volume cap forward to Year 2. Bond counsel did not timely advise the Authority of the need to file with the Internal Revenue Service the Form 8328 (Carryforward Election of Unused Private Activity Bond Volume Cap) by February 15 of Year 2, and the Authority has not yet filed the Form 8328.

The Authority's failure to file the Form 8328 with the IRS was discovered on February 20 of Year 2. This request for a private letter ruling was immediately prepared and submitted to the IRS. This ruling request was received by the IRS in February of Year 2. As of that date, the IRS had not discovered the Authority's failure to timely file the Form 8328.

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.

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(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, 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).

Under the facts and circumstances of this case, we conclude that the Authority acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Conclusion

Based on the facts and representations submitted, the Authority is granted an extension of time to a date which is 5 business days after the date of the receipt of this favorable ruling to file the Form 8328 to carryforward unused volume cap in the amount of \$a.

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 the Authority, as well as to an authorized representative of the Authority.

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