

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

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**CC:TEGE:EOEG:TEB/PLR-130791-00**  
Date:  
**March 6, 2001**

**LEGEND:**

Authority =

Department =

State =

Borrower =

a =

Bonds =

Year 1 =

Year 2 =

Date 1 =

Date 2 =

Dear :

This is in response to a request submitted by 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**

You make the following factual representations. The Authority is a political subdivision of the State that funds loans for certain multi-family housing purposes. The Department is the agency of the State authorized to allocate bond volume cap to issuers.

In December of Year 1, the Borrower requested the Authority's preliminary

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approval of the issuance of the Bonds. The Authority preliminarily approved issuance of the Bonds to allow the Borrower to submit a request to the Department for an allocation of State volume cap. The documents requesting an allocation and carryforward with respect to the Bonds were submitted to the Department. Later in December of Year 1, the Department confirmed the carryforward allocation of unused State volume cap in the amount of \$a to the Authority.

The Authority has no staff who prepare and file with the Internal Revenue Service the Form 8328 (Carryforward Election of Unused Private Activity Bond Volume Cap), nor does the Authority assign the task of preparing the election to one specific counsel. Rather, the Authority relies on the other parties to the transaction to determine which party will prepare and file the Form 8328. Generally, the parties to a transaction assign this responsibility at the first financing meeting. In this case, however, the other parties did not meet until April of Year 2, more than 2 months after the deadline for filing the Form 8328 with the IRS had passed.

In addition, in November of Year 1, the Authority had decided to replace its current counsel on financing transactions ("Bond Counsel 1") with a different counsel ("Bond Counsel 2") as their counsel on future transactions. Because the transition between Bond Counsel 1 and Bond Counsel 2 had not been fully completed at the time the Authority granted its preliminary approval for the issuance of the Bonds, Bond Counsel 1 served as counsel to the Authority with respect to the Bonds. There was confusion between Bond Counsel 1, Bond Counsel 2, and a third counsel, which served as special tax counsel with respect to the Bonds ("Special Tax Counsel"), as to which counsel was supposed to file the Form 8328. Bond Counsel 1, Bond Counsel 2, and Special Tax Counsel each assumed that one of the other counsel had properly filed the Form 8328. It was not until August of Year 2 that the various counsel realized that the Form 8328 had never been filed.

On Date 1, the Authority issued the Bonds using \$a of the carryforward volume cap allocation from the Department. In August of Year 2, while the transcript for the Bonds was being prepared, Bond Counsel 1 prepared the Form 8328 and mailed it to the IRS after it was determined that the Form 8328 had not been filed. The Form 8328 was received by the IRS on Date 2, which was in September of Year 2. The Authority did not learn that the Form 8328 had not been filed until it was asked by Bond Counsel 1 to sign the Form 8328.

Bond Counsel 1, Bond Counsel 2, and Special Tax Counsel thereafter assisted the Authority with the preparation and submission of this request for a private letter ruling. This ruling request was received by the IRS in December 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

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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 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 30 days after Date 2 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

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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 Branch