

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **200406028**

Release Date: 02/06/2004

Index Number: 146.07-00; 9100.00-00

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:TEGE:EOEG:TEB- PLR-152734-03

Date:

November 04, 2003

In Re:

Legend:

Authority =

State =

Department =

a =

Date 1 =

Date 2 =

Dear :

This is in response to your request for an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to file Form 8328 (Carry forward Election of Unused Private Activity Bond Volume Cap) for the Authority to make a carry forward election under § 146(f) of the Internal Revenue Code with respect to \$a in unused private activity bond volume cap from 2002.

PLR-152734-03

### **Facts and Representations**

You make the following factual representations. Authority is a public corporation of State authorized to issue obligations to finance certain types of exempt facilities described in § 142(a). Department administers the system established by State pursuant to § 146(e) to allocate State's volume cap. In December 2002, Department granted Authority an allocation of volume cap carry forward in the amount of \$a. After the due date for filing its carry forward election had passed, Authority discovered that the Form 8328 to carry forward the 2002 volume cap had not been filed. On Date 1, Authority filed with the Internal Revenue Service a Form 8328 electing to carry forward the \$a of 2002 bond volume cap. Very soon thereafter, on Date 2, Authority submitted a ruling request for an extension of time to file the Form 8328. As of Date 2, the IRS had not discovered Authority's failure to timely file the Form 8328.

### **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 carry forward for one or more carry forward 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 carry forward election.

The election must identify the purpose for which the carry forward is elected, and specify the amount to be carried forward for that purpose. Section 146(f) (2). Carry forward elections (and any identifications or specifications stated therein) are irrevocable. Section 146(f) (4).

Section 301.9100-1 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 published in the Federal Register, 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.

PLR-152734-03

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 the taxpayer would have had if the election had been timely (taking into account the time value of money).

### **Conclusion**

Under the facts and circumstances of this case, we conclude that Authority acted reasonably and in good faith, and that granting an extension of time under § 301.9100-1 to file Form 8328 to carry forward \$a of unused volume cap from calendar year 2002 will not prejudice the interests of the government. Authority is granted an extension of time to 45 days from the date of this letter ruling to file the Form 8328 to carry forward \$a in unused 2002 volume cap.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer who requested it. Section 6110(k) (3) provides that it may not be used or cited as precedent.

In accordance with a Power of Attorney on file with this office, a copy of this letter is being sent to Authority.

PLR-152734-03

The ruling contained in this letter is based upon information and representations submitted by Authority and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the materials submitted in support of the request for a ruling, it is subject to verification upon examination.

Sincerely,

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

By: \_\_\_\_\_  
Rebecca L. Harrigal  
Chief, Tax Exempt Bond Branch