

**Internal Revenue Service**

Department of the Treasury  
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, ID No.

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Refer Reply To:  
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Date:  
December 18, 2007

LEGEND:

Authority =

State =

a =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Year 1 =

Year 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 (Carryforward Election of Unused Private Activity Bond Volume Cap) for Authority to make a carryforward election under § 146(f) of the Internal Revenue Code with respect to \$a of unused private activity bond volume cap.

### **Facts and Representations**

You make the following factual representations. Authority finances a wide variety of projects, including issuing revenue bonds for housing projects. The Governor's Office of State (the "Governor") allocates the State volume cap for State under § 146(e). On Date 1, Authority adopted a resolution authorizing the issuance of bonds to finance qualified mortgage loans to first-time low and moderate income homebuyers in State.

On Date 2, Governor awarded to Authority an allocation of volume cap in the amount of \$a to be used in connection with the issuance of qualified mortgage bonds by the end of Year 1, and directed Authority to carry forward the \$a of volume cap if the volume cap was not used for the issuance of bonds by the end of Year 1. No such bonds were issued by the end of Year 1.

On Date 3, a "closing" of the bond issue occurred during which bond documents were executed and delivered. However, bond proceeds were to be advanced and made available to purchase qualified mortgage loans only as the mortgage loans were made. To date, the purchaser of the bonds has not advanced any moneys to the Authority to purchase the bonds. Thus, under § 1.150-1 of the Income Tax Regulations, the bonds have not been issued.

On Date 4, Authority timely filed a Form 8328 for Year 1 (the "Year 1 Form 8328"). The staff members of Authority responsible for filing the Year 1 Form 8328 mistakenly thought the \$a in bonds had been issued in Year 1. The staff members erroneously stated on line 2 of the Year 1 Form 8328 that \$a of bonds had been issued in Year 1, instead of indicating on the proper lines that the \$a was Year 1 volume cap available for carry forward.

Authority did not discover the error until Year 2. On Date 5, very soon after discovering this error, Authority filed with the IRS a proposed Form 8328 for Year 1, correcting the error with respect to its election to carry forward the \$a of volume cap. Shortly thereafter, on Date 6, Authority submitted this ruling request for an extension of time to file a Form 8328 for \$a of unused Year 1 private activity bond volume cap. As of Date

6, the IRS had not discovered the failure to make a timely and valid Year 1 carryforward election with respect to the \$a of Year 1 volume cap.

### **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 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. The automatic extension of time to file Form 8328, set forth in Revenue Procedure 2005-30, 2005-1 C.B. 1148, does not apply in this case.

The election must identify the purpose for which the carryforward is elected, and specify the amount to be carried forward for that purpose. Section 146(f)(2). Carryforward 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.

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 generally 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 a Form 8328 to carry forward \$a of unused Year 1 volume cap will not prejudice the interests of the government. Therefore, 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 of unused Year 1 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's authorized representative.

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  
(Financial Institutions and Products)

By: \_\_\_\_\_  
Rebecca L. Harrigal  
Chief, Branch 5