

Internal Revenue Service

Department of the Treasury
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Person To Contact:

Telephone Number:

Refer Reply To:
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PLR-104284-07

Date:
March 14, 2007

LEGEND:

Authority =

State =

Department =

Company =

Underwriter =

a =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

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 is authorized to issue private activity bonds for facilities for the furnishing of water and sewage facilities. Department administers the system established by State pursuant to § 146(e) to allocate State's private activity bond volume cap. On Date 1, Authority passed an inducement resolution, which preliminarily approved the issuance of revenue bonds to finance a project of Company (the "Project"). This inducement resolution was attached to a Notice of Intent to Carryforward, and was filed with Department by the Underwriter for the proposed issuance of bonds on Date 2.

On Date 3, Department awarded to Authority a carryforward allocation of State's unused private activity bond volume cap in the amount of \$a for the benefit of Company. The carryforward allocation confirmation was sent by Department to Underwriter but was never sent to Authority or Authority's counsel. Underwriter was not aware of the need to file a Form 8328 to carry forward the allocation. Authority was not informed that Department had awarded to Authority the \$a carryforward allocation for the benefit of Company, and the Form 8328 was not timely filed for that allocation.

Two years later Company and Underwriter determined that the market was favorable for proceeding with the Project and approached Authority about issuing the bonds. It was at this time, on Date 4, that Authority determined that the carryforward allocation had been granted and no Form 8328 had been filed. This request was filed on Date 5, within one month after discovery of the failure to timely file. As of Date 5, 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 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 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 Form 8328 to carry forward \$a of unused volume cap awarded to Authority on Date 3, 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 the \$a of unused 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
(Exempt Organizations/Employment
Tax/Government Entities)

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

This document may not be used or cited as precedent. Section 6110(k)(3) of the Internal Revenue Code.