

**Internal Revenue Service**

Department of the Treasury

Washington, DC 20224

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Date:

October 14, 2010

LEGEND:

State =

Agency 1 =

Agency 2 =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

a =

b =

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 Agency 1 and Agency 2 to make a carryforward election under § 146(f) of the Internal Revenue Code with respect to \$a of unused private activity bond volume cap from Year 1.

### **Facts and Representations**

You make the following factual representations. On Date 1, the Governor of State allocated State's Year 1 private activity bond volume cap in the amount of \$a to Agency 1, and \$b to Agency 2. Agency 1 and Agency 2 are each agencies of State authorized to issue private activity bonds.

The Governor's Date 1 allocation was made after the date the Form 8328 was required to be filed with the Service. Accordingly, Agency 1 and Agency 2 did not file Form 8328 for, respectively, \$a and \$b in Year 1 volume cap before the due date. The Governor's allocation was not timely because, for the first time, State had to coordinate with several public corporations due to the start-up of its new public-private partnership. The start-up of this new program required that State, for the first time, establish a priority list based on the urgency of the need for the projects being considered.

Criteria taken into consideration by State in prioritizing the projects include the urgency of public need for each project, existing financing alternatives, the status of feasibility studies, and the availability of volume cap carryforward for each project. This analysis had to be coordinated with the public corporations responsible for the projects, and took longer than expected. As soon as these determinations and allocations by project were made, the Governor signed the order allocating the private activity bond volume cap to Agency 1 and Agency 2.

On Date 2, Agency 1 and Agency 2 each executed with the Service a Form 8328 electing to carry forward their respective amounts of Year 1 volume cap. Soon thereafter, on Date 3, State on behalf of Agency 1 and Agency 2, submitted a ruling request for an extension of time to file Form 8328 electing to carry forward the volume cap allocations. As of Date 3, the Service had not discovered the failure by Agency 1 and Agency 2 to timely file the carryforward elections.

### **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 State, Agency 1, and Agency 2 have acted reasonably and in good faith, and that granting an extension of time under § 301.9100-1 for State to make the allocation to its affiliated agencies and for those Agencies to file Form 8328 to carry forward \$a and \$b of unused Year 1 volume cap will not prejudice the interests of the government. Therefore, Agency 1 and Agency 2 are granted an extension of time to 45 days from the date of this letter ruling to file Form 8328 to carry forward, respectively, \$a and \$b 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 requesting 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 your authorized representative.

The ruling contained in this letter is based upon information and representations submitted by State on behalf of the Agencies 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: \_\_\_\_\_  
Timothy L. Jones  
Senior Counsel, Branch 5

cc: