

Part IV - Items of General Interest

Deadline for an Issuing Authority to Assign Private Activity Bond Volume Cap to Another Issuing Authority Under Section 146

Notice 2003-42

PURPOSE

This Notice provides guidance to issuing authorities on the deadline for assigning private activity bond volume cap under §146 of the Internal Revenue Code (the "Code") to other issuing authorities. It clarifies that the deadline for an issuing authority to assign any portion of its volume cap to another issuing authority in the state is the earlier of (1) February 15 of the calendar year following the year in which the state ceiling represented by that volume cap arises, or (2) the date of issue of bonds issued pursuant to the assignment of that portion of the volume cap. Notice 2003-41 clarifies the deadline under §146(e) for a state to allocate its state ceiling among issuing authorities in the state.

BACKGROUND

Under §103(a), except as provided in §103(b), gross income does not include interest on any state or local bond. Section 103(b) provides, in part, that §103(a) shall not apply to any private activity bond that is not a qualified bond (within the meaning of §141). Section 141(e) provides, in part, that a qualified bond must meet the applicable requirements of §146.

Section 146(a) provides that a private activity bond issued as part of an issue meets the requirements of §146 if the aggregate face amount of the private activity bonds issued pursuant to such issue, when added to the aggregate face amount of tax-exempt private activity bonds previously issued by the issuing authority during the calendar year, does not exceed such authority's volume cap for such calendar year.

In general, an issuing authority's volume cap for a calendar year is the portion of the state ceiling allocated to the issuing authority for that year. Under §146(d)(1), the state ceiling applicable to any state for any calendar year is the greater of (1) an amount equal to \$75 multiplied by the state population, or (2) \$225 million. Beginning in 2003, these amounts are adjusted for inflation in accordance with §146(d)(2).

Generally, §§146(b) and (c) provide formulae for allocating state ceiling among issuing authorities in the state authorized to issue tax-exempt private activity bonds. However, §146(e)(1) provides that, except as provided in §146(e)(3) (relating to volume cap of constitutional home rule cities), a state may, by law, provide a different allocation formula for allocating the state ceiling among the governmental units (or other authorities) in such state having authority to issue tax-exempt private activity bonds.

Section 1.103(n)-3T, A-14, of the temporary Income Tax Regulations provides that in certain circumstances an issuing authority may assign all or any portion of its volume cap to other issuing authorities within the state. These regulations, which were issued under the predecessor to §146, generally continue to apply to the extent they are not inconsistent with the Tax Reform Act of 1986. See Conf. Rep. 99-841 at II-686, 1986-3 (Vol. 4) C.B. 686.

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 by the authority during such calendar year, such issuing authority may elect to treat all (or any portion) of such excess as a carryforward for one or more carryforward purposes described in §146(f)(5).

Section 146(f)(3) provides that if any issuing authority elects a carryforward with respect to any

carryforward purpose, any private activity bonds issued by such authority with respect to such purpose during the three calendar years following the calendar year in which the carryforward arose shall not be taken into account under §146(a) to the extent the amount of such bonds does not exceed the amount of the carryforward elected for that purpose.

Section 146(f)(4) provides that any carryforward election (and any identification or specification contained therein), once made, shall be irrevocable.

Section 1.103(n)-4T, A-2, generally provides that an election to carry forward volume cap must be filed prior to the end of the calendar year with respect to which the issuing authority has the unused volume cap. However, Notice 89-12, 1989-1 C.B. 633, which may be relied upon, provides that regulations to be issued under §146 will require that the issuing authority file the carryforward election 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.

DISCUSSION

Neither the Code nor the regulations specifically provide a due date for making assignments of volume cap under §146. In Notice 89-12, the Service extended the time to file a carryforward election to accommodate difficulties issuers may experience in determining the amount of unused volume cap and filing the election by the end of the calendar year. To coordinate the deadline for assigning volume cap and the deadline for making a carryforward election, the deadline for an issuing authority to assign any portion of its volume cap to another issuing authority in the state is the earlier of (1) February 15 of the calendar year following the year in which the state ceiling represented by that volume cap arises, or (2) the date of issue of bonds issued pursuant to the assignment of that portion of the volume cap.

EFFECTIVE DATE

This Notice applies to assignments of volume cap with respect to state ceiling arising after 2002.

DRAFTING INFORMATION

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