

Internal Revenue Service

Department of the Treasury

Number: **200208014**
Release Date: 2/22/2002
Index Number: 146.07-00, 9100.00-00

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Date:
November 20, 2001

LEGEND:

Administration =

State =

Department =

Authority =

X =

Year 1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Dear

This is in response to a request submitted by the Administration for an extension of time under § 301.9100-1 of the Procedure and Administrative Regulations to file a Form 8328 to make a carryforward election under § 146(f) of the Internal Revenue Code and for a ruling that the Authority may assume the Administration's carryforward allocation of the state private activity bond volume cap as the Administration's successor entity.

Facts and Representations:

The Administration represents the following facts. The Administration is a body

public and corporate and instrumentality of the State. The Administration has the authority under State law to issue taxable and tax-exempt general or limited obligation revenue bonds or similar obligations for the purpose of financing the acquisition and construction of certain projects in the State.

The Secretary of the Department is authorized to allocate the State private activity bond volume cap established pursuant to § 146(d) (the "State Ceiling") to issuers in the State. On or about Date 1, the Secretary of the Department allocated \$ X of the State Ceiling for calendar Year 1 to the Administration. The Administration did not use this volume cap in Year 1. On Date 2, the Secretary for the Department sent a letter to the Administration reserving \$ X of Year 1 volume cap for the Administration's carryforward election.

The Director of the Administration was solely responsible for decisions concerning carryforward elections by the Administration and had no professional staff or administrative support assigned to him on a full-time basis. On Date 2, the Director of the Administration retired. The person assigned to the Director's duties after his retirement was unaware of the Administration's intent to carryforward \$ X of volume cap.

Because of the change in personnel and because the Date 2 letter from the Department providing the Administration with \$ X in carryforward volume cap did not reach bond counsel for the Administration until about Date 3, which is after the time for filing a carryforward election, the Form 8328 was not timely filed.

On Date 4, which is after the time for filing a carryforward election, the Governor of State signed into law an act which has the effect of dissolving the Administration as of Date 5. This law provides that upon the Administration's dissolution, the Administration's statutory powers and functions will be consolidated and vested with the Authority, an agency organized under the jurisdiction of the Department.

Law and Analysis:

Section 146(f) 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 portion of the excess which is to be used for that purpose. I.R.C. § 146(f)(2). The election is irrevocable. I.R.C. § 146(f)(4).

Section 301.9100-1(c) of the Procedure and Administrative 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, 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 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 if the election had been made timely (taking into account the time value of money).

In the instant case, the Administration's request for relief was made before the failure to make the regulatory election was discovered by the IRS. Granting an extension of time under § 301.9100-1 to file an amended Form 8328 will not prejudice the interest of the government. Accordingly, the Administration is granted an extension of time to file its Form 8328.

The Administration, however, will be dissolved as of Date 5, at which time all of the Administration's statutory powers and functions will vest with the Authority. We conclude that as of Date 5, when Authority becomes the successor to the Administration, the Authority will succeed to any carryforward election properly made by the Administration and will be able to use that carryforward to the same extent that the Administration could have used that carryforward had it remained in existence.

Conclusion:

Based on the facts and representations submitted, the Administration is granted an extension of time to 45 days after the date of this letter to file Form 8328 to carryforward \$X of Year 1 State volume cap. Moreover, when the Authority becomes the successor to the Administration, the Authority will succeed to the Administration's carryforward volume cap, as stated in this letter.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed

by an appropriate party. While this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination.

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

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

In accordance with the Power of Attorney on file with this office, the original of this letter is being sent to the Administration's representatives and a copy of this letter is being sent to the Administration.

Sincerely yours,
Assistant Chief Counsel
(Exempt Organizations/Employment Tax/
Government Entities)
By: ebecca L. Harrigal
Chief, Tax Exempt Bond Branch