

**Internal Revenue Service**

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Department of the Treasury  
Washington, DC 20224

Person To Contact:

Telephone Number:

Refer Reply To:

CC:TEGE:EOEG:TEB – PLR-135303-04

Date:

August 03, 2004

LEGEND:

Authority =

State =

Department =

A Bonds =

B Bonds =

a =

b =

c =

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 \$b of unused private activity bond volume cap from Year 1, and \$c of unused private activity bond volume cap from Year 2.

### **Facts and Representations**

You make the following factual representations. Authority is a State agency authorized to issue qualified student loan bonds described in § 144(b). Department administers the system established by State pursuant to § 146(e) to allocate State's private activity bond volume cap. During Year 1, Department granted Authority an allocation of volume cap in the amount of \$a. On Date 1, Authority in compliance with State law, notified Department of Authority's intent to carry forward \$b of the Year 1 volume cap allocation. On Date 2, Authority issued the A Bonds using \$b of the Year 1 volume cap carryforward.

During Year 2, Department granted Authority an allocation of volume cap in the amount of \$c. In Date 3, Authority in compliance with State law, notified Department of Authority's intent to carry forward \$c of the Year 2 volume cap allocation. On Date 4, Authority issued the B Bonds using \$c of the Year 2 volume cap carryforward.

Authority did not timely file with the Internal Revenue Service the Form 8328 to carry forward either the Year 1 or the Year 2 private activity bond volume cap. Authority was not aware of its obligation to file the Forms 8328, having been advised by its bond counsel that Department was responsible for filing the Forms 8328. On Date 5, Authority discovered that the Forms 8328 to carry forward the Year 1 volume cap and the Year 2 volume cap had not been filed. Very soon thereafter, on Date 6, Authority submitted a ruling request for an extension of time to file the Forms 8328. As of Date 6, the IRS had not discovered Authority's failure to timely file the Forms 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 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 Forms 8328 to carry forward \$b of unused volume cap from Year 1, and \$c of unused volume cap from Year 2 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 Forms 8328 to carry forward \$b of unused volume cap from Year 1, and \$c of unused volume cap from Year 2 for issuing qualified student loan bonds under § 144(b).

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 representatives.

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