

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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Date:

October 25, 2000

LEGEND:

Authority =

State =

\$T =

Year 1 =

Year 2 =

Dear :

This is in response to your request on behalf of the Authority for an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to file Form 8328 in order to make a carryforward election under § 146(f) of the Internal Revenue Code ("the Code").

FACTS AND REPRESENTATIONS

The Authority is a political subdivision of State. In Year 1, the State enacted legislation that required the Authority to study the feasibility of a pilot program for student loans. The same legislation allocated \$T of volume cap to the Authority for use in the program should bonds be issued under it. The legislation also required any unused portion of the allocated volume cap to be carried forward.

Before the end of Year 1, the Authority concluded that the pilot program was legally feasible. However, the Authority did not issue bonds making use of the \$T of volume cap during Year 1. Later in Year 2, bond counsel discovered that the Authority failed to file Form 8328 with the Internal Revenue Service to carry forward the volume cap. The Authority represents that

personnel responsible for student loan programs were unaware that Form 8328 had to be filed. The fact that Form 8328 had not been filed was brought to the attention of the Internal Revenue Service before the Service discovered the problem.

LAW AND ANALYSIS

Except as otherwise provided, § 103(a) of the Code provides that gross income does not include interest on any state or local bond. One exception is that interest on a private activity bond is included in gross income unless it is a qualified private activity bond within the meaning of § 141. Section 141(e)(2) requires a qualified bond to meet the volume cap requirements of § 146.

Section 146(a) provides that a private activity bond issued as part of an issue meets the volume cap requirements 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 the calendar year.

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), such authority may elect to treat all (or any portion) of the excess as a carryforward for one or more carryforward purposes. Section 146(f)(2) requires the issuing authority to identify the purpose for which the carryforward is elected and to specify the portion of which is to be a carryforward for each such purpose. Section 146(f)(5) defines "carryforward purpose" to mean four different purposes, including the purpose of issuing qualified student loan bonds. Once an election is made, it is irrevocable.

The § 146(f) 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.

Section 301.9100-1(c) 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 proscribed by regulations or a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code except subtitles E, G, H, and I.

Sections 301.9100-3(a) through (c)(1)(i) of the regulations set forth rules that the Internal Revenue Service generally will use to determine whether, under the facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do

not meet the requirements of § 301.9100-2. Section 301.9100-3(a) provides that relief will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

Section 301.9100-3(b)(i) provides that, subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith. Section 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower taxpayer liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

CONCLUSION

Based on the facts and representations submitted, the Authority's request for relief is granted. The Authority may elect to carry forward the \$T of volume cap for the purpose of issuing qualified student loan bonds by filing Form 8328 by the earlier of 30 days from the date of this letter ruling or the date of bonds issued to utilize the carried forward amount.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. Pursuant to a Power of Attorney on file with this office the original copy of this letter is being sent to your authorized representative and a copy is being sent to you.

Sincerely yours,
Timothy Jones
Assistant Chief Counsel
(Exempt Organizations/Employment
Tax/Government Entities)