

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:TEGE:EOEG:TEB-PLR-108613-00
Date:
June 23, 2000

LEGEND:

<u>X</u>	=
<u>Y</u>	=
<u>Z</u>	=
<u>N</u>	=
<u>1</u>	=
<u>2</u>	=
<u>3</u>	=
<u>4</u>	=
<u>5</u>	=
<u>s</u>	=
<u>t</u>	=
<u>u</u>	=
<u>v</u>	=

Dear Sir or Madam:

This in response to your private letter ruling request, on behalf of X, for an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to file an election under § 146(f) of the Internal Revenue Code to carryforward excess private activity bond volume cap from 1999.

FACTS:

X is an agency of state Z, authorized to borrow money through the issuance of notes and bonds to provide financing for affordable multi-family and single housing. On date 1, X filed a notice of intent to issue bonds with Y, a division of state Z responsible for private activity bond volume cap (volume cap) allocations. At the same time, X requested written confirmation of its allocation of volume cap, so that it could issue bonds in the aggregate principal amount of s dollars to finance four multi-family rental projects.

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On date 2, X filed a notice of its election to carryforward all its remaining allocation of volume cap with Y, including its previous allocation s dollars, and any additional amounts of volume cap subsequently becoming available to X for a multi-family purpose. Subsequently, an additional t dollars was allocated to X. The carryforward allocation of u dollars (s dollars plus t dollars) was confirmed by Y on date 3.

The volume cap allocation was properly obtained from Y, properly elected by X, and confirmed to be carried forward for a multi-family housing purpose by Y, as required by Z state law. However, as a result of the extensive staff turnover at X, the Form 8038 "Carryforward Election of Unused Private Activity Bond Volume Cap" was not filed by its deadline, February 15, 2000.

On date 4, X issued N bonds using v dollars of its multi-family housing carryforward volume cap allocation. Immediately following the N bond closing, bond counsel ascertained that the Form 8038 had not been properly filed. Upon discovery of this oversight, X completed a Form 8328 in the amount of u dollars to finance multi-family housing under § 142(a)(7) and properly filed it with the Internal Revenue Service Center in Ogden, Utah. Two days latter, on date 5, X filed an amended Form 8328 correcting the employer identification number, and also submitted the request for a private letter ruling described above. These actions were taken before the failure to make the regulatory election was discovered by the Internal Revenue Service.

LAW:

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. 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) 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(b), (c), and (e).

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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 Service, or, failed to make the election because of intervening events beyond the taxpayer's control. Section 301.9100-3(c)(1)(i) provides, in part, that the interests of the Government are prejudiced if granting relief would result in the taxpayer having a lower tax liability than if the election had been made timely (taking into account the time value of money).

Under the facts and circumstances of this case, granting an extension of time to make the election to carryforward volume cap will authorize X to issue the same amount of tax-exempt bonds that it would have been authorized to issue if the election had been filed on time. Further, granting an extension of time to make the election to carryforward volume cap does not change the tax liability of X.

CONCLUSION:

Based on the facts and representations submitted, X is granted an extension of time to date 5 to file the Form 8328 to carryforward unused volume cap in the amount of u dollars.

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.

Sincerely yours,
Mary Oppenheimer
Assistant Chief Counsel
(Exempt Organizations/Employment
Tax/Government Entities)

Enclosure:

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