



Year 2 =

a =

b =

Dear :

This is in response to the Agency's request for an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to file a Form 8328 (Carryforward Election of Unused Private Activity Bond Volume Cap) to make a carryforward election under § 146(f) of the Internal Revenue Code with respect to \$a and \$b of the Agency's Year 1 private activity bond volume cap.

#### FACTS AND REPRESENTATIONS

You make the following factual representations. The Agency is a local public agency created under State law. The Agency is authorized to issue bonds, including multifamily residential rental bonds. Committee administers the system established by the State pursuant to § 146(e) to allocate the State's private activity bond volume cap. In Year 1, Committee passed Resolutions 1 and 2 awarding the Agency \$a and \$b of State ceiling on a carryforward basis to finance Projects 1 and 2, respectively. In Year 2, after the due date to file the Form 8328 for Year 1 allocations had passed, the Agency issued the Bonds utilizing \$a of the Year 1 volume cap to finance Project 1. Agency has not yet issued bonds for Project 2.

The Agency was not aware of its obligation to file a Form 8328 with the Internal Revenue Service and did not timely file the Form 8328 with respect to allocations of \$a and \$b. The Agency became aware of its obligation to file a Form 8328 on or after Date 1, Year 2, when, in preparation for issuing bonds pursuant to allocation of \$b of the Agency's unused private activity bond volume cap for Project 2, Bond Counsel discovered that the Form 8328 had not been filed with respect to allocations \$a and \$b. Soon thereafter, on Date 2, Year 2, Agency submitted a ruling request for an extension of time to file the Form 8328. The Agency sought relief before the failure to file the Form 8328 was discovered by the Service.

#### 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. While Revenue Procedure 2005-30, 2005-1 C.B. 1148, provides for an automatic extension of six months from the due date of the carryforward election to make the carryforward election, it does not apply in this case.

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 generally 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 the Agency acted reasonably and in good faith, and that granting an extension of time under § 301.9100-1 to file a Form 8328 to carry forward \$a and \$b of unused volume cap from Year 1 will not prejudice the interests of the government. Agency is granted an extension of time of

45 days from the date of this letter ruling to file the Form 8328 to carry forward \$a plus \$b of unused volume cap from Year 1.

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, including, without limitation, whether the interest on the Bonds or any other bonds issued pursuant to Resolutions 1 and 2 is excludable from income under § 103 of the Code.

This ruling is directed only to the taxpayer 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, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are 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 rulings, it is subject to verification on examination.

Sincerely,

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Rebecca L. Harrigal  
Branch Chief, Branch 5  
Office of the Associate Chief Counsel  
(Financial Institutions and Products)

cc: