Legend

City:

State:

Firm:

Year:

a:

b:

x Bonds:

y Bonds:

Date 1:

Date 2:

Date 3:

Date 4:

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 City to make a carryforward election under § 146(f) of the Internal Revenue Code with respect to $ a of unused private activity bond volume cap from Year.

Facts and Representations

In Year, volume cap under § 146 in the amount of $ a was granted to City by State in connection with a proposed issuance of multifamily housing revenue bonds. On Date 1, City applied for and was granted carryforward allocation from Year from State. City engaged Firm to prepare the application for this carryforward allocation. However, Firm did not timely advise City of the need to file with the Internal Revenue Service ("Service") a Form 8328 in connection with the Year carryforward allocation.

On Date 2, City issued x Bonds and y Bonds in the aggregate principal amount of $ b. When preparing its filing of Form 8038 (Information Return for Tax-Exempt Private Activity Bond Issues) in connection with these bonds, City became aware that a Form 8328 was not filed for the Year carryforward allocation. A Form 8328 for the Year carryforward election was then filed on Date 3.

This request was filed on Date 4, promptly after discovery of the failure to timely file the Form 8328 for the Year carryforward election. As of Date 4, the IRS had not discovered City's failure to timely file the Form 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. 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 must 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 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 City has acted reasonably and in good faith, and that granting an extension of time under § 301.9100-1 to file Form 8328 to carry forward $ a will not prejudice the interests of the Government. Therefore, City is granted an extension of time of 45 days from the date of this letter ruling to file Form 8328 to carry forward $ a of unused volume cap for Year.

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 City's authorized representative.

The ruling contained in this letter is based upon information and representations submitted by City 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,

/S/

James A. Polfer
Chief, Branch 5
Associate Chief Counsel (Financial Institutions & Products)