

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202224001**

Release Date: 6/17/2022

Index Number: 146.07-00, 9100.03-00

Third Party Communication: None
Date of Communication: Not Applicable

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, ID No.

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Refer Reply To:
CC:FIP:B05
PLR-100379-22

Date:
March 17, 2022

LEGEND

Issuer =

Authority =

State =

Bond Counsel =

Year 1 =

Year 2 =

Year 3 =

Date 1 =

a =

Dear :

This is in response to the request submitted on behalf of Issuer 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 (the Code) with respect to \$*a* of unused private activity bond volume cap from Year 1.

Facts and Representations

Issuer was created by the Authority to provide low-income housing and related services and is authorized under the State law to issue exempt facility bonds for qualified residential rental projects as defined in § 142(d). In Year 1, Issuer received an allocation of private activity bond volume cap pursuant to § 146 in the amount of \$a (the "Allocation"). Issuer intended to carry forward the Allocation to issue exempt facility bonds for a qualified residential rental project. Issuer hired Bond Counsel to, among other things, prepare and file a Form 8328 with the Internal Revenue Service (the Service) to make a carryforward election under § 146(f) with respect to the Allocation within the six-month automatic extension period provided in Rev. Proc. 2005-30, 2005-1 C.B. 1148.

Due to a miscommunication between two offices within Bond Counsel, a Form 8328 with respect to the Allocation was inadvertently not filed within the six-month automatic extension period provided in Rev. Proc. 2005-30. Preparations for the financing of the project continued in Year 2, with the bonds scheduled to be issued pursuant to the Allocation in Year 3. In anticipation of the closing of the bonds, it was discovered that a Form 8328 had not been filed with the Service to carry forward the Allocation. Upon discovering this oversight, Issuer and Bond Counsel began preparation of the request for an extension of time to file the Form 8328. On Date 1, Form 8328 with respect to the Allocation was filed, and the instant extension request was submitted. As of Date 1, the Service had not discovered Issuer'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 Service. 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. Rev. Proc. 2005-30 provides for an automatic extension of six months from the due date of the carryforward election to make the carryforward election.

Section 301.9100-1(c) provides that the Commissioner in exercising the Commissioner's discretion may grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 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 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. Pursuant to § 301.9100-3(a), 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, except as provided in § 301.9100-3(b)(3)(i) through (iii), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requested relief under § 301.9100-3 before the failure to make the regulatory election is discovered by the Service. Section 301.9100-3(b)(3)(ii) and (iii) provide, however, that the taxpayer has not acted in good faith if it was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or used hindsight in requesting relief.

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).

Upon discovering the inadvertent failure to file the Form 8328 pursuant to Rev. Proc. 2005-30 timely, Issuer promptly, on Date 1, submitted a ruling request for an extension of time to file the Form 8328. As of Date 1, the Service had not discovered the failure to timely file the Form 8328. At no point did Issuer decide not to file the Form 8328, nor did Issuer use hindsight in requesting an extension of time to file the Form 8328. If the requested relief is granted, no taxpayer will have a lower tax liability than if the election had been timely made. Thus, Issuer acted reasonably and in good faith and the interests of the government will not be prejudiced if we grant the relief requested by Issuer.

Conclusion

Based solely on all of the facts and representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been met. The filing of the Form 8328 with the Service by Issuer on Date 1 is deemed timely.

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 requesting 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 your authorized representative.

The ruling contained in this letter is based upon information and representations submitted by Issuer and accompanied by penalty of perjury statements executed by the appropriate parties. 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,

Associate Chief Counsel
(Financial Institutions and Products)

By: _____
Zoran Stojanovic
Assistant to the Branch Chief, Branch 5

cc: