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Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:FI&P:5/PLR-115625-99
Date:
DEC 16 1999

LEGEND:

Authority =

State =

Department =

County =

X =

City =

Date I =

Date J =

Date K =

Date L =

Date M =

Date N =

244

Dear

This is in response to a request submitted on behalf of the Authority by its authorized representative for an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file a carryforward election under § 146(f) of the Internal Revenue Code.

Facts

The Department is the authority responsible for allocating the State's bond volume cap. In 1998, the Department allocated X of the State's bond cap to the County.

On Date I, the County attempted to assign the X allocation to the City. The City intended to carry forward the X allocation to finance a qualified residential rental project under § 142(a)(7), and made the requisite filing with the State of its intention to carry forward the X allocation. On Date J, the City also filed with the Internal Revenue Service Form 8328 (Carryforward Election of Unused Private Activity Bond Volume Cap).

The County's assignment of the X allocation to the City was not permitted under State law. The assignment was thus invalid, and the City's carryforward election and Date J filing of Form 8328 was not made by the proper party.

Under applicable State law, the X allocation automatically reverted to the Department at the end of 1998. The Department was unaware of this reversion.

The Authority is a political subdivision of the State authorized to issue obligations to finance certain types of exempt facilities described in § 142(a). In December 1998, unused volume cap was assigned to the Authority by the State and the Authority carried forward this volume cap, as evidenced by the Form 8328 the Authority filed with the Internal Revenue Service on Date K.

Because the Department was unaware that the X allocation had reverted to it at the end of 1998, the Department did not assign the X allocation to the Authority in 1998, and the Authority did not include the X allocation in its 1998 carryforward election amount.

On Date L, the Authority discovered that the X allocation had been improperly assigned to the City, and immediately informed the Department of the mistake. On Date M, the Department assigned the X allocation to the Authority. On Date N, the Authority filed with the Internal Revenue Service an additional Form 8328 electing to

carry forward the X allocation. Simultaneously, the Authority prepared this request for a ruling that the Authority be granted an extension of time to file a Form 8328 with respect to the X allocation. As of Date N, the failure to make the regulatory election had not been discovered by the Internal Revenue Service.

Law and Analysis

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 § 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 prescribed 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 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.

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(b) 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, Agency is granted an extension of time to Date N to file the adjusted Form 8328 for 1998 which includes the X allocation.

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 a copy of this letter is being sent to the Authority's authorized representative.

Sincerely yours,

Lon B. Smith

Assistant Chief Counsel
(Financial Institutions & Products)