Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply to:
CC:DOM:FI&P:5/PLR-118963-98

Date:

DEC 28 1998

LEGEND:

City =

State =

X =

Project =

Corporation =

Dear Sir or Madam:

This in response to your request on behalf of City for an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to file a carryforward election under § 146(f) of the Internal Revenue Code.

FACTS:

City is a political subdivision of State authorized to issue obligations to finance certain types of exempt facilities described in §142(a)(7) of the Internal Revenue Code. In 1996, State allocated X of private activity bond volume cap to City.

In September 1996, City adopted a resolution to carryforward X to finance Project, a facility described in § 142(a)(7), to be constructed by Corporation. City also notified State of its intention to carryforward X for a maximum three year period. In 1998 Corporation inquired about actions necessary to issue bonds

for the Project utilizing the 1996 carryforward allocation. Corporation was advised that proof of timely filing of Form 8328, "Carryforward Election of Unused Private Activity Bond Volume Cap", was required. The parties found no evidence that Form 8328 had been filed. On October 13, 1998, Form 8328 was filed with the Internal Revenue Service Center in Philadelphia.

Form 8328 for 1996, and the request for an extension of time, was filed before the failure to make the regulatory election was discovered by the Service. If an extension of time to file the Form 8328 is granted, City's tax liability will not be lower than it would have been if the election had been filed timely. Also, specific facts have not changed since the original due date of the election that make the election advantageous to City. City has represented that it issued no private activity bonds in 1997 or in 1998.

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.

Section 146(f)(3) provides that if an issuing authority elects a carryforward with respect to any carryforward purpose, any private activity bonds issued by the authority with respect to that purpose during the three calendar years following the calendar year in which the carryforward arose shall not be taken into account under subsection (a) to the extent the amount of such bonds does not exceed the amount of the carryforward elected for that purpose. The term "carryforward purpose" means, in part, the purpose of issuing exempt facility bonds described in one of the paragraphs of § 142(a) and the purpose of issuing qualified mortgage bonds or mortgage credit certificates.

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.

Section 301.9100-1(c) of the 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 by 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; and § 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax 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, City is granted an extension of time to October 13, 1998, to file Form 8328 for 1996. The amount of carryforward is X. The City's carryforward election in the amount of X for 1996, made under § 146(f), is deemed timely filed.

This letter is directed only to the taxpayer who requested it. Section 6110(j)(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 your authorized representative.

Sincerely yours,

Lon B Smith

Assistant Chief Counsel
(Financial Institutions & Products)

Enclosure:
Copy for § 6110 purposes