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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-121715-98

Date:
MAR 3 1999

Legend

Authority =

State =

Foundation =

Association =

Bonds =

Property =

Trustee =

a =

b =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Bond Counsel =

Dear

This is in response to your request on behalf of the Authority for an extension of time under § 301.9100 of the Procedure and Administration Regulations to file the notice of defeasance escrow required by § 1.141-12(d)(3) of the Income Tax Regulations.

FACTS

The Authority is an agency of State and is authorized to issue bonds to finance various types of projects. The Association and the Foundation (together, the Organizations) have each received letters from the Internal Revenue Service confirming their status as exempt organizations under § 501(c)(3) of the Code.

On Date 1, the Authority issued the Bonds and loaned a of the Bond proceeds to the Organizations pursuant to a loan agreement. The Authority also loaned an unspecified amount of the Bond proceeds to various other 501(c)(3) organizations. It has been represented that the Bonds were qualified 501(c)(3) bonds under § 145.

The Organizations used a portion of the loaned Bond proceeds to purchase and remodel the Property. On Date 2, the Organizations sold the Property to a for-profit company for b. It has been represented that on Date 2 the Organizations established a defeasance escrow in satisfaction of the remedial action provisions set forth at § 1.141-12(d).

Bond Counsel advised the Organizations with respect to the defeasance escrow and provided its opinion to both the Authority and the Organizations. On or about Date 2, Bond Counsel received from the Authority executed originals of a notice to the Commissioner (the Notice) stating that an escrow had been established as part of a remedial action under § 1.141-12(d)(3) regarding the Bonds. The Authority, the Organizations, and Bond Counsel expected that Bond Counsel would mail the Notice to the Internal Revenue Service on or before Date 3, the date on which the 90-day period for a timely Notice expired.

On or about Date 4, while preparing the bond transcript, Bond Counsel could not locate proof of mailing for the Notice and could not recall whether it had ever been mailed. Bond Counsel sent the Notice to the Midstates Key District Office by certified mail on Date 5, less than 30 days after the 90-day period had expired.

The Authority's request for relief was filed before the failure to provide the Notice was discovered by the Service. If the requested relief is granted, the Authority's tax liability will not be lower than it would have been if the Notice had been timely mailed to the Service.

LAW

Section 103(a) of the Code provides that, except as stated in § 103(b), gross income does not include interest on any State or local bond. Section 103(b)(1) provides that § 103(a) does not apply to any private activity bond that is not a qualified bond under § 141. Section 141(e)(1)(G) provides that qualified bonds include qualified 501(c)(3) bonds.

Section 145 sets forth the requirements for qualified 501(c)(3) bonds. As material here, § 145(a)(1) provides that all property that is to be acquired with the net proceeds of the issue must be owned by a 501(c)(3) organization or governmental unit in order for the bonds to be qualified 501(c)(3) bonds.

With certain exceptions that are not material here, § 1.145-2(a) provides that §§ 1.141-0 through 1.141-15 apply to § 145(a). Under § 1.145-2(b)(3), references to the private business use test in §§ 1.141-2 and 1.141-12 include the § 145(a)(1) ownership test. Thus, under § 1.145-2(a), if the issuer takes a deliberate action that causes a facility financed with 501(c)(3) bonds to no longer be owned by a 501(c)(3) organization or governmental unit, the bonds are treated as though they meet the private use test of § 141.

Section 1.141-12(a) provides, in part, that an action that causes an issue to meet the private business tests is not treated as a deliberate action if the issuer takes a remedial action described in § 1.141-12(d), (e), or (f) with respect to the nonqualified bonds. One remedial action under § 1.141-12(d)(1) is the establishment of a defeasance escrow within 90 days of the deliberate action if, within 90 days of the escrow's establishment, appropriate written notice is given to the Commissioner.

Section 301.9100-1(c) provides, in part, that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (but not more than 6 months) under all subtitles of the Code except subtitles E, G. H, and I. Under § 301.9100-1(b), the term "election" is defined, in part, to include an application for relief in respect of tax. As material here, under § 301.9100-1(b), the term "regulatory election" means an election whose due date is prescribed by a regulation, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) through (c)(1)(i) sets forth rules that the 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 (automatic elections). Section 301.9100-3(b) provides that, subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, the taxpayer will be deemed to have acted reasonably and in good faith when the taxpayer applies for relief under this section before the Service discovers the failure to make the regulatory election. Section 301.9100-3(c)(1)(i) provides that the interests of the Government are not prejudiced if granting relief will not cause the taxpayer to have a lower tax liability in the aggregate for all taxable years affected by the election 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, the Authority is granted an extension of time to July 20, 1998, to provide the Notice required by § 1.141-12(d)(3).

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

Sincerely yours,

Assistant Chief Counsel
(Financial Institutions & Products)

Enclosure:
Copy for § 6110 purposes