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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-105568-99

Date:

MAY 28 1999

LEGEND:

Authority =

State =

Department =

$X =

$Y =

Date J =

Date K =

Date L =

Date M =

Bonds =

Dear Sir or Madam:

This is in response to a request submitted on behalf of Authority by its authorized representative 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:

Authority is a political subdivision of State authorized to issue obligations to finance certain types of exempt facilities described in §142(a)(6) of the Code. In 1998, Department, the

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agency responsible for allocating State's bond volume cap, promised to allocate $X + $Y of State's 1999 volume cap to the Authority in the first quarter of 1999 for a solid waste disposal project located within Authority's jurisdiction. However, in December of 1998, Department asked Authority to accept $X of unused 1998 State bond volume cap towards the volume cap Authority had been promised for 1999 for the project. Later that month Authority received official notification that it had been granted the $X allocation of 1998 State's bond volume cap to be carried forward to 1999. On Date J, Authority received an allocation by Department of $ Y from the 1999 State bond volume cap. On Date K, Authority issued the Bonds in the amount of $X + $Y.

On or about Date L, while preparing transcripts for the issuance of the Bonds, Authority's authorized representative discovered that Form 8328 (Carryforward Election of Unused Private Activity Bond Volume Cap) had inadvertently not been filed. On Date M the representative prepared and filed with the Internal Revenue Service a Form 8328 electing to carryforward $X of its 1998 bond volume cap. An amended Form 8038 (Information Return for Tax-Exempt Private Activity Bond Issues) modifying the volume cap portion of the timely filed Form 8038, was also filed to accurately reflect the carryforward of $X. Simultaneously, the representative prepared this ruling request for an extension of time to file the Form 8328. As of Date M, the failure to make the regulatory election had not been discovered by the Internal Revenue Service.

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.

The § 146(f) election is made by filing Form 8328 with the Internal Revenue 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.

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. 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 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, Authority is granted an extension of time to Date M, to file Form 8328 for 1998. The amount of carryforward is $X.

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 Authority's authorized representative.

Sincerely yours,

Lon B. Smith

Assistant Chief Counsel
(Financial Institutions & Products)

Enclosure:
Copy for § 6110 purposes