**Internal Revenue Service**

Index No. 9100.00-00

Department of the Treasury

Washington, DC 20224

199901027

Person to Contact:

Telephone Number:

Refer Reply to:
CC:DOM:FI&P:5/PLR-116440-98
Date:
OCT 9 1998

LEGEND:

City =

State =

County =

W =

X =

Y =

Z =

Dear Sir or Madam:

This in response to your request on behalf of City for extensions of time under § 301.9100-1 of the Procedure and Administration Regulations to file carryforward elections 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). State allocated to City in September of 1996, W of private activity bond volume cap. In addition, on September 11, 1996, County assigned its 1996 allocation of volume cap, X, to City.

City intended to carry forward the entire amount of Y (W+X) to finance qualified residential projects under § 142(d). It notified State of this intention, but failed to file Form 8328, "Carryforward Election of Unused Private Activity Bond Volume Cap", on or before February 15, 1997.

On or about August 15, 1997, City discovered that Form 8328 had not been filed for 1996. Legal representatives for the City promptly prepared and filed Form 8328 with the Internal Revenue Service in Philadelphia, Pennsylvania on September 8, 1997. Simultaneously with the filing of Form 8328, bond counsel prepared a ruling request for an extension of time to file Form 8328. For various reasons, submission of the ruling request was delayed.

In November of 1997, City issued tax-exempt bonds (the "1997 Bonds") in an amount of Z for a residential rental project. City had no assurance that it could apply the 1996 carryforward to the 1997 Bonds. Therefore, it used volume cap from its 1997 volume cap allocation for the 1997 Bonds. If the 1996 carryforward is permitted, Y amount of the City's 1997 volume cap allocation will be available for carryforward to 1998. In anticipation of this, on September 9, 1998, City filed Form 8328 to carryforward Y amount of its 1997 volume cap and submitted a supplemental ruling request for an extension of time to file Form 8328 for 1997.

Forms 8328 for 1996 and 1997, and the requests for extensions of time, were filed before the failures to make the regulatory elections were discovered by the Service. If extensions of time to file the Forms 8328 are granted, the City's tax liability will not be lower than it would have been if the elections had been filed timely.

**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, Philadelphia, Pennsylvania 19255. 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 September 8, 1997, to file Form 8328 for 1996. City is also granted an extension of time to September 9, 1998 to file Form 8328 for 1997. The amount of carryforward for each of these years is Y. The City's carryforward elections in the amount of Y for 1996 and 1997, made under § 146(f), are 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