

## Section 146.—Volume Cap

*26 CFR 1.103(n)-4T: Elective carryforward of unused private activity bond limit (Temporary).*

Relief is provided to issuing authorities and authorities responsible under state law for allocating private activity bond volume cap that filed Form 8328 (*Carryforward Election of Unused Private Activity Bond Volume Cap*) for volume cap allocated to such issuing authorities. Relief is needed because the Form 8328 should have been filed by the issuing authority that has been allocated the volume cap subject to the carryforward election. See Rev. Proc. 2003-46, page 54.

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## SECTION 1. PURPOSE

This revenue procedure sets forth procedures under § 146(f) of the Internal Revenue Code of 1986 (the “1986 Code”) for correcting certain Forms 8328 (*Carryforward Election of Unused Private Activity Bond Volume Cap*) that were improperly filed by an authority (other than the issuing authority) authorized under state law to allocate state private activity bond volume cap to issuing authorities (the “allocating authority”). The correction is needed because the Form 8328 should have been filed by the issuing authority.

## SECTION 2. BACKGROUND

.01 Under § 103(a), except as provided in § 103(b), gross income does not include interest on any state or local bond. Section 103(b) provides, in part, that § 103(a) shall not apply to any private activity bond that is not a qualified bond (within the meaning of § 141). Section 141(e) provides, in part, that a qualified bond must meet the applicable requirements of § 146.

.02 Section 146(a) provides that a private activity bond issued as part of an issue meets the requirements of § 146 if the aggregate face amount of the private activity bonds issued pursuant to such issue, when added to the aggregate face amount of tax-exempt private activity bonds previously issued by the issuing authority during the calendar year, does not exceed the authority’s volume cap for such calendar year.

.03 Section 146(f)(1) 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 the authority issued during such calendar year, such issuing authority may

elect to treat all (or any portion) of such excess as a carryforward.

.04 Section 146(f)(2) provides that, in making an election under § 146(f)(1), an issuing authority must identify one or more carryforward purposes described in § 146(f)(5) and specify the portion of the excess that is to be carried forward for each such purpose.

.05 Section 146(f)(4) provides that any carryforward election (and any identification or specification contained therein), once made, shall be irrevocable.

.06 Section 1.103(n)-4T, A-2(i), of the temporary Income Tax Regulations (together with § 1301(b) of the Tax Reform Act of 1986 (the “1986 Act”) 1986-3 (Vol. 1) C.B. 1, 520, *see* H.R. Conf. Rep. 99-841, at II-740 (1986), 1986-3 (Vol. 4) C.B. 740) provides that the carryforward election shall be made by means of a statement, signed by an authorized public official responsible for making allocations of the issuing authority’s volume cap, that the issuing authority elects to carry forward its unused volume cap.

.07 Section 1.103(n)-4T, A-2(ii) (together with § 1301(b) of the 1986 Act), requires that the carryforward election provide the following information:

(A) The name, address, and TIN of the issuing authority;

(B) The issuing authority’s volume cap for the calendar year;

(C) The aggregate amount of volume cap used by the issuing authority during the calendar year for which the election is being made;

(D) The unused volume cap of the issuing authority; and

(E) The purposes for the carryforward and the amount to be carried forward for each such carryforward purpose.

.08 Announcement 87-43, 1987-19 I.R.B. 15, provides that Form 8328 should be used by issuers of tax-exempt bonds who wish to make the carryforward election under § 146(f). *See also* Announcement 85-2, 1985-1 I.R.B. 42 (announcing the development of Form 8328 for carryforward elections under § 103(n) of the Internal Revenue Code of 1954).

.09 Notice 89-12, 1989-1 C.B. 633, provides that the issuing authority must file the carryforward election 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.

.10 The Internal Revenue Service has learned that certain allocating authorities have filed a Form 8328 to carry forward unused private activity bond volume cap that was properly allocated to an issuing authority (other than the allocating authority). A Form 8328 filed by an allocating authority that is not the issuing authority does not comply with the 1986 Code and regulations because the Form 8328 does not constitute an election by the issuing authority and because the form may fail to provide other information required under § 1.103(n)-4T, A-2.

## SECTION 3. SCOPE

.01 This revenue procedure provides relief if a Form 8328 was filed by an allocating authority to carry forward unused private activity bond volume cap arising in any calendar year prior to 2003 that was properly allocated to an issuing authority (other than the allocating authority). This revenue procedure only applies when all requirements of § 146 (other than the requirement that the issuing authority file the carryforward election containing the information required under § 146(f)) have been met.

.02 This revenue procedure does not limit an issuing authority’s ability to request relief under § 301.9100-3 of the Procedure and Administration Regulations. For example, if no carryforward election has been made for an issuing authority, that issuing authority may apply for relief under § 301.9100-3, Rev. Proc. 2003-1, 2003-1 I.R.B. 1 (or its successor), and Rev. Proc. 96-16, 1996-1 C.B. 630.

## SECTION 4. PROCEDURE

If an allocating authority improperly filed a Form 8328 to carry forward unused private activity bond volume cap for an issuing authority for a calendar year prior to 2003, the Form 8328 will be deemed effective to carry forward such unused volume cap for that issuing authority if either the allocating authority or the issuing authority has on file the following information with respect to the issuing authority:

(1) The name, address, and TIN of the issuing authority;

(2) The issuing authority's volume cap for the calendar year;

(3) The aggregate amount of volume cap for the calendar year used by the issuing authority during the calendar year;

(4) The unused volume cap of the issuing authority for the calendar year (determined by subtracting (3) of this § 4 from (2) of this § 4); and

(5) The purpose(s) for the issuing authority's carryforward and the amount to be carried forward for each such carryforward purpose.

## SECTION 5. INQUIRIES

.01 The Service invites comments with respect to carryforward election procedures under § 146(f), including whether the procedures should be changed to permit the filing of a single Form 8328 to carry forward unused volume cap for all of the issuing authorities within the state.

.02 Comments should be sent to Internal Revenue Service, Associate Chief Counsel, Attention: CC:TEGE:EOEG:TEB, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044. The words "Comments Submitted Pursuant to Rev. Proc. 2003-46" should be typed or printed across the top of the document. Comments should be submitted on or before October 14, 2003.

## SECTION 6. EFFECT ON OTHER DOCUMENTS

Except as expressly provided in this revenue procedure, this revenue procedure has no effect on the application of any other document.

## SECTION 7. EFFECTIVE DATE

This revenue procedure is effective as of July 14, 2003.

## SECTION 8. PAPERWORK REDUCTION ACT

The collection of information referenced in this revenue procedure has been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-0874.

An agency may not conduct or sponsor, and a person is not required to respond

to, a collection of information unless the collection of information displays a valid OMB control number.

## DRAFTING INFORMATION

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