

**Internal Revenue Service**

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:  
CC:FIP:2- PLR-155707-01  
Date:  
January 29, 2002

Legend

Trusts =

Year 1 =

Sponsor =

Servicer =

Trustee =

Accounting Firm 1 =

Accounting Firm 2 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

y =

Dear \_\_\_\_\_ :

This responds to a ruling request submitted October 5, 2001, by your authorized representatives on behalf of Trusts, requesting an extension of time pursuant to §§301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations for

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REMICs to make an election under § 860(D)(b)(1) of the Internal Revenue Code of 1986 to be treated as a Real Estate Mortgage Investment Conduit (REMIC) for Year 1 and subsequent taxable years.

## FACTS

Sponsor, a corporation, generates and acquires residential mortgage loans. It engages in the business of securitizing these loans. In Year 1, it formed Trusts for the purpose of securitizing certain mortgage loans in REMIC form. Sponsor created regular and residual interests in the Trusts. It sold a y% interest in the residual interest to Servicer and the remaining interests to an entity related to Sponsor. The private placement memorandum associated with this transaction stated that a REMIC election would be made on behalf of Trusts.

Servicer, a corporation, operates a securitization program that includes originating and packaging loans in REMICs. In Year 1, Servicer agreed to be the Servicer and Tax Matters Person for certain REMIC transactions undertaken by sponsors other than Sponsor.

As part of its securitization program, Servicer had an arrangement with Accounting Firm 1 whereunder Accounting Firm 1 provided tax compliance services, including filing initial REMIC returns and making REMIC elections. Servicer assumed that Accounting Firm 1 would perform the tax reporting for the transaction under discussion in this letter.

Pursuant to an investor request for information on the Trusts in February of Year 4, Servicer undertook a review of its outstanding mortgage pools and its list of REMIC returns. In March of Year 4, Servicer discovered that returns had not been filed on behalf of Trusts and that REMIC elections had not been made.

Servicer notified Accounting Firm 2 of this omission and asked this firm to prepare documents relating to federal income tax compliance matters and to the election of REMIC status for Year 1, their first taxable year. In March of Year 4, Accounting Firm 2 filed Forms SS-4, requesting EINs for the Trusts, on which it indicated that Trusts would elect to be master and subsidiary REMICs.

Accounting Firm 2 also filed Forms 8736, Application for Automatic Extension of Time to File U.S. Return for a Partnership, REMIC, or for certain Trusts, for both Trusts for taxable year 3. In January of Year 5, Accounting Firm 2 filed Forms 1066, U.S. Real Estate Mortgage Investment Conduit Income Tax Return, for taxable years 1, 2, and 3, referencing this ruling request for relief under §§301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations. In January of Year 5 Accounting Firm 2 began to prepare and issue to the holders of the residual interests Schedule Qs, Form 1060, Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation, for all years in arrears.

## LAW AND ANALYSIS

Section 860D(b)(1) of the Code provides that an entity otherwise meeting the definitional requirements of a REMIC may elect to be treated as a REMIC for its first taxable year by making this election on its return for that year. Section 1.860D-1(d) of the regulations provides that a qualified entity elects REMIC status by timely filing a Form 1066, U.S. Real Estate Mortgage Investment Conduit Income Tax Return, by the 15<sup>th</sup> day of the fourth month following the close of the first tax year of its existence. Pursuant to this regulation, therefore, Trusts should have elected REMIC status by April 15<sup>th</sup> of Year 2 by timely filing Forms 1066 for that year. This regulation also provides a reference to § 301.9100-1 for rules regarding extensions of time for making elections.

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 Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) through (c)(1)(i) of the regulations sets 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 information and representations submitted, we conclude that Trusts have satisfied the requirements for obtaining a reasonable extension of time to elect REMIC status. Therefore, Trusts are granted a reasonable extension of time to elect REMIC status for purposes of section 860D(b) of the Code and § 1.860D-1(d)(1) of the regulations, and the election will be considered to have been timely made. The extension of time will be for a period beginning on April 15<sup>th</sup> of Year 2, the date that the initial Form 1066 was due, until January 31 of Year 5. Thus, solely for purposes of making a REMIC election, the initial Forms 1066 are deemed timely filed.

This ruling is limited to the timeliness of Trusts' REMIC elections. This ruling does not relieve Trusts from any penalty that they may owe as a result of their failure to timely file Forms 1066. This ruling's application is limited to the facts, representations,

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Code sections, and regulations cited herein. No opinion is expressed with regard to whether Trusts meet the requirements of a REMIC under section 860D(a) of the Code.

No opinion is expressed as to whether each Trust's tax liability is not lower in the aggregate for all years to which the election applies than each Trust's tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the tax liability for the years in question will be determined. If it is determined that this tax liability is lower, the federal income tax effect will be determined.

A copy of this letter is being forwarded to the Service Center with which Trusts file their returns with instructions that although their Forms 1066 were not timely filed, Trusts are to be treated as having made timely REMIC elections.

This ruling is directed only to the taxpayers who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,  
William E. Coppersmith  
Chief, Branch 2  
Office of Associate Chief Counsel  
(Financial Institutions & Products)