

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:FIP:B02 – PLR-112992-03

Date:

December 04, 2003

Legend

Trust =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Date A =

Sponsor =

Tax Matters Person =

Trustee =

Tax Administrator =

Accounting Firm =

X =

PLR-112992-03

Dear _____ :

This responds to a ruling request submitted on behalf of Trust February 24, 2003, by your authorized representatives, requesting an extension of time pursuant to §§301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations for REMIC to make an election under § 860(D)(b)(1) of the Internal Revenue Code of 1986 and §1.860D-1(d) of the Income Tax Regulations to be treated as a Real Estate Mortgage Investment Conduit (REMIC) for Year 1 and subsequent taxable years.

FACTS

Sponsor, a corporation, originates and securitizes residential mortgage loans in REMIC form. By Trust Agreement dated in Year 1, Sponsor formed Trust for the purpose of securitizing certain pools of mortgage loans.

Trust's start-up day is a date in Year 1. Sponsor created regular and residual interests in Trust and sold an x% interest in the residual interest to Tax Matters Person.

The Trust Agreement appointed Trustee to act as trustee, tax administrator, and agent of Tax Matters Person. Pursuant to its duties as tax administrator, Trustee was to make a REMIC election on behalf of Trust. The Trust Agreement and the supplement to the prospectus indicate Sponsor's and Trustee's intent that Trust qualify as a REMIC and that an election be made to treat Trust as a REMIC for federal income tax purposes.

On a date in Year 2, Trustee received a request for tax information from an investor in Trust. Trustee's tax unit records indicated that Trust was not listed on the appropriate internal file utilized to record new REMICs when final documentation is received from one of its account officers. Trustee discovered that a new account officer had inadvertently failed to provide final documentation to the tax unit and had also failed to list Trust on the internal tickler system established to provide reminders of time sensitive tasks related to the administration of Trust. Trustee's further research determined that Trustee was Trust's tax administrator; that Trust had not filed a tax return by the due date; and that Trust, therefore, had failed to elect REMIC status on a timely filed return.

Trustee immediately filed Form SS-4, Application for Employer Identification Number, on behalf of Trust. It filed Trust's tax return for Taxable Year 1, on which an election to be treated as a REMIC for its first taxable year and all subsequent taxable years was set forth, on Date A, a date in Year 2. It prepared and issued Schedule Qs, Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation, to the holder of the residual interest.

PLR-112992-03

Trustee also notified Accounting Firm of the situation and retained Accounting Firm to prepare a request for relief under §§301.9100-1 and 301.9100-3 of the regulations. On a date in Year 4, this request for relief was filed. The delay in filing the request for relief was due primarily to work volume both at the offices of Trustee and at the offices of Accounting Firm, as both offices were dealing with an unprecedented volume of loan originations and securitizations during this time. Also, additional review of this request for relief was required at the offices of Trustee, which experienced a disruption in its normal business activities in Year 3 for reasons external to this request.

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 15th day of the fourth month following the close of the first tax year of its existence. Pursuant to this regulation, therefore, Trust should have elected REMIC status by April 15th of Year 2 by timely filing Form 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 Trust has satisfied the requirements for obtaining a reasonable extension of time to elect REMIC status. Therefore, Trust is 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 15th of Year 2, the date that the initial Form 1066 was due, until Date A, the date in Year 2 when the Form 1066 setting forth the election to be taxed as a REMIC was filed. Thus, solely for purposes of making a REMIC election, the initial Form 1066 is deemed timely filed.

This ruling is limited to the timeliness of Trust's REMIC elections. This ruling does not relieve Trust from any penalty that it may owe as a result of its failure to timely file Form 1066. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether Trust meets the requirements of a REMIC under section 860D(a) of the Code.

No opinion is expressed as to whether Trust's tax liability is not lower in the aggregate for all years to which the election applies than 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 return involved, the director's office will determine Trust's tax liability for the year involved. If the director's office determines Trust's liability is lower, that office will determine the federal income tax effect.

A copy of this letter is being forwarded to the office with which Trust files its returns with instructions that although Form 1066 were not timely filed, Trust is to be treated as having made a timely REMIC election.

This ruling is directed only to the taxpayer 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)