

Internal Revenue Service

Department of the Treasury
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Date:

January 07, 2004

LEGEND

Trust =

Sponsor =

Trustee =

Tax Matters Person =

Tax Service Provider =

Accounting Firm =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Dear :

This is in reply to a letter received by the Service on October 20, 2003, requesting a ruling that Trust be granted relief under § 301.9100-1 of the Procedure and Administration Regulations for an extension of time to elect to be treated as a Real Estate Mortgage Investment Conduit (REMIC) under § 860D of the Internal Revenue Code.

FACTS

Sponsor operates a securitization program that includes originating and packaging loans in REMICs. Trust was formed to securitize pools of mortgage loans. Sponsor created regular and residual interests in Trust, transferring the regular interests to investors on Date 1. Sponsor sold to the Tax Matters Person a 100 percent residual interest. Trust's "startup day," as defined in § 1.860G-2(k) of the Income Tax Regulations, is Date 1.

Trust was intended to qualify as a REMIC. The Sponsor and the Trustee intended to make an election to treat Trust as a REMIC for federal income tax purposes. This election was intended to have been made with the timely filing of Trust's initial Form 1066. This return was for the tax year ended Date 2, and was due on Date 3.

During Date 4, the Trustee furnished the final information to the Tax Service Provider for the purpose of preparing Trust's Form 1066. Tax Service Provider prepared Trust's Form 1066 and delivered it to Accounting Firm in Date 5 for its review and signature as the tax return preparer. Trust's Form 1066 was submitted to Accounting Firm along with many other initial returns also prepared by the Tax Service Provider. Trust's return, however, was inadvertently omitted from both Accounting Firm's internal tax return due date tracking list as well as the engagement letter with Tax Service Provider.

Because Trust was not on Accounting Firm's internal tax return tracking list, Accounting Firm failed to file the Form 1066 for Trust by the Date 3 due date. Accounting Firm also failed to file a Form 8736 (Application for Automatic Extension of Time to File U.S. Return for a Partnership, REMIC, or for Certain Trusts) on behalf of Trust. Consequently, Trust inadvertently failed to elect REMIC status on a timely filed return.

The error was discovered by Accounting Firm on Date 6. Trust's initial Form 1066 was filed late by Accounting Firm on Date 7. Accounting Firm subsequently submitted a request for a private letter ruling requesting relief under § 301.9100-1 for an extension of time for Trust to elect to be treated as a REMIC under § 860D of the Code.

LAW AND ANALYSIS

Section 860D(b)(1) of the Code provides that an entity which meets the requirements of a REMIC under § 860D(a) may elect to be treated as a REMIC for its first taxable year and that such election must be made on the return for its first taxable year.

Section 1.860D-1(d)(1) provides that a qualified entity makes a REMIC election by timely filing, for its first taxable year, a Form 1066 signed by a person authorized to sign that return. This regulation also provides a reference to § 301.9100-1 for rules regarding extensions of time for making elections.

Section 1.860F-4(b)(1) provides that the due date and any extensions for filing a REMIC's annual tax return are determined as if the REMIC were a partnership. Therefore, pursuant to § 1.6013-1(e)(2), a REMIC's annual return must be filed on or before the fifteenth day of the fourth month following the close of the taxable year, unless an extension is granted.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in section 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) 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 section 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of section 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 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 information and representations submitted, we conclude that Trust has satisfied the requirements for granting 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) and section 1.860D-1(d)(1). Accordingly, the election made on the Form 1066 filed on Date 7 on behalf of Trust for the tax year ended Date 2 will be considered to have been timely filed.

This ruling is limited to the timeliness of the REMIC election of Trust. This ruling does not relieve Trust from any penalty that they may owe as a result of the 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).

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

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

In accordance with the provisions of a Power of Attorney currently on file, we are sending a copy of this ruling letter to your authorized representative.

Sincerely yours,

Alice M. Bennett
Chief, Branch 3
Office of Office of Associate Chief Counsel

(Financial Institutions and Products)

Enclosures:

Copy of this letter
Section 6110 Copy