

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:
CC:DOM:FI&P:1-PLR-111238-99
Date:
October 18, 1999

Legend:

- Issuer =
- Trustee =
- Date 1 =
- Year 1 =
- Subcontractor =
- Month =
- Date 2 =
- Date 3 =
- Firm =

Dear :

This replies to your letter of June 7, 1999, and subsequent correspondence submitted on behalf of Issuer, requesting a ruling for an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to make an election pursuant to § 860D(b)(1) of the Internal Revenue Code 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 all subsequent years.

Issuer was formed pursuant to a pooling and servicing agreement (Agreement) dated as of Date 1. Issuer's property includes a pool of fixed rate, non-conforming closed-end home equity loans, secured by mortgages on residential properties. Issuer issued a single bond class (the Class A regular interests) and one residual class.

All parties to the arrangement intended that Issuer's affairs would be conducted so as to qualify as a REMIC. The face of both the regular and residual interest certificates state that the certificates represent an interest in a REMIC. Trustee and parties to the Agreement were instructed in the Agreement to make the REMIC election in the tax return of the REMIC for the calendar year Year 1 and to act in a manner that will assure continuing treatment of Issuer as a REMIC. The offering document (private

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placement memorandum) also states that the Issuer will be treated as a REMIC.

Trustee, as tax agent for Issuer, was responsible for preparing and filing all required federal and state tax and information returns for Issuer as a REMIC. This responsibility included ensuring that Issuer made a timely election to be treated as a REMIC on Form 1066, U.S. Real Estate Mortgage Investment Conduit Income Tax Return, for its first taxable year.

Trustee subcontracts its tax-agent responsibility to third party contractors, who prepare the REMIC returns of Issuer. Due to oversight, the relationship manager for Trustee failed to notify Subcontractor that it was responsible for preparing the REMIC returns of Issuer. During the early part of Month, the oversight was discovered as a result of an inquiry by a REMIC interest holder. Trustee then discovered that Subcontractor had not been notified of its engagement to prepare REMIC filings and that an automatic extension filing had not been made for the Year 1 return. On Date 2, Trustee hired Firm to request a private letter ruling seeking an extension of time to file Issuer's Form 1066 and election to be treated as a REMIC. The tax return for Issuer will be filed on or before Date 3.

Section 860D(b)(1) provides that an entity otherwise meeting the requirements of a REMIC under § 860D(a) 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) 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. 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 § 1.6031-1(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, 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) 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

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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).

Based on the information and representations submitted, we conclude that Issuer has satisfied the requirements for obtaining a reasonable extension of time to elect REMIC status. Therefore, Issuer is granted an extension of time until Date 3 to make an election to be treated as a REMIC for Year 1.

This ruling is limited to the timeliness of the Issuer's REMIC election. This ruling does not relieve Issuer 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 Issuer meets the requirements of a REMIC under § 860D(a).

No opinion is expressed as to whether Issuer's tax liability is not lower in the aggregate for all years to which the election applies than its 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 district director's office will determine the tax liability for the years in question. If the district director's office determines that this 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.

Sincerely,
Assistant Chief Counsel
(Financial Institutions & Products)

Enclosure
Copy of letter
Section 6110 Copy
cc: