

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-149944-02

Date:

January 27, 2003

Legend

Trusts =

Year 1 =

Year 2 =

Year 4 =

Year 5 =

Sponsor =

Trustee =

Firm =

State =

Date A =

Date B =

Dear :

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This responds to a ruling request submitted August 22, 2002, 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 Trusts 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

Trust was formed as a business trust under the laws of State pursuant to a pooling and servicing agreement entered into between Sponsor and the predecessor of Trustee on Date A in Year 1. Sponsor transferred a pool of mortgage-backed securities to Trust.

By the terms of the pooling and servicing agreement, Trustee was to elect to treat the segregated pool of assets consisting of the pooled mortgage-backed securities and related assets as a REMIC, to be designated as REMIC I. The parties intended that Trustee would create regular interests and a residual interest in REMIC I and that Trustee would further elect to treat the regular interests in REMIC I as a separate REMIC, to be designated as REMIC II.

The pooling and servicing agreement designated the holder of the residual interest in each REMIC as the tax matters person. The tax matters person, or its appointed agent and attorney-in-fact, was to prepare and file federal tax returns for Trusts and to cause the elections for both Trusts to be treated as REMICs for federal income tax purposes. Trustee was appointed agent and attorney-in-fact of the initial tax matters person, with the right to further delegate its duties as tax matters person.

Pursuant to a prospectus and prospectus supplement dated Date B in Year 1, Trust offered seven series of classes of certificates to investors, each representing a regular interest in REMIC II. Class R-1 and Class R-2 certificates were also issued, representing residual interests in Trusts designated as REMIC I and REMIC II, respectively. The prospectus stated that Sponsor would cause an election to be made to treat both Trusts as REMICs for federal income tax purposes.

Approximately five years before Date A, Trustee had entered into a servicing agreement with Firm to provide certain services for securitized asset transactions for which Trustee was serving as trustee. Under the terms of this agreement, Trustee could specify that Firm provide tax services, including the preparation of REMIC tax returns and the making of REMIC tax elections, or non-tax services, such as the calculation of payments to be made to certificate holders, or both types of services, for Trustee with respect to a particular securitization.

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Shortly after Date A, Trustee solicited a bid from Firm to provide services in connection with the securitization of Trusts designated REMIC I and REMIC II. In response to this solicitation, Firm submitted to Trustee a proposal to perform both tax and non-tax services in connection with this transaction, and the proposal was accepted by Trustee.

Although Firm had contracted to perform both tax and non-tax services in connection with this transaction, the tax services were never performed. It is not known whether this was due to a failure to assign the work to the appropriate employees or due to a failure of the employees to perform the work. It was Firm's practice, after being hired to work on a securitization transaction, to create an internal record on which data was to be entered concerning the transaction and the work to be performed on the transaction by Firm. The record created for this transaction indicated that Firm was performing non-tax services and not tax services.

When Firm performs tax services for a particular transaction, its practice is to submit a copy of Internal Revenue Service Form SS-4 to the trustee for the transaction, and for the trustee to obtain the federal employer identification number (EIN) from the Internal Revenue Service and send that number to Firm. For this transaction Firm has no record that a Form SS-4 was sent to Trustee or that Trustee notified Firm that an EIN had been obtained. On Trustee's own records for Trusts, the EIN of Sponsor was erroneously entered, causing other employees of Trustee to believe that appropriate steps had been taken to obtain an EIN.

Because Trustee believed that Firm had obtained an EIN for Trusts and was performing tax services, and because Firm's own internal records indicated that it was responsible only for non-tax services, no one became aware that tax returns had not been filed on behalf of Trusts for Year 1 or for subsequent taxable years. In response to an inquiry from a certificate holder received by Trustee in year 4, it was discovered that no returns had been filed on behalf of Trusts and consequently that no election to be taxed as a REMIC had been made. Trustee and Firm then agreed to file this request for an extension of time to make the election.

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, Trusts should have elected REMIC status by April 15th of Year 2 by timely filing Forms 1066 for that year. This regulation also provides a

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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 90 days following the date of issuance of this letter. Solely for purposes of making the REMIC elections, the initial Forms 1066 will be deemed timely filed if filed within this period.

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, 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

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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)