

INTERNAL REVENUE SERVICE

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U.I.L. Nos: 0860D.01-00
9100.00-00

CC:DOM:FI&P:2 PLR-103723-00

July 6, 2000

Trust =

Trustee =

VP =

Agent =

Firm =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear

This replies to a letter dated December 13, 1999, and other correspondence, submitted on behalf of Trust. Trust requests 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).

FACTS

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Trust, which commenced its activities on Date 1, is intended to qualify as a REMIC under section 860D of the Code. The assets of Trust consist of regular interests in another REMIC.

Trustee, the trustee of and tax agent for Trust, retained Agent to administer Trustee's responsibilities regarding tax matters, including tax filings. On Date 2, Trustee's employee, VP, realized that trustee had failed to notify Agent to file a federal income tax return and make a REMIC election for Trust.

Firm, a group of professional tax advisers, became involved with Trust's failure to elect REMIC status on or about Date 3. During the week of Date 3, Firm prepared a request for a private letter ruling pursuant to section 301.9100-1 of the regulations. On Date 4, Firm filed Trust's initial return.

Trust makes the following representations:

1. The request for relief was filed by the taxpayer before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief will not 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).
3. The taxpayer did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time the taxpayer requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, the taxpayer did not choose to not file the election.

APPLICABLE LAW

Section 860D(b)(1) of the Code 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 the 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. This regulation also provides a reference to

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§301.9100-1 for rules regarding extensions of time for making elections.

Section 1.860F-4(b)(1) of the regulations 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) 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 section 301.9100-1(b) as an election whose deadline 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.

Sections 301.9100-3(a) through (c)(1)(i) of the regulations set 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 upon the facts and representations submitted, it is held that Trust has shown good cause for granting a reasonable extension of time to allow it to make an election under §860D(b) of the Code. Accordingly, the time for filing the election is extended to Date 4.

No opinion is expressed whether the taxpayer's tax liability is not lower in the aggregate for all years to which the regulatory election applies than its tax liability would have

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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 taxpayer's tax liability for the years involved. If the district director's office determines the taxpayer's liability is lower, that office will determine the federal income tax effect.

This ruling is limited to the timeliness of Trust's election. This ruling does not relieve Trust from any penalty it may owe as a result of its failure to file its federal income tax return on time. This ruling's application is limited to the facts, Code sections, and regulations cited herein. No opinion is expressed whether Trust qualifies as a REMIC under subchapter M, part I, of the Code.

A copy of this letter is being forwarded to the service center where Trust files its returns with instructions that although its Form 1066 was not timely filed, Trust is to be treated as having made a timely election under §860D(b) of the Code.

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above.

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

In accordance with the terms of a power of attorney on file in this office, copies of this letter are being sent to Trustees authorized representatives.

Sincerely yours,

Lon B. Smith
Assistant Chief Counsel
(Financial Institutions & Products)