

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Refer Reply To:

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Date: April 13, 2004

Legend

Trust =

Date A =

Date B =

Date C =

Date D =

Date E =

Trustee =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

m =

Dear :

This responds to a ruling request dated November 20, 2003, submitted on behalf of Trust by its authorized representative, requesting a reasonable extension of time pursuant to sections 301.9100-1 and section 301.9100-3 of the Procedure and Administration Regulations to make an election. Specifically, Trust requests a reasonable extension of time to make an election under section 860D of the Internal Revenue Code and section 1.860-1(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

Trust was established on or about Date A of Year 1 by agreement between Trust and Trustee. Trust was established to facilitate the securitization of a number of REMIC regular interests issued by previously created REMICs (underlying REMIC interests). Each of the underlying REMIC interests was deposited to Trust on or about Date A of Year 1, and Trust issued two classes designated as regular interests and one class designated as a residual interest. The transaction was evidenced by a Confidential Placement Memorandum and a Pooling Agreement, each of which states the intention of Trust to make a REMIC election, and designates the regular interests and residual interest created by Trust.

Trustee was engaged as trustee for Trust. The Pooling Agreement contains multiple statements that the Trustee will cause an election to be made to treat the assets of Trust as a REMIC.

Trustee acts as trustee for numerous REMIC arrangements. Each REMIC arrangement is assigned a corporate trust administrator – an employee of Trustee responsible for all administrative actions required for each entity. An administrator's duties at the time that an arrangement closes include imputing each task associated with the maintenance of the arrangement, including required tax filings, into a "tickler" system maintained by Trustee. This system is a proprietary software system created to maintain a central record of all required tasks, and to facilitate the transition of duties upon any personnel turnover. Trustee timely appointed an employee to act as administrator to Trust; however, the administrator failed to enter the required tax return filing information into the tickler system. Shortly thereafter, the administrator assigned to Trust left Trustee's employment. Trust has had m administrators since its inception due to employee turnover. In Date B of Year 4, Trustee became uncertain as to Trust's tax status. On Date C of Year 4, Trustee began investigating if Trust had filed tax returns. In Date D of Year 5, Trustee's accountants confirmed that tax returns for Trust had not been filed and in Date E of Year 5, Trust filed a request for a reasonable extension of time to elect REMIC status with the Service.

Although Trust operates as if it was a REMIC, it has failed to file any federal income tax returns. Trust represents that for Year 1 through Year 3, inclusive, it incurred losses for federal income tax purposes. Trust has provided us with the amount of the loss for each of these years. Trust will report these amounts to the residual holders through its Form 1066, Schedule Qs. Interest earned on the debt instrument held by Trust was timely distributed to Trust's regular interest holders. Form 1099-INT/OIDs were not issued to these holders. Trust represents that each holder of a regular interest was an exempt recipient as defined in section 1.6049-4(c)(1)(ii), and therefore, exempt from information reporting.

Trust has provided the Service with detailed affidavits from individuals having knowledge or information about the events that led to the failure to make a valid regulatory election to be treated as a REMIC and to the discovery of the failure.

LAW AND ANALYSIS

Section 860D(b)(1) 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) provides that a qualified entity elects REMIC status by timely filing a Form 1066, U.S. Real Estate Mortgage Investment Conduit Income Tax Return, signed by a person authorized to sign that return. Timely filing means filed by the 15th day of the fourth month following the close of the first tax year of its existence. Pursuant to section 1.860D-1(d), 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 section 301.9100-1 for rules regarding extensions of time for making elections.

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 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.

Sections 301.9100-3(a) through (c)(1)(i) 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 on the facts and representations submitted, we are satisfied that Trust has acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the Government. Accordingly, Trust is granted an extension of 30 days after the date of this letter to elect REMIC status for purposes of section 860D(b) and section

1.860D-1(d)(1), and the election will be considered to have been timely made. Thus solely for purposes of making the REMIC election, the initial Form 1066 will be deemed timely filed.

This ruling is limited to the timeliness of Trust's REMIC election. This ruling does not provide relief from any other liability incurred as a result of filing a late return. Except as specifically ruled upon herein, we express no opinion concerning any federal tax consequences relating to the facts herein. No opinion is expressed whether Trust meets the requirements of a REMIC under section 860D.

Further, no opinion is expressed as to whether Trust's tax liability is not lower in the aggregate for the year to which the regulatory 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 will file its returns with instructions that although Form 1066 for the period ending Date A was not timely filed, Trust is to be treated as having made a timely REMIC election.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to the taxpayer.

Sincerely,

Elizabeth A. Handler
Chief, Branch 2
Office of Associate Chief Counsel

(Financial Institutions & Products)

cc: