

## Internal Revenue Service

## Department of the Treasury

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### LEGEND

Series A =

Series B =

Series C =

Trust A =

Trust B =

Trust C =

Sponser =

Trustee =

Firm =

State X =

State Y =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

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Date 8 =

Date 9 =

Date 10 =

Date 11 =

Year 1 =

Dear :

This is in reply to a letter dated November 15, 2000, requesting a ruling that Trust A, Trust B, and Trust C each be granted an extension of time to elect to be treated as a Real Estate Mortgage Investment Conduit (REMIC) under section 860D of the Internal Revenue Code.

### FACTS

Sponsor, a State X corporation, is in the business of securitizing residential mortgage loans that it generates or acquires. Sponsor frequently enters into multiple securitization transactions in any calendar year.

Series A, Series B, and Series C (each one “a Series” and collectively “the Series”) were formed under the laws of State Y and are accrual method, calendar year taxpayers. The Series were formed to securitize pools of mortgage loans pursuant to the terms of a Pooling and Servicing Agreement (Agreement) entered into by the Series, Sponsor, and Trustee.

Each of the Series has a trust (each one “a Trust” and collectively “the Trusts”) that corresponds to it. Trust A, Trust B, and Trust C are the lower tier entities of the Series. Sponsor is also, pursuant to the Agreement, the Master Servicer of the Trusts. Each of the Trusts’ Start-Up Day, as defined in § 1.860G-2(k) of the Income Tax Regulations, is as follows: Trust A, Date 1; Trust B, Date 2; and Trust C, Date 3. Each of the Series of which the Trusts are a part were intended to qualify as two-tier REMIC structures. Trustee is a corporation unrelated to Sponsor. Trustee was appointed to be trustee of the Trusts and is responsible, among other duties, for the administration of the Trusts.

Firm was engaged to prepare the federal income tax returns on behalf of the Series. Under this type of engagement, Firm would usually prepare documents relating to federal income tax compliance matters and the election to treat the assets of each of the Series as a REMIC for its first tax year, Year 1. Consistent with the statement in the Prospectus Supplements, each of the Trusts intended to elect REMIC status. Firm filed

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a Form SS-4 on the following dates on behalf of each of the Series requesting an EIN and indicated that each of the Series would elect to be treated as a REMIC:

Series A	Filed Date 4
Series B	Filed Date 5
Series C	Filed Date 6

The Prospectus Supplements indicate on the inside cover pages that each of the Series intended to cause an election to be made to treat each of the Series as a REMIC for federal income tax purposes. The Prospectus Supplements, however, did not clearly indicate that more than one tier existed for the Series. Based on past established practice, the Prospectus Supplements stated the number of tiers of each REMIC and the number of the Residual holders involved. In the case of the Series, a Firm employee read the Prospectus Supplements and mistakenly concluded that Series A, B, and C were single-tier REMICs. At the time the returns for the Series were filed, Firm had not received the Agreements for those transactions.

According to Treasury Regulations, REMIC status is elected by filing a Form 1066, U.S. Real Estate Mortgage Investment Conduit Income Tax Return, for the trust by the 15th day of the fourth month following the close of its first tax year, *i.e.*, by Date 7 in the case of each of the Series. Since Firm mistakenly believed that the Series were all single-tier REMICs (instead of double-tier REMICs), Firm only filed the upper tier trust forms.

Firm's error was ultimately discovered by another Firm employee around Date 8, while the employee was examining the Prospectus Supplements in conjunction with the Agreement while reviewing a proposed transaction for Sponser. The new deal did not specify in the Prospectus Supplement the number of tiers being issued. After determining that the Agreement was more precise than the Prospectus Supplement in the discussion of tax issues, Firm's employee promptly obtained all the Agreements for all of Sponser's previous issues that Firm services, and discovered that similarly, in the earlier transactions, the Agreement was more precise than the Prospectus Supplement. At the time the returns for each of the Series were filed, Firm had not received the Agreements for those transactions. Upon discovering the that the REMIC election had not been made for the lower tier Trusts, Firm notified Sponser.

By Date 9, Firm filed Forms SS-4 with the Service requesting EIN numbers for each of the Trusts. The three Series have filed amended Forms 1066 to reflect the proper number of tiers. Amended Schedule Qs have been prepared as well, and issued to Sponser as the holder of the residual interests. Forms 1066 for Year 1 for the Trusts (the lower tiers) were signed on Date 10 and forwarded to Trustee for filing. Schedule Qs have been prepared for the Trusts and issued to Sponser as the holder of the residual interests. Schedule Qs have been prepared for the Trusts and issued to Sponser as the holder of the residual interests.

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On Date 11, Firm submitted a request for a private letter ruling requesting relief under § 301.9100-1 of the Procedure and Administration Regulations to allow each of the Trusts an extension of time to elect REMIC treatment.

### **LAW AND ANALYSIS**

Section 860D(b)(1) of the Code provides that an entity which meets the requirements of a REMIC under section 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 section 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 section 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 the Trusts have satisfied the requirements for granting a reasonable extension of time to elect REMIC status. Therefore, each of the Trusts 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 elections made on the Forms 1066 filed for the Trusts for Year 1 will be considered to have been timely filed.

This ruling is limited to the timeliness of the REMIC election of the Trusts. This ruling does not relieve the Trusts from any penalty that they may owe as a result of their 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 each of the Series or the Trusts meets the requirements of a REMIC under section 860D(a).

No opinion is expressed with regard to whether each of the 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,  
Acting Associate Chief Counsel  
(Financial Institutions and Products)  
By: Alice M. Bennett  
Chief, Branch 3

Enclosures:

Copy of this letter  
Section 6110 Copy