

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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PLR-118026-22

Date:

March 16, 2023

Legend

Taxpayer =

Trust Agreement =

Entity A =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Year 1 =

a =

b =

Dear :

This ruling responds to a letter dated September 21, 2022, requesting an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make an election under section 860D(b)(1) of the Internal Revenue Code and section 1.860D-1(d) of the Income Tax Regulations to treat Taxpayer as a Real Estate Mortgage Investment Conduit ("REMIC").

FACTS

Taxpayer was formed on Date 1 pursuant to Trust Agreement. Taxpayer was formed as a segregated pool of assets, and the Trust Agreement required that a REMIC election be filed under section 1.860D-1(d)(1) for the asset pool to be treated as a REMIC. Taxpayer intended to be a part of a tiered REMIC structure along with a other segregated pools of assets. The Trust Agreement requires that a REMIC election be filed for each of the b segregated pools of assets. Section 860D(b) provides that the REMIC election shall be made on the entity's return for its first taxable year. Taxpayer's first year Form 1066 REMIC tax return or a request for an extension to file the return was due on Date 2. The REMIC elections were timely filed for the other a segregated pools of assets. The REMIC election for Taxpayer, however, was not timely filed because a request for an extension to file Taxpayer's return was not filed by Date 2.

Entity A is the partnership representative for Taxpayer. Entity A was responsible for filing Taxpayer's REMIC election and tax return. Entity A administers many REMIC returns and relies on a tracking system to do so efficiently. The tracking system requires the entry of a REMIC's startup day. The startup day drives all the efforts related to filing of a REMIC's tax returns and extensions. On Date 3, Entity A's tax management learned that the startup day for Taxpayer was not specified in the governing document, so Taxpayer was not entered into the tracking system. On Date 4, Entity A's tax team explained to its tax management that the team was awaiting the existence of documentation through the formal document review process that would have provided the startup day for Taxpayer. The relevant document, however, did not follow the formal document review process and there was insufficient communication regarding the documentation that reflected Taxpayer's startup day. Consequently, the tax team did not enter Taxpayer into the tracking system and, as a result, a request for an extension to file Taxpayer's Year 1 Form 1066 REMIC tax return, on which the REMIC election was made, was not timely filed by Date 2. Taxpayer's Form 1066 REMIC tax return for Year 1, on which the REMIC election was made, was filed on Date 5.

Taxpayer represents that its failure to file a timely REMIC election was inadvertent and that Entity A has since performed the tax reporting responsibilities for Taxpayer. Taxpayer further represents that this request for relief under sections 301.9100-1 and 301.9100-3 was submitted as soon as the inadvertent oversight was discovered and all the facts were collected.

Taxpayer makes the following additional representations in connection with this request for an extension of time:

- 1) The request for relief was filed before the failure to make the regulatory election was discovered by the Service.
- 2) Granting the relief requested will not result in Taxpayer having a lower U.S. federal tax liability in the aggregate for all years to which the election applies than it would have had if the election had been timely made (taking into account the time value of money).
- 3) Taxpayer does 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 it 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, Taxpayer did not choose to not file the election.
- 5) Taxpayer is not using hindsight in making the decision to seek the relief requested. No specific facts have changed since the due date for making the election that make the election advantageous to Taxpayer.
- 6) The period of limitations on assessment under section 6501(a) has not expired for Taxpayer for the taxable year in which the election should have been filed, nor for any taxable year(s) that would have been affected by the election had it been timely filed.

In addition, affidavits on behalf of Taxpayer have been provided as required by section 301.9100-3(e).

LAW AND ANALYSIS

Section 860D(b)(1) provides that an entity which meets the requirements of a REMIC under section 860D(a) may elect to be treated as a REMIC on the return for its first taxable year. Once elected, section 860D(b)(1) provides that the entity will be treated as a REMIC for the first taxable year in which the election is made and all subsequent taxable years until such status is terminated under section 860D(b)(2). Section 1.860D-1(d)(1) of the Income Tax Regulations provides that a qualified entity

makes a REMIC election by timely filing, for its first taxable year, a Form 1066, *U.S. Real Estate Mortgage Investment Conduit Income Tax Return*, 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.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, 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 Code except subtitles E, G, H, and I. Section 301.9100-1(b) defines a regulatory election 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.

Section 301.9100-3(a) through (c)(1) sets forth rules that the Service generally will use to determine whether, under the particular 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(a) provides that requests for relief subject to section 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in section 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b) provides that a taxpayer generally is deemed to have acted reasonably and in good faith if the taxpayer (i) requests relief under section 301.9100-3 before the failure to make the regulatory election is discovered by the Service; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the written advice of the Service; or (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election. A taxpayer will be deemed to have not acted reasonably and in good faith, however, if the taxpayer (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested; (ii) was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or (iii) uses hindsight in requesting relief.

Section 301.9100-3(c)(1) provides that a reasonable extension of time to make a regulatory election will be granted only when the interests of the Government will not be prejudiced by the granting of relief. Section 301.9100-3(c)(1)(i) 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 taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Section 301.9100-3(c)(1)(ii) provides that the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under section 301.9100-3.

CONCLUSION

Based on the information submitted and representations made, we conclude that Taxpayer has satisfied the requirements for granting a reasonable extension of time to make the election under section 860D to be treated as a REMIC beginning Year 1. Therefore, the election filed on Date 5 on behalf of Taxpayer, electing REMIC status for Year 1, will be deemed to have been timely filed.

CAVEATS

This ruling is limited to the timeliness of the REMIC election of Taxpayer. This ruling does not relieve Taxpayer from any penalty or interest that it may owe as a result of the failure to timely file the Form 1066. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination. No opinion is expressed with regard to whether Taxpayer otherwise qualifies as a REMIC under part IV of subchapter M of Chapter 1 of the Code.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

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.

Sincerely,

K. Scott Brown
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)

cc: