

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:FIP:2 / PLR-127159-00

Date:

January 30, 2001

LEGEND

Trust	=
REMIC 1	=
REMIC 2	=
REMIC 3	=
Trustee	=
Department	=
Date <u>1</u>	=
Date <u>2</u>	=
Date <u>3</u>	=
Date <u>4</u>	=
Date <u>5</u>	=
Date <u>6</u>	=
Date <u>7</u>	=
Date <u>8</u>	=
Date <u>9</u>	=
Date <u>10</u>	=
Year <u>1</u>	=

Dear _____ :

This is in reply to a letter dated Date 9, requesting a ruling that REMIC 3 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

Trust was created pursuant to a trust agreement (Agreement) dated Date 2. Trust consists of a pool of assets that is segregated into four groups. REMIC 1 and REMIC 2 represent the assets contained in Groups 1, 2 and 4. REMIC 3 represents the assets contained in Group 3. The Offering Circular Supplement states that REMIC elections will be made for a Double REMIC Series (i.e. REMICs 1 and 2), and a separate REMIC election will be made for REMIC 3. As a result, Trustee was required

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to file three REMIC elections. REMIC 3's tax year is a calendar year, and the first taxable year for REMIC 3 ended on Date 4. The Agreement required Trustee to make an election to treat REMIC 3 as a REMIC under section 860D.

Trustee timely filed Forms 8736, Application for Automatic Extension of Time to File U.S. Return for a Partnership, REMIC, or for Certain Trusts, for REMICs 1 and 2. Form 8736 is required to be filed to receive an automatic three-month extension to file an income tax return on Form 1066, U.S. REMIC Income Tax Return. Trustee filed second requests for extensions for REMICs 1 and 2 on Forms 8800, Application for Additional Extension of Time to File U.S. Return for a Partnership, REMIC or for Certain Trusts, to extend the due date for filing the Forms 1066.

In Date 6, after the due date for seeking an extension of time to elect REMIC status for REMIC 3 had passed, Trustee discovered that it had failed to file the Form 8736 on Date 5, and the Form 8800 on Date 7. Trustee filed the Form 1066 on behalf of REMIC 3 by Date 8.

On Date 1, Trustee's Department had undergone a thorough reorganization. As a result of the reorganization, personnel in the Department were required to take on additional duties and develop new areas of expertise. In Date 3, the individual in the Department who was responsible for filing REMIC extensions left the Department. This responsibility was reassigned to a new person in the Department who did not have experience with filing REMIC extensions. Moreover, specific internal charts used by personnel in the Department to identify entities for REMIC extension purposes indicated that only two, rather than three, REMIC elections had to be made on behalf of Trust.

On Date 10, Trustee filed this request for relief under section 301.9100-1 of the Income Tax Regulations to make a REMIC election under section 860D for its taxable year ending Date 4.

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.

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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 REMIC 3 has satisfied the requirements for granting a reasonable extension of time to elect REMIC status. Therefore, REMIC 3 is granted a reasonable extension of time 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. Accordingly, REMIC 3 is granted an extension of time until Date 8 to make an election to be treated as a REMIC for Year 1.

This ruling is limited to the timeliness of the REMIC election of REMIC 3. This ruling does not relieve REMIC 3 from any penalty that it may owe as a result of its 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 REMIC 3 meets the requirements of a REMIC under section 860D(a).

No opinion is expressed with regard to whether REMIC 3's tax liability is not lower in the aggregate for all years to which the election applies than such tax liability

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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 district director's office will determine such tax liability for the years involved. If the district 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.

Sincerely,

Lon B. Smith

Acting Associate Chief Counsel
(Financial Institutions & Products)

Enclosures:

Copy of this letter
Section 6110 Copy