

Internal Revenue Service

Department of the Treasury

Number: **200101017**
Release Date: 1/5/2001
Index Number: 860D.01-00, 9100.00-00

Washington, DC 20224

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CC:FIP:2 / PLR-114264-00
Date:
October 2, 2000

LEGEND

REMIC 1 =

REMIC 2 =

REMIC 3 =

REMIC 4 =

REMIC 5 =

REMIC 6 =

REMIC 7 =

Depositor =

Trustee =

Seller =

Date a =

Date b =

Date c =

Date d =

Date e =

Date f =

Date g =

Date h =

Year 1 =

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Dear

This is in reply to a letter dated July 19, 2000, requesting a ruling that each of REMICs 1-7 be granted an extension of time to elect to be treated as Real Estate Mortgage Investment Conduits (REMIC) under section 860D of the Internal Revenue Code.

FACTS

On Date b, Seller, Depositor and Trustee entered into a pooling and servicing agreement (Agreement) establishing Trust as of Date a. Trust holds a pool of mortgage loans, and REMICs 1-7 represent seven segregated pools of Trust assets. Trustee was authorized and directed to make a separate REMIC election with regard to each of REMICs 1–7 in accordance with sections 860A through 860G of the Code.

Prior to Date b, but after the origination of the mortgage loans underlying REMICs 1-7, Seller, the originator of these mortgage loans entered into seven separate REMIC Declarations, obligating itself to make, or cause any assignee of the mortgage loans to make, a separate REMIC election for each of REMICs 1-7. In accordance with the REMIC Declarations, the Agreement provided that Trustee, as tax administrator for the Trust, was to file elections for REMICs 1-7 for the taxable year ending on Date c.

The Agreement further provided that Trustee was to make a REMIC election with respect to a segregated pool of assets consisting of the regular interests in REMICs 1-7, and other mortgage loans. This REMIC is referred to as REMIC A. The regular interests in REMIC A were then contributed to a second REMIC (REMIC B), and the regular interests in REMIC B were contributed to REMIC C. The result was a multiple-tier REMIC structure for Trust consisting of ten REMICs, namely REMICs 1-7 and REMICs A, B and C.

On Date d, Trustee filed a Form 8736, Application for Automatic Extension of Time to File U.S. Return for a Partnership, REMIC, or for Certain Trusts, for each of REMICs A, B and C. 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 did not file a similar request for extension for each of REMICs 1-7, and first discovered its failure to file such requests on or about Date e. On Date f, Trustee filed a second request for extension on Form 8800, Application for Additional Extension of Time to File U.S. Return for a Partnership, REMIC or for Certain Trusts, for each of REMICs A, B and C. On Date f, Trustee also filed a request for an initial extension of time on Form 8800 for each of REMICs 1-7 to file an income tax return on Form 1066. On Date g, Trustee filed this request for relief under section 301.9100-1 of the Income Tax Regulations. Trustee is currently preparing the income tax returns for REMICs 1-7 and REMICs A, B and C.

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In summary, Trust, which consists of ten REMICs, filed only three Forms 8736 for an extension of time to elect REMIC status on Form 1066. Trustee inadvertently failed to timely file a similar Form 8736 with respect to each of REMICs 1-7. Upon discovering its failure to timely file these Forms 8736, Trustee promptly filed a Form 8800 for each of REMICs 1-7 requesting an extension of time to file an income tax return on Form 1066, and requested an extension of time under the authority of section 301.9100-1 to elect REMIC treatment for REMICs 1-7.

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.

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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 each of REMICs 1–7 has satisfied the requirements for granting a reasonable extension of time to elect REMIC status. Therefore, each of REMICs 1–7 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, each REMIC is granted an extension of time until Date h to make an election to be treated as a REMIC for Year 1.

This ruling is limited to the timeliness of the REMIC elections of REMICs 1–7. This ruling does not relieve any REMIC 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 any REMIC meets the requirements of a REMIC under section 860D(a).

No opinion is expressed with regard to whether any REMIC'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 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 yours,
Acting Associate Chief Counsel
(Financial Institutions & Products)

Enclosures:

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