

Internal Revenue Service

Department of the Treasury
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PLR-154515-04

Date:

May 25, 2005

In Re:

TY:

LEGEND:

Date 1 =

Date 2 =

Date 3 =

Entity A =

Taxpayers =

X =

Dear :

This responds to a letter dated July 14, 2004, and subsequent correspondence submitted on behalf of Taxpayers, requesting an extension of time under section

301.9100-1 of the Procedure and Administration Regulations to make elections under section 860D of the Internal Revenue Code (“the Code”) to treat Taxpayers as Real Estate Mortgage Investment Conduits (REMICs).

FACTS

Taxpayers were created on Date 1 pursuant to a pooling and servicing agreement. The pooling and servicing agreement provides that elections are required to be made for Taxpayers and Entity A to be treated as REMICs under section 860D of the Code. Taxpayers represent that the X entities created pursuant to the pooling and servicing agreement were inadvertently listed by Taxpayers’ representative as one entity. Taxpayers further represent that due to this error, only one Form 8736, Application For Automatic Extension of Time to File U.S. Return for a Partnership, REMIC, or for Certain Trusts, was filed when in fact X separate forms should have been filed. The Form 8736 filed was with respect to Entity A. Accordingly, no Form 8736 was filed with respect to Taxpayers.

On or about Date 2, the erroneous listing of the X entities as one entity was discovered. After discovery of the error, Taxpayers submitted a request for a private letter ruling under section 301.9100-1 of the regulations requesting a reasonable extension of time for Taxpayers to elect to be treated as REMICs and also filed their initial returns. Taxpayers represent that they took no actions that were inconsistent with their intention to elect REMIC status.

Taxpayers make the following additional representations:

1. The request for relief was filed by Taxpayers before the failure to make the regulatory elections was discovered by the Service.
2. Granting the relief requested will not result in any of the Taxpayers having a lower tax liability in the aggregate for all years to which the regulatory election applies than that Taxpayer would have had if the election had been timely made (taking into account the time value of money).
3. Taxpayers did 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 the Taxpayers 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, Taxpayers did not choose to not file the election.

LAW AND ANALYSIS

Section 860D(b)(1) of the Code provides that an entity otherwise meeting the requirements of a REMIC under section 860D(a) may elect to be treated as a REMIC for its first taxable year by making an election on its return for that year. Section 1.860D-1(d) of the regulations provides that a qualified entity elects REMIC status by timely filing a Form 1066, U.S. Real Estate Mortgage Investment Conduit Income Tax Return, by the 15th day of the fourth month following the close of the first tax year of its existence. 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) of the regulations 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 1.6031-1(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) of the regulations 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 Code except E, G, H, and I.

Sections 301.9100-3(a) through (c)(1)(i) of the regulations set forth rules that the Internal Revenue 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(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 submitted and representations made, we conclude that Taxpayers have satisfied the requirements for granting a reasonable extension of time to allow them to make elections under section 860D of the Code to be treated as REMICs. Accordingly, the time for filing the elections is extended to Date 3.

This ruling is limited to the timeliness of making the election under section 860D(b) of the Code. This ruling does not relieve Taxpayers from any penalties they may owe as a

result of their failure to file their federal income tax return on time. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether Taxpayers qualify as REMICs under subchapter M, part I, of the Code.

No opinion is expressed with regard to whether each Taxpayer'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 each Taxpayer's tax liability for the years involved. If the director's office determines that a Taxpayer's liability is lower, that office will determine the federal income tax effect.

A copy of this letter is being forwarded to the service center where Taxpayers file their returns with instructions that although their Forms 1066 were not timely filed, Taxpayers are treated as having made timely elections under section 860D(b) 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 taxpayers 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 Taxpayers.

Sincerely,

William E. Coppersmith
William E. Coppersmith
Chief, Branch 2
Office of Associate Chief Counsel
(Financial Institutions & Products)