

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:FI&P:2-PLR-122346-98

Date:

May 10, 1999

Legend:

Pool =

Sponsor =

State =

Date A =

Year A =

Year B =

Year C =

Firm M =

Dear :

This replies to your letter of December 15, 1998, submitted on behalf of Pool, requesting a ruling under sections 301.9100-1 and 301.9100-3 of the Regulations on Procedure and Administration. The requested ruling would grant Pool an extension of time 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 be treated as a real estate mortgage investment conduit (REMIC).

FACTS

Sponsor is a corporation organized under the laws of State. It engages in the business of issuing, acquiring, and securitizing residential mortgage loans.

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Sponsor caused Pool to be formed on Date A pursuant to the terms of a pooling and servicing agreement whereunder certain conventional, adjustable-rate, one-to-four family residential mortgage loans would be pooled and Sponsor would act as master servicer. Pool also included certain credit enhancement contracts and a reserve fund.

Two classes of interests in Pool, Class A and Class R, were issued on Date A. The Class A certificates and certificates representing 99.99% of the Class R certificates were sold. The remaining Class R certificates were retained by Sponsor. As stated in the Prospectus Supplement offering these interests for sale, Sponsor intended to cause a REMIC election to be made with respect to Pool. The Class A certificates would represent regular interests, as defined in section 860G(a)(1) of the Code and related regulations, and the Class R certificates would represent the residual interest, as defined in section 860G(a)(2) and related regulations.

Firm M was engaged to prepare the federal income tax returns on behalf of Pool, including the making of the election to be treated as a REMIC for its first taxable year, Year A. In November of Year A a representative of Firm M requested an EIN on behalf of Pool and indicated on the request form (Form SS-4) that Pool would elect to be treated as a REMIC.

Firm M did not file a timely Form 1066 for Year A on behalf of Pool. Under section 1.860D-1(d) of the regulations, 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 inadvertent failure to file a Form 1066 was due to a number of factors, including (1) workload compression at Firm M around the April 15th deadline and (2) the fact that the interests offered in Pool were of a relatively simple single maturity interest that is typically associated with trusts that do not make a REMIC election. The error was discovered by a representative of Firm M in November of the year following Year A (Year B).

Upon discovery of the error, the filing of this request for relief was authorized. A Form 1066 for Year A was filed on behalf of Pool in September of Year C (the year following Year B). At the same time, a Form 1066 for Year B was filed. On both returns, a notation that "9100 relief" would be requested for the late election was made. Schedule Qs were issued to the holders of the residual interest as soon as the oversight was discovered and consistently thereafter on a timely basis.

LAW

Section 860D(b)(1) of the Code provides that an entity otherwise meeting the definitional requirements of a REMIC may elect to be treated as a REMIC for its first taxable year by making this 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

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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 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 Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) through (c)(1)(i) of the regulations 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 Pool has satisfied the requirements for obtaining a reasonable extension of time to elect REMIC status. Therefore, Pool is granted a reasonable extension of time to elect REMIC status for purposes of section 860D(b) of the Code and section 1.860D-1(d)(1) of the regulations, and the election will be considered to have been timely made. The extension of time will be for a period beginning on the date that the initial Form 1066 was due until September 30, 1997. Thus, solely for purposes of making a REMIC election, the initial Form 1066 is deemed timely filed.

This ruling is limited to the timeliness of Pool's REMIC election. This ruling does not relieve Pool 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 Pool meets the requirements of a REMIC under section 860D(a) of the Code.

No opinion is expressed as to whether Pool's tax liability is not lower in the aggregate for all years to which the election applies than its 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 the tax

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liability for the years in question. If the district director's office determines that this tax liability is lower, that office will determine the federal income tax effect.

A copy of this letter is being forwarded to the Service Center with which Pool files its returns with instructions that although Pool's Form 1066 was not timely filed, Pool is to be treated as having made a timely REMIC election.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,

Paul Francis
Assistant Chief Counsel
(Financial Institutions and Products)

Enclosure:
Copy for 6110 purposes