

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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9100.00-00, 1286.00-00

Person To Contact:

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CC:FIP:B03
PLR-127130-16

Date:
September 16, 2016

LEGEND:

Taxpayer =

Accountant =

Year 1 =

Dear :

This ruling responds to a letter dated August 29, 2016, submitted on behalf of Taxpayer. Taxpayer requests an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to elect to use the safe harbor of Rev. Proc. 91-50, 1991-2 C.B. 778, in applying section 1286 of the Internal Revenue Code to certain mortgage servicing contracts beginning in Year 1.

FACTS

Taxpayer is the parent of an affiliated group of corporations that file a consolidated federal income tax return. Taxpayer is a publicly traded company which, together with its subsidiaries, conducts diversified mortgage banking services focused primarily on originating and servicing residential mortgage loans. Taxpayer also purchases mortgage loans. Taxpayer sells mortgage loans to third parties, while retaining the mortgage servicing rights ("MSRs") to the loans.

Taxpayer engaged Accountant to prepare its Year 1 federal income tax return. Under the belief that the safe harbor election provided by Rev. Proc. 91-50 was in effect

for Year 1, Taxpayer and Accountant applied the rates contained in Rev. Proc. 91-50 to determine the extent to which the amounts received under an MSR represent reasonable compensation, for purposes of applying section 1286 to the MSRs.

Taxpayer makes the following additional representations in connection with its 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 Internal Revenue Service ("Service").
2. Granting the relief requested will not result in Taxpayer having a lower tax liability in the aggregate for all years to which the election applies than Taxpayer 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 be imposed under section 6662 of the Code at the time Taxpayer 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 made, nor for any taxable year(s) that would have been affected by the election had it been timely made.

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

LAW AND ANALYSIS

Section 1286 defines the term "bond" to include a certificate or other evidence of indebtedness. Section 1286(d)(5) defines the term "coupon" to include any right to receive interest on a bond (whether or not evidenced by a coupon). Section 1286(e)(2) defines the term "stripped bond" as a bond issued with interest coupons where there is a separation in ownership between the bond and any coupon that has not yet become payable. Section 1286(e)(3) defines a "stripped coupon" as any coupon resulting from a stripped bond.

In Rev. Rul. 91-46, 1991-2 C.B. 358, a taxpayer sold mortgage loans and at the same time entered into a contract to service the mortgages for amounts received from interest payments collected on the mortgages. The ruling holds that the mortgages are “stripped bonds” within the meaning of section 1286(e)(2) if the contract entitles the taxpayer to receive amounts that exceed reasonable compensation for the services to be performed under the contract. The ruling also holds that the taxpayer’s rights to receive amounts under the contract are “stripped coupons” within the meaning of section 1286(e)(3) to the extent that they are rights to receive mortgage interest other than as reasonable compensation for the services to be performed.

Rev. Proc. 91-50 provides a safe harbor that taxpayers may elect to use in applying section 1286 and Rev. Rul. 91-46 to certain mortgage servicing contracts. When elected, this safe harbor determines the extent to which amounts that a taxpayer is entitled to receive under a mortgage servicing contract represent reasonable compensation for the services provided. To elect the safe harbor of Rev. Proc. 91-50, a taxpayer must attach a statement to its timely filed federal income tax return for the first taxable year for which the safe harbor is elected.

Section 301.9100-1(c) of the Procedure and Administration Regulations 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 Internal Revenue 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, revenue procedure, notice, or 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 this section 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 is deemed to have acted reasonably and in good faith if the taxpayer (i) requests relief under this section 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 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 this section.

CONCLUSION

Based upon the facts and representations submitted, we conclude that Taxpayer has shown good cause for granting a reasonable extension of time to elect the safe harbor of Rev. Proc. 91-50 in applying section 1286 to its mortgage servicing contracts. We further conclude that the time for filing the election under Rev. Proc. 91-50 for Taxpayer's Year 1 federal income tax return is extended to the date that is 90 calendar days from the date of this letter.

This ruling is limited to the timeliness of the filing of Taxpayer's election under Rev. Proc. 91-50. This ruling's application is limited to the facts, representations, and Code and regulation sections cited herein.

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

Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of the transaction described above.

This ruling is directed only to the taxpayer that requested 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 your authorized representatives.

Sincerely,

K. Scott Brown
Branch Chief, Branch 3
Office of the Associate Chief Counsel
(Financial Institutions and Products)