

Internal Revenue Service

Department of the Treasury
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Legend

Sponsor =

Trust =

Agreement =

Pool A =

Pool B =

Pool C =

Pool D =

Pool E =

Pool F =

Pool G =

Pool H =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Year 1 =

Dear :

This ruling responds to a letter dated January 25, 2023, requesting an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations 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 treat Pools A, B, C, D, E, F, G, and H (collectively, "Pools" and individually, each a "Pool") as Real Estate Mortgage Investment Conduits ("REMICs").

FACTS

Sponsor established the Pools between Date 1 and Date 2 as part of a new REMIC securitization program to facilitate transactions in the secondary market. Each Pool is a segregated pool of assets owned by Trust. The Agreement evidences the creation of the Pools and states the intention of each Pool to make a REMIC election under section 860D and to designate the regular interests and the residual interest created by the Pool. Under the Agreement, Sponsor was responsible for making a REMIC election for each Pool and for preparing, signing, and filing each of the REMIC tax returns on behalf of the Pools. Sponsor timely filed Form SS-4, *Application for Employer Identification Number*, and Form 8811, *Information Return for Real Estate Mortgage Investment Conduits (REMICs) and Issuers of Collateralized Debt Obligations*, for each Pool.

Section 860D(b) provides that the REMIC election shall be made on the entity's return (Form 1066, *U.S. Real Estate Mortgage Investment Conduit Income Tax Return*) for its first taxable year. The first year Form 1066 for Year 1 for each Pool was due on Date 3. On or about Date 4, Sponsor discovered the failure to timely file Forms 1066 for

Year 1 for each Pool while reviewing its filings. Upon discovery, Sponsor immediately began the process of filing Forms 1066 and making REMIC elections for each of the Pools. Sponsor filed a Form 1066 for Year 1 for each Pool, on which the REMIC election was made, on Date 5. Each Pool issued a Schedule Q to its residual interest holder for Year 1. Sponsor, on behalf of each Pool, requests relief under sections 301.9100-1 and 301.9100-3 for a reasonable extension of time for each Pool to make a REMIC election.

Sponsor makes the following additional representations in connection with this 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 Service.
- 2) Granting the relief requested will not result in any of the Pools or Trust having a lower U.S. federal tax liability in the aggregate for all years to which the election applies than they would have had if the election had been timely made (taking into account the time value of money).
- 3) Sponsor, on behalf of each of the Pools, does 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 it 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, Sponsor did not choose to not file the election for each of the Pools.
- 5) Sponsor, for each of the Pools, 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 the Pools.
- 6) The period of limitations on assessment under section 6501(a) has not expired for any of the Pools for the taxable year in which the election should have been filed, nor for any taxable year(s) that would have been affected by the election had it been timely filed.

In addition, an affidavit on behalf of the Pools has been provided as required by section 301.9100-3(e).

LAW AND ANALYSIS

Section 860D(b)(1) provides that an entity which meets the requirements of a REMIC under section 860D(a) may elect to be treated as a REMIC on the return for its first taxable year. Once elected, section 860D(b)(1) provides that the entity will be treated as a REMIC for the first taxable year in which the election is made and all subsequent taxable years until such status is terminated under section 860D(b)(2). Section 1.860D-1(d)(1) of the Income Tax Regulations provides that a qualified entity makes a REMIC election by timely filing, for its first taxable year, a Form 1066, *U.S. Real Estate Mortgage Investment Conduit Income Tax Return*, 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.

Section 301.9100-1(c) 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 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, a revenue procedure, a notice, or an 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 section 301.9100-3 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 generally is deemed to have acted reasonably and in good faith if the taxpayer (i) requests relief under section 301.9100-3 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, however, 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 section 301.9100-3.

CONCLUSION

Based on the information submitted and representations made, we conclude that each Pool has satisfied the requirements for granting a reasonable extension of time to allow it to make the election under section 860D to be treated as a REMIC beginning Year 1. Therefore, the election made on the Form 1066 filed on Date 5 for each Pool, electing REMIC status for Year 1, will be deemed to have been timely filed.

CAVEATS

This ruling is limited to the timeliness of the REMIC election for each Pool. This ruling does not relieve a Pool from any penalty or interest that it may owe as a result of the failure to timely file the Form 1066. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination. No opinion is expressed with regard to whether each Pool otherwise qualifies as a REMIC under part IV of subchapter M of Chapter 1 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 taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Michael Chin
Senior Technician Reviewer, Branch 1
Office of Associate Chief Counsel
(Financial Institutions & Products)

cc: