

Internal Revenue Service

Department of the Treasury

Number: **200124015**
Release Date: 6/15/2001
Index Number: 860D.01-00, 9100.00-00

Washington, DC 20224

Person to Contact:

Telephone Number:
(202) 622-3920
Refer Reply To:
CC:FIP: /PLR-100587-01
Date:
March 20, 2001

LEGEND

- Taxpayer =
- State A =
- CanCo =
- Subsidiary =
- Accountant =
- City A =
- City B =
- City C =
- Amount 1 =
- Amount 2 =
- Year 1 =
- Year 2 =
- Year 3 =
- Month 1 =
- Month 2 =
- Month 3 =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =

Dear:

This is in reply to a letter dated December 22, 2000, and subsequent correspondence, requesting a ruling on behalf of Taxpayer. You have requested a ruling that Taxpayer be granted an extension of time under § 301.9100 of the Procedure and Administration Regulations to make an election to be treated as a real estate mortgage investment conduit (REMIC) under § 860D of the Internal Revenue Code.

FACTS

Taxpayer was incorporated in State A, on Date 1, to act as a REMIC. Taxpayer has its principal place of business in State A. Taxpayer uses an accrual method of accounting and a calendar year as its taxable year. CanCo, a Canadian corporation, is the regular interest holder of Amount 1 shares of Taxpayer's preferred stock, and Subsidiary, a subsidiary of CanCo, is the residual interest holder of Amount 2 shares of Taxpayer's common stock.

Before Taxpayer's incorporation, Accountant advised CanCo that Taxpayer should elect to be treated as a REMIC in its initial tax return. Accountant's City A office has coordinated all U.S. tax matters for CanCo and Subsidiary since Year 1. However, U.S. tax advice and compliance services were provided primarily by another office of Accountant. In Month 1 or Month 2 of Year 2, a tax senior manager in Accountant's City A office (City A Manager) began providing U.S. tax consulting services, but the responsibility for providing compliance services remained in Accountant's City B office until the end of Year 2, when it was transferred to Accountant's City C office.

Shortly after compliance responsibility was transferred to City C, the City C senior manager for compliance left Accountant; his replacement (City C Manager) was then hired in Month 3 of Year 3. Since City C Manager began working after the tax compliance season had started, he faced a considerable backlog of work and had little time to familiarize himself with his clients. Also, the tracking system used by the City C office did not include any return for Taxpayer, since Taxpayer had not yet filed a return.

On Date 2, the comptroller of CanCo attempted to contact City A Manager to ask about Taxpayer's Form 8736, Application for Automatic Extension of Time to File U.S. Return for a Partnership, REMIC, or for Certain Trusts (extension request). The comptroller was concerned because he had received extensions for other companies handled by Accountant. After receiving the message from the comptroller, City A Manager, along with the comptroller, called City C Manager and informed him that Taxpayer's extension request was due that day. City A Manager requested that City C Manager immediately prepare and file the extension request. Due to the stated urgency of filing the extension request, City C Manager inadvertently filed a Form 7004, Application for Automatic Extension of Time to File Corporation Income Tax Return, checking the box for a regulated investment company, rather than filing the Form 8736.

On Date 3, City A Manager and City C Manager realized that the due date for the Form 8736 was actually Date 4, not Date 2. They also discovered that the wrong form had been used. Since the due date for filing a Form 8736 had passed, they could not obtain the automatic three-month extension provided by that form or the additional three-month extension provided by Form 8800, Application for Additional Extension of Time To File U.S. Return for a Partnership, REMIC, or for Certain Trusts. However, a Form 1066, U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return, was filed for Taxpayer by Date 5.

LAW AND ANALYSIS

Section 860D(b)(1) of the Code provides that an entity which meets the requirements of a REMIC under § 860D(a) may elect to be treated as a REMIC for its first taxable year and that the election must be made on the return for its first taxable year. Under § 860D(b)(1), such an election generally applies to the taxable year for which made and all subsequent taxable years.

Section 1.860D-1(d)(1) of the Income Tax Regulations provides that a qualified entity elects to be treated as a REMIC by timely filing, for its first taxable year, a Form 1066 (the REMIC income tax return) signed by a person authorized under § 1.860F-4(c) to sign that return. Section 1.860D-1(d)(1) also provides a reference to § 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 income tax return are determined as if the REMIC were a partnership. Therefore, pursuant to § 1.6031(a)-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 REMIC's taxable year, unless an extension is granted.

Section 301.9100-1(c) provides, in part, that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in § 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.

Sections 301.9100-3(a) through (c)(1)(i) set 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 § 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of § 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 § 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 facts and representations submitted, we conclude that Taxpayer has satisfied the requirements for our granting a reasonable extension of time to elect to be treated as a REMIC under § 860D. Accordingly, Taxpayer is granted an

extension of time until Date 5 to make an election under § 860D on its federal income tax return for its tax year ended Date 6.

This ruling is limited to the timeliness of the REMIC election of Taxpayer. This ruling does not relieve Taxpayer from any amount that it may owe as a result of its failure to timely file Form 1066. Except as specifically ruled on herein, we express no opinion concerning any federal tax consequences relating to the facts herein under any section of the Code. For example, no opinion is expressed as to whether Taxpayer meets the requirements of a REMIC under § 860D(a).

Further, no opinion is expressed as to whether 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 return(s) involved, the director's office will determine Taxpayer's tax liability for the year(s) involved. If the 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)
By: Kevin J. Kraft
Chief, Branch 1

Enclosures:

Copy of this letter
Section 6110 Copy