

Internal Revenue Service

Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B02
PLR-114867-24

Date:
September 17, 2024

In Re:

LEGEND

Taxpayer =
State =
Year 1 =
City =
Management Company =
Advisor =

Dear :

This letter responds to a ruling request dated August 16, 2024, submitted on behalf of Taxpayer, requesting an extension of time to make a § 163(j)(7)(B) election to be treated as a real property trade or business (“RPTOB”). The request was submitted under Treas. Reg. §§ 301.9100-1(c) and 301.9100-3.

FACTS

The facts and information described herein and forming the basis of this ruling are as represented by the taxpayer under penalty of perjury.

Taxpayer is a limited partnership formed under the laws of State in Year 1. Through disregarded entities, Taxpayer owns and operates an apartment complex in City. Taxpayer is managed by Management Company.

Management Company engaged Advisor to perform various tax services, including tax return preparation, for Taxpayer and for several other entities Management Company owns and manages. Management Company and Advisor filed § 163(j)(7)(B) RPTOB elections for several of the entities for the Year 1 tax year. Management Company and Advisor discussed filing an election for Taxpayer, and Management Company provided

Advisor with all information necessary to properly file the election statement to be attached to Taxpayer's Year 1 Form 1065, *U.S. Return of Partnership Income*.

In the weeks before the filing deadline, unexpected personnel turnover in the Advisor team responsible for preparing Taxpayer's return caused the team to inadvertently fail to attach the § 163(j)(7)(B) election statement to Taxpayer's Year 1 Form 1065. Taxpayer's Year 1 Form 1065 did not include a Form 8990, *Limitation on Business Interest Expense Under Section 163(j)*. Taxpayer's Year 1 Form 1065 was prepared in a manner consistent with having made a § 163(j)(7)(B) election, with the interest expense deduction calculated as if the election had been filed and with depreciation calculated using § 168(g) alternative depreciation. Taxpayer's audited financial statements treated Taxpayer as an electing RPTOB.

A year after Taxpayer's Year 1 Form 1065 was filed, while reviewing the return for unrelated reasons, Advisor discovered that the § 163(j)(7)(B) election statement was omitted. Advisor informed Taxpayer of the omission. Management Company engaged Advisor on behalf of Taxpayer to prepare this private letter ruling request, pursuant to Treas. Reg. §§ 301.9100-1(c) and 301.9100-3, for an extension of time to file the § 163(j)(7)(B) election statement for the Year 1 tax year.

LAW

Internal Revenue Code § 163(a) allows a deduction for debt interest paid or accrued during the tax year. Section 163(j) provides a cap on the amount of "business interest" that may be deducted. Section 163(j)(5) defines business interest as "any interest paid or accrued on indebtedness properly allocable to a trade or business." Section 163(j)(7)(A)(ii) provides that the term "trade or business" does not include "any electing real property trade or business." Section 163(j)(7)(B) defines an electing real property trade or business as "any trade or business described in section 469(c)(7)(C) and which makes an election under this subparagraph. Any election shall be made at such time and in such manner as the Secretary shall prescribe, and, once made, shall be irrevocable." Section 469(c)(7)(C) defines a real property trade or business as "any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business." Treas. Reg. § 1.163(j)-9(d)(1) provides that a taxpayer makes the election "by attaching an election statement to the taxpayer's timely filed original Federal income tax return."

Under § 168(g)(1)(F), an electing RPTOB must use an alternative depreciation system provided in § 168(g)(2). Barring an exclusion from § 163(j), such as an electing RPTOB, a taxpayer with business interest must file Form 8990, *Limitation on Business Interest Expense Under Section 163(j)*.

Treas. Reg. §§ 301.9100-1 through 301.9100-3 provide standards for the Commissioner to grant an extension of time for a taxpayer to make an election. Sections 301.9100-1(c) and 301.9100-3 provide that the Commissioner has discretion to issue reasonable extensions for regulatory elections, defined in § 301.9100-1(b) as an election whose

due date is specified in a regulation published in the Federal Register or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. Section 301.9100-2(a)(2) provides a list of certain elections entitled to “automatic extensions.”

Treas. Reg. § 301.9100-3(a) provides that requests for extension under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government. Section 301.9100-3(b)(1) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer: (i) requests relief before the failure to make the regulatory election is discovered by the IRS; (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.

Treas. Reg. § 301.9100-3(b)(2) provides that a taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not: (i) competent to render advice on the regulatory election; or (ii) aware of all relevant facts.

Treas. Reg. § 301.9100-3(b)(3) provides that 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 § 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.

Treas. Reg. § 301.9100-3(c)(1) 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. 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 § 6501(a) by the time the ruling would be received.

ANALYSIS

Taxpayer's election in this case is a regulatory election as defined under § 301.9100-1(b) because the requirements and due date of the election are prescribed in Treas. Reg. § 1.163(j)-9(d). The Commissioner has the authority and discretion under

§§ 301.9100-1 and 301.9100-3 to grant an extension of time to file a late regulatory election.

To receive an extension of time to file a regulatory election, a taxpayer must provide evidence sufficient to establish that it acted reasonably and in good faith. Taxpayer intended to file the § 163(j)(7)(B) election to avoid the § 163(j) business interest deduction limit, as evidenced by Taxpayer's audited financial statement submitted with this request. Taxpayer expected Advisor to timely file the election along with Taxpayer's Year 1 Form 1065 and it was Advisor's inadvertent oversight that led to the omission, as evidenced by the affidavits submitted with this request. The information in Taxpayer's Year 1 Form 1065 was consistent with having made a § 163(j)(7)(B) election. Taxpayer's use of § 168(g) alternative depreciation and Taxpayer's failure to attach a Form 8990 are also consistent with making a § 163(j)(7)(B) election. Accordingly, the documents and representations provided establish that Taxpayer acted reasonably and in good faith.

Further, Taxpayer submitted this relief request prior to the IRS discovering Taxpayer's failure to make the election, Taxpayer relied reasonably on a qualified tax professional to make the election, and Taxpayer had no reason to believe Advisor was not competent to make the election or not aware of all the facts. No accuracy-related penalty has been assessed, Taxpayer did not make a fully informed choice not to file the election, and there is no indication Taxpayer is submitting this request with the benefit of hindsight.

The government's interests are not prejudiced as a result of granting this ruling because this ruling will not result in Taxpayer having a lower tax liability for the tax year at issue than Taxpayer would have had if the election have been made timely. Additionally, the tax year at issue is not yet closed by the period of assessment.

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that Taxpayer acted reasonably and in good faith and that granting the request for an extension to file the election under § 163(j)(7)(B) of the Code will not prejudice the interests of the government.

Taxpayer is granted an extension of 60 calendar days from the date of this letter ruling to file, in accordance with the procedures set forth in § 1.163(j)-9(d), the election statement required by § 163(j)(7)(B).

The ruling contained in this letter is based on information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination. If any of the information or representations provided are subsequently determined to be inaccurate and/or incomplete, this ruling and its conclusions are void.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences arising from the facts described above under any other provision of the Code or regulations. In particular, we are not expressing any opinion concerning whether Taxpayer qualifies as an electing real property trade or business that is qualified to make the election under § 163(j)(7)(B).

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, a taxpayer filing its return electronically may satisfy this requirement by attaching a statement to its return that provides the date and control number of the letter ruling.

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

In accordance with the provisions of the power of attorney currently on file with this office, copies of this letter are being sent to your authorized representative. We are also sending a copy of this letter to the appropriate operating division director.

Sincerely,

Ronald J. Goldstein
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel
(Income Tax and Accounting)

cc: