

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Date:

March 29, 2021

TY:

LEGEND:

Taxpayer =

Parent =

Entity A =

Entity B =

Entity C =

Advisor =

X =

Country A =

Country B =

State =

Date 1 =

Date 2 =

n1 =

n2 =

n3 =

n4 =

Dear :

This responds to a letter ruling request dated September 28, 2020, submitted on behalf of Taxpayer. Taxpayer requests an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file an election statement, pursuant to § 1.163(j)-9 of the Proposed Income Tax Regulations, published in the Federal Register on December 28, 2018 (83 F.R. 67490), for the taxable year ending Date 1.

FACTS

Taxpayer represents the facts are as follows:

Taxpayer is a limited liability company formed under the laws of Country A engaged in the business of x. Taxpayer is treated as a partnership for U.S. federal income tax purposes. Pursuant to certain management agreements, Parent and its affiliates generally manage the operations of Taxpayer's real property trades or business. Parent also has general authority over Taxpayer's tax matters, including deciding whether to make tax elections.

Parent owns n1 percent of a disregarded entity, Entity A, which owns a n2 percent interest in Entity B. Entity B is a State limited liability company that is treated as a partnership for U.S. federal income tax purposes. Entity B owns, through two disregarded entities, n3 percent of the stock of Entity C. Entity C is a corporation formed under the laws of Country B. Entity C owns, through a disregarded entity, a n4 percent interest in Taxpayer.

Parent engaged Advisor to prepare Taxpayer's tax return for the taxable year ending Date 1 and to provide advisory services on tax matters including the application of section 163(j) of the Internal Revenue Code. Advisor then determined that for the taxable year ending Date 1, Taxpayer should make an election to be an electing real property trade or business (RPTOB election) under section 163(j)(7)(B) for each of its real property trades or businesses. Parent agreed with this determination and represents that it relied on Advisor to properly make the RPTOB election under the procedures outlined in Prop. Reg. § 1.163(j)-9.

Taxpayer represents that it did not have gross income that was effectively connected with a U.S. trade or business in the taxable year ending Date 1. Taxpayer also represents that it was not otherwise required to file a U.S. partnership tax return for the taxable year ending Date 1. Consequently, Advisor attempted to make the RPTOB election by including an election statement with the Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations, filed by Entity B with respect to Entity C for the taxable year ending Date 1.

During Date 2, Parent's external auditors raised the issue of the proper method for making an election under section 163(j)(7)(B). Upon review, Parent and Advisor determined that Taxpayer should have made the RPTOB election by attaching an election statement to a timely filed U.S. partnership tax return for Taxpayer for the taxable year ending Date 1, including extensions, as required by Prop. Reg. § 1.163(j)-9(d) and § 1.6031(a)-1(b)(5) of the Income Tax Regulations. Parent therefore instructed Advisor to prepare and file this request.

LAW

Section 163(j) generally limits the amount of business interest expense that a taxpayer can deduct in the current taxable year to the sum of: (1) the taxpayer's business interest income for the taxable year; (2) 30% of the taxpayer's adjusted taxable income for the taxable year; and (3) the taxpayer's floor plan financing for the taxable year. However, section 163(j)(7) provides that this limitation does not apply to certain excepted trades or businesses, including electing real property trades or businesses.

On December 28, 2018, the Treasury Department issued proposed regulations regarding the limitation on the deduction for business interest expense. REG-106089-18, 2018-16 I.R.B. 492. Prop. Reg. § 1.163(j)-9 sets forth the procedures by which a taxpayer may elect for its qualifying real property trade or business to be an electing real property trade or business. Specifically, Prop. Reg. § 1.163(j)-9(c)(1) states that a taxpayer makes such an election by attaching an election statement to its timely filed original Federal income tax return, including extensions. Prop. Reg. § 1.163(j)-9(c)(4) specifies that an election for a partnership must be made on the partnership's return for the trade or business that the partnership conducts. Taxpayers may apply the proposed regulations, in their entirety, for taxable years beginning after December 31, 2017 and before November 13, 2020.

Section 1.6031(a)-1(b)(5) provides that, for a partnership not otherwise required to file a partnership return, if an election that only the partnership may make is required to be made by or for the partnership, a return on the form prescribed for the partnership return must be filed for the partnership.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner uses to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-1(b) defines the term "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, procedure, notice or announcement published in the Internal Revenue Bulletin.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable

extension of time to make a regulatory election, or a statutory election (but no more than six 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) provides extensions of time to make a regulatory election under Code sections other than those for which § 301.9100-2 expressly permits automatic extensions. Requests for extensions of time for regulatory elections will be granted when the taxpayer provides evidence (including affidavits described in the regulations) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1) states that a taxpayer will be 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 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 due diligence, 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.

Under § 301.9100-3(b)(3), a taxpayer will not be considered to have 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 (taking into account § 1.6664-2(c)(3)) 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.

If specific facts have changed since the original deadline that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief.

Section 301.9100-3(c)(1) provides that the Commissioner will grant a reasonable extension of time only when the interests of the Government will not be prejudiced by the granting of relief. Section 301.9100-3(c)(1)(i) provides, in part, 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, in part, 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.

ANALYSIS

Taxpayer's election is a regulatory election, as defined under § 301.9100-1(b), because the due date of the election is prescribed in Prop. Reg. § 1.163(j)-9. The Commissioner has the authority under §§ 301.9100-1 and 301.9100-3 to grant an extension of time to file a late regulatory election.

Taxpayer in this case has represented that it requested relief before the failure to make the regulatory election was discovered by the Service, that it reasonably relied on its hired tax professionals, and that the tax professionals failed to make the election. Thus, under §§ 301.9100-3(b)(1)(i) and (v), Taxpayer will be deemed to have acted reasonably and in good faith. Taxpayer has also represented that none of the circumstances listed in § 301.9100-3(b)(3) apply.

Based on the facts of the case Taxpayer provided, granting an extension of time to file the election will not prejudice the interests of the government under § 301.9100-3(c)(1). Taxpayer has represented that granting relief would not result in a lower tax liability in the aggregate for all taxable years affected by the election than Taxpayer would have had if the election had been timely made (taking into account the time value of money). Furthermore, Taxpayer has represented that the taxable year in which the regulatory election should have been made and any taxable years that would have been affected had it been timely made, are not closed by the period of limitations on assessment.

CONCLUSION

In the present situation, the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. The information and representations made by Taxpayer establish that Taxpayer acted reasonably and in good faith. Furthermore, granting an extension will not prejudice the interests of the Government under § 301.9100-3(c)(1). Accordingly, Taxpayer is granted an extension of time until 60 days following the date of this ruling to file an election statement in accordance with the procedures set forth in Prop. Reg. § 1.163(j)-9 for the taxable year ending Date 1 electing for Taxpayer's qualifying real

property trades or businesses to be electing real property trades or businesses under section 163(j)(7)(B).

The rulings contained in this letter are based upon information and representations submitted by the 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.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal income tax consequences of any aspect of any transaction or item discussed or referenced in this ruling, including whether Taxpayer's real property trades or businesses qualify for the RPTOB election.

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.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative. Enclosed is a copy of the letter ruling showing the deletions proposed to be made in the letter when it is disclosed under Section 6110 of the Code.

Sincerely,

Brinton T. Warren
Chief, Branch 3
(Income Tax & Accounting)

cc: