

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Attn:

Refer Reply To:  
CC:ITA:B02  
PLR-105939-22

Date:  
September 15, 2022

Legend

- Taxpayer =
- Accounting Firm =
- Year 1 =
- Year 2 =
- Year 3 =
- Month 1 =
- Month 2 =
- Month 3 =
- Month 4 =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =

Dear :

This letter responds to your correspondence dated Date 2, requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations for Taxpayer to make the real property trade or business election under § 163(j)(7)(B) of the Internal Revenue Code, § 1.163(j)-9 of the Income Tax Regulations, and Rev. Proc. 2020-22, 2020-18 I.R.B. 745 (“RPTOB Election”), with respect to its real property trade or business for its taxable year ended Date 1 (“the

Year 1 taxable year”).<sup>1</sup> This letter ruling is being issued electronically, as permissible under sections 7.02(2) and 9.04(3) of Rev. Proc. 2022-1, 2022-1 I.R.B. 1, 33, 49.

## FACTS

Taxpayer operates as a real estate and investment advisory services company.

Taxpayer’s real estate business consists of both active real estate operations and passive real estate investments owned either directly or indirectly through entities classified as partnerships or disregarded for U.S. Federal income tax purposes. Taxpayer’s real estate business includes all aspects of real estate ownership, including acquisitions and divestments, leasing, property management, financing, capital improvements, and facility maintenance.

In Month 1, Taxpayer decided to make a late RPTOB Election with respect to its real property trade or business for its Year 1 taxable year, on an amended income tax return, pursuant to section 4 of Rev. Proc. 2020-22.

Taxpayer had engaged Accounting Firm to provide tax compliance and tax advisory services for the relevant tax years. These services included tax return preparation and tax advisory services on various tax matters, including the application of the limitation on business interest expense under § 163(j). In Month 2, Taxpayer also engaged Accounting Firm to prepare an amended tax return for its Year 1 taxable year in order to make a late RPTOB Election pursuant to Rev. Proc. 2020-22.

The Accounting Firm senior manager and partner responsible for preparation of Taxpayer’s Year 3 income tax return and the statement required for Taxpayer’s amended return for Year 1 mistakenly believed that the late RPTOB Election could be filed on Taxpayer’s amended Year 1 tax return no later than Date 3, the end of the applicable period of limitations on assessment for the Year 1 taxable year. The reason for this error was a misinterpretation of the language in section 4 of Rev. Proc. 2020-22, which established the deadline for filing a late RPTOB Election. The actual deadline for filing a late RPTOB Election for the Year 1 taxable year was October 15, 2021. Accounting Firm had communicated the erroneous filing deadline to Taxpayer, and Taxpayer relied on the filing deadline provided by Accounting Firm.

The income tax returns for Year 2 and Year 3 included statements indicating Taxpayer’s intention to make a late RPTOB Election for Year 1 under Rev. Proc. 2020-22.

The Accounting Firm senior manager and partner serving Taxpayer did not discover their misinterpretation with regard to the deadline for filing Taxpayer’s Year 1 amended tax return to make a late RPTOB election pursuant to Rev. Proc. 2020-22 until Month 3, after the October 15, 2021 deadline had passed. In Month 4, Accounting Firm advised

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<sup>1</sup> Taxpayer executed a Form 872, “Consent to Extend the Time to Assess Tax,” to extend the limitations period for the Year 1 taxable year to Date 4.

taxpayer to request relief under §§ 301.9100-1 and 301.9100-3 for an extension of time to make the RPTOB Election, and Taxpayer requested that Accounting Firm prepare and file a request for relief.

### LAW & ANALYSIS

Section 163(j)(1)(A) limits a taxpayer's deduction for "business interest." The term "business interest" means any interest paid or accrued on indebtedness property allocable to a "trade or business." § 163(j)(5). The term "business interest," however, does not include "any electing real property trade or business." § 163(j)(7)(A)(ii). An "electing real property trade or business" is any trade or business that is described in § 469(c)(7)(C) and that makes an election under § 163(j)(7)(B).

Section 1.163(j)-9(d)(1) provides that a taxpayer makes a RPTOB Election by attaching a statement to the taxpayer's timely filed original Federal income tax return, including extensions.

Section 4.02 of Rev. Proc. 2020-22 allows certain taxpayers to make a late RPTOB Election for a taxable year beginning in 2018, 2019, or 2020 on an amended federal income tax return. In general, section 4.02 of Rev. Proc. 2020-22 requires the amended federal income tax return for the Year 1 taxable year to be filed by October 15, 2021.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election.

Section 301-9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make certain regulatory elections. Section 301.9100-1(b) defines a "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice or announcement published in the Internal Revenue Bulletin.

Section 301.9100-3(a) provides that requests for relief 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 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 at 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.

Section 301.9100-3(b)(3) provides that a taxpayer will not be deemed 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 § 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 an extension of time to make a regulatory election will be granted only when the interests of the Government are not prejudiced by the granting of relief. The interests of the Government are prejudiced if granting relief would result in a 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)(i).

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 under § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section. Section 301.9100-3(c)(1)(ii).

Taxpayer's election is a regulatory election as defined in § 301.9100-1(b) because the requirements and due date of the election are prescribed in section 4 of Rev. Proc. 2020-22. The Commissioner has the authority under §§ 301.9100-1 and 301.9100-3 to grant an extension of time to file a regulatory election.

## CONCLUSION

Based solely on the information provided and representations made, we conclude that Taxpayer acted reasonably and in good faith and granting relief will not prejudice the interests of the Government. In so doing, we likewise conclude that Taxpayer has met the requirements of §§ 301.9100-1 and 301.9100-3.

Taxpayer is granted an extension of 60 calendar days from the date of this letter ruling to amend its tax return for Year 1 to make the RPTOB Election, pursuant to § 163(j) and the regulations thereunder.

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. In particular, we are not expressing any opinion concerning whether Taxpayer qualifies to make the RPTOB Election, and we are not expressing any opinion

concerning whether any property of Taxpayer qualifies for the RPTOB Election. Moreover, we also are not expressing any opinion concerning whether Taxpayer is within the scope of Rev. Proc. 2020-22.

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 letter must be attached to any income tax return to which it is relevant. 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.

The ruling contained in this letter is based upon 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.

Sincerely,

Robert A. Martin  
Senior Technician Reviewer, Branch 2  
(Income Tax & Accounting)

Enclosure: Copy for § 6110 purposes

cc: