

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Taxpayer =
State A =
Business =
Taxable Year =

Tax Officer =
Accounting Firm =
Year 1 =
Year 2 =
Month 1 =

Dear

This is in reply to a letter dated July 22, 2024, requesting an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations for Taxpayer to make an election under section 1.163(j)-7(e)(5) of the Income Tax regulations.

FACTS

Taxpayer represents the following:

Taxpayer is an affiliated group of corporations that files a consolidated U.S. federal income tax return. Taxpayer, which uses a Taxable Year and an overall accrual method, is engaged in the business of Business. During each of Year 1 and Year 2, Taxpayer was the specified group parent (within the meaning of section 1.163(j)-7(d)) of certain controlled foreign corporations within the meaning of section 957(a) (the “**CFCs**”).

For Year 1 and Year 2, Taxpayer intended to make and apply a CFC group election with respect to the CFCs under the applicable provisions of section 1.163(j)-7 (the “**CFC group election**”). Tax Officer avers that Taxpayer always intended to make the CFC group election.

The 2021 Final Regulations (defined below) were applicable to Year 1 and Year 2. Taxpayer, by mistake and oversight, computed its taxable income pursuant to inapplicable proposed regulations and failed to file the statement required to make the CFC group election under the 2021 Final Regulations. For Year 1, Taxpayer prepared its tax return and attempted to make the CFC group election by applying section 1.163(j)-7 of the 2020 Proposed Regulations (defined below). However, Taxpayer did not file the statement required to make a CFC group election under the 2020 Proposed Regulations. For Year 2, Taxpayer prepared its tax return and attempted to make the CFC group election by applying section 1.163(j)-7 of the 2018 Proposed Regulations (defined below). Taxpayer satisfied the requirements for making a CFC group election that would have applied under the 2018 Proposed Regulations if the rules of those proposed regulations had been applicable in Year 2. Taxpayer represents that no accuracy-related penalty has been or could be imposed under section 6662 with respect to Taxpayer's computations under section 1.163(j)-7 for Year 1 or Year 2.

In Month 1, Taxpayer's tax department first learned it had applied inapplicable proposed regulations to make the CFC group election and had failed to file the statement required to make the CFC group election under the 2021 Final Regulations for Year 1 and Year 2. Taxpayer promptly sought advice from its tax advisor, Accounting Firm, which informed Taxpayer that Taxpayer needed to request late election relief in order to perfect the CFC group election. Taxpayer promptly engaged Accounting Firm to assist Taxpayer with preparing the request.

Taxpayer makes the following additional representations:

1. The request for relief was filed before the failure to make the election was discovered by the Internal Revenue Service (the "**Service**").
2. Granting the relief requested will not result in Taxpayer having a lower tax liability in the aggregate for all years to which the election applies than it would have had if the election had been timely made (taking into account the time value of money).
3. Taxpayer does not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 at the time it requested relief.
4. After being fully informed of the required election and related tax consequences, Taxpayer did not choose to not file the election.
5. Taxpayer is not using hindsight in requesting relief. No facts have changed since the due date for making the election that make the election more advantageous to Taxpayer.

6. The period of limitations on assessment under section 6501(a) has not expired for any taxable year that would have been affected by the election had it been timely filed.

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

LAW AND ANALYSIS

Section 163(j)(1) generally limits the amount of business interest allowed as a deduction for a taxable year. On December 28, 2018, the Department of Treasury (“**Treasury Department**”) and the Service published proposed regulations under section 163(j) (83 FR 67490) (the “**2018 Proposed Regulations**”). On September 14, 2020, the Treasury Department and the Service published final regulations under section 163(j) (T.D. 9905, 85 FR 56686) (the “**2020 Final Regulations**”). Concurrently with the publication of the 2020 Final Regulations, the Treasury Department and the Service published additional proposed regulations under section 163(j) (85 FR 56846) (the “**2020 Proposed Regulations**”). On January 19, 2021, the Treasury Department and the Service published additional final regulations under section 163(j) (T.D. 9943, 86 FR 5496) (the “**2021 Final Regulations**”). Section 1.163(j)-7 of the 2021 Final Regulations applies to taxable years beginning on or after March 22, 2021. Therefore, section 1.163(j)-7 of the 2021 final regulations applies to Year 1 and Year 2.

Section 1.163(j)-7 of the 2021 Final Regulations provides rules for the application of the section 163(j) limitation to foreign corporations and United States shareholders. Section 1.163(j)-7(e)(5) sets forth the procedures by which a taxpayer may make a CFC group election. To make a CFC group election for a specified period, each designated U.S. person must attach a statement to its relevant federal income tax or information return in accordance with publications, forms, instructions, or other guidance. Section 1.163(j)-7(e)(5)(iv). The election must be made no later than the due date (taking into account any extensions) of the original federal income tax return for the taxable year of each designated U.S. person in which or with which the specified period ends. Section 1.163(j)-7(e)(5)(iii).

The 2018 Proposed Regulations and the 2020 Proposed Regulations also contain proposed rules relating to an election described as a “CFC group election.” The 2020 Proposed Regulations required the filing of a statement to make a CFC group election, while the 2018 Proposed Regulations did not require the filing of a statement. See section 1.163(j)-7(e)(5)(iv) of the 2020 Proposed Regulations and section 1.163(j)-7(b)(5) of the 2018 Proposed Regulations.

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 Internal Revenue Code (“**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, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. An election under section 1.163(j)-7(e)(5)(iv) is a regulatory election.

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 this section 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 this section 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 this section.

For Year 1, Taxpayer attempted to make the CFC group election by applying section 1.163(j)-7 of the 2020 Proposed Regulations. Although the 2020 Proposed Regulations

required the filing of a statement to make a CFC group election, Taxpayer did not file the required statement. For Year 2, Taxpayer attempted to make the CFC group election by applying section 1.163(j)-7 of the 2018 Proposed Regulations. The 2018 Proposed Regulations did not require the filing of a statement to make a CFC group election, and Taxpayer satisfied the requirements for making a CFC group election that would have applied under the 2018 Proposed Regulations if the rules of those proposed regulations had been applicable in Year 2.

However, in order to make the CFC group election for Year 1 or Year 2, Taxpayer was required to follow the rules provided in section 1.163(j)-7 of the 2021 Final Regulations. For Year 1 and Year 2, Taxpayer did not make the CFC group election in accordance with the requirements of the 2021 Final Regulations because it did not file the statement required under section 1.163(j)-7(e)(5)(iv). Thus, no CFC group election was or can be effective for Year 1 or Year 2 unless the Commissioner grants an extension of time to make the election.

CONCLUSION

Based upon the facts and representations submitted, we conclude that Taxpayer has satisfied the requirements for granting a reasonable extension of time to make the CFC group election. Accordingly, Taxpayer is granted an extension of time of 120 days from the date of this letter to make and apply the CFC group election effective for Year 1 and Year 2. This extension of time is contingent on Taxpayer filing, within 120 days from the date of this letter, all required returns (including amended returns) for all open years that are consistent with the granted relief and all other requirements of the applicable regulations under section 163(j).

This ruling is limited to the timeliness of the filing of the election described herein. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. Except as specifically provided otherwise, no opinion is expressed on the federal income tax consequences of any transaction or item discussed or referenced in this letter.

The ruling contained in this letter is 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 ruling, it is subject to verification on examination.

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

In accordance with the Powers of Attorney on file with this office, a copy of this letter is being sent to the Taxpayer's authorized representatives.

Sincerely,

Raphael Cohen
Senior Counsel, Branch 5
Office of Associate Chief Counsel
(International)

cc: