

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Refer Reply To:  
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PLR-110912-25

Date:  
February 2, 2026

In Re:

**LEGEND**

Taxpayer =  
State =  
State 2 =  
Date =  
Year 1 =  
Year 2 =  
Year 3 =

Dear :

This letter responds to a ruling request dated May 15, 2025, 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 election”) for its taxable year ending Year 2. The request was submitted under Treas. Reg. §§ 301.9100-1(c) and 301.9100-3, Proc. & Admin. Regs.

**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 liability company formed on Date 1 under the laws of State 1 for the purpose of real property acquisition, development, rental, operation, management and leasing. Taxpayer is classified as a partnership for U.S. Federal income tax purposes.

Taxpayer owns and operates real estate projects located in State 2. Taxpayer's personal and real property was placed in service in Year 1. Taxpayer represents that it is a real property trade or business engaged in activities described in § 469(c)(7)(C) of the Internal Revenue Code (Code), and therefore, it may elect to not be subject to the limitation in § 163(j).

Taxpayer filed a Form 1065, U.S. Return of Partnership Income, for Year 2, but failed to make an election under § 163(j)(7)(B) on that return. Taxpayer retained an international certified public accounting firm (the "CPA Firm") to prepare its Year 2 income tax return and provided CPA Firm with all information necessary to make an RPTOB election under § 163(j)(7)(B).

Taxpayer retained a different accounting firm for Year 3. Upon reviewing Taxpayer's Year 2 Form 1065, the new accounting firm informed Taxpayer that Taxpayer could have made an RPTOB election in Year 2, but it had not done so on its tax return. Taxpayer and its members were unaware that the RPTOB election was available for Taxpayer.

CPA Firm has acknowledged to Taxpayer that Taxpayer was not informed of the possibility of making an RPTOB election for Year 2. CPA Firm does not deny the availability of the RPTOB election for Year 2, and that CPA Firm was aware of the availability for Taxpayer to make the election and did not inform Taxpayer of the availability of the election.

While CPA Firm acknowledges having offered an RPTOB election to an entity related to Taxpayer for the related entity's tax return, CPA Firm also acknowledges it did not inform Taxpayer of the availability of the RPTOB election for Taxpayer's tax return. Had Taxpayer known that an RPTOB election was available for Year 2, Taxpayer would have made the election.

Taxpayer represents that, with respect to its taxable year Year 2, the period of limitations on assessment remains open.

## LAW

Section 163(a) of the Code allows a deduction for interest paid or accrued during the tax year. Section 163(j) limits the amount of "business interest" that a taxpayer may deduct.

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 1.163(j)-9(d)(1) of the Income Tax Regulations (Regulations) provides that a taxpayer makes the election “by attaching an election statement to the taxpayer’s timely filed original Federal income tax return.”

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.”

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)*.

Under § 301.9100-1(a), the Commissioner of Internal Revenue (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 a regulatory election.

Sections 301.9100-1 through 301.9100-3 provide standards for the Commissioner to grant an extension of time for a taxpayer to make a regulatory election. Sections 301.9100-1(c) and 301.9100-3 provide that the Commissioner has discretion to issue reasonable extensions for regulatory elections. Section 301.9100-1(b) defines a “regulatory election” 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.”

Taxpayer’s request must be analyzed under the requirements of § 301.9100-3 because the automatic extensions provided in § 301.9100-2 are not applicable.

Section 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. These benchmarks are disjunctive and, as such, a

taxpayer only need satisfy one in order to be deemed to have acted reasonably and in good faith. Vines v. Commissioner, 126 T.C. 279, 291 (2006).

Section 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.

Section 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. In this sense, “the relevant inquiry is whether allowing a late election gives the taxpayer some advantage that was not available on the date due.” Vines v. Commissioner, 126 T.C. at 293.

Section 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 § 1.163(j)-9(d) of the Regulations. 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 sufficient evidence to establish that it acted reasonably and in good faith. Had Taxpayer known of its ability to file a § 163(j)(7)(B) election to avoid the § 163(j) business interest deduction limit, it would have done so. Taxpayer relied on CPA Firm, a qualified tax professional, to prepare its Year 2 tax return and was not informed of the availability of the RPTOB election despite CPA Firm having all information necessary to determine the election’s availability to Taxpayer. The affidavits 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 reasonably relied on CPA Firm to prepare Taxpayer's Form 1065, U.S. Return of Partnership Income, for Year 2 and was wholly dependent on the tax advice CPA Firm provided. Taxpayer had no reason to believe CPA Firm would fail to inform Taxpayer of available elections. 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 in the aggregate for all tax years affected by the election than Taxpayer would have had if the election have been made timely (taking into account the time value of money). 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,

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Ian D. Heminsley  
Assistant to the Branch Chief, Branch 2  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

cc: