Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

[Third Party Communication:
Date of Communication: Month DD, YYYY]

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B02
PLR-103480-26

Date:
August 25, 2026

In Re:

LEGEND

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

Dear :

This letter responds to Taxpayer's letter ruling request dated February 11, 2026, and supplemental correspondence dated May 6, 2026, requesting an extension of time pursuant to sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make a late election to be treated as a real property trade or business ("RPTOB election") as provided by § 163(j)(7)(B) of the Internal Revenue Code (Code) for its taxable year ending Year 1.

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 an incorporated real estate management company organized and operating in State. Taxpayer is a calendar year taxpayer, classified as a corporation for U.S. Federal income tax purposes, employing an accrual method of accounting.

Taxpayer manages and operates real estate projects, and constitutes a real property trade or business (RPTOB), within the meaning of § 163(j)(7)(B) (cross-referencing § 469(c)(7)(C)) and therefore, may elect to not be subject to the limitation in § 163(j) of the Code.

Taxpayer self-prepares its federal income tax return. Taxpayer filed its Form 1120, U.S. Corporation Income Tax Return, for Year 2, on Date 1. Despite exercising reasonable diligence at the time it prepared and filed that return, Taxpayer's staff were unaware of the RPTOB election and thus failed to make the election on that return. Taxpayer's failure to make the RPTOB election was due solely to its lack of knowledge concerning the election's availability.

In early Year 2, while reviewing IRS guidance and tax resources, Taxpayer became aware of the RPTOB election and that election's potential applicability to Taxpayer's real estate management activities. Shortly thereafter, Taxpayer filed the present request for relief under §§ 301.9100-1 and 301.9100-3 seeking an extension of time to make the RPTOB election.

Taxpayer represents that the period of limitations on assessment remains open with respect to its taxable year Year 1.

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 § 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. The affidavit 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. 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. 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, a copy of this letter is 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
Senior Counsel, Branch 2
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: