

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.601. Rules and regulations.
(Also Part I, §§ 163, 168.)

Rev. Proc. 2020-22

SECTION 1. PURPOSE

.01 This revenue procedure provides guidance regarding the election under section 163(j)(7)(B) of the Internal Revenue Code (Code) to be an electing real property trade or business and the election under section 163(j)(7)(C) to be an electing farming business for purposes of the business interest expense deduction limitation under section 163(j) of the Code. This revenue procedure allows certain taxpayers to make a late election, or to withdraw an election, under section 163(j)(7)(B) or 163(j)(7)(C), as applicable, on an amended Federal income tax return, an amended Form 1065, or an administrative adjustment request under section 6227 of the Code (AAR).

.02 This revenue procedure also provides guidance regarding recent changes made to section 163(j)(10) of the Code. This revenue procedure describes the time and

manner in which certain taxpayers can elect (1) out of the 50 percent adjusted taxable income (ATI) limitation for taxable years beginning in 2019 and 2020, (2) to use the taxpayer's ATI for the last taxable year beginning in 2019 to calculate the taxpayer's section 163(j) limitation for taxable year 2020, and (3) out of deducting 50 percent of excess business interest expense (EBIE) for taxable years beginning in 2020 without limitation.

SECTION 2. BACKGROUND

.01 On December 22, 2017, section 163(j) was amended by Public Law 115-97, 131 Stat. 2054, commonly referred to as the Tax Cuts and Jobs Act (TCJA). Section 163(j), as amended by § 13301(a) of the TCJA, provides new rules limiting the amount of business interest expense that can be deducted for taxable years beginning after December 31, 2017.

.02 On March 27, 2020, section 163(j) was further amended by § 2306 of the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136, 134 Stat. 281 (CARES Act). The CARES Act amended section 163(j) by redesignating section 163(j)(10), as amended by the TCJA, as new section 163(j)(11), and adding a new section 163(j)(10) providing special rules for applying section 163(j) to taxable years beginning in 2019 and 2020.

.03 Under section 163(j)(1), as in effect prior to the enactment of the CARES Act, the business interest expense deduction is limited to the sum of: (1) the taxpayer's business interest income, as defined in section 163(j)(6), for the taxable year; (2) 30 percent of the taxpayer's ATI, as defined in section 163(j)(8) (30 percent ATI limitation), for such

taxable year; and (3) the taxpayer's floor plan financing interest, as defined in section 163(j)(9), for such taxable year (collectively, section 163(j) limitation).

.04 The section 163(j) limitation applies to all taxpayers with business interest expense, as defined in section 163(j)(5), except for taxpayers, other than tax shelters under section 448(a)(3), that meet the gross receipts test in section 448(c).

.05 Section 163(j)(5) generally provides that the term "business interest" means any interest expense properly allocable to a trade or business. Section 163(j)(7)(A)(ii) provides that, under the limitation, the term "trade or business" does not include an "electing real property trade or business." Section 163(j)(7)(A)(iii) provides that, under the limitation, the term "trade or business" does not include an "electing farming business." Thus, interest expense that is properly allocable to an electing real property trade or business or an electing farming business is not properly allocable to a trade or business under section 163(j) and therefore is not business interest expense that is subject to section 163(j)(1).

.06 The CARES Act retroactively increases the amount of business interest expense that may be deductible for taxable years beginning in 2019 and 2020 by computing the section 163(j) limitation using 50 percent, rather than 30 percent, of the taxpayer's ATI (50 percent ATI limitation). The 50 percent ATI limitation does not apply to partnerships for taxable years beginning in 2019. See section 163(j)(10)(A)(i).

.07 Under the CARES Act, a taxpayer can elect not to apply the 50 percent ATI limitation to any taxable year beginning in 2019 or 2020, and instead apply the 30 percent ATI limitation. In the case of a partnership, the election must be made by the partnership and may be made only for taxable years beginning in 2020. The election,

once made, cannot be revoked without the consent of the Secretary of the Treasury or his delegate. See section 163(j)(10)(A)(iii).

.08 The CARES Act provides special rules for partnerships and partners for taxable years beginning in 2019. Under section 163(j)(10)(A)(ii), a partner treats 50 percent of its allocable share of a partnership's EBIE for 2019 (2019 EBIE) as an interest deduction in the partner's first taxable year beginning in 2020 without limitation (50 percent EBIE rule). The remaining 50 percent of such EBIE remains subject to the section 163(j) limitation applicable to EBIE carried forward at the partner level. A partner may elect out of the 50 percent EBIE rule. See section 163(j)(10)(A)(ii)(II).

.09 The CARES Act allows a taxpayer to elect to substitute its ATI for the last taxable year beginning in 2019 (2019 ATI) for the taxpayer's ATI in determining the taxpayer's section 163(j) limitation for any taxable year beginning in 2020. See section 163(j)(10)(B)(i).

.10 On December 28, 2018, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) published a notice of proposed rulemaking in the Federal Register (REG-106089; 83 FR 67490) containing proposed regulations under section 163(j) (2018 proposed regulations) to amend the Income Tax Regulations (26 CFR Part 1).

.11 Proposed § 1.163(j)-9 provides the rules and procedures for making an election under section 163(j)(7)(B) to be an electing real property trade or business, as defined in proposed § 1.163(j)-1(b)(12), and an election under section 163(j)(7)(C) to be an electing farming business, as defined in proposed § 1.163(j)-1(b)(11). Proposed

§ 1.163(j)-9(b)(2) provides that the election described in proposed § 1.163(j)-9 is irrevocable.

.12 Proposed § 1.163(j)-9(c)(1) provides that a taxpayer makes an election under section 163(j)(7)(B) or 163(j)(7)(C) by attaching an election statement with the information specified in proposed § 1.163(j)-9(c)(2) to the taxpayer's timely filed original Federal income tax return, including extensions.

.13 The Treasury Department and the IRS intend to publish final regulations as well as additional proposed regulations under section 163(j).

.14 With the enactment of the CARES Act, and prior to publication of the final and additional proposed regulations, immediate transition guidance is needed under section 163(j) for taxpayers who are affected by the various amendments to the Code made by the CARES Act, including, for example, the technical corrections to section 168(e) of the Code relating to the classification of qualified improvement property. Immediate transition guidance is also needed to provide the time and manner of making the elections provided for under section 163(j)(10) as amended by the CARES Act.

.15 Section 4 of this revenue procedure provides an automatic extension of time for certain taxpayers to file an election under section 163(j)(7)(B) to be an electing real property trade or business or under section 163(j)(7)(C) to be an electing farming business for taxable years 2018, 2019, or 2020. Section 5 of this revenue procedure also provides an opportunity for certain taxpayers to withdraw a prior election under section 163(j)(7)(B) to be an electing real property trade or business or under section 163(j)(7)(C) to be an electing farming business. If a taxpayer withdraws an election

within the manner outlined in section 5 of this revenue procedure, the taxpayer will be treated as if the election was never made.

.16 Section 6 of this revenue procedure provides the time and manner by which certain taxpayers can make elections under new section 163(j)(10). Specifically, these elections are: (1) under section 163(j)(10)(A)(iii), to not apply the 50 percent ATI limitation; (2) under section 163(j)(10)(B), to use the taxpayer's ATI for the last taxable year beginning in 2019 to calculate the taxpayer's section 163(j) limitation in 2020; and (3) under section 163(j)(10)(A)(ii)(II), for a partner to elect out of the 50 percent EBIE rule.

SECTION 3. SCOPE

.01 Section 163(j)(7) elections. Sections 4 and 5 of this revenue procedure apply to a taxpayer described in section 3.01(1) or (2) of this revenue procedure with respect to an election under section 163(j)(7)(B) to be an electing real property trade or business or under section 163(j)(7)(C) to be an electing farming business (collectively, section 163(j)(7) election). The fact that a taxpayer satisfies the scope requirement of this section 3.01 is not a determination that the taxpayer is a real property trade or business under section 162, 212, or 469 of the Code, or a farming business under section 162, 199A, or 263A of the Code.

(1) A taxpayer is described in this section 3.01(1) if the taxpayer did not file a section 163(j)(7) election with its timely filed original Federal income tax return or Form 1065, including extensions, or withdrew an election under section 5 of this revenue procedure, for a taxable year beginning in 2018 (2018 taxable year), 2019 (2019 taxable year), or 2020 (2020 taxable year), was otherwise qualified to make an election when

the return was filed, and now wants to make an election for one of those taxable years.

(2) A taxpayer is described in this section 3.01(2) if the taxpayer filed a section 163(j)(7) election with its timely filed original Federal income tax return or Form 1065, including extensions, or made a late election under section 4 of this revenue procedure, for a 2018, 2019, or 2020 taxable year and now wants to withdraw the election.

.02 Section 163(j)(10) elections. Section 6 of this revenue procedure provides the time and manner of making or revoking elections under new section 163(j)(10) applicable to a taxpayer that has timely filed, or will timely file, an original Federal income tax return or Form 1065 for a taxpayer's 2019 or 2020 taxable year.

SECTION 4. AUTOMATIC EXTENSION OF TIME TO FILE A SECTION 163(j)(7) ELECTION

.01 In general. A taxpayer within the scope of section 3.01(1) of this revenue procedure has properly made the section 163(j)(7) election if the taxpayer made the section 163(j)(7) election under the 2018 proposed regulations or under section 4.02 of this revenue procedure.

.02 Time for making a late section 163(j)(7) election. A taxpayer within the scope of section 3.01(1) of this revenue procedure may make the section 163(j)(7) election for a 2018, 2019, or 2020 taxable year by filing an amended Federal income tax return, amended Form 1065, or AAR, as applicable. Except as provided in Revenue Procedure 2020-23, 2020-18 I.R.B. 1 (April 27, 2020), released on www.irs.gov on April 8, 2020, regarding the time to file an amended return by a partnership subject to the centralized partnership audit regime enacted as part of the Bipartisan Budget Act of 2015 (BBA partnership) for 2018 and 2019 taxable years, the amended Federal income

tax return or amended Form 1065 must be filed on or before October 15, 2021, but in no event later than the applicable period of limitations on assessment for the taxable year for which the amended return is being filed. In the case of a BBA partnership that chooses not to file an amended Form 1065 as permitted under Rev. Proc. 2020-23, the BBA partnership may make a late section 163(j)(7) election by filing an AAR on or before October 15, 2021, but in no event later than the applicable period of limitations on making adjustments under section 6235 for the reviewed year, as defined in § 301.6241-1(a)(8) of the Procedure and Administration Regulations (26 CFR Part 301).

.03 Manner of making a late section 163(j)(7) election. A taxpayer described in section 4.02 of this revenue procedure must make the election on a timely filed amended Federal income tax return, amended Form 1065, or an AAR, as applicable, with the election statement in accordance with the rules and procedures contained in proposed § 1.163(j)-9 of the 2018 proposed regulations and this section 4. The amended Federal income tax return, amended Form 1065, or AAR, as applicable, must include the adjustment to taxable income for the late section 163(j)(7) election and any collateral adjustments to taxable income or to tax liability. Such collateral adjustments also must be made on amended Federal income tax returns, amended Forms 1065, or AARs, as applicable, for any affected succeeding taxable year. An example of such collateral adjustments is the amount of depreciation allowed or allowable in the applicable taxable year for the property to which the late election applies. The taxpayer is subject to all of the other rules and requirements in section 163(j), except as otherwise provided in this revenue procedure. The Treasury Department and the IRS have provided guidance under section 163(j) in the 2018 proposed regulations and will

provide additional guidance in forthcoming final regulations and additional proposed regulations under section 163(j). The additional proposed regulations will address issues arising under the CARES Act as well as certain other issues.

.04 Late section 163(j)(7) election statement contents. The election statement must be titled, "Revenue Procedure 2020-22 Late Section 163(j)(7) Election." The election statement must contain:

- (1) The taxpayer's name;
- (2) The taxpayer's address;
- (3) The taxpayer's social security number (SSN) or employer identification number (EIN);
- (4) A description of the taxpayer's electing trade or business, including the principal business activity code; and
- (5) A statement that the taxpayer is making an election under section 163(j)(7)(B) or 163(j)(7)(C), as applicable.

.05 Depreciation. A taxpayer within the scope of section 3.01(1) of this revenue procedure that is making a section 163(j)(7) election must determine its depreciation on the amended Federal income tax returns, amended Forms 1065, or AARs, as applicable, for the property that is affected by the late election using the alternative depreciation system of section 168(g), pursuant to section 168(g)(1)(F) or (G). See also section 163(j)(11). Section 4.02 of Rev. Proc. 2019-8, 2019-3 I.R.B. 347, explains how to change to the alternative depreciation system for existing property that is affected by the late election.

SECTION 5. OPPORTUNITY TO WITHDRAW A SECTION 163(j)(7) ELECTION

.01 In general. A taxpayer within the scope of section 3.01(2) of this revenue procedure will be treated as if the section 163(j)(7) election was never made if the taxpayer withdraws the election as provided in this section 5.

.02 Time and manner for withdrawing a section 163(j)(7) election. A taxpayer that wishes to withdraw an election as described in section 5.01 of this revenue procedure for a 2018, 2019, or 2020 taxable year must timely file an amended Federal income tax return, amended Form 1065, or AAR, as applicable, for the taxable year in which the election was made, with an election withdrawal statement. Except as provided in Revenue Procedure 2020-23, regarding the time to file amended returns by BBA partnerships for 2018 and 2019 taxable years, the amended Federal income tax return or amended Form 1065 must be filed on or before October 15, 2021, but in no event later than the applicable period of limitations on assessment for the taxable year for which the amended return is being filed. In the case of a BBA partnership that chooses not to file an amended Form 1065 as permitted under Rev. Proc. 2020-23, the BBA partnership may withdraw the section 163(j)(7) election by filing an AAR on or before October 15, 2021, but in no event later than the applicable period of limitations on making adjustments under section 6235 for the reviewed year, as defined in § 301.6241-1(a)(8). The amended Federal income tax return, amended Form 1065, or AAR, as applicable, must include the adjustment to taxable income for the withdrawn section 163(j)(7) election and any collateral adjustments to taxable income or to tax liability, including any adjustments under section 481. A taxpayer also must file amended Federal income tax returns, amended Forms 1065, or AARs, as applicable, including such collateral adjustments, for any affected succeeding taxable years. An

example of such collateral adjustments is the amount of depreciation allowed or allowable in the applicable taxable year for the property to which the withdrawn election applies.

.03 Section 163(j)(7) election withdrawal statement contents. The election withdrawal statement should be titled, “Revenue Procedure 2020-22 Section 163(j)(7) Election Withdrawal.” The election withdrawal statement must contain the taxpayer’s name, address, and SSN or EIN, and must state that, pursuant to Revenue Procedure 2020-22, the taxpayer is withdrawing its election under section 163(j)(7)(B) or 163(j)(7)(C), as applicable.

.04 Depreciation. A taxpayer that is withdrawing a prior section 163(j)(7) election must determine its depreciation for the property that is affected by the withdrawn election in accordance with section 168 on the amended Federal income tax returns, amended Forms 1065, or AARs, as applicable.

SECTION 6. ELECTIONS UNDER SECTION 2306 OF THE CARES ACT

.01 Election out of the 50 percent ATI limitation.

(1) In general. Except as otherwise provided in this section 6.01(1), a taxpayer may elect under section 163(j)(10)(A)(iii) not to apply the 50 percent ATI limitation for a 2019 or 2020 taxable year. A partnership can make this election only for a 2020 taxable year because partnerships cannot use the 50 percent ATI limitation for a 2019 taxable year.

(2) Time and manner of making the election. A taxpayer permitted to make the election, as described in section 6.01 of this revenue procedure, makes the election not to apply the 50 percent ATI limitation for a 2019 or 2020 taxable year by timely filing a

Federal income tax return or Form 1065, including extensions, an amended Federal income tax return, amended Form 1065, or AAR, as applicable, using the 30 percent ATI limitation. No formal statement is required to make the election.

(3) Consent granted to revoke the election. If a taxpayer made the election, as described in section 6.01(2) of this revenue procedure, not to apply the 50 percent ATI limitation, for a 2019 or 2020 taxable year, and the taxpayer wishes to revoke that election for such taxable year, the Commissioner grants the taxpayer consent to revoke that election, provided the taxpayer timely files an amended Federal income tax return, amended Form 1065, or AAR, as applicable, for the applicable tax year, using the 50 percent ATI limitation.

(4) Annual election; who makes the election. The election in section 6.01 of this revenue procedure must be made for each taxable year. For a consolidated group, the election is made by the agent for a consolidated group, within the meaning of § 1.1502-77, on behalf of members of the consolidated group. For partnerships, the election is made by the partnership, but only for a 2020 taxable year. For an applicable CFC, as defined in proposed § 1.163(j)-7(f)(2), the election is not effective unless made for the applicable CFC by each controlling domestic shareholder, as defined in § 1.964-1(c)(5).

.02 Election to use 2019 ATI in 2020 taxable year

(1) In general. Under section 163(j)(10)(B), a taxpayer may elect to use the taxpayer's ATI for the last taxable year beginning in 2019 (that is, the taxpayer's 2019 ATI) as the ATI for any taxable year beginning in 2020, subject to modifications for short taxable years.

(2) Time and manner of making or revoking the election. A taxpayer makes an election under this section 6.02 for a 2020 taxable year by timely filing a Federal income tax return or Form 1065, including extensions, an amended Federal income tax return, amended Form 1065, or AAR, as applicable, using the taxpayer's 2019 ATI. A taxpayer revokes an election under this section 6.02 for a 2020 taxable year by timely filing an amended Federal income tax return, amended Form 1065, or AAR by a BBA partnership, as applicable, not using the taxpayer's 2019 ATI. No formal statement is required to make or revoke the election.

(3) Who makes the election. For a consolidated group, the election under section 6.02 of this revenue procedure is made by the agent for a consolidated group, within the meaning of § 1.1502-77, on behalf of itself and members of the group. For partnerships, the election is made by the partnership. For an applicable CFC, the election is not effective unless made for the applicable CFC by each controlling domestic shareholder. In the case of a CFC group, as defined in proposed § 1.163(j)-7(f)(6), the election is not effective for any CFC group member, as defined in proposed § 1.163(j)-7(f)(8), unless made for every taxable year of a CFC group member for which the election is available and for which the CFC group member is a CFC group member on the last day of the CFC group member's taxable year.

(4) Short taxable year. If an election is made under section 6.02 of this revenue procedure for a 2020 taxable year that is a short taxable year, the ATI for the taxpayer's applicable taxable year beginning in 2020 is equal to the amount that bears the same ratio to such ATI as the number of months in the short taxable years bears to 12.

.03 Election out of the 50 percent EBIE rule.

(1) In general. Under section 163(j)(10)(A)(ii)(II), a partner may elect out of the 50 percent EBIE rule.

(2) Time and manner of making or revoking the election. A partner makes the election under section 6.03 of this revenue procedure by timely filing a Federal income tax return or Form 1065, including extensions, an amended Federal income tax return, an amended Form 1065, or an AAR, as applicable, for the partner's first taxable year beginning in 2020, by not applying the 50 percent EBIE rule in determining the section 163(j) limitation. A partner revokes the election under this section 6.03 by timely filing an amended Federal income tax return, amended Form 1065, or AAR, as applicable, for the partner's first taxable year beginning in 2020, by applying the 50 percent EBIE rule in determining the section 163(j) limitation.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective April 10, 2020.

SECTION 8. DRAFTING INFORMATION

The principal authors of this revenue procedure are Jaime Park, Susie Bird, and Charles Gorham of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this revenue procedure, contact Ms. Park at (202) 317-4877 (not a toll-free call), Ms. Bird at (202) 317-4860 (not a toll-free call), or Mr. Gorham at (202) 317-5091 (not a toll-free call).