U.S. Tax Reform: IRS Proposes Interest Deduction Limitation Regulations

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On November 26, 2018, the Internal Revenue Service (the "IRS") and the U.S. Department of the Treasury (the "Treasury") issued proposed regulations (the "Proposed Regulations") under section 163(j) of the Internal Revenue Code (the "Code").[1] Section 163(j) limits the deductibility of net business interest expense to 30% of "adjusted taxable income" plus "floor plan financing interest expense" for taxable years beginning after December 31, 2017.

The Proposed Regulations generally apply to taxable years ending after the date the Proposed Regulations are published as final regulations. However, taxpayers may elect to apply the Proposed Regulations retroactively to a taxable year beginning after December 31, 2017 so long as the taxpayer and any related parties consistently apply the Proposed Regulations to those taxable years.

This post provides background and a general summary of some of the most important aspects of the Proposed Regulations. For more information, please contact any of the Proskauer tax lawyers listed on this post or your regular Proskauer contact. Click to read more about the Proposed Regulations.

Background

Section 163(j) and the Proposed Regulations generally disallow a deduction for business interest expense that exceeds the sum of (i) business interest income, (ii) 30% of adjusted taxable income ("ATI"), and (iii) floor plan financing interest expense in the current taxable year (this combined limitation, the "section 163(j) limitation").[2] To the extent that business interest expense for a taxable year exceeds this limitation, the taxpayer generally may carryforward the amount of disallowed business interest expense to subsequent taxable years.[3] The section 163(j) limitation applies to a taxpayer's total amount of business interest expense in a taxable year (including carryforwards of disallowed business interest expense from prior taxable years), and is not traced to particular debt obligations.[4]

ATI is the taxable income of the taxpayer, computed without regard to (i) any item of income, gain, deduction, or loss that is not properly allocable to a trade or business, (ii) business interest expense and income, (iii) net operating loss deductions under section 172, (iv) deductions for qualified business income under section 199A, and (v) for years beginning before January 1, 2022, deductions for depreciation, amortization, or depletion.[5]

A small business taxpayer, other than a tax shelter, is not subject to the section 163(j) limitation if the taxpayer's average annual gross receipts are $25 million or less for the three taxable years immediately preceding the current year.[6] Certain electing real property businesses, electing farming businesses, and excepted regulated utility businesses are entirely exempt from the section 163(j) limitation ("excepted trades or businesses") for each taxable year in which they qualify.

Summary of the Proposed Regulations

Expansive scope of "interest" including an anti-abuse rule

The Proposed Regulations define "interest" very broadly for purposes of section 163(j) to include amounts paid, received, or accrued as compensation for the use or forbearance of money under the terms of an instrument or contractual arrangement that is treated as indebtedness under the Code, or an amount that is treated as interest under the Code.[7] These items include original issue discount, qualified stated interest, acquisition discount, amounts treated as interest in certain integrated transactions, and accrued market discount.[8]

The Proposed Regulations also treat as interest certain amounts that are closely related to interest and that affect the economic yield or cost of funds of a transaction involving interest, but may not be compensation for the use or forbearance of money on a stand-alone basis[9] or otherwise treated as interest under general principles, such as (i) income, deduction, gain, or loss from transactions used to hedge interest-bearing assets or liabilities, (ii) substitute interest payment, (iii) commitment fees, (iv) debt issuance costs, (v) guaranteed payments for the use of capital,[10] and (vi) the time value component of a non-cleared swap with significant nonperiodic payments.[11] These items are treated as both interest income and interest expense for purposes of section 163(j). However, the Proposed Regulations also include an anti-abuse rule that treats as interest expense for purposes of section 163(j) any expense or loss predominately incurred in consideration of the time value of money in a transaction or series of transactions in which the taxpayer secures the use of funds for a period of time (and which is not included in the preceding list).[12] Therefore, if a corporation that issues preferred stock or a partnership issues a preferred interest that is entitled to allocated income, it is possible that such issuer could be treated as paying interest for purposes of the anti-abuse rule, even though the preferred stock or partnership interest would not generate interest expense for other federal income tax purposes. Also, the anti-abuse rule does not treat income or gain in analogous transactions as interest income. Accordingly, under the Proposed Regulations, a taxpayer that both secures and expends funds and predominantly incurs and receives time value of money consideration not otherwise treated as interest would be whipsawed by being deemed to pay interest expense subject to the section 163(j) limitation, but not receiving interest income that could be offset by the interest expense.

Definition of ATI

The Proposed Regulations refine the statutory definition of ATI (the amount to which the 30% limitation on deductibility applies) by (i) subtracting floor plan financing interest expense, (ii) requiring, in taxable years beginning before January 1, 2022, an adjustment for sales or dispositions of property subject to depreciation, amortization, or depletion, and (iii) requiring an adjustment with respect to sales or dispositions of stock of a member of a consolidated group or partnership interest.[13] These adjustments under the Proposed Regulations are described as intended to prevent double-counting. However, the ATI adjustments do not include depreciation, amortization, or depletion that are capitalized into inventory property under section 263A and included in costs of goods sold.[14]

Ordering rules and interaction with other Code provisions

The Proposed Regulations provide that section 163(j) is generally applied after other provisions that defer, capitalize, or disallow interest expense. Thus, the section 163(j) limitation typically applies to interest expense that otherwise could be deducted entirely without regard to the section 163(j) limitation.[15] Interest expense that has been disallowed, deferred, or capitalized in the current taxable year, or that has not yet been accrued, is not taken into account for purposes of section 163(j).[16] However, section 163(j) is applied before the at-risk rules and passive activity loss rules in sections 465 and 469 as well as the excess business loss rules in section 461(l).[17] The IRS has requested comments regarding the interaction between section 163(j) and the provisions relating to exclusions from income on the discharge of indebtedness. The Proposed Regulations reserve on the interaction between section 163(j) and the base erosion and anti-abuse tax under section 59A.[18]

Applying section 163(j) to all of a C corporation’s interest expense

The Proposed Regulations provide that all interest expense and interest income of a C corporation (including, in certain cases, members of a consolidated group, real estate investment trusts (REITs), and regulated investment companies (RICs)) is *per se* business interest expense and business interest income for purposes of section 163(j).[19] Moreover, the investment interest expense or investment interest income of a partnership that is allocated to a C corporation partner is recharacterized as business interest expense or business interest income (except to the extent the C corporation partner is allocated a share of a domestic partnership's subpart F or global intangible low-taxed income ("GILTI") inclusions that are treated as investment income at the partnership level).[20] Thus, generally all of a C corporation's interest expense is subject to the section 163(j) limitation, and generally all of a C corporation's interest income increases the section 163(j) limitation, except to the extent the interest expense or interest income is allocable to an excepted trade or business.

Disallowance of interest expense under section 163(j) does not affect a C corporation's E&P calculation

The Proposed Regulations provide that a C corporation (other than a RIC or a REIT) will calculate its current earnings and profits ("E&P") without regard to any portion of its business interest expense that is disallowed or carried forward.[21] Thus, a C corporation with disallowed interest expense for a taxable year reduces its current E&P by all of its interest expense for the year, although it may not currently deduct the disallowed portion of the interest expense. In the case of a RIC or a REIT, E&P is adjusted in the taxable year in which the business interest expense is deductible, or if earlier, in the first taxable year for which the entity is no longer a RIC or a REIT.[22]

Application of section 163(j) to partnerships and S corporations, and their partners and shareholders

The statute provides that the section 163(j) limitation applies first at the partnership level, and any allowable business interest expense deduction is taken into account in determining the nonseparately stated taxable income or loss of the partnership.[23] A partner's ATI is increased by the partner's distributive share of the "unused" portion of the partnership's ATI, which is referred to as the partnership's "excess taxable income", [24] but not by the partner's distributive share of income, gain, deduction, or loss.[25] The amount of a partnership's interest expense that is disallowed as a deduction at the partnership level – its "excess business interest expense" – is not carried forward by the partnership, but instead is allocated to the partners.[26] This excess business interest expense can be used by a partner in a subsequent year only to the extent that the partner is allocated "excess taxable income" or the partnership's business interest income that exceeds its business interest expense (this excess, "excess business interest income") from that partnership in that subsequent year.

Under the Proposed Regulations, for purposes of calculating a partner's own business interest income and thereby its section 163(j) limitation, the partner includes only its share of excess business interest income from the partnership,[27] and the partner may not include its share of the partnership's floor plan financing interest for purposes of determining its own section 163(j) limitation.[28]

The Proposed Regulations create a complex eleven-step computation rule for determining a partner's share of the partnership's excess business interest expense, excess business interest income, and excess taxable income (referred to for this purpose as "section 163(j) excess items").[29] The detailed computation steps are designed to ensure that the total amount of deductible business interest expense and section 163(j) excess items allocated to each partner will equal the partnership's total amount of deductible business interest expense and section 163(j) excess items.

Similar rules apply to S corporations and their shareholders. The Proposed Regulations provide that the section 163(j) limitation applies at the S corporation level and is determined in the same manner as for partnerships.[30] The same rule prohibiting double counting of business interest income and floor plan financing interest expense applies to S corporations and their shareholders.[31] As an S corporation generally is required to make pro rata distributions of income, allocations of excess taxable income and excess business interest income are made in accordance with the shareholders' respective pro rata interests in the S corporation.[32] Under the Proposed Regulations, if an S corporation has disallowed business interest expense, it is carried forward to the succeeding year by the S corporation, instead of being allocated to its shareholders.[33] In contrast, partners in partnerships carry forward their share of a partnership's disallowed business interest expense.

Controlled foreign corporations ("CFCs")

Section 163(j) applies to CFCs in the same manner as it applies to domestic corporations. Thus, a CFC with business interest expense is required to apply the Proposed Regulations to determine its section 163(j) limitation for purposes of computing subpart F income, GILTI-tested income, and income effectively connected with a U.S. trade or business ("ECI"). While the section 163(j) limitation is taken into account when calculating the above types of taxable income, the earnings and profits of a CFC are reduced by interest expense that is subject to the section 163(j) limitation.[34] Accordingly, for a CFC with only subpart F income, the section 163(j) limitation will have no practical effect and the United States shareholders of the CFC will effectively benefit from the interest expense derived by the CFC.

By default, the Proposed Regulations apply the section 163(j) limitation on a CFC-by-CFC basis.[35] However, this application may result in an unfair double counting of GILTI-tested income for a United States shareholder. For example, if CFC 1 and CFC 2 are controlled by the same United States shareholder, and CFC 1 makes a loan to CFC 2, then the interest income received by CFC 1 would be included as GILTI-tested income while the deduction for the corresponding interest expense incurred by CFC 2 would be limited under section 163(j), thereby increasing CFC 2’s GILTI-tested income. At the United States shareholder level, the inclusion of the business interest income coupled with the limitation on the deductibility of the corresponding business interest expense would amount to double counting. To mitigate this double counting, the Proposed Regulations allow an election to calculate the section 163(j) limitation on a group basis (the “CFC group election”).

The CFC group election is made by applying the rules for computing the section 163(j) limitation of an “applicable CFC” under the Proposed Regulations.[36] The term “applicable CFC” means a CFC, but only if the foreign corporation has at least one United States shareholder that owns, within the meaning of section 958(a), stock of the foreign corporation.[37] Once the election is made, it is irrevocable until or unless a CFC group ceases to exist or with respect to a particular CFC, when such CFC ceases to be a member.[38] A CFC group is two or more applicable CFCs at least 80% of the stock by value of which is directly, indirectly, or constructively owned[39] by a single United States shareholder or in the aggregate by related United States shareholders if each related United States shareholder owns the stock of each applicable CFC.[40] This election allows CFCs to net intercompany interest income and interest expense. Therefore, the members of a CFC group that has only intercompany debt and is the subject of the election would not be subject to the section 163(j) limitation. Where the CFC group holds debt other than intercompany debt and the election is made, the section 163(j) limitation is applied to a member’s allocable share of the CFC group’s business interest expense.[41]

Different rules apply to a financial services subgroup of a CFC.[42] In addition, specific rules apply to a CFC group member that is a partnership or otherwise fiscally transparent.

The Proposed Regulations require a CFC to compute ATI in accordance with either the CFC gross income computation rules[43] or the foreign corporation ECI computation rules, as applicable.[44] Rules to adjust ATI to avoid either double-counting or inappropriate exclusions related to GILTI, subpart F income, section 78, and related-party dividends are also contained in the Proposed Regulations.

Foreign persons with effectively connected income (ECI)

Foreign persons that have ECI are subject to section 163(j). The application of section 163(j) and the general rules under the Proposed Regulations is modified so that the section 163(j) limitation is calculated only with respect to the foreign person’s ECI. A foreign corporation that is not a CFC would first determine its effectively connected interest expense under Treas. Reg. § 1.882-5, and then apply the section 163(j) limitation in computing its branch income under section 884.[45]

Limited partners of trading partnerships with interest income subject to section 163(j)

Partnerships or S corporations that are "traders" or otherwise are engaged in a trade or business in which some partners or shareholders do not materially participate (e.g., limited partners of a trader hedge fund) will be subject to section 163(j).[46] To the extent that the business interest expense of such a partnership or S corporation is not subject to the section 163(j) limitation, it will still be limited by section 163(d) at the owner level. With respect to partnerships, to the extent that the business interest expense is subject to the section 163(j) limitation and becomes a carryover item of the limited partners, the interest expense will be treated as investment interest expense subject to section 163(d) in the hands of the limited partners. This would almost certainly be the worst possible result for trading funds, and will create an additional incentive for general partners and individual investors in trading funds with leverage to hold their interest in those funds in a CFC and make a section 962 election with respect to the CFC or for investors to prefer to invest through a foreign feeder that is treated as a passive foreign investment company ("PFIC") and make a "qualifying electing fund" ("QEF") election to report their share of the PFIC's income.[47] Because the earnings and profits of a CFC and PFIC are reduced by interest expense that is disallowed under section 163(j), and because investors in a CFC or PFIC report only their share of the CFC's or PFIC's earnings and profits, investing through a CFC or PFIC will effectively preserve the investor's interest expense deduction.[48]

Ordering rule for business interest expense deduction and carryforwards

For a C corporation taxpayer that is not a member of a consolidated group, the Proposed Regulations provide that current-year business interest expense is deducted in the current taxable year before any disallowed business interest expense carryforwards from a prior tax year are deducted in that year.[49] Disallowed business interest expense carryforwards are then deducted in the order of the tax years in which they arose, beginning with the earliest tax year, subject to certain limitations.[50]

Transition rules for disallowed disqualified interest under former section 163(j)

The Proposed Regulations include a transition rule for interest expense (including carryforwards) for which a deduction was disallowed under former section 163(j) in the taxpayer’s last taxable year beginning before January 1, 2018 (“disallowed disqualified interest”).[51] Disallowed disqualified interest is carried forward to the first taxable year beginning after December 31, 2017, except to the extent that the interest is properly allocable to an excepted trade or business.[52]

Electing excepted trade or business status; REMICs

As mentioned above, section 163(j) does not apply to any “excepted trades or businesses,” which include the trade or business of providing services as an employee, electing real property businesses, electing farming businesses, and certain regulated utility businesses. Certain infrastructure trades or businesses can qualify as an electing real property trade or business.[53] However, an excepted trade or business must use an alternative depreciation system under section 168(g)(8), which requires the assets of the business to be depreciated over a longer period and forfeits the benefit of immediate expensing under section 168(k) for certain types of property.[54] For any partnership that conducts a trade or business which qualifies as an excepted trade or business, the election must be made at the partnership level by attaching an election statement to its federal income tax return.[55]

The Proposed Regulations provide rules and procedures for making an election to be treated as an electing real property trade or business.[56] Once the election is made, it is irrevocable.[57] The Proposed Regulations clarify that a taxpayer, including a partnership, can make an election for a particular trade or business, rather than for an entire entity, and this election would apply to the taxable year that the election is made and all subsequent years.[58] The election generally terminates automatically if the taxpayer ceases to exist or ceases the operation of the electing trade or business.[59] However, the election does not terminate when a taxpayer transfers substantially all of the assets of an electing trade or business to a related party.[60]

A REIT that holds real property, interests in partnerships holding real property, or shares in other REITs holding real property may benefit from a safe harbor in the Proposed Regulations allowing the REIT to make an election to be an electing real property trade or business for all or part of its assets.[61] However, a mortgage REIT cannot make the election because real property financing is not a “real property trade or business.”

The Proposed Regulations provide that real estate mortgage investment conduits (REMICs) are not subject to the section 163(j) limitation as they are neither carrying on a trade or business nor are REMICs C corporations.

Broad anti-abuse rule

The Proposed Regulations include a broad anti-abuse rule that disregards or recharacterizes any transaction or arrangement if a principal purpose for entering into the transaction or arrangement is to avoid the application of section 163(j) or the regulations issued under it.[62] This includes the use of multiple entities to satisfy the gross receipts test in order to qualify for the small business exception.

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[1] Pub. L. No. 115-97, 115 Stat. 2054 (2017).

[2] IRC § 163(j)(1); Prop. Reg. § 1.163(j)-2(b).

[3] IRC § 163(j)(2); Prop. Reg. § 1.163(j)-2(c).

[4] Preamble to the Proposed Regulations.

[5] IRC § 163(j)(8).

[6] IRC § 163(j)(3); Prop. Reg. § 1.163(j)-2(d) (citing the gross receipts test in section 448(c)). For purposes of section 163(j), tax shelter means any enterprise if its interests are offered for sale pursuant to a security offering that is required to be registered under securities laws; any syndicate, which is generally defined as a partnership if more than 35 percent of its losses during a taxable year are allocable to limited partners or limited entrepreneurs; or any partnership, entity, plan, or arrangement, the significant purpose of which is the avoidance or evasion of federal income tax. IRC §§ 448 (a)(3), (d)(3); 461(i)(3); 1256(e)(3)(B); 6662(d)(2)(C)(ii).

[7] Prop. Reg. § 1.163(j)-1(b)(20)(i).

[8] Prop. Reg. § 1.163(j)-1(b)(20)(i)(A)-(P).

[9] Preamble to the Proposed Regulations; *see* Prop. Reg. § 1.163(j)-1(b)(20)(iii).

[10] Prop. Reg. § 1.163(j)-1(b)(20)(iii).

[11] Prop. Reg. § 1.163(j)-1(b)(20)(ii)(A). The Proposed Regulations reserve on providing an exception for collateralized swaps that are cleared by a derivatives clearing organization or by a clearing agency. Prop. Reg. § 1.163(j)-1(b)(20)(ii)(B).

[12] Prop. Reg. § 1.163(j)-1(b)(20)(iv).

[13] Prop. Reg. § 1.163(j)-1(b)(1)(ii).

[14] Prop. Reg. § 1.163(j)-1(b)(1)(iii). There are also special adjustment rules for specific types of entities. Prop. Reg. § 1.163(j)-1(b)(1)(v) (cross-referencing other provisions in the Proposed Regulations where these rules can be found).

[15] Prop. Reg. § 1.163(j)-3(b)(1).

[16] Prop. Reg. § 1.163(j)-3(b).

[17] Prop. Reg. § 1.163(j)-3(b)(4).

[18] Prop. Reg. § 1.163(j)-3(b)(10).

[19] The preamble to the Proposed Regulations notes that this approach is consistent with the legislative history of section 163(j) and Notice 2018-28. 1.163(j)-4(b)(1).

[20] Prop. Reg. § 1.163(j)-4(b)(3); Prop. Reg. § 1.163(j)-7(d)(1)(ii).

[21] Prop. Reg. § 1.163(j)-4(c)(1).

[22] Prop. Reg. § 1.163(j)-4(c)(2).

[23] IRC § 163(j)(4)(A)(i); Prop. Reg. § 1.163(j)-6(a). Although "non-separately stated taxable income or loss of the partnership" is not defined in section 163(j), it is understood it to mean the partnership's "taxable income or loss, exclusive of items requiring separate computation under other paragraphs of [Section 702(a)]." *See* New York State Bar Association Tax Section, Report on Section 163(j), Report No. 1393 (Mar. 28, 2018).

[24] Excess taxable income is the amount that bears the same ratio to the partnership's ATI as (i) the excess (if any) of (A) 30% of the ATI of the partnership over (B) the amount (if any) by which the business interest expense of the partnership, reduced by the floor plan financing interest expense, exceeds the business interest income of the partnership, bears to (ii) 30% of the ATI of the partnership. IRC § 163(j)(4)(C); Prop. Reg. § 1.163(j)-1(b)(15).

[25] IRC § 163(j)(4)(A)(ii); Prop. Reg. § 1.163(j)-6(e)(1).

[26] IRC § 163(j)(4)(B)(i); Prop. Reg. § 1.163(j)-6(g)(1).

[27] Prop. Reg. § 1.163(j)-6(e)(4)(i).

[28] Prop. Reg. § 1.163(j)-6(e)(4)(ii); *see also* Notice 2018-28, 2018-16 I.R.B. 492, where the basis for these rules was first announced.

[29] Prop. Reg. § 1.163(j)-6(f)(2).

[30] Prop. Reg. § 1.163(j)-6(l)(1).

[31] Prop. Reg. § 1.163(j)-6(l)(4)(iii).

[32] Prop. Reg. § 1.163(j)-6(l)(1).

[33] Prop. Reg. § 1.163(j)-6(l)(5).

[34] Prop. Reg. § 1.163(j)-7(e).

[35] Prop. Reg. § 1.163(j)-7(b)(2).

[36] Prop. Reg. § 1.163(j)-7(b)(5).

[37] Prop. Reg. § 1.163(j)-7(f)(2).

[38] Prop. Reg. § 1.163(j)-7(b)(5).

[39] Ownership for this purpose is interpreted within the meaning of section 958(a) of the Code.

[40] Prop. Reg. § 1.163(j)-7(f)(6).

[41] A member’s allocable share of the business interest expense is the CFC group’s net business interest expense *multiplied by* a fraction equal to the CFC group member’s business interest expense *over* the aggregate net business interest expense of each CFC group member. *See* Prop. Reg. § 1.163(j)-7(f)(1)(i).

[42] Prop. Reg. § 1.163(j)-7(f)(1)(ii).

[43] Treas. Reg. § 1.952-2.

[44] *See generally* IRC §§ 882, 884.

[45] Prop. Reg. § 1.163(j)-8(e). If the foreign corporation is a CFC, then the ordering is reversed. Prop. Reg. § 1.163(j)-8(d).

[46] Rev. Rul. 2008-12 (2008-1 C.B. 520) provides that securities trading activity conducted by a partnership involves a trade or business and therefore is not a passive activity. Because limited partners do not materially participate in the partnership’s trading business, the limited partners’ interest in the partnership’s trading activity is an interest in an activity that is property held for investment under section 163(d)(5)(A)(ii).

[47] Section 962 provides that an individual United States shareholder (including trusts and estates) of a CFC may elect to be taxed at corporate rates (*i.e.*, 21% rather than marginal rates up to 37%) on income included under section 951(a) and on the United States shareholder’s GILTI inclusions. Making this annual election also permits the individual United States shareholder to claim an indirect tax credit under section 960 for foreign income taxes paid by the CFC on the section 951(a) amounts included in the taxpayer’s income.

Section 1297(a) generally defines a PFIC as a foreign corporation if 75% or more of its gross income for a taxable year is passive income or if 50% or more of the average value of its gross assets for a taxable year consists of assets that would produce passive income. Section 1295 permits a U.S. investor to elect to tax its investment in a PFIC as a qualifying electing fund (QEF), which generally is a modified pass-through regime in which the character of income and gain is preserved and recognized currently, but losses, deductions and credits do not flow through.

[48] CFC or PFIC status generally will be disadvantageous if the fund earns either substantial dividend income or income that is effectively connected with a trade or business in the United States.

[49] Prop. Reg. § 1.163(j)-5(b)(2).

[50] Prop. Reg. § 1.163(j)-5(b)(2).

[51] Prop. Reg. § 1.163(j)-1(b)(10).

[52] Prop. Reg. § 1.163(j)-11(b). No transition relief is granted for taxpayers who are subject to the new section 163(j), but who do not elect to apply the Proposed Regulations to taxable years before they are finalized.

[53] Rev. Proc. 2018-59 (2018-50 I.R.B.) issued effectively concurrently with the Proposed Regulations, allows taxpayers to treat certain trades or businesses that are conducted in connection with the designing, building, managing, operation, or maintaining of certain core infrastructure projects as real property trades or businesses eligible to qualify as an electing real property trade or business.

[54] IRC § 163(j)(10).

[55] Prop. Reg. §§ 1.163(j)-9(c)(1), (4).

[56] Prop. Reg. § 1.163(j)-9.

[57] Prop. Reg. § 1.163(j)-9(b)(2).

[58] Prop. Reg. § 1.163(j)-9(b).

[59] Prop. Reg. § 1.163(j)-9(d).

[60] Prop. Reg. § 1.163(j)-9(d).

[61] Prop. Reg. § 1.163(j)-9(g).

[62] Prop. Reg. § 1.163(j)-2(h).

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