

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:LM:HMT:WAS

PLR-104695-08

Date:

May 30, 2008

**Legend**

Taxpayer =

Parent =

Date 1 =

Year 1 =

CPA Firm =

Law Firm =

Individual A =

Dear \_\_\_\_\_ :

This responds to a letter dated January 21, 2008, submitted by CPA Firm (Taxpayer's authorized representative) requesting that the Internal Revenue Service ("Service") grant Taxpayer an extension of time under Treas. Reg. § 301.9100-3 to file a Form 4876-A ("Election to be Treated as an Interest Charge DISC") for Taxpayer's Year

1 taxable year. The information submitted for consideration is substantially as set forth below.

Taxpayer is a domestic corporation that was incorporated on Date 1, and is wholly-owned by Parent, a domestic corporation. CPA Firm had recommended to Individual A that Taxpayer engage a law firm to organize Taxpayer as a domestic international sales corporation ("DISC") pursuant to sections 991 through 997. Parent hired Law Firm to perform all the actions necessary to form Taxpayer as a DISC. CPA Firm expected Law Firm to prepare Form 4876-A as well as prepare the organizational documents for Taxpayer. A representative of Law Firm filed incorporation documents for Taxpayer just prior to leaving the firm, but believed that CPA Firm would prepare and file the DISC election. Therefore, Law Firm never prepared or filed the DISC election with respect to Taxpayer. Law Firm did not communicate to Parent or CPA Firm the need to file the DISC election. Parent believed that all actions necessary to assure that Taxpayer would qualify as a DISC for its first taxable year had been performed by CPA Firm or Law Firm.

In late Year 1 (the year of Taxpayer's incorporation), during discussions concerning the processing of commissions to be paid to Taxpayer, CPA Firm's representatives discovered that a signed Form 4876-A was not on file with Taxpayer and that an election to be treated as a DISC under Temp. Treas. Reg. § 1.921-1T(b)(1) had not been made. At this time, CPA Firm advised Parent to submit a request for relief under Treas. Reg. § 301.9100-3 for an extension of time to file the DISC election effective Date 1.

Sections 991 through 997 relate to the tax treatment of DISCs and their shareholders. To qualify as a DISC, a taxpayer must, among other requirements, elect to be treated as a DISC under section 992(b)(1)(A), which provides:

An election by a corporation to be treated as a DISC shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

The second and third sentences of Temp. Treas. Reg. § 1.921-1T(b) require a corporation for its first taxable year as an interest charge DISC to file Form 4876-A and elect to be treated as an interest charge DISC within 90 days after the beginning of such taxable year.

Treas. Reg. § 301.9100-1(c) provides, in part, that the Commissioner, in exercising the Commissioner's discretion, may grant a reasonable extension of time

under the rules set forth in Treas. Reg. § 301.9100-2 and 301.9100-3 to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) provides that a regulatory election is an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Treas. Reg. § 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 must be made under the rules of Treas. Reg. § 301.9100-3. Requests for relief subject to Treas. Reg. § 301.9100-3 will be granted when the taxpayer provides the evidence (including affidavits described in paragraph (e) of that section) 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 interest of the Government.

In the present situation, the election described in the second and third sentences of Temp. Treas. Reg. § 1.921-1T(b)(2) is a regulatory election as defined in Treas. Reg. § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the rules set forth in Treas. Reg. § 301.9100-3(a). Based on the facts and information submitted, we conclude that Taxpayer satisfies the rules set forth in Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file the election described in Temp. Treas. Reg. § 1.921-1T(b)(2). The granting of an extension of time to make the election is not a determination that Taxpayer is otherwise eligible to make the election or to claim DISC status or benefits.

This ruling is directed only to Taxpayer. Section 6110(k)(3) provides that it may not be used or cited as precedent. The ruling given in this letter is based on facts and representations submitted by Taxpayer and accompanied by penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials, submitted in support of the ruling request. Verification of the information, representations, and other data may be required as part of the audit process. A signed PLR is being sent to Individual A. In accordance with the power of attorney on file in this office, a copy of this letter is also being sent to your authorized representative.

We express no opinion on any provisions of the Code or regulations not specifically covered by the above ruling.

Taxpayer should attach a copy of this ruling letter to its Federal income tax return for the taxable years to which this letter applies.

Sincerely,

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Christopher J. Bello  
Senior Technical Reviewer, Branch 6  
Office of the Associate Chief Counsel  
(International)