

FACTS

Taxpayer is a domestic corporation with a calendar taxable year. Taxpayer was formed to serve as an interest charge domestic international sales corporation (“IC-DISC”) and has established a commission arrangement with Corporation. At the time of Taxpayer’s formation, on Date 1, Taxpayer and Corporation were each owned by three individual shareholders: Shareholder A, Shareholder B, and Shareholder C. Law Firm advised Shareholders A, B, and C of the tax benefits of the IC-DISC regime, and shortly thereafter Taxpayer was incorporated. On or about Date 2, Shareholder B acquired all of the shares of Taxpayer and Corporation held by Shareholders A and C and, thus, became the sole shareholder of Taxpayer and Corporation.

Taxpayer filed Form 4876-A on Date 3, about a month after its incorporation. Thereafter, Taxpayer filed its Federal income tax returns on Form 1120-IC-DISC (“Interest Charge Domestic International Sales Corporation Return”). On Date 4, Taxpayer received a letter from the Service stating that Taxpayer was not eligible to file Form 1120-IC-DISC because the Form 4876-A that it had filed on Date 3 did not contain all of the required information. As of Date 4, the period during which Taxpayer could file a timely Form 4876-A had passed. After contacting the Service center that issued the letter on Date 4 to discuss possible remedies, Law Firm advised Taxpayer to submit a request for relief under Treas. Reg. § 301.9100-3 for an extension of time to file the IC-DISC election effective Date 1.

LAW AND ANALYSIS

Section 992(b)(1)(A) provides that an election by a corporation to be treated as a DISC¹ 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.

Section 992(b)(1)(B) provides that such election shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on such first day of the first taxable year for which such election is effective consent to such election.

Temp. Treas. Reg. § 1.921-1T(b)(1) provides, in part, that a corporation electing IC-DISC status must file Form 4876-A and that a corporation electing to be treated as an IC-DISC for its first taxable year shall make its election within 90 days after the beginning of that year.

¹ As used in this letter, the terms “IC-DISC” and “DISC” have the same meaning.

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. For this purpose, an election includes an application for relief in respect of tax.

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 (automatic extensions) 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 Treas. Reg. § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that the grant of relief will not prejudice the interests of the Government.

Based on the facts and representations submitted with Taxpayer's ruling request, we conclude that Taxpayer satisfies 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 Form 4876-A. Such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer's first taxable year.

The granting of an extension in this ruling letter is not a determination that Taxpayer is otherwise eligible to make the election or to claim IC-DISC status or benefits. See Treas. Reg. § 301.9100-1(a). Taxpayer should attach a copy of this ruling letter to its Federal income tax return for the taxable years to which this letter applies.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Christopher J. Bello
Chief, Branch 6
Office of Associate Chief Counsel (International)