

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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PLR-103073-16

Date:
November 21, 2016

Legend

Taxpayer =
Opco A =
Opco B =
Individual A =
Individual B =
Accounting Firm =
Law Firm =
Date 1 =
Date 2 =
Date 3 =

Dear :

This responds to your letter dated January 5, 2016, supplemented by letters dated May 9, July 5, September 26, and October 20, 2016, submitted by Taxpayer and Accounting Firm requesting that the Internal Revenue Service (“Service”) grant Taxpayer an extension of time under Treas. Reg. §§ 301.9100-1 and 301.9100-3 to file Form 4876-A (“Election To Be Treated as an Interest Charge DISC”) for Taxpayer’s first taxable year.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and Accounting Firm and accompanied by affidavits and penalty of perjury statements executed by appropriate parties. This office has not verified any of the materials submitted in support of the request for rulings. It is subject to verification on examination.

FACTS

Taxpayer is a domestic corporation wholly owned by Individual A and Individual B. Taxpayer was formed on Date 1 for the sole purpose of qualifying and operating as an interest charge domestic international sales corporation (“IC-DISC”). Taxpayer operates under a commission arrangement with Opco A, a domestic corporation, and Opco B, another domestic corporation wholly owned by Opco A. Individuals A and B are officers of Opco A and Opco B and are beneficial owners of Opco A through two trusts.

Shortly before Date 1, Opco A and Opco B consulted with Law Firm about benefits that an IC-DISC may provide. After deciding to form Taxpayer as an IC-DISC, Opco A and Opco B retained Law Firm to organize Taxpayer as a corporation. Individuals A and B understood that Taxpayer was required to file Form 4876-A to operate as an IC-DISC. Law Firm prepared the Form 4876-A electing that Taxpayer be treated as an IC-DISC effective Date 1, which was signed by the appropriate parties on Date 2. Individuals A and B relied on Law Firm and the former Chief Financial Officer of Opco A and Opco B to timely file the Form 4876-A. However, the Form 4876-A was not timely filed. The Service notified Taxpayer as of Date 3 that the Form 4876-A was not timely filed.

As a result of the untimely filing and unsuccessful attempts to cure the untimely filing, Taxpayer requested a ruling granting an extension of time to file Form 4876-A for its first taxable year.

LAW AND ANALYSIS

Section 992(b)(1)(A) of the Internal Revenue Code (the “Code”) 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) of the Code 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.

Temporary Treasury Regulation § 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.

Treasury Regulation § 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.

Treasury Regulation § 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.

Treasury Regulation § 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.

Pursuant to a Power of Attorney on file in this office, a copy of this ruling letter is being furnished to your authorized representatives.

Sincerely,

Joseph P. Dewald
Senior Technical Reviewer, Branch 6
Office of Associate Chief Counsel (International)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes