

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

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CC:INTL:B06
PLR-118967-22

Date:
January 26, 2023

Legend

Taxpayer =
Accounting Firm =
Law Firm =
Opco =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Individual =
Owner 1 =
Owner 2 =
Owner 3 =
Owner 4 =
Owner 5 =
Owner 6 =

Dear _____ :

This responds to a letter dated August 31, 2022, supplemented by subsequent additional correspondence submitted by your representatives 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 ruling contained in this letter is based upon information and representations submitted by Taxpayer 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 a ruling. It is subject to verification on examination.

FACTS

On Date 1, Taxpayer was incorporated to operate as an interest charge domestic international sales corporation ("IC-DISC"). Taxpayer is a domestic corporation that is wholly owned by Opco. Opco is owned by Owners 1 through 6. Individual is President of Taxpayer.

Taxpayer established a commission arrangement with Opco on Date 1. Under the commission arrangement, Taxpayer receives commission payments related to Opco's export of medical devices manufactured by Opco. Following advice from Accounting Firm, Taxpayer was incorporated on Date 1. Taxpayer immediately began operating as if it had a valid IC-DISC election in effect. Taxpayer maintained its own bank account and maintained separate books and records to record IC-DISC transactions starting on Date 1.

Shortly after Taxpayer's incorporation, Law Firm prepared Form 4876-A, Election To Be Treated as an Interest Charge DISC, with an effective date of Date 1. Initially, Taxpayer signed Part I of the Form 4876-A, at "Signature and Title of Officer" (of the IC-DISC), but did not complete Part II ("Shareholders' Consent Statement"). On Date 2, Accounting Firm received a correctly signed copy of Form 4876-A from Taxpayer. On Date 3, Accounting Firm mailed the partially signed copy of Form 4876-A to the IRS via certified mail and subsequently received confirmation of delivery. Accordingly, Form 4876-A was submitted to the IRS but only partially completed. Taxpayer believed that all requirements to conduct business and be treated as an IC-DISC for its first taxable year were satisfied.

Even though Taxpayer assumed that all the necessary requirements to conduct business as an IC-DISC were satisfied, Taxpayer did not qualify as an IC-DISC for federal income tax purposes because it did not timely file a completed Form 4876-A with the Service within 90 days of Date 1. Taxpayer did not realize this error until after Taxpayer filed a Form 1120-IC-DISC tax return for the year ending Date 4 (the year of its incorporation) and received a notice from the Service dated Date 5 stating that the Service had not received a valid Form 4876-A with respect to Taxpayer. Taxpayer asked Accounting Firm for assistance in addressing the Service's notice. Accounting Firm had several communications with the IRS, and on Date 6, the IRS explained to Accounting Firm that the Form 4876-A was rejected because a question on the Form 4876-A regarding the Tax Year of the IC-DISC was not answered by Law Firm and also because the copy of the Form 4876-A mailed to the IRS by Accounting Firm had not been signed in Part II by the shareholder. Taxpayer worked with Accounting Firm to submit the request that is the subject of this ruling a few months later.

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 the 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.

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.

In the present situation, the election described in Temp. Treas. Reg. § 1.921-1T(b)(1) 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 standards for relief set forth in Treas. Reg. § 301.9100-3.

¹ An Interest Charge Domestic International Sales Corporation ("IC-DISC") is the type of DISC for which the Internal Revenue Code provides for the years at issue. See I.R.C. § 995(f).

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 90 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 Form 4876-A and Federal income tax return for the taxable years to which this letter applies.

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.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Anand Desai
Senior Counsel, Branch 6
(International)

cc: