

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:INTL:B06
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Date:
August 02, 2007

Re:

TY:

Legend

- Taxpayer =
- Parent =
- Date 1 =
- Date 2 =
- Year 1 =
- Year 2 =
- CPA Firm 1 =
- CPA Firm 2 =
- Individual A =
- Individual B =

Dear _____ :

This letter responds to a letter dated March 21, 2007, supplemented by a letter dated May 14, 2007, submitted by Taxpayer’s authorized representative requesting that the Internal Revenue Service (“Service”) grant Taxpayer an extension of time under section 301.9100-3 of the Regulations on Procedure and Administration (“regulations”) to file a Form 4876-A, “Election to be Treated as an Interest Charge DISC,” for Taxpayer’s Year 1 tax year. The information submitted for consideration is substantially as set forth below.

The ruling contained in this letter is predicated upon facts and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in

support of the request for a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

Parent engaged the services of CPA Firm 1 to establish Taxpayer as an interest charge domestic international sales corporation ("DISC") pursuant to sections 991 through 997 of the Internal Revenue Code ("Code"). Parent's Director of Finance requested that CPA Firm 1 provide Parent with the procedures and information necessary to establish Taxpayer as a DISC, and informed CPA Firm 1 that Parent was relying on it to provide tax advice to establish Taxpayer as a DISC.

Individual A, who is Parent's President, understood CPA Firm 1's scope of representation to include: (1) providing advice on the DISC structure, (2) preparing and filing the DISC election form, (3) preparing a DISC manual, (4) drafting a commission agreement, and (5) providing any other tax advice relating to establishing Taxpayer as a DISC.

Individual B was a senior manager at CPA Firm 1 in Year 1 and Year 2. Individual B understood CPA Firm 1's scope of representation to include: (1) establishing a DISC, (2) preparing the DISC election form, (3) preparing a DISC manual, (4) drafting a commission agreement, and (5) handling initial filing issues such as filing articles of incorporation.

Taxpayer was incorporated on Date 1 and was intended to be a DISC as of its date of incorporation. During Year 2, CPA Firm 2 conducted an independent audit of Parent's financial statements for Parent's tax year ending Date 2 (the tax year during which Taxpayer was incorporated). In connection with that audit, CPA Firm 2 requested a copy of the Form 4876-A filed for Taxpayer from Parent's Director of Finance. In responding to this request, Parent's Director of Finance discovered that CPA Firm 1 had not filed a Form 4876-A for Taxpayer. Parent's Director of Finance immediately contacted a representative of CPA Firm 1, who advised that Parent file a request for an extension to file the Form 4876-A for Taxpayer.

Section 992(b)(1)(A) of the Code provides that 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 the Secretary 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 the first day of the first taxable year for which such election is effective consent to such election.

Section 1.921-1T(b)(1) of the Temporary Income Tax Regulations provides, in part, that

a corporation electing DISC status must file Form 4876-A. A corporation electing to be treated as a FSC, small FSC, or DISC for its first taxable year shall make its election within 90 days after the beginning of that year. The rules contained in section 1.992-2(a)(1), (b)(1), and (b)(3) shall apply to the manner of making the election and the manner and form of representing shareholder consent to the election.

Section 1.992-2(a)(1)(i) of the Income Tax Regulations provides that except as provided in paragraphs (b)(3) and (c) of that section, the election to be treated as a DISC shall be valid only if the consent of every person who is a shareholder of the corporation as of the beginning of the first taxable year for which such election is effective is on or attached to the Form 4876 when filed with the service center.

Section 301.9100-1(c) of the regulations 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 sections 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.

Section 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.

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

In the present situation, the election described in section 1.921-1T(b)(1) is a regulatory election as defined in section 301.9100-1(b). Therefore, the Commissioner has discretionary authority under section 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards for relief set forth in section 301.9100-3.

Based on the facts and information submitted, we conclude that Taxpayer satisfies section 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 and shareholder consent statements required under sections 1.921-1T(b)(1) and 1.992-2(a)(1)(i) for Taxpayer's Year 1 tax year.

The granting of an extension of time to make the election is not a determination that Taxpayer is otherwise eligible to make the election, to submit shareholder consent

statements, or to claim DISC status or benefits. See Treas. Reg. §301.9100-1(a). A copy of this ruling letter should be associated with the election and shareholder consent statements.

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, we express or imply no opinion 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, a copy of this letter is being sent to your authorized representative.

Sincerely,

John M. Breen
Chief, Branch 6
Office of Associate Chief Counsel
(International)

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