

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:INTL:B06
PLR-136346-11

Date:
February 23, 2012

In Re:

Legend

Taxpayer =
State =
Company =
Individual =
Attorney =
Law Firm =
Accountant =
Accounting Firm =
Date 1 =
Date 2 =
Month 1 =
Year 1 =

Dear _____ :

This responds to a letter dated August 25, 2011, supplemented by letters dated November 7, 2011, and December 7, 2011, submitted by Law 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 Law Firm, and accompanied by penalty of perjury statements executed by appropriate parties. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

FACTS

Taxpayer was formed to serve as an interest charge domestic international sales corporation (“IC-DISC”) acting as a commission agent with respect to Company’s sales of export property. In late Month 1, Individual, an officer of Company, met with Accountant from Accounting Firm, and Attorney from Law Firm, to discuss the tax benefits of and process for forming an IC-DISC.

Law Firm regularly advises clients on the formation of IC-DISCs and on its clients’ behalf files Form 4876-A. As a result of Law Firm’s advice and experience in IC-DISC formation, Company engaged Law Firm to prepare certain documentation for the formation of Taxpayer, including the Form 4876-A. Law Firm prepared such documentation, which was then forwarded to Individual, who obtained signatures on the documentation, as necessary. Taxpayer was incorporated in State on Date 1.

Believing all the requirements to conduct business and to be treated as an IC-DISC for its first taxable year were satisfied, Taxpayer began acting as an IC-DISC as of its date of formation. Accountant, also believing all the requirements for Taxpayer to be treated as an IC-DISC were satisfied, timely filed Taxpayer’s Form 1120-IC-DISC (“Interest Charge Domestic International Sales Corporation Return”) for the calendar year Year 1. On or about Date 2, Taxpayer received a letter from the Service indicating that the Service has no record of Taxpayer’s filing Form 4876-A. Based on a review of the files of both Law Firm and Accountant, Taxpayer confirmed that the previously prepared Form 4876-A had not been filed with the Service. By that time, the deadline for filing a Form 4876-A effective for Taxpayer’s first taxable year had passed.

Taxpayer has requested a ruling that grants an extension of time of 60 days from the date of the ruling letter to file Form 4876-A and that such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer’s first taxable year beginning 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.

Temp. Treas. Reg. § 1.921-1T(b)(1) provides, in part, that a corporation electing IC-DISC status must file Form 4876-A. A corporation electing to be treated as an IC-DISC

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

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.

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 as required by Temp. Treas. Reg. § 1.921-1T(b)(1). 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 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.

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). A copy of this letter ruling should be filed with the Form 4876-A.

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, this ruling neither expresses nor implies any opinion 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 with this office, a copy of this letter is being furnished to your authorized representative.

Sincerely,

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