

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **201237006**

Release Date: 9/14/2012

Index Number: 9100.22-00, 992.02-00

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact: \_\_\_\_\_, ID No.

Telephone Number:

Refer Reply To:  
CC:INTL:B06  
PLR-111308-12

Date:  
June 15, 2012

TY:

**LEGEND**

Taxpayer =

Law Firm =

Company =

Individual =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year 1 =

Dear \_\_\_\_\_ :

This responds to a letter dated March 12, 2012, submitted by Law Firm requesting that the Internal Revenue Service (“Service”) acknowledge a timely filing of Form 4876-A (“Election To Be Treated as an Interest Charge DISC”) or grant Taxpayer an extension of time under Treas. Reg. §§ 301.9100-1 and 301.9100-3 to file Form 4876-A 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 materials 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 incorporated on Date 1 as a result of a discussion between Company and Law Firm about the possibility of forming an interest charge domestic international sales corporation (“IC-DISC”). Company’s intent was to treat Taxpayer as an IC-DISC from the date of its inception, and Law Firm was charged with the task of forming the new corporation and filing Form 4876-A.

Law Firm prepared Form 4876-A and, due to a clerical error, filed Form 4876-A on Date 2, one day after the due date in order for the election to be effective for Taxpayer’s first taxable year. Taxpayer received notification dated Date 3 from the Service indicating that Taxpayer was ineligible to be treated as an IC-DISC for its first taxable year because Form 4876-A appeared to have been filed after the due date.

Taxpayer has requested a ruling which acknowledges that the due date (Date 4) was considered a legal holiday in the state of Ohio under section 7503 that resulted in a one-day extension of the due date such that Taxpayer’s Form 4876-A is considered to be filed in a timely manner. Alternatively, 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.

## LAW AND ANALYSIS

- a. Section 7503 does not apply.

Section 7503 provides that when the last day prescribed under authority of the internal revenue laws for performing any acts falls on Saturday, Sunday, or a legal holiday, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday, or a legal holiday. The term “legal holiday” also means a statewide legal holiday in the state where any return, statement, or other document is required to be filed.

Form 4876-A must be filed with the IRS Service Center where the corporation will file its annual return, Form 1120-IC-DISC (“Interest Charge Domestic International Sales Corporation Return”). The instructions for Form 1120-IC-DISC provide that the form must be filed “at the following address: Internal Revenue Service, 201 W. Rivercenter Blvd., Covington, KY 41019.”

Because the instructions provide that Form 4876-A must be filed in Kentucky, section 7503 will extend the time prescribed for filing the DISC<sup>1</sup> election by one day **only if** the

---

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

due date was a Saturday, Sunday, or statewide legal holiday in Kentucky. Therefore, it is irrelevant whether the due date was a statewide legal holiday in Ohio even though the location of filing is commonly known as the Cincinnati Service Center.

Kentucky state law provides that “State offices shall be closed and state employees shall be given a holiday on . . . Presidential election day as required under KRS 2.190. . . .” KY. REV. STAT. ANN. § 18A.190(1)(h) (West 2012) (emphasis added). Further, “[t]he Tuesday after the first Monday in November in Presidential election years shall be a state holiday on which all state offices, all schools and all state universities and colleges shall be closed.” KY. REV. STAT. ANN. § 2.190 (West 2012) (emphasis added). Year 1 was not a Presidential election year. Nor was Date 4 appointed by the President of the United States or the Governor of Kentucky as a day of thanksgiving or any other legal holiday. See KY. REV. STAT. ANN. § 2.110 (West 2012) (listing Kentucky public holidays but not including Election Day).

Because Date 4 was not a Saturday, Sunday, or legal holiday, including a statewide legal holiday in Kentucky, section 7503 does not apply and the DISC election was not made timely.

b. Extension of time to file Form 4876-A is granted.

Section 992(b)(1)(A) 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 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 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 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). In addition, we express no opinion as to whether the payment of purchase prices or commissions (or portions thereof) to Taxpayer by Company may constitute taxable gifts. See, e.g., Rev. Rul. 81-54, 1981-1 C.B. 476. A copy of this letter ruling must be attached to any income tax return (or in the case of an electronically filed return, a statement providing the date and control number of this letter ruling) to which it is relevant.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that written determinations 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 ruling letter.

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

Sincerely,

---

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