

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Date:
October 09, 2012

In re: Letter Ruling Request Regarding Late IC-DISC Election

Legend

Taxpayer =

Parent =

Law Firm =

Accounting Firm =

Shareholder =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear _____ :

This replies to your letter dated March 27, 2012, in which you request on behalf of Taxpayer an extension of time under Treas. Reg. § 301.9100-3(a) to file a Form 4876-A ("Election to be Treated as an Interest Charge DISC") effective as of Date 1. The information submitted for consideration is substantially as set forth below.

Taxpayer is a domestic corporation wholly owned by Parent, an S corporation. Parent is wholly owned by Shareholder, an individual. Taxpayer and Shareholder each have a calendar taxable year. Parent has a 52/53 week taxable year ended the Saturday closest to December 31.

Shortly before Date 1, Parent's chief financial officer consulted Law Firm and Accounting Firm about tax advantages that interest charge domestic international sales corporations (IC-DISCs) may afford. Parent then requested Law Firm to set up and to make all registrations and elections needed for an IC-DISC. Parent requested Accounting Firm to prepare annual computations and federal income tax returns for the IC-DISC.

Parent, its officers, and Taxpayer are inexperienced in IC-DISC related matters. Therefore, they relied on Law Firm to set up Taxpayer as an IC-DISC.

Parent believed Law Firm was knowledgeable in IC-DISC related matters. Law Firm and Accounting Firm have provided tax services to Shareholder and his related entities for many years. Shareholder and the entities have consistently found the firms' work to be accurate, complete, and timely.

On Date 1, Taxpayer was incorporated through the filing of its Certificate of Incorporation. Law Firm made all filings required to register Taxpayer with the state corporation authority, the state tax authority, and the Internal Revenue Service – with the exception of Form 4876-A, "Election To Be Treated as an Interest Charge DISC".

Taxpayer began operations as an IC-DISC immediately upon its incorporation. On or about Date 2, roughly eighteen months after Taxpayer was incorporated, Taxpayer filed its first year's federal income tax return as an IC-DISC, on Form 1120-IC-DISC, Interest Charge Domestic International Sales Corporation Return.

Shortly after Date 3, about three months after the return was filed, Taxpayer received a notice from the Internal Revenue Service bearing that date and informing Taxpayer that it had failed to timely file Form 4876-A. Until then, Taxpayer had not received any notice and was not otherwise aware that the form had not been filed. Taxpayer has at all times maintained consistency with IC-DISC status, including in all transactions with Parent.

On Date 4, about two weeks later, Taxpayer asked Accounting Firm to help it address the IRS notice. Over the next several weeks, Accounting Firm had several communications with Taxpayer and Law Firm. Accounting Firm soon discovered from Law Firm that the lawyer responsible for the Form 4876-A had known that the form was due but had simply failed to file it. Law Firm had not notified Taxpayer of the failure and had not received any notice about the failure prior to the Date 3 notice.

About three weeks after Date 4, Accounting Firm submitted the ruling request that is the subject of this letter.

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 and that a corporation electing to be treated as a 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.

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 beginning Date 1. 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. A copy of this letter ruling should be filed with the Form 4876-A.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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) 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.

Sincerely,

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

Enclosures:
Copy of letter
Copy for section 6110 purposes

cc: