

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

In Re:

Refer Reply To:
CC:INTL:B06
PLR-120139-12
Date:
November 01, 2012

TY:

Legend

- Taxpayer =
- Company =
- Individual 1 =
- Individual 2 =
- Law Firm =
- Accounting Firm =
- Consultant =
- Consulting Firm =
- Date 1 =
- Date 2 =
- Date 3 =
- Month 1 =

Dear _____ :

This responds to a letter dated May 9, 2012, supplemented by a letter dated August 3, 2012, submitted by Law Firm and Accounting 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, Law Firm, and Accounting 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 is a domestic corporation wholly owned by Individual 1 that acts as a commission agent with respect to Company's sales of export property. Individual 1 is an officer of Company.

Taxpayer was incorporated on Date 1 and was intended from its inception to be treated as an interest charge domestic international sales corporation ("IC-DISC"). In Month 1, Accounting Firm had advised Individual 1 of the benefits of establishing such an IC-DISC. Subsequently, Accounting Firm introduced Company to Consultant of Consulting Firm, a third party consultant that Accounting Firm relies upon for international tax support. Company instructed Accounting Firm to engage Consulting Firm for assistance with establishing an IC-DISC.

On Date 2, Consulting Firm sent Form 4876-A, together with instructions and notice of the due date for filing the form, to Individual 2, another officer of Company. However, due to misplacement of mail in Individual 2's office, Individual 2 did not realize that she had received these documents at the time of delivery. Due to Individual 2's increased work responsibilities during a period of rapid growth for Company, and because Individual 2 was unfamiliar with the due date for making an IC-DISC election, Individual 2 was not aware of the need to sign and submit Form 4876-A by a certain date. Moreover, neither Consulting Firm nor Accounting Firm contacted Individual 2 in advance of the due date for filing Form 4876-A to confirm that the form would be filed on a timely basis. Eventually, Individual 2 found the documents sent by Consulting Firm and signed and mailed Form 4876-A to the Service. On Date 3, Taxpayer received a letter from the Service stating that Taxpayer was ineligible to be treated as an IC-DISC for its first taxable year beginning Date 1 because the election on Form 4876-A was filed after its due date.

Taxpayer has requested a ruling that grants an extension of time 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.

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

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. 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). 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,

Jason Osborn
Senior Technical Reviewer, Branch 6
Office of Associate Chief Counsel
(International)