

**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-127884-12

Date:  
December 10, 2012

TY:

**Legend**

- Taxpayer =
- Law Firm =
- Shareholder =
- Corporation =
- Individual =
- Year 1 =
- Year 2 =
- Accounting Firm 1 =
- Accounting Firm 2 =
- Date 1 =

Dear :

This responds to a letter dated June 25, 2012, 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 affidavits and 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. It is subject to verification on examination.

## FACTS

Taxpayer is a domestic corporation wholly owned by Shareholder with a calendar taxable year. Taxpayer was formed to serve as an interest charge domestic international sales corporation (“IC-DISC”) and has established a commission arrangement with Corporation. In summer of Year 1, Individual, an officer of Corporation and Taxpayer, met with Accounting Firm 1 to discuss establishing an IC-DISC to be used in connection with Corporation’s export-sales activities. Accounting Firm 1 had previously served as Corporation’s general tax counsel and income tax preparer for more than 10 years. Accounting Firm 1 noted that it had limited experience working with IC-DISCs, and suggested that Individual contact Accounting Firm 2.

Individual met with Accounting Firm 2, which explained the general tax benefits and certain technical tax aspects of the IC-DISC regime, including how an IC-DISC commission is calculated. Based on these conversations and further conversations with Accounting Firm 1, Corporation decided to form an IC-DISC. Individual informed Accounting Firm 1 and Accounting Firm 2 about this decision. During these discussions, neither Accounting Firm 1 nor Accounting Firm 2 advised Individual or any other principal of Corporation of the requirement to file Form 4876-A to elect IC-DISC status.

Taxpayer was incorporated as a domestic corporation on Date 1. In Year 2, Individual contacted Accounting Firm 1 about the preparation of Taxpayer’s Form 1120 IC-DISC (“Interest Charge Domestic International Sales Corporation Return”), for Taxpayer’s first taxable year. Accounting Firm 1 explained that it understood that Accounting Firm 2 would be preparing the returns. Individual responded that that was not his intent and asked Accounting Firm 1 to prepare all of the tax filings for Taxpayer.

While Accounting Firm 1 worked to assemble the information necessary to prepare Taxpayer’s tax return, it was unable to locate any evidence that Form 4876-A had been filed for Taxpayer. Accounting Firm 1 contacted Individual, who responded that he was not aware that such a form was required to be filed and, to the best of his knowledge, it had not been filed. Accounting Firm 1 also contacted Accounting Firm 2 to ask if Accounting Firm 2 had filed Form 4876-A for Taxpayer, but it had not filed the form either. Accounting Firm 1, Accounting Firm 2, and Individual then met with Law Firm, which advised Individual to submit a request for relief under Treas. Reg. § 301.9100-3 for an extension of time to file the IC-DISC election effective Date 1.

## LAW AND ANALYSIS

Section 992(b)(1)(A) provides that an election by a corporation to be treated as a DISC<sup>1</sup> shall be made by such corporation for a taxable year at any time during the 90-day

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

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.

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 such first day of the first taxable year for which such election is effective consent to such election.

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 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.

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 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). Taxpayer should attach a copy of this ruling letter to its Federal income tax return for the taxable years to which this letter applies.

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, no opinion is expressed or implied 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, copies of this letter are being sent to your authorized representatives.

Sincerely,

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

cc: