

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201335002**

Release Date: 8/30/2013

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-103855-13

Date:
May 17, 2013

Legend

Taxpayer =

Parent =

Accounting Firm =

Law Firm =

Date 1 =

Date 2 =

Date 3 =

Dear :

This replies to your representative's letter dated January 11, 2013, 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.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. 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 Parent, an S corporation. Accounting Firm had provided tax advice to Parent for many years. Shortly before Date 1, Accounting Firm advised Parent of benefits that an interest charge domestic international sales corporation (IC-DISC) may provide. Parent proceeded to rely on Accounting Firm to arrange for the formation and qualification of an IC-DISC. Accounting Firm in turn engaged Law Firm to prepare the corporate documents and the IC-DISC election.

On Date 1, Taxpayer was incorporated. About that time, Accounting Firm received from Law Firm a document that Accounting Firm thought at the time, erroneously, was simply a copy for Accounting Firm's files of an IC-DISC election for Taxpayer that Law Firm had filed with the Service.

Taxpayer proceeded to operate as an IC-DISC. Taxpayer also did not take any position inconsistent with IC-DISC status. Taxpayer filed Form 1120-IC-DISC, Interest Charge Domestic International Sales Corporation Return, as its first tax year's annual return by the due date of that form (including extension), Date 2.

On Date 3, about two months after the return was filed, the Service sent Taxpayer a notice that it had no record of Taxpayer electing IC-DISC status. Taxpayer promptly received the notice. Accounting Firm and Law Firm investigated the situation. Accounting Firm and Law Firm had each previously believed the other had filed the IC-DISC election with the Service, but Accounting Firm discovered that what it thought was merely a copy for its own files was the election that was meant to be filed with the Service.

About eight weeks after the date of the Service notice, Accounting Firm submitted the ruling request that is the subject of this letter.

Law and Analysis

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.

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 a IC-DISC for its first taxable year shall make its election within 90 days after the beginning of that year.

Treasury Regulation § 1.992-2(a)(1)(i) provides that, except as otherwise provided in paragraphs (b)(3) and (c) of that section, the election to be treated as a domestic international sales corporation shall be valid only if the consent of every person who is a shareholder of the corporation as of the beginning of the first taxable year for which such election is effective is on or attached to the Form 4876-A when filed with the service center.

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 90 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 and shareholder consent statements.

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.

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,

Joseph L. Tobin
Senior Counsel, Branch 6
(International)