

Internal Revenue Service

Number: **201341023**

Release Date: 10/11/2013

Index Number: 9100.22-00, 992.02-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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CC:INTL:B06

PLR-113867-13

Date:

July 11, 2013

TY:

Legend

Taxpayer =

Corporation =

Accounting Firm =

Law Firm =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Shareholder A =

Shareholder B =

Shareholder C =

Shareholder D =

Shareholder E =

Shareholder F =

Dear :

This responds to a letter dated March 21, 2013, submitted by 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 and Accounting 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 with a calendar taxable year. Taxpayer was formed on Date 1 to serve as an interest charge domestic international sales corporation ("IC-DISC") and has established a commission arrangement with Corporation. At the time of its formation until Date 2, Taxpayer was owned solely by Shareholder A and Shareholder B. During the same period, Corporation was owned solely by Shareholders A, B, and C. Shareholders A, B, and C are all individuals.

Taxpayer was formed as a result of discussions between Corporation's officers and Accounting Firm about establishing an IC-DISC to be used in connection with Corporation's export sales activities. Accounting Firm had provided tax and consulting services to Corporation for many years. Corporation retained Law Firm to organize Taxpayer as an IC-DISC and prepare the required incorporation documents. Taxpayer relied on Accounting Firm and Law Firm to organize and to prepare all documents and filings needed to establish Taxpayer as an IC-DISC. On Date 3, Accounting Firm completed Form 4876-A and delivered it, along with mailing instructions, to Taxpayer for signature by its officers and shareholders. Shareholder B was traveling outside the country on Date 3. As a result, the officers and shareholders of Taxpayer did not sign Form 4876-A until Date 4, after Shareholder B had returned to the United States. Although Date 4 was within 90 days of the beginning of Taxpayer's first taxable year, as a result of a clerical error, Taxpayer filed Form 4876-A with its corporate records rather than mailing it to the Service. Neither Accounting Firm nor Law Firm followed up with Taxpayer to ensure that Form 4876-A was mailed to the Service. On Date 2, Shareholder A transferred portions of his shares in Taxpayer and Corporation to Shareholders D and E, which are trusts for the benefit of Shareholder A's two children. At the same time, Shareholder B transferred portions of his shares in Taxpayer and Corporation to Shareholder F, who is Shareholder B's son. Shareholders A and B reported the stock transfers as gifts for Federal tax purposes.¹

After Taxpayer filed its first year's federal income tax return, Taxpayer received a notice from the Service informing it that it had failed to timely file Form 4876-A. Taxpayer sought advice from Accounting Firm, at which time Accounting Firm first discovered that the Form 4876-A had not been mailed to the Service and advised Taxpayer 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.

¹ We express no opinion as to whether the exclusion of Shareholder C from the ownership of Taxpayer should have been reported as gifts for Federal tax purposes.

LAW AND ANALYSIS

Section 992(b)(1)(A) provides that an election by a corporation to be treated as a DISC² 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 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.

² As used in this letter, the terms "IC-DISC" and "DISC" have the same meaning.

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 commissions (or portions thereof) paid to Taxpayer by Corporation may constitute taxable gifts. See, e.g., Rev. Rul. 81-54, 1981-1 C.B. 476 (holding that, where individual shareholders of a DISC transferred their shares in the DISC to their minor children, both the stock transfers themselves and the subsequent commission payments to the DISC constituted gifts). 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, a copy of this letter is being sent to your authorized representative.

Sincerely,

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