

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No.

Telephone Number:

In re:

Refer Reply To:
CC:INTL:B06
PLR-110072-13
Date:
August 27, 2013

TY:

LEGEND

- Taxpayer =
- State =
- Company =
- Accounting Firm =
- Law Firm =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =

Dear _____ :

This responds to a letter dated February 28, 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 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 Company. Taxpayer was formed to serve as an interest charge domestic international sales corporation (“IC-DISC”) and has established a commission arrangement with Company. Law Firm prepared the articles of incorporation. Taxpayer was formed on Date 1 in State.

Taxpayer engaged Accounting Firm, which specializes in consulting on IC-DISC taxation, on Date 2. On the same day, Accounting Firm advised Taxpayer that it did not meet the capitalization requirements to qualify as an IC-DISC. According to Taxpayer’s original submission, the two individuals who served as the only board members of both Taxpayer and Company had “offered to subscribe to 1,000 shares of [Taxpayer’s] stock in exchange for \$1000.00 cash.” Those individuals are not the shareholders of Taxpayer,¹ and Taxpayer has not established that any stock was issued by Taxpayer with respect to such proposed subscription. According to a subsequent submission² by Taxpayer dated August 14, 2013 (based on information provided by Law Firm), Company had issued a promissory note in the amount of \$2500 to Taxpayer on Date 3 in exchange for stock. Based on the limited record before us, it is unclear whether Taxpayer had any outstanding stock during the relevant time period, and it is also unclear what the value of any such stock may have been.

After obtaining Taxpayer’s EIN, Accounting Firm delivered the completed IRS Form 4876-A to Taxpayer on Date 4 and erroneously advised Taxpayer the election had to be filed by Date 5, one day after the actual due date. Taxpayer filed the election on Date 5 and received a notice of rejection from the Service on Date 6.

Taxpayer has requested a ruling that grants an extension of time of 60 days from the date of the ruling letter 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.

LAW AND ANALYSIS

Section 992(b)(1)(A) provides that an election by a corporation to be treated as a DISC³ 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 Taxpayer also asserts that the original articles of incorporation identified the two individuals as the shareholders of Taxpayer, but that the articles were amended shortly thereafter to identify Company as the sole shareholder of Taxpayer. In addition, while the original articles of incorporation specified a share par value of \$0, the amended articles specified a par value of \$1.

² The subsequent submission was not accompanied by a penalty of perjury statement.

³ 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.

Section 992(b)(1)(C) provides that the term "DISC" means, with respect to any taxable year, a corporation that is incorporated under the laws of any state and satisfies a number of conditions, including that such corporation does not have more than one class of stock, and that the par or stated value of its outstanding stock is at least \$2500 on each day of the taxable year.

Treas. Reg. § 1.992-1(d)(1) provides that, in the case of a corporation that has elected to be treated as a DISC for its first taxable year, the capitalization requirement of section 992(b)(1)(C) is satisfied if the par value (or, in the case of stock without par value, the stated value) of the corporation's outstanding stock is at least \$2,500 on the last day of the period within which the election must be made and on each succeeding day of the 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.

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 particular, Taxpayer may still fail to qualify as an IC-DISC for one or more years for failure to meet the capitalization requirement under section 992(b)(1)(C) and Treas. Reg. § 1.992-1(d)(1). However, we do not attempt to answer that question in this ruling.

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

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that written determinations 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 ruling letter.

Pursuant to a Power of Attorney on file in this office, copies of this ruling letter are being furnished to your authorized representatives.

Sincerely,

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