

Internal Revenue Service

Number: **201411008**

Release Date: 3/14/2014

Index Number: 9100.22-00, 992.02-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

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CC:INTL:B06

PLR-126201-13

Date:

December 03, 2013

Legend

Taxpayer =

Consulting Firm A =

Consulting Firm B =

Company =

Individual A =

Individual B =

Date 1 =

Date 2 =

Date 3 =

Dear _____ :

This responds to a letter dated June 3, 2013, supplemented by letters dated November 18, 2013, November 20, 2013, and November 24, 2013, submitted by Consulting Firm A and Taxpayer 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, Consulting Firm A, and Consulting Firm B, and accompanied by affidavits and penalty of perjury statements executed by appropriate parties. This office has not verified any of the materials submitted in support of the request for rulings. It is subject to verification on examination.

FACTS

Taxpayer is a domestic corporation that assists Company with the export of property. Individual A wholly owns Taxpayer and Company.

On Date 1, Individual B at Consulting Firm B advised Individual A of the benefits of forming an interest charge domestic international sales corporation (“IC-DISC”). Subsequently, Consulting Firm B prepared the necessary documents to establish a corporate entity that was intended to be treated as an IC-DISC, including Form 4876-A. Taxpayer was incorporated on Date 2. Taxpayer asserts that the organizational documents were filed with the proper state authorities and that the Form 4876-A was filed with the Service on or shortly after Date 2. However, the Form 4876-A was not timely filed because the file containing the form was misplaced for an undetermined period of time.¹ Believing all requirements for IC-DISC status had been satisfied, Taxpayer began operating as an IC-DISC as of Date 2.

On Date 3, Taxpayer received a letter from the Service stating that the Service had no record that a Form 4876-A had been filed. After discovering that the Form 4876-A had not been filed, Taxpayer requested a ruling granting an extension of time to file Form 4876-A for its first taxable year.

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.

Temporary Treasury Regulation § 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.

¹ The record is somewhat unclear as to these details. Nonetheless, we are satisfied from the record that Taxpayer has asserted that it intended to elect to be treated as a DISC from its inception, it filed the election with the intent of making the election in a timely manner, and the filing was untimely due to some inadvertence.

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

Treasury Regulation § 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.

Treasury Regulation § 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.

Treasury Regulation § 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). 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.

Sincerely,

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