

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201750005**
Release Date: 12/15/2017

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 9100.22-00, 992.02-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:INTL:BR6
PLR-109023-17

Date:
September 12, 2017

In re:

LEGEND

- Taxpayer =
- Individual =
- Company =
- Accounting Firm 1 =
- Accounting Firm 2 =
- Year 1 =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =

Dear

This responds to a letter dated March 8, 2017, submitted on behalf of 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 given in this letter are based on facts and representations submitted by Taxpayer and Accounting Firm 1, and accompanied by penalty of perjury statements. This office has not verified any of the materials submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as part of the audit process.

FACTS

Taxpayer is a domestic corporation wholly owned by Individual. Individual is president of Taxpayer and also the majority shareholder of Company. Accounting Firm 1 is an accounting, tax, financial advisory, and consulting organization. Accounting Firm 2 is an accounting, consulting, and technology firm. In early Year 1, Accounting Firm 1 assisted Individual with the establishment of Taxpayer as an interest charge domestic international sales corporations (“IC-DISC”) to support Company with its export activities. Taxpayer was incorporated on Date 1 and was intended to be treated as an IC-DISC from inception. Following the incorporation of Taxpayer, Accounting Firm 1 was engaged to perform all necessary steps to qualify Taxpayer as an IC-DISC and prepare all necessary forms, including Form 4876-A. Taxpayer alleges that, on Date 2, it signed Form 4876-A and mailed it to the Service. Upon realizing that it had not received confirmation that the election had been received and accepted by the Service, Taxpayer contacted the Service in Date 3 and was informed that the Service had no record of Taxpayer’s Form 4876-A having been filed.

Subsequently, Accounting Firm 1 sent a letter to the Service on Date 4, attaching a copy of the initial signed Form 4876-A and requesting that the resubmitted Form 4876-A be processed with the effective date of Date 1. The Service responded indicating that it considered the election filed on Date 4 and, therefore, the election was not valid because it was not timely filed. Taxpayer assumed that the Service misunderstood the intention of the letter, and that the copy of the resubmitted Form 4876-A constituted proof of the timely filed election.

Even though Taxpayer had assumed that all the necessary requirements to conduct business as an IC-DISC were satisfied, it did not qualify as an IC-DISC for federal income tax purposes because it did not timely file a Form 4876-A with the Service within 90 days of Date 1. Although Taxpayer received notices from the Service providing that Taxpayer’s Form 1120-IC-DISC tax returns could not be processed because there was no record of an approved Form 4876-A having been filed, Taxpayer represents that it continued to believe that the notices were a result of a misunderstanding of the facts on part of the Service. After addressing the notices through Accounting Firm 1 unsuccessfully, in Date 5 Taxpayer consulted with Accounting Firm 2 on the issue of the late election and was informed that the only option was to file a request for relief under Treas. Reg. § 301.9100-1(b). Accordingly, Taxpayer requested that Accounting Firm 2 submit a ruling request granting Taxpayer 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 DISC¹

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

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. A corporation electing to be treated as an IC-DISC for its first taxable year must make the 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 the grant of relief will not prejudice the interests of the Government.

The election described in the third sentence of 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, 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). 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, 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 representatives.

Sincerely,

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

Enclosure (2)
Copy of this letter
Copy for § 6110 purposes