

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:INTL:6
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Date:
February 20, 2020

LEGEND

Taxpayer =
Partnership =
Company =
Accounting Firm =
Individual 1 =
Individual 2 =
Individual 3 =
Individual 4 =
Individual 5 =
Individual 6 =
Products =

Date 1 =
Date 2 =
Taxable Year 1 =
Taxable Year 2 =
Taxable Year 3 =
Taxable Year 4 =
Taxable Year 5 =

Dear Mr. :

This responds to correspondence dated October 18, 2019, 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 ruling contained in this letter is 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 materials submitted in support of the request for a ruling. It is subject to verification on examination.

FACTS

Taxpayer is a domestic corporation with a taxable year beginning on Date 2. Taxpayer was formed on Date 1 to operate as an interest charge domestic international sales corporation (“IC-DISC”) and has established a commission arrangement with Partnership. Partnership is a limited liability company taxed as a partnership for Federal income tax purposes and owned by Individual 1, Individual 2, Individual 3, Individual 4, Individual 5, and Company. Partnership manufactures and sells Products. Company is a domestic corporation owned by Individual 1, Individual 3, Individual 4, and Individual 5.¹

Taxpayer was formed as a result of advice from Accounting Firm. Accounting Firm prepared Form 4876-A with an effective date of Date 2 and provided it to Taxpayer. Taxpayer’s chief financial officer, Individual 6, stated in an affidavit that he executed and mailed the Form 4876-A to the IRS within 90 days after Date 2 but did not specify a date. Upon its formation, Taxpayer immediately began operating as if it had a valid DISC election in effect. Accounting Firm helped Taxpayer prepare and timely file Forms 1120-IC-DISC (“Interest Charge Domestic International sales Corporation Return”) for Taxable Year 1 through Taxable Year 2 as well as Taxable Year 3, and late file Forms 1120-IC-DISC for Taxable Year 4 through Taxable Year 5. Upon receiving the late-filed returns, the IRS sent notices to Taxpayer stating that the IRS had not received a valid Form 4876-A with respect to Taxpayer.

Accounting Firm submitted this request for relief on behalf of Taxpayer under Treas. Reg. §§ 301.9100-1 301.9100-3 for an extension of time to file Form 4876-A for Taxable Year 1, Taxpayer’s first taxable year.

LAW AND ANALYSIS

Section 992(b)(1)(A) of the Internal Revenue Code 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.

¹ We express no opinion in this ruling letter regarding whether the ownership structures of Taxpayer, Partnership, and Company constitute a gift or gifts between or among the individual shareholders.

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

Section 992(b)(1)(B) provides that the election shall be made in the manner prescribed by the Secretary and shall be valid only if all persons who are shareholders in such corporation on the first day of the first taxable year for which such election is effective consent to the election.

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.

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.

The IC-DISC election described in 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 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 Taxable Year 1.

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

Form 4876-A and Federal income tax return for the taxable years to which this ruling letter applies.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) 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
Branch Chief
Office of Associate Chief Counsel
(International)

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

cc: