

Internal Revenue Service

Number: **202243005**

Release Date: 10/28/2022

Index Number: 992.02-00, 9100.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:B06

PLR-107076-22

Date:

August 3, 2022

Legend

Taxpayer =

LLC =

Opco =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Accounting Firm 1 =

Accounting Firm 2 =

Law Firm 1 =

Law Firm 2 =

Law Firm 3 =

Individual 1 =

Individual 2 =

Individual 3 =

Individual 4 =

Individual 5 =

Individual 6 =

Individual 7 =

Individual 8 =

Individual 9 =

Individual 10 =

Class 1:

Class 2:

Class 3:

Dear _____ :

This responds to your letter dated March 30, 2022, requesting that the Internal Revenue Service (“IRS”) 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.

Facts

Taxpayer was established for the purpose of functioning as an IC-DISC¹ in connection with the export of various plastic goods manufactured by Opco.

Taxpayer is a domestic corporation wholly owned by LLC. LLC is a domestic limited liability company treated as a partnership for Federal income tax purposes.

Opco is a domestic corporation with three classes of shares. Each class participates in the earnings of Opco. Each share of Class 1 and 2 has an equal vote. The organizing documents of Opco and LLC provide that each Class 2 share is associated with one LLC membership unit such that all of the Class 2 shares in Opco and the units in LLC are, and will continue to be, owned in equal proportions to one another by each owner. The organizing documents of Opco further provide that:

- Distributions on each Class 1 share equal the sum of the distribution by Opco on each Class 2 share and the distribution by LLC on the corresponding membership unit.
- Ownership of Class 2 shares are restricted to United States persons as defined under the Internal Revenue Code that are not exempt from tax under section 401, 501, or 408(e) or otherwise barred by Opco’s board,
- If a Class 2 share is transferred to a person not allowed to own Class 2 shares, upon transfer the share will automatically convert to a Class 1 share and the associated LLC unit will be automatically cancelled.
- If a Class 1 share is transferred to a person allowed to own Class 2 shares, Opco would generally exchange it for a Class 1 share and LLC would thereupon issue the owner an LLC unit.

Class 2 stock accounts for a super-majority of the votes and equity in Opco. Most of the Class 2 shares are owned by trusts whose beneficiaries are members of a few families, who are themselves U.S. persons. Most of the Class 1 shares are owned by an employee plan. Like Class 1 shares, Class 3 shares are not associated with ownership interests in the DISC. A Class 3 share has a smaller participation in profits of Opco than a Class 1 share, a vote that is smaller than its profit participation, and has a liquidation preference over Class 1 and Class 2. Class 3 shares are generally owned by

¹ An Interest Charge Domestic International Sales Corporation (“IC-DISC”) is the type of DISC for which the Internal Revenue Code provides for the years at issue. See I.R.C. § 995(f).

or for employees of Opco.

For many years, Opco had considered using a DISC. Between Date 1 and Date 2, Opco consulted several well-known tax and legal advisory firms, including Accounting Firms 1 and 2 and Law Firms 1, 2, and 3 about potential tax, legal, and accounting implications of a DISC and about how to set one up. During this process, Accounting Firm 1 advised Opco that Taxpayer must file Form 4876-A, Election to Be Treated as an Interest Charge DISC, within 90 days of Taxpayer's formation (to satisfy one of the conditions to qualify as a DISC for its first taxable year). Then, promptly, on Date 3, Opco incorporated Taxpayer.

Within the next few weeks, Individuals 1 through 4, who are senior staff of Taxpayer, Opco, and some of the accounting and law firms, discussed over email how to complete and file the Form 4876-A. Then, promptly and following the advice, Individuals 5 through 8, who are an officer, tax employee, and members of the administrative staff of Opco, completed the Form 4876-A and mailed it at the post office on Date 4 (less than a month after Taxpayer's incorporation). Taxpayer believed the election was correctly filed. Taxpayer provided affidavits and contemporaneous emails corroborating its understanding that all the foregoing steps to file the election had occurred, and that the plan was to send the election by certified mail and retain the receipt, but acknowledges that it does not have a certified mail receipt.

On Date 5, the next fall, Taxpayer filed Form 1120-IC-DISC, Interest Charge Domestic International Sales Corporation Return, as its annual return. On or about Date 6, early the year after that, the IRS sent Taxpayer a letter stating that it could not process the Form 1120-IC-DISC because the IRS had no record of Taxpayer having filed a Form 4876-A. Over the next few weeks, Individuals 6, 9 and 10, in Opco's tax staff, received the IRS letter, discussed the situation internally, and telephoned the IRS. Taxpayer represents that the IRS told Individual 9 that the IRS had no record of a Form 4876-A from Taxpayer. Taxpayer then consulted Accounting Firm 1, which over the course of the next several weeks prepared and submitted the request which is the subject of this ruling. Taxpayer confirmed that to the best of its knowledge no taxable year of any party that may benefit from the DISC structure (including but not limited to Taxpayer, Opco, or LLC) that would have been affected by the election had it been timely made was closed.

Law and Analysis

Section 992(b)(1)(A) of the Internal Revenue Code (the "Code") provides that an election by a corporation to be treated as a DISC shall be made by the 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) of the Code provides that this 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 DISC status must file Form 4876-A and that a corporation electing to be treated as a 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 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.

Treasury Regulation § 301.9100-3(b)(1)(v) provides that a taxpayer is generally deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Here, Taxpayer reasonably obtained guidance from qualified tax professionals and acted reasonably and diligently to follow that guidance in filing Form 4876-A, but for an unknown reason did not succeed in getting the intended election on file with the IRS.

Treasury Regulation § 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in the affected taxpayer(s) having a lower aggregate tax liability (taking into account the time value of money) than if the election had been timely made. Treasury Regulation § 301.9100-3(c)(1)(ii) provides that the interests of the Government are ordinarily prejudiced if taxable year(s) in which the election should have been made or that would have been affected by the election are

closed by the period of limitation on assessment before the taxpayer's receipt of a ruling granting relief. Here, Taxpayer has represented and it appears to us that neither of these conditions is present.

Conclusion

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 90 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 a 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 DISC status or benefits. See Treas. Reg. § 301.9100-1(a).

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 particular, no opinion is expressed or implied as to whether the commissions (or portions thereof) paid to Taxpayer by Opco may constitute taxable gifts. See, e.g., Rev. Rul. 81-54, 1981-1 C.B. 476.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by penalty of perjury statements executed by appropriate parties. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Anand Desai
Senior Counsel, Branch 6
(International)

cc: