

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

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Date:
October 26, 2022

TY:

Legend

- Taxpayer =
- Law Firm A =
- Law Firm B =
- Accounting Firm =
- LLC =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Year 1 =
- Shareholder A =
- Shareholder B =
- Shareholder C =
- CFO =

Dear :

This responds to correspondence dated August 9, 2022 and August 30, 2022, submitted by Law Firm A 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.

FACTS

On Date 1, Taxpayer was incorporated to operate as an interest charge domestic international sales corporation (“IC-DISC”). Taxpayer is a domestic corporation with a

calendar taxable year and has established a commission arrangement with LLC, a limited liability company classified as a partnership for federal income tax purposes. LLC and Taxpayer are both owned solely, and in the same proportions, by Shareholder A, Shareholder B, and Shareholder C, all of whom are individuals. LLC and Taxpayer both employ CFO, a different individual who is a certified public accountant, as Chief Financial Officer.

Taxpayer was formed at CFO's suggestion and after resulting discussions between LLC's officers, Accounting Firm, and Law Firm B about establishing an IC-DISC to use in connection with LLC's export sales activities. Taxpayer relied on Accounting Firm and Law Firm B to organize and prepare all documents and filings needed to establish Taxpayer as an IC-DISC. Accounting Firm completed Form 4876-A and delivered it on Date 2, along with mailing instructions, to Taxpayer for signature by its officers and shareholders.

CFO mailed Form 4876-A to the Service on Date 3. CFO neither noticed that the officer's signature line in Part I of Form 4876-A was incomplete, nor obtained proof of mailing or delivery. Nevertheless, based on its belief that it was an IC-DISC, Taxpayer prepared its Year 1 federal income tax return on Form 1120-IC-DISC and filed it on or about Date 4.

In correspondence dated Date 5, the Service informed Taxpayer that Taxpayer's Form 1120-IC-DISC filing could not be processed because an approved Form 4876-A was not on file.

Taxpayer subsequently filed a request for assistance with its IC-DISC election with the Service's Taxpayer Advocate Service. The Taxpayer Advocate Service informed Taxpayer that the Service denied its election to be treated as an IC-DISC because Form 4876-A was missing an officer's signature at the bottom of Part I. The Taxpayer Advocate Service also advised Taxpayer that it could request an extension of time to file Form 4876-A for its first taxable year under Treas. Reg. §§ 301.9100-1 and 301.9100-3.

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 DISC¹ 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

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

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.

Treas. Reg. § 301.9100-1(c) gives the Commissioner discretion to 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.

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.

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 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). 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.

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 representative.

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 Taxpayer and Law Firm A and accompanied by affidavits and 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 upon examination.

Sincerely,

Robert Z. Kelley
Senior Technical Reviewer, Branch 6
Office of Associate Chief Counsel (International)

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

cc: