

Internal Revenue Service

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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-111058-22

Date:

January 09, 2023

Legend

Taxpayer =

Law Firm =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Individual A =

Individual B =

Individual C =

Individual D =

Individual E =

Individual F =

Individual G =

Company A =

Year 1 =

Year 2 =

Dear _____ :

This responds to a letter dated May 20, 2022, supplemented with a letter dated December 6, 2022, submitted by your representative 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 Year 1.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and Law Firm, 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 was incorporated on Date 1 as an interest charge domestic international sales corporation ("IC-DISC"). Taxpayer represents that it did not conduct any operations until the following year, Year 2. Taxpayer is a domestic corporation owned by Individual A, Individual B, Individual C, Individual D, Individual E, Individual F, Individual G, and Company A. Individual A is the Chief Financial Officer of Taxpayer. On Date 2, Law Firm, under Taxpayer's instructions, filed Form 4876-A ("Election To Be Treated as an Interest Charge DISC") with the IRS on behalf of Taxpayer. The attempted election was not made within 90 days after the beginning of Year 1. Law Firm received confirmation that the Form 4876-A had been received by the IRS. Taxpayer assumed that it had completed all of the requirements necessary to operate as an IC-DISC and conducted its business as if it was an IC-DISC. Believing that it was an IC-DISC, Taxpayer filed an initial return, a Form 1120-IC-DISC, with the IRS on Date 3.

Even though Taxpayer assumed that it had met all the requirements to conduct business as an IC-DISC, it did not qualify as an IC-DISC for federal income tax purposes because the election was not timely filed. Additionally, the Form 4876-A that was filed with the IRS was missing an officer's signature and, therefore, was invalid. Taxpayer represents that it did not realize the error regarding the missing signature until it received a notice from the IRS dated Date 4, stating that Taxpayer's Form 4876-A could not be processed, and that Taxpayer was not eligible for IC-DISC status. The IRS letter stated that Taxpayer had failed to respond to previous correspondence requesting information needed to process the form. Taxpayer represents that it never received the previous notice and therefore could not correct the error.

Taxpayer asked Law Firm to assist with responding to the IRS notice. Law Firm contacted the IRS and exchanged several phone calls with the IRS. Law Firm learned that Taxpayer's Form 4876-A that was filed with the IRS could not be processed because it was missing an officer's signature. Taxpayer and Law Firm examined and confirmed that the Form 4876-A was missing an officer's signature. The IRS was unable to provide a copy of the previous notice sent to Taxpayer, and instead sent another notice to Taxpayer on Date 5, explaining that the IRS had received the Form 1120-IC-DISC but could not process it because the IRS had not approved Taxpayer's Form 4876-A. Law Firm filed a request on behalf of Taxpayer, to be allowed to make a late election to be treated as an IC-DISC beginning on Date 1.

LAW AND ANALYSIS

Section 992(b)(1)(A) provides that an election by a corporation to be treated as an IC-DISC 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 the election shall be made in the 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 and that a corporation electing to be treated as an IC-DISC for its first taxable year must make its 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 that the grant of relief will not prejudice the interests of the Government.

The election described in 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 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 considered 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 Form 4876-A and 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,

Angela E. Holland
Senior Counsel, Branch 6
(International)

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

cc: