

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:INTL:B06
PLR-115154-22

Date:
December 29, 2022

TY:

Legend

- Taxpayer =
- Shareholder =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =
- Date 7 =
- Date 8 =
- Date 9 =
- Date 10 =
- Date 11 =
- Individual A =
- Individual B =
- Accounting Firm =
- Year 1 =
- Year 2 =
- Year 3 =
- Month 1 =
- Month 2 =

Dear :

This responds to your letter dated August 5, 2022 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 wholly owned by Shareholder. Shareholder is treated as an S corporation for Federal income tax purposes.

Individual A is the Chief Financial Officer of both Taxpayer and Shareholder. Individual B is a qualified tax professional employed at Accounting Firm. Individual A engaged Individual B to prepare the documentation for Shareholder to form Taxpayer and qualify Taxpayer as an IC-DISC. On Date 2, Individual A received Form 4876-A from Individual B, but Individual B did not advise Individual A to send Form 4876-A by certified mail return receipt requested. On Date 2, which was within 90 days after the beginning of Taxpayer’s first taxable year, Individual A mailed a signed Form 4876-A to the Service, but did not send the Form 4876-A by certified mail return receipt requested.

During Year 2, Taxpayer timely submitted Form 1120-IC-DISC for Taxpayer’s first taxable year. On Date 3, less than one year after Taxpayer filed Form 4876-A and shortly after Taxpayer filed Form 1120-IC-DISC, the Service notified Taxpayer that the Service did not have any record of Form 4876-A having been filed and therefore the Service could not process Taxpayer’s Form 1120-IC-DISC for Taxpayer’s first taxable year.

During the period from Month 1 to Month 2, Accounting Firm sent letters and made phone calls to the Service on behalf of Taxpayer to try and resolve the issue of why the Service had not processed Taxpayer’s Form 4876-A. On Date 4, the Service responded to Accounting Firm’s first letter and notified Taxpayer that the Service was investigating the matter. On Date 5, the Service sent a second response to Accounting Firm’s first letter stating that the Service needed more time to investigate the matter.

During the period from Month 1 to Month 2, Accounting Firm prepared Form 1120-IC-DISC for Taxpayer’s Year 2 and Year 3 taxable years, and Taxpayer timely filed such Forms. On Date 6 and Date 7, the Service sent notices to Taxpayer stating that the Service could not process Taxpayer’s Form 1120-IC-DISC for Year 2 because the Service had no record of Taxpayer filing Form 4876-A. On Date 8 and Date 10, the Service sent notices to Taxpayer stating that the Service could not process Taxpayer’s Form 1120-IC-DISC for Year 3 because the Service had no record of Taxpayer filing Form 4876-A.

On Date 9, the Service called an employee of Accounting Firm and told the employee that Taxpayer would have to file a request for an extension of time to file Form 4876-A under Treas. Reg. §§301.9100-1 and 301.9100-3 in order for Taxpayer to be treated as an IC-DISC beginning in its first taxable year. Having been unsuccessful in resolving

with the Service the issue of Taxpayer's Form 4876-A, on Date 11 Accounting Firm recommended Taxpayer engage legal counsel and request an extension of time under Treas. Reg. §§301.9100-1 and 301.9100-3 to file Form 4876-A. In conjunction with this request, Taxpayer, Shareholder, and the owners of Shareholder all executed Forms 872 ("Consent to Extend the Time to Assess Tax") for Year 2 and all provided representations that Taxpayer had no gross income or deductions in Year 1.

LAW

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 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) of the Code 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.

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.

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.

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.

ANALYSIS

Based on the facts and representations submitted with Taxpayer's ruling request and subsequent additional information requests, 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 the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. 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,

By: _____
for Frank W. Dunham III
Branch Chief, Branch 6
(International)

cc: