

**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-122214-22

Date:

March 07, 2023

In Re:

TY:

**Legend**

Taxpayer =

Accounting Firm =

LLC =

Partnership =

Partner 1 =

Partner 2 =

Partner 3 =

Partner 4 =

Partner 5 =

Partner 6 =

Partner 7 =

Individual =

Tax Consultant =

Tax Attorney =

Independent Auditor =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Dear \_\_\_\_\_ :

This responds to correspondence dated October 20, 2022, and February 13, 2023, submitted by Accounting Firm 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 1, a limited liability company classified as a disregarded entity for federal tax purposes. LLC 1 is Taxpayer’s only shareholder. The only member of LLC 1 is Partnership 1, which is classified as a partnership for federal tax purposes.

Partnership 1 is owned by Partner 1, Partner 2, Partner 3, Partner 4, Partner 5, Partner 6, and Partner 7. Partnership 1 employs Individual as its controller. In this capacity, Individual is responsible for ensuring that tax returns for Partnership 1 and its related entities, including Taxpayer, are completed and filed with the appropriate taxing authority. Partnership 1 also employs Accounting Firm as its tax accountant.

Taxpayer was formed at the suggestion of Accounting Firm and after resulting discussions between Partnership 1’s officers and Accounting Firm about establishing an IC-DISC to use in connection with Partnership 1’s export sales activities. Accounting Firm recommended that Partnership 1 hire Tax Consultant to assist in creating Taxpayer, as Tax Consultant had extensive experience in creating IC-DISCs and had previously assisted Accounting Firm in doing so.

Taxpayer relied on Tax Consultant to organize and prepare all documents and filings needed to establish Taxpayer as an IC-DISC. Tax Consultant completed Form 4876-A and delivered it, along with mailing instructions, on Date 2 to Individual for signature by Taxpayer’s officers and shareholder.

Individual subsequently informed Tax Consultant that he had obtained the signatures and filed the Form 4876-A with the Service. Nevertheless, Individual kept neither a copy of the executed Form 4876-A nor proof of mailing or delivery.

Tax Consultant has since prepared Form 1120-IC-DISC for Taxpayer for all its taxable years since its incorporation on Date 1. These include Taxpayer’s Year 1 through Year 5 taxable years. After preparing each Form 1120-IC-DISC, Tax Consultant has sent it to Individual 5 to obtain necessary signatures and file it with the Service. Individual did not keep proof of mailing or delivery for Form 1120-IC-DISC for Year 1 through Year 5.

In correspondences dated Date 3 and Date 4, more than six years after Date 1, the Service informed Taxpayer that Taxpayer's Form 1120-IC-DISC returns for Year 4 and Year 5 respectively could not be processed because there was no record of a Form 4876-A having been filed. When Tax Consultant contacted the Service, he was informed that the Service had records showing that Taxpayer had been formed in 2015, but no Form 4876-A.

Accounting Firm consulted Tax Attorney, who 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.

The period of limitations on assessment under Internal Revenue Code § 6501(a) is closed for at least Year 1 through Year 5. However, Taxpayer has provided a statement from an Independent Auditor as described in Treasury Regulation § 301.9100-3(c)(1)(ii) considering the relevant circumstances of all affected parties and confirming that the interests of the Government are not prejudiced under the standards contained in Treas. Reg. § 301.9100-3(c)(1).

### **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<sup>1</sup> 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 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) 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

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

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.

Treasury Regulation § 301.9100-3(c)(1) provides the standards the Commissioner will use to determine when the interests of the Government are prejudiced. Treas. Reg. § 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money).

Treasury Regulation § 301.9100-3(c)(1)(ii) provides that the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under Code section 6501(a) before the taxpayer's receipt of a ruling granting relief. However, the Service may condition a grant of relief on the taxpayer providing the Service with a statement from an independent auditor (other than an auditor providing an affidavit pursuant to Treas. Reg. § 301.9100-3(e)(3)) certifying that the interests of the Government are not prejudiced under the standards set forth in Treas. Reg. § 301.9100-3(c)(1)(i).

## **CONCLUSION**

Based on the facts and representations submitted with Taxpayer's ruling request, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Furthermore, although under Treas. Reg. § 301.9100-3(c)(1)(ii) the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made are closed by the period of limitations on assessment, Taxpayer submitted an affidavit from an independent auditor certifying that the interests of the Government are not prejudiced under the standards of Treas. Reg. 301.9100-3(c)(1)(i).

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,

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Frank W. Dunham III  
Branch Chief, Branch 6  
Office of Associate Chief Counsel (International)

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

cc: