

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:INTL:B06
PLR-107850-23

Date:
August 25, 2023

Legend

Taxpayer =
Shareholder =
Individual =
Accounting Firm =
Law Firm =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Year 1 =
Year 2 =

Dear :

This responds to a letter dated April 3, 2023, submitted by your representatives, 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.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and its representatives, 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, which are subject to verification on examination.

FACTS

Taxpayer was incorporated on Date 1 to operate as an interest charge domestic international sales corporation ("IC-DISC"). Taxpayer is a domestic corporation wholly owned by Shareholder, which is classified as a partnership for Federal income tax purposes. Individual is President of both Taxpayer and Shareholder.

During Year 1, Individual, on the recommendation of Accounting Firm, engaged Law Firm to advise and assist with incorporating Taxpayer and fulfilling the requirements for Taxpayer to operate as an IC-DISC. Individual represents that, at all relevant times, Individual and Taxpayer relied on Accounting Firm and Law Firm to organize and prepare the necessary documentation for Taxpayer to be treated as an IC-DISC.

Following Taxpayer's incorporation, Law Firm prepared Form 4876-A for Individual to execute and file with the Service. On Date 2 (less than 90 days after Date 1), Individual filed what purported to be an executed Form 4876-A with the Service. However, while Individual properly executed Part I ("Signature and Title of Officer") of the Form 4876-A, signing the form as an officer of Taxpayer, Individual failed to execute Part II ("Shareholders' Consent Statement") of the Form 4876-A, in which the electing entity's shareholder(s) (or here, Individual in his capacity as an owner and officer of Shareholder) must sign the form to reflect their consent to the election. At all relevant times, Taxpayer operated as if it were a validly elected IC-DISC.

In correspondence dated Date 3, the Service informed Taxpayer that it had not received a properly executed Form 4876-A and requested that Taxpayer submit a properly executed consent statement from Taxpayer's shareholder(s). Accounting Firm, responding on behalf of Taxpayer, submitted to the Service a copy of the Form 4876-A filed by Individual, on the mistaken belief that it was fully and properly executed.

Thereafter, Taxpayer filed its Federal income tax return for Year 1 as an IC-DISC. In correspondence dated Date 4, the Service informed Taxpayer that it could not process Taxpayer's return because it did not have an approved Form 4876-A on file. Accounting Firm, responding on behalf of Taxpayer, again submitted to the Service a copy of the Form 4876-A filed by Individual.

Thereafter, Taxpayer filed its Federal income tax return for Year 2 as an IC-DISC. In correspondence dated Date 5, the Service again informed Taxpayer that it could not process Taxpayer's return because it did not have an approved Form 4876-A on file. After receiving this notice, Individual recognized the error with the original Form 4876-A submission, and directed Law Firm, on behalf of Taxpayer, to file the request that is the subject of this ruling.

LAW

Section 992(b)(1)(A) of the Internal Revenue Code (the “Code”) 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 her consent to the making of an election at such other times as she may designate. Section 992(b)(1)(B) of the Code provides that the 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 the 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 may, in exercising his discretion, 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 the due date for which 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, and that 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.

ANALYSIS

Here, Taxpayer seeks relief to make the election described in Temp. Treas. Reg. § 1.921-1T(b)(1), which 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, to make such election.

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). 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.¹

In accordance with section 996(g), Taxpayer should not accept any income tax treaty claims of reduced withholding under sections 1441 or 1442 with respect to distributions (deemed or otherwise) of accumulated DISC income.

Taxpayer should attach a copy of this ruling letter to its Form 4876-A and Federal income tax return for the taxpayer years to which this letter applies (and any other 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.

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, copies of this letter are being sent to your authorized representatives.

Sincerely,

Brad McCormack
Senior Technician Reviewer, Branch 6
(International)

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

¹ For example, no opinion is expressed regarding the consequences to any person under section 996(g).

cc: