

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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Refer Reply To:

CC:INTL

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Date:

February 08, 2006

LEGEND

Taxpayer =

Individual A =

Individual B =

Law Firm =

CPA Firm =

Tax Year =

One

State Y =

Dear :

This replies to your representative's letter dated September 15, 2004 (as supplemented and clarified by your representative's letter dated January 12, 2006), in which your representative requests on behalf of Taxpayer an extension of time under Treas. Reg. §301.9100-3 to file the election and shareholder consent statements as required under Temp. Treas. Reg. §1.921-1T(b)(1) for Tax Year One. The information submitted for consideration is substantially as set forth below.

The ruling contained in this letter is predicated upon facts and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

Taxpayer has no employees dedicated to tax or legal matters. The task of managing these matters is the responsibility of Individual A, who is Taxpayer's treasurer and secretary, and is not a specialist in tax or legal matters. Accordingly, Taxpayer engaged the services of Law Firm to establish Taxpayer as a domestic international sales corporation ("DISC") pursuant to sections 991 through 997 of the Internal Revenue Code. Individual A was unaware of the requirements that Taxpayer needed to satisfy under Temp. Treas. Reg. §1.921-1T(b)(1) to qualify as a DISC for Tax Year One. Individual A expected the scope of Law Firm's services to include performing the steps necessary to create Taxpayer as a DISC.

Individual B is an attorney with Law Firm. Individual B's understanding of the scope of the engagement between Law Firm and Taxpayer was that he would organize Taxpayer as a State Y corporation, draft a commission agreement to be entered into between Taxpayer and its parent, and prepare documents to obtain a valid employer identification number for Taxpayer. Consequently, based on what he believed to be the scope of the engagement, Individual B did not advise Individual A to have Taxpayer make the election under Temp. Treas. Reg. §1.921-1T(b)(1). Individual B did not realize that Taxpayer's understanding of the engagement was that Taxpayer had retained Law Firm to take the steps necessary to qualify Taxpayer to operate as a DISC for Tax Year One. This mutual misunderstanding concerning the scope of the engagement led to the failure to file an election to be treated as a DISC under Temp. Treas. Reg. §1.921-1T(b)(1).

Subsequently, Taxpayer engaged CPA Firm to provide tax preparation services for Tax Year One. During this process, CPA Firm discovered the failure to file the DISC election and shareholder consent statements necessary for Taxpayer to qualify as a DISC for Tax Year One.

Section 992(b)(1)(A) provides:

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) provides:

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 the

first day of the first taxable year for which such election is effective consent to such election.

The second and third sentences of Temp. Treas. Reg. §1.921-1T(b)(1) provide:

A corporation electing interest charge DISC status must file Form 4876A. A corporation electing to be treated as a FSC, small FSC, or interest charge DISC for its first taxable year shall make its election within 90 days after the beginning of that year.

The last sentence of Temp. Treas. Reg. §1.921-1T(b)(1) provides:

The rules contained in §1.992-2(a)(1), (b)(1), and (b)(3) shall apply to the manner of making the election and the manner and form of shareholder consent.

The last sentence of Treas. Reg. §1.992-2(a)(1)(i) provides:

Except as provided in paragraphs (b)(3) and (c) of this section, such election to be treated as a DISC shall be valid only if the consent of every person who is a shareholder of the corporation as of the beginning of the first taxable year for which such election is effective is on or attached to such Form 4876 when filed with the service center.

Treas. Reg. §301.9100-1(c) provides, in part:

The Commissioner, in exercising the Commissioner's discretion, may grant a reasonable extension of time under the rules set forth in §§301.9100-2 and 301.9100-3 to make a regulatory election . . . under all subtitles of the Internal Revenue 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. §301.9100-1(b).

Treas. Reg. §301.9100-3(a) provides, in part:

Requests for extensions of time for regulatory elections that do not meet the requirements of §301.9100-2 must be made under the rules of this section. Requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in paragraph (e) of this section) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

In the present situation, 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 information submitted, we conclude that Taxpayer satisfies Treas. Reg. §301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file the election and shareholder consent statements as required under Temp. Treas. Reg. §1.921-1T(b)(1) and Treas. Reg. §1.992-2(a)(1)(i) for Tax Year One.

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to file the election and shareholder consent statements. Treas. Reg. §301.9100-1(a). A copy of this ruling letter should be associated with the election and shareholder consent statements.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. No ruling has been requested, and none is expressed, as to the application of any other section of the Code or regulations to the facts presented.

Pursuant to a power of attorney on file in this office, a copy of this ruling letter is being furnished to your authorized representatives.

Sincerely,

/s/ Christopher J. Bello

Christopher J. Bello

Assistant to the Branch Chief, Branch 6

Office of the Associate Chief Counsel (International)

Enclosure

Copy for 6110 purposes

cc