

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-116407-18

Date:

September 13, 2018

Legend

Taxpayer	=
Opco	=
Individual	=
Law Firm A	=
Law Firm B	=
Accounting Firm	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=

Dear :

This responds to your letter dated February 26, 2018, 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 ("DISC election") for Taxpayer's first taxable year.

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.

Facts

Taxpayer is a domestic corporation wholly owned by Individual and members of Individual's extended family that operates in connection with the export of agricultural produce grown by Opco. Opco is an S corporation that is also owned by Individual and

his extended family, in the same proportions as Taxpayer. Individual has long managed Taxpayer and Opco.

Law Firm A and Accounting Firm have provided tax services to Opco and related entities for many years.

Shortly before Date 1, Individual consulted with Law Firm A about benefits that an interest charge domestic international sales corporation (“IC-DISC”)¹ may provide. Individual engaged Law Firm A to set up Taxpayer as an IC-DISC and prepare initial corporate and tax filings, and engaged Accounting Firm to prepare Taxpayer’s returns.

A few weeks later, on Date 2, Taxpayer inadvertently filed Form 2553, “Election by a Small Business Corporation (Under section 1362 of the Internal Revenue Code)” (“S election”), to take effect as of incorporation, instead of a DISC election.

A few weeks after that, on Date 3 (and before the 15th day of the third month of Taxpayer’s first taxable year), Taxpayer sent the Service a revocation letter regarding the S election. The revocation was to be retroactive to incorporation. The letter, which stated that the S election was due to inadvertent error and that Taxpayer was meant to be a DISC, was signed by all of Taxpayer’s shareholders.

On Date 4, the Service promptly responded with a letter that the revocation request could not be considered because there was no record of an S election. In other words, Taxpayer erroneously attempted to make an S election rather than a DISC election, but apparently also failed to make the S election in the first place.

Taxpayer and Accounting Firm further discussed the matter of the S and DISC elections with the Service. Several months later, at Accounting Firm’s recommendation, Taxpayer engaged Law Firm B to submit the ruling request at issue.

Law and Analysis

Section 992(d)(7) of the Internal Revenue Code (the “Code”) provides that an S corporation is not eligible to be treated as a DISC. Section 1361(b)(2)(D) provides that a “DISC or former DISC” is ineligible to be a “small business corporation” that in turn may by election be an S corporation. Under section 1362(b)(1)(B), a “small business corporation” may elect to be an S corporation for the current taxable year within the first two months and 15 days of the year.

Under section 1362(d)(1)(C)(i), shareholders owning more than one-half of the corporation’s shares may revoke this election, and the revocation may be made effective for the current taxable year if made within the first two months and 15 days.

¹ An IC-DISC is the type of DISC for which the Internal Revenue Code provides for the years at issue. See I.R.C. § 995(f).

Section 992(b)(1)(A) 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.

Taxpayer's status as an S corporation for its first taxable year would have precluded it from electing to be a DISC for that year, and a retroactive revocation at this time would not have been possible under section 1362(d). However, it appears that Taxpayer never made a valid S election. And even if it did successfully make the S election, Taxpayer's revocation of such election during the first two and a half months of its first taxable year would have had retroactive effect back to the first day of that year.

Therefore, Taxpayer's attempted S election poses no barrier to the DISC status that the ruling request contemplates.

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 60 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.

Sincerely,

Christopher J. Bello
Chief, Branch 6
(International)