

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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February 09, 2009

Legend

Taxpayer	=	
Parent	=	
Advisor	=	
Business	=	
Date 1	=	
Date 2	=	
Year 1	=	
Year 2	=	
State A	=	
State B	=	

Dear :

This responds to a Date 1 letter submitted on Taxpayer's behalf by Advisor, requesting a ruling that grants Taxpayer an extension of time under Treas. Reg. § 301.9100-3 to file Form 4876-A in accordance with Temp. Treas. Reg. § 1.921-1T(b)(1), thereby allowing Taxpayer to file a Form 4876-A that will be treated as timely filed within 90 days after the beginning of its first taxable year.

The rulings given in this letter are based on facts and representations submitted by Taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of this ruling request. Verification of the information, representations, and other data may be required as part of the audit process.

Facts

Taxpayer is a State A corporation that was incorporated on Date 2. Taxpayer is wholly owned by Parent, a State B limited liability corporation engaged in Business. Taxpayer was formed to act as an interest charge domestic international sales corporation ("IC-DISC") on a commission basis for Parent since its inception. Taxpayer has a calendar year taxable year.

Advisor has provided tax advisory services to Parent for many years. In Year 1, Advisor determined that Parent would benefit from forming an IC-DISC, and Parent relied on Advisor to establish Taxpayer as an IC-DISC. Advisor represents that it is qualified and competent to provide advice on IC-DISC issues, and that it was aware that Parent and Taxpayer were relying on it to perform all tasks necessary to qualify Taxpayer as an IC-DISC for federal tax purposes. Because Parent and Taxpayer believed Advisor was a competent tax professional qualified to render IC-DISC advice, they relied on Advisors to perform all necessary tasks for Taxpayer to qualify as an IC-DISC for federal tax purposes. However, Advisor represents that through inadvertence it neither prepared Form 4876-A nor advised Parent or Taxpayer of the requirement to file the form.

While preparing Taxpayer's Form 1120-IC-DISC for Year 2, Advisor realized that the Form 4876-A was never filed. This occurred after the due date for the Form 4876-A for Taxpayer's first taxable year. Advisor informed Taxpayer of this issue, and shortly thereafter filed this ruling request on Taxpayer's behalf for an extension of time under Treas. Reg. § 301.9100-1 to file the Form 4876-A for Taxpayer's first taxable year beginning Date 2. Taxpayer represents that it has not been contacted by the IRS with respect to its failure to file the Form 4876-A.

The period of limitations on assessment under section 6501(a) has not expired for Taxpayer's taxable years for which the election is being made or any taxable years that would have been affected by the election had Taxpayer made a timely election.

Taxpayer has requested a ruling that grants an extension of time to file Form 4876-A so that the form will be treated as timely filed within 90 days after the beginning of its first taxable year.

Law and Analysis

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) 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.

Temp. Treas. Reg. § 1.921-1T(b)(1) provides, in part, that a corporation electing IC-DISC status must file Form 4876-A. 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.

Treas. Reg. § 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.

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. § 301.9100-3(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 interest 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 representations submitted with the ruling request, this office has concluded 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 required by Temp. Treas. Reg. § 1.921-1T(b)(1). Such filing will be treated as a timely election to be treated as an IC-DISC for Taxpayer's first taxable year beginning Date 2.

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). A copy of this letter ruling should be filed with the Form 4876-A.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that written determinations may not be used or cited as precedent. Except as expressly provided herein, this ruling neither expresses nor implies any opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this ruling letter.

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

Sincerely,

Christopher J. Bello
Chief, Branch 6
Office of Associate Chief Counsel
(International)

cc: