

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-106995-19

Date:

July 31, 2019

Legend

Taxpayer =

Opco =

Parent A =

Parent B =

Individual =

Law Firm =

Accounting Firm =

Year 1 =

Year 2 =

Year 3 =

Dear :

This responds to your letter dated March 22, 2019, supplemented by an undated letter made available on July 18, 2019, 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.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by penalty of perjury statements executed by appropriate parties. 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 owned by Parent A, a partnership for tax purposes. Opco is a domestic C corporation owned by Parent B, a domestic C corporation, which is in turn owned by Parent A. Individual, a US resident, is the majority owner of Parent A, and an unrelated investment fund, which is a US partnership for tax purposes, is the minority owner. Taxpayer receives commissions in connection with Opco's exporting of software.

In Year 1, Parent A engaged Law Firm to set up Taxpayer as an IC-DISC in connection with Taxpayer's exporting, and engaged Accounting Firm to prepare Taxpayer's books, records, and tax forms.¹ Law Firm and Accounting Firm are well established, well known practices; Parent A and Taxpayer are inexperienced in IC-DISC related matters, and so relied on those professionals' expertise to ensure a proper election was made.

Taxpayer promptly began to operate as an IC-DISC and filed returns as an IC-DISC for each year, and Opco operated and filed consistently with this status. But after filing its return for Year 2, which was several years after Year 1, Taxpayer received a notice from the Service that it had no record of a proper Form 4876-A IC-DISC election.

Taxpayer went back to Accounting Firm to address the problem. Taxpayer located a copy of an executed election with incorrect information, but could not determine whether the election was somehow rejected or simply not mailed. In any event, neither Taxpayer nor Accounting Firm (which previously understood Law Firm was to file the election) was aware until Year 3 – the year after Year 2 – that Taxpayer did not have a valid IC-DISC election.

As soon as Accounting Firm had confirmed with both Taxpayer and Law Firm that they had no evidence of the filing of a valid IC-DISC election, Accounting Firm prepared the extension request letter.

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 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

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).

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.

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).

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
Branch Chief, Branch 6
(International)