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Department of the Treasury
Washington, DC 20224

Person To Contact: _____, ID No. _____

Refer Reply To:
CC:INTL:B06
PLR-152785-08

Date:
February 27, 2009

Taxpayer =

Parent =

Accounting Firm =

State A =

Activity B =

Activity C =

Activity D =

$$Y =$$

Date 1 =

Date 2 =

Dear _____ :

This responds to the letter from your authorized representative dated December 10, 2008, requesting a ruling that Taxpayer be permitted an extension of time under Treas. Reg. § 301.9100-3 to file Form 4876-A (“Election to be Treated as an Interest Charge DISC”) (including the shareholder’s consent statement) in accordance with Temp. Treas. Reg. § 1.921-1T(b)(1) and Treas. Reg. § 1.992-2(a)(1)(i) to be effective as of Date 1.

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

Facts

Taxpayer is a domestic corporation wholly owned by Parent, a domestic corporation. Parent performs Activities B, C, and D in the Y industry. Taxpayer was incorporated in State A on Date 1 and was intended to be treated as an interest charge domestic international sales corporation (“DISC”) from the date of inception. Both Taxpayer and Parent use the accrual method of accounting with a calendar taxable year-end.

Accounting Firm is a certified public accounting firm that prepared and forwarded a Form 4876-A to Parent on Date 2. The officer at that time who was responsible for filing the Form 4876-A was acting in certain capacities in addition to his normal duties, including responsibility for the implementation of a new accounting software system as well as budgeting and tax processes and inadvertently overlooked the election period deadline. Consequently, Taxpayer did not file Form 4876-A within 90 days after Date 1, as required by Temp. Treas. Reg. § 1.921-1T(b)(1). Taxpayer discovered the failure to file the election 99 days after Date 1. Even though Form 4876-A was not timely filed, Taxpayer represents that it intended all along to qualify as a DISC and that it reasonably believed that it could operate as a DISC citing, as evidence of that intent, Taxpayer’s name.

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 within 60 days from the issuance of a favorable ruling letter 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 DISC status must file Form 4876-A and that a corporation electing to be treated as a DISC for its first taxable year shall make its election within 90 days after the beginning of that year. Temp. Treas. Reg. § 1.921-1T(b)(1) further provides that the rules contained in Treas. Reg. § 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 to the election.

Treas. Reg. § 1.992-2(a)(1)(i) provides that, except as otherwise provided in paragraphs (b)(3) and (c) of that section, the election to be treated as a domestic international sales corporation 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 the Form 4876-A when filed with the service center.

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 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-A¹ and the shareholder consent statement required by Temp. Treas. Reg. § 1.921-1T(b)(1) and Treas. Reg. § 1.992-2(a)(1)(i). Such filing will be treated as a timely election to be treated as a 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, to submit shareholder consent statements, or to claim 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 and shareholder consent statement.

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 representatives.

Sincerely,

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

Enclosure:
Copy for 6110 purposes

¹ Based on the submitted materials, it is not clear whether the individual who was originally assigned responsibility for executing and filing the election had the authority to do so. For example, the submission indicates that such individual is an officer of Parent but does not state whether he is an officer of Taxpayer. The election must be made by an officer of Taxpayer duly authorized to act on behalf of Taxpayer in tax matters under the law of State A.