

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-153407-05

Date:

January 31, 2006

In re:

TY:

Legend

Taxpayer	=
Parent	=
Firm	=
Management Company	=
Date1	=
Date2	=
Date3	=
Date4	=
Date5	=

Dear :

This replies to your letter dated October 14, 2005 (as supplemented and clarified by your letter dated December 21, 2005), in which you request on behalf of Taxpayer an extension of time under Treas. Reg. § 301.9100-3(a) to file a Form 4876-A ("Election to be Treated as an Interest Charge DISC") effective as of Date1. The information submitted for consideration is substantially as set forth below.

Taxpayer is a domestic corporation that was incorporated on Date1. Taxpayer is wholly owned by Parent, a domestic corporation, and receives management services and administrative assistance (including mailroom services) from Management

Company). Based on the recommendation of Parent's accountants, Firm, Taxpayer was formed as a calendar year taxpayer with the intention of electing under section 992(b)(1) to be treated as a domestic international sales corporation ("DISC") for its first taxable year.

On Date2 (84 days after Date1), Firm prepared a Form 4876-A on Taxpayer's behalf, and submitted it to Taxpayer, which signed it. On Date3 (four days later), pursuant to the normal business practice of Taxpayer for handling outgoing mail, Taxpayer delivered the signed Form 4876-A to Management Company's mailroom for processing and mailing to the Internal Revenue Service ("the Service"). Mailroom personnel placed the form in an envelope, affixed postage to the envelope, and mailed it that day. Eight days later, on Date4, the United States Postal Service returned the sealed envelope to the mailroom for insufficient postage. Mailroom personnel immediately resent the envelope with sufficient postage without notifying any corporate officers that the envelope had been returned. Subsequently, the Service returned the Form 4876-A to Taxpayer because it was not timely filed (i.e., it was filed after Date5). At that time, Taxpayer became aware of the situation and contacted Firm for advice. Based on Firm's advice, Taxpayer requested Firm to prepare and file, on its behalf, a request under Treas. Reg. § 301.9100-3(a) to extend the time to file Form 4876-A effective as of Date1.

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.

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.

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 the second and third sentences of Temp. Treas. Reg. § 1.921-1T(b)(2) 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 rules set forth in Treas. Reg. § 301.9100-3(a). Based on the facts and information submitted, we conclude that Taxpayer satisfies the rules set forth in 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 described in Temp. Treas. Reg. § 1.921-1T(b)(2). The granting of an extension of time to make the election is not a determination that Taxpayer is otherwise eligible to make the election or to claim DISC status or benefits.

The ruling contained in this letter is based upon information 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.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent. Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

In accordance with the power of attorney on file with this office, copies of this letter are being sent to your two authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant.

Sincerely,

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