

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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PLR-133268-10

Date:
January 04, 2011

In Re:

TY:

LEGEND

Taxpayer	=
Accounting Firm	=
Trust	=
Individual	=
Attorney	=
Date 1	=
Date 2	=
Year 1	=

Dear :

This responds to a letter dated June 29, 2010, submitted on behalf of Taxpayer, 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 given in this letter are based on facts and representations submitted by Taxpayer and Accounting Firm, and accompanied by penalty of perjury statements executed by appropriate parties. This office has not verified any of the materials submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as part of the audit process.

FACTS

Taxpayer is a domestic corporation wholly owned by Trust. Accounting Firm is an accounting, tax planning and compliance, and business advisory organization. Individual is President/CEO of Taxpayer and grantor of Trust.

Taxpayer was incorporated on Date 1 and was intended to be treated as an interest charge domestic international sales corporation ("IC-DISC") from inception based on earlier discussions in Year 1 between Individual and Accounting Firm. Unfamiliar with IC-DISC tax matters, Individual consulted with Attorney and Accounting Firm regarding the formation of an IC-DISC. Believing all the requirements to conduct business and to be treated as an IC-DISC for its first taxable year were satisfied, Taxpayer began acting as an IC-DISC as of Date 1.¹

Even though Taxpayer had assumed that all the necessary requirements to conduct business as an IC-DISC were satisfied, it did not qualify as an IC-DISC for federal income tax purposes because it did not timely file a Form 4876-A with the Service within 90 days of Date 1. Accounting Firm had neither filed nor advised Taxpayer to file Form 4876-A within 90 days of Date 1 because Accounting Firm had assumed that Attorney would be responsible for timely filing this form. Accounting Firm did not discover until approximately Date 2 that Form 4876-A had not been filed by Attorney. Upon discovery that the form had not been filed, Taxpayer instructed Accounting Firm to submit a ruling request to the Service for an extension of time to file Form 4876-A for Taxpayer's first taxable year.

LAW AND ANALYSIS

Section 992(b)(1)(A) of the Internal Revenue Code ("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 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. 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.

¹ As explained below, although Taxpayer acted as an IC-DISC, it was not, in fact, an IC-DISC.

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 the grant of relief will not prejudice the interest of the Government.

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, 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 beginning Date 1.

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) of the Code provides that written determinations may not be used or cited as precedent. 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.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Jason Osborn
Senior Technical Reviewer, Branch 6
Office of Associate Chief Counsel
(International)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: