

## 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-103962-18

Date:

November 30, 2018

TY:

## Legend

Taxpayer =

Law Firm =

Accounting Firm =

Company =

Date 1 =

Year 1 =

Year 2 =

Shareholder =

Dear :

This responds to a letter dated February 8, 2018 submitted by Law Firm requesting that the Internal Revenue Service ("Service") give effect to Taxpayer's election to be an Interest Charge Domestic International Sales Corporation ("IC-DISC") as of Year 1, Taxpayer's first taxable year.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer 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. It is subject to verification on examination.

## FACTS

Taxpayer is a domestic corporation wholly owned by Shareholder. Taxpayer was formed on Date 1 to operate as an IC-DISC. Taxpayer was formed to sell export property of Company to international buyers on a commission basis. Taxpayer engaged Accounting Firm for advice and assistance with arranging for Taxpayer to

qualify as an IC-DISC. On the same day that Taxpayer was formed, it timely filed Form 4876-A (the IC-DISC election form). However, on that same day, Taxpayer also mistakenly filed a form that, if accepted, made treatment as an IC-DISC impossible.

Accounting Firm prepared and Taxpayer timely filed its Form 1120-IC-DISC for Year 1. Taxpayer prepared and timely filed its Form 1120-IC-DISC for Year 2. Taxpayer was subsequently notified by the Service that the Year 1 and Year 2 IC-DISC returns were not eligible for filing based on the lack of a valid IC-DISC election for Taxpayer. Since its incorporation, Taxpayer has conducted business and fulfilled all federal tax requirements consistent with its understanding that it was an IC-DISC.

Law Firm submitted this request for relief on behalf of Taxpayer.

### **LAW AND ANALYSIS**

Section 992(a)(1) of the Internal Revenue Code<sup>1</sup> provides that the term “DISC”<sup>2</sup> means, with respect to any taxable year, a corporation which is incorporated under the laws of any State and satisfies the following conditions for the taxable year: 95 percent or more of the gross receipts (as defined in section 993(f)) of such corporation consist of qualified export receipts (as defined in section 993(a)); the adjusted basis of the qualified export assets (as defined in section 993(b)) of the corporation at the close of the taxable year equals or exceeds 95 percent of the sum of the adjusted basis of all assets of the corporation at the close of the taxable year; such corporation does not have more than one class of stock and the par or stated value of its outstanding stock is at least \$2,500 on each day of the taxable year; and the corporation has made an election pursuant to section 992(b) to be treated as a DISC and such election is in effect for the taxable year.

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.

Treasury Regulation § 1.992-1(a) provides that the term “DISC” means a corporation which, for a taxable year: is duly incorporated and existing under the laws of any State

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<sup>1</sup> Unless specified otherwise, all section references are references to the Internal Revenue Code of 1986, as amended.

<sup>2</sup> As used in this letter, the terms “IC-DISC” and “DISC” have the same meaning.

or the District of Columbia; satisfies the gross receipts test described in paragraph (b) of Treas. Reg. § 1.992-1; satisfies the assets test described in paragraph (c) of Treas. Reg. § 1.992-1; satisfies the capitalization requirement described in paragraph (d) of Treas. Reg. § 1.992-1; satisfies the requirement that an election to be treated as a DISC be in effect for such year, as described in paragraph (e) of Treas. Reg. § 1.992-1; maintains separate books and records; and is not an ineligible corporation described in paragraph (f) of Treas. Reg. § 1.992-1.

Treasury Regulation § 1.992-1(e) provides that, in order for a corporation to be a DISC for a taxable year, an election to be treated as a DISC must be made by such corporation pursuant to Treas. Reg. § 1.992-2 and must be in effect for such taxable year. Treasury Regulation § 1.992-1(e) also provides that a corporation does not become or remain a DISC solely by making such an election, and that a corporation is a DISC for a taxable year only if such an election is in effect for that year and the corporation also satisfies the requirements of paragraphs (a) through (d) of that section. Treasury Regulation § 1.992-2 contains rules regarding the time and manner of making such an election.

Based on Taxpayer's facts and representations, we conclude that it was eligible to make the IC-DISC election and, if all other requirements were met, be treated as an IC-DISC as of Date 1, despite the simultaneous erroneous filing of any other election forms. Accordingly, any other election by Taxpayer inconsistent with IC-DISC status is superseded.

This ruling letter is not a determination that Taxpayer is otherwise eligible to claim IC-DISC status or benefits. Taxpayer should attach a copy of this ruling letter to its Federal income tax return for the taxable years to which this ruling letter applies.

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, 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 ruling letter is being sent to your authorized representative.

Sincerely,

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Robert Z. Kelley  
Senior Counsel, Branch 6  
Office of Associate Chief Counsel (International)

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

cc: