

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:

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PLR-127788-16

Date:

March 07, 2017

Legend

Taxpayer =

Opco =

Individual A =

Individual B =

Individual C =

Accounting Firm =

Law Firm =

Date 1 =

Date 2 =

Dear :

This responds to your letter and affidavits dated August 18, 2016, supplemented by your letter dated January 27, 2017 and your affidavit dated March 3, 2017, 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 Taxpayer and its representatives and accompanied by affidavits and penalty of perjury statements executed by appropriate parties. This office has not verified any of the materials submitted in support of the request for rulings. It is subject to verification on examination.

FACTS

Taxpayer is a domestic corporation wholly owned by Opco. Opco is an S corporation that is and has for several years been wholly owned by Individuals A, B, and C. Part of their interest in Opco is held through a trust.

Taxpayer was formed on Date 1 for the sole purpose of qualifying and operating as an interest charge domestic international sales corporation ("IC-DISC"). Taxpayer operates under a commission arrangement with Opco. Individual B has been the President and CEO of Taxpayer throughout its existence and also the President and CEO of Opco for several years.

Shortly before Date 1, Opco consulted with Accounting Firm about benefits that an IC-DISC may provide. After deciding to form Taxpayer as an IC-DISC, Taxpayer retained Law Firm to organize Taxpayer as a corporation and prepare initial filings. Accounting Firm informed Taxpayer that Taxpayer was required to file Form 4876-A to operate as an IC-DISC, and prepared, provided, and explained filing requirements for Taxpayer to elect IC-DISC status as of its inception.

However, on Date 2 (after the period for filing Form 4876-A effective as of Taxpayer's inception), the Service notified Taxpayer that it did not have a valid IC-DISC election on record for Taxpayer. Accounting Firm helped Taxpayer investigate. Although Taxpayer believes that the Form 4876-A had been timely mailed to the Service, Taxpayer acknowledges that it does not have proof of mailing the form, and the former CFO of Opco who would have been responsible for filing it is not available to explain the situation.

From a copy of the Form 4876-A in Taxpayer's files, Accounting Firm surmised that the Service may have refused to recognize the form for lack of a required signature. Taxpayer believes that a copy of the form, now with the additional signature, was mailed to attempt to rectify the situation. At the time, Taxpayer believed that it had rectified its IC-DISC election effective to its inception. Taxpayer continued to operate and report as an IC-DISC. However, the Service again notified Taxpayer that it did not have a valid IC-DISC election on file. The Service received the Form 4876-A the second time, but it was not timely.

As a result of the apparent lack of timely filing and unsuccessful attempts to cure the situation, Taxpayer engaged Accounting Firm to submit a request for a ruling granting an extension of time to file Form 4876-A for its first taxable year.

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 DISC¹ 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 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

¹ As used in this letter, the terms “IC-DISC” and “DISC” have the same meaning.

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). Taxpayer should attach a copy of this ruling letter to its Federal income tax returns for the taxable years to which this letter applies.

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. 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.

Sincerely,

Marissa K. Rensen
Senior Counsel, Branch 6
Office of Associate Chief Counsel (International)

Enclosures (2)
Copy of this letter
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