

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

Telephone Number:

In Re:

Refer Reply To:
CC:INTL:B6
PLR-102292-08
Date:
July 22, 2008

Legend

Taxpayer =
Parent =
DE =

Date 1 =
Date 2 =
Date 3 =
Date 4 =

Year 1 =
Year 2 =

X =

Products =

Accounting Firm =
Law Firm =

Dear :

This responds to your letter dated Date 1, requesting a ruling that Taxpayer be permitted an extension of time under Treas. Reg. § 301.9100-3 to file Form 4876-A (including the shareholders' 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 2.

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 limited liability company treated as a partnership for U.S. federal tax purposes. Taxpayer has no employees and was intended to be treated as an interest charge domestic international sales corporation ("DISC") since its inception. Parent has approximately X partners and also wholly owns DE, a limited liability company that is treated as a disregarded entity for federal income tax purposes. Taxpayer uses a calendar taxable year.

Accounting Firm is a certified public accounting firm that has performed tax compliance and audit work, as well as some tax planning for several entities related to Taxpayer. In Year 1 or Year 2, Accounting Firm recommended that it would be advantageous for tax reasons for Parent to form a DISC to which DE would pay commissions with respect to its sales of Products to foreign customers.

DE's vice president and treasurer conferred with legal counsel from Law Firm on the issue of forming a DISC, and requested that Law Firm incorporate Taxpayer. Law Firm understood that its engagement was limited to incorporating Taxpayer. DE and Parent assumed that Accounting Firm would advise them concerning any tax requirements or other tax issues related to the formation of Taxpayer or its qualification as a DISC. However, Accounting Firm understood that its engagement with Taxpayer was limited to tax compliance work. Consequently, neither Taxpayer nor either of its outside advisors filed Form 4876-A ("Election to be Treated as an Interest Charge DISC") within 90 days after the beginning of Taxpayer's first taxable year, as required by Temp. Treas. Reg. § 1.921-1T(b)(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.

On Date 3, Taxpayer received a notice from the Service stating that the Service had no record that Taxpayer filed Form 4876-A. As a result of receiving this notice, Taxpayer became aware for the first time that it needed to file Form 4876-A to make a valid election to be a DISC, and that neither of its advisors filed Form 4876-A on its behalf nor advised it to file the form.

As a precautionary measure, Taxpayer filed a protective Form 4876-A so that it would be treated as a DISC for its taxable year beginning Date 4 in the event that it cannot be treated as a DISC for its first taxable year (i.e., two years earlier).

Taxpayer has requested a ruling that grants the following:

- (1) an extension of time to file a Form 4876-A within 60 days from the date such ruling is issued so that it will be treated as a DISC for its first taxable year (effective Date 2); and
- (2) permission to withdraw the protective Form 4876-A it filed for its taxable year beginning Date 4 if it receives a favorable ruling granting an extension of time to file Form 4876-A for its first taxable year.

Law

Section 992(b)(1)(A) provides that an election by a corporation to be treated as 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. 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). 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 representing shareholder consent to the election. Id.

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 DISC 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 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 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 information 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 the election and shareholder consent statements required under Temp. Treas. Reg. § 1.921-1T(b)(1) and Treas. Reg. § 1.992-2(a)(1)(i) for its taxable year beginning Date 2. In addition, we believe that, if Taxpayer makes a later-executed election in accordance with this ruling that is effective on Date 2, Taxpayer's earlier-executed (but later-effective) protective election must properly be viewed either as having never been legally effective in the first place or as redundant. Under either view, Taxpayer need not withdraw its protective election.¹

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 associated with the election and shareholder consent statements.

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

¹ Taxpayer provided no precedential authority for the proposition that taxpayers may withdraw DISC elections in a manner other than the revocation procedures set forth in Treas. Reg. § 1.992-2(e). We provide no opinion whether taxpayers may withdraw DISC elections in the manner requested by Taxpayer.

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 letter ruling is being furnished to your authorized representatives.

Sincerely,

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

cc: