

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:6

PLR-100397-22

Date:

April 19, 2022

Legend

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Year 1 =

Year 2 =

Year 3 =

Taxpayer =

Parent =

Accounting Firm =

Individual A =

Individual B =

Dear :

This responds to your letter dated December 23, 2021 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.

Facts

On Date 1, Taxpayer was incorporated to operate as an interest charge domestic international sales corporation ("IC-DISC"). Taxpayer is a corporation wholly owned by Parent.

Parent is an S corporation. Parent manufactures dust suppression systems for a wide array of industries.

Individual A is the president of both Taxpayer and Parent. Parent engaged Individual B, a qualified tax professional, to incorporate the Taxpayer and make the necessary election to qualify Taxpayer as an IC-DISC. Individual B prepared Form 4876-A, and Individual A signed Form 4876-A on Date 2, which was within 90 days of the beginning of Taxpayer's first taxable year.

Taxpayer and Parent engaged Accounting Firm to discharge their federal tax compliance responsibilities for all taxable years since Year 1, but Accounting Firm did not review Form 4876-A before it was filed. Based on representations by representatives of Taxpayer that Taxpayer's Form 4876-A had been accepted by the Service, Accounting Firm prepared Taxpayer's Year 1 federal income tax return on Form 1120-IC-DISC and Parent's 2018 Form 1120-S, which were filed on or about Date 3. Accounting Firm also prepared and timely filed Taxpayer's Form 1120-IC-DISC for Taxpayer's Year 2 and Year 3 taxable years.

In correspondence dated Date 4, more than two years after Form 4876-A had been filed, the Service wrote to Taxpayer and advised that its election on Form 4876-A could not be processed because Taxpayer had not replied to previous correspondence requesting information needed to process the form. Individual B represents that he believed the Form 4876-A to have been properly completed, and that his understanding is that the sole reason for the rejection of the form is the failure to include the exact date on which the Taxpayer's taxable year ended, rather than just the month.

On Date 5, Taxpayer received a letter from the Service stating that Taxpayer's Year 3 return could not be processed because there was no record of a Form 4876-A having been filed. In correspondence dated Date 6, the Service notified the Taxpayer that Taxpayer's Year 1 return could not be processed for the same reason. Individual A represents that Taxpayer's failure to respond to the Service's requests for additional information necessary to process its original Form 4876-A was due to staff turnover and medical leave associated with the COVID-19 crisis.

Over the next several months, Taxpayer, Individual B, and Accounting Firm discussed the problem, and had Accounting Firm prepare this request for an extension of time under Treas. Reg. §§ 301.9100-1 and 301.9100-3 to file Form 4876-A. In conjunction with this request, Taxpayer executed a Form 872, Consent to Extend the Time to Assess Tax for Year 1.

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 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 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.

Treasury Regulation § 301.9100-3(b)(1)(v) provides that a taxpayer is generally deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Conclusion

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 90 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.

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). 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 particular, no opinion is expressed or implied as to whether the commissions (or portions thereof) paid to Taxpayer by Parent may constitute taxable gifts. See, e.g., Rev. Rul. 81-54, 1981-1 C.B. 476.

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.

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

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Frank W. Dunham III
Branch Chief
(International)

cc: