



Treasury Decision 7533n1

TITLE 26.-INTERNAL REVENUE-CHAPTER 1, SUBCHAPTER A, PART
1.-INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953;
SUBCHAPTER F, PART 301.-PROCEDURE AND ADMINISTRATION

1978-1 C.B. 248; T.D. 7533; 1978 IRB LEXIS 733

January 1978

[*1]

SUBJECT MATTER: Section 971.-Definitions

APPLICABLE SECTIONS:

26 CFR 1.971-1: Definitions with respect to export trade corporations. (Also *Sections 6011, 6072, 6501, 6686; 1.6011-2, 1.6072-2, 301.6501 (g)-1, 7.367 (c)-2.*)

TEXT:

DISC Rules on Procedure and Administration; Rules on Export Trade Corporations

AGENCY:

Internal Revenue Service, Treasury.

ACTION:

Final regulations.

SUMMARY:

This document provides final regulations relating to domestic international sales corporation (DISC) rules on procedure and administration and rules relating to export trade corporations. Changes to the applicable tax law were made by the Revenue Act of 1971 [Pub. L. 92-178, 1972-1 C.B. 443]. These regulations provide necessary guidance to DISC and export trade corporations for compliance with the law.

EFFECTIVE DATE:

In general, the regulations are effective for taxable years ending after December 31, 1971.

FOR FURTHER INFORMATION CONTACT:

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1978-1 C.B. 248; T.D. 7533;
1978 IRB LEXIS 733, *1

Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention CC:LR:T) (202-566-3926).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On Thursday, September 16, 1976, the Federal Register published proposed amendments [*2] to the Income Tax Regulations (26 CFR Part 1) under *sections 971, 6011, 6071, 6072, and 6081* of the Internal Revenue Code of 1954 and to the regulations on Procedure and Administration (26 CFR Part 301) under *sections 6011, 6072, 6501, and 6686* of the Internal Revenue Code of 1954, 41 F.R. 39762. The amendments were proposed to conform the regulations to sections 504 and 505 (c) of the Revenue Act of 1971 (85 Stat. 550) [Pub. L. 92-178, 1972-1 C.B. 476]. No public comments were received regarding the proposed amendments. Those amendments are adopted by this Treasury decision except that this Treasury decision (1) deletes from the proposed amendments the statutory provisions whose corresponding Code sections were amended (e.g. Code *section 971 (a)* was amended, § 1.971 was deleted); (2) revises references to Code *section 6011 (e) (2)* in the proposed amendments in three places to read as *6011 (c) (2)* (these changes are made to conform to amendments made to the Internal Revenue Code of 1954 by 1904 (b) (10) (A) (ii) of the Tax Reform Act of 1976 (90 Stat. 1817) [Pub. L. 94-455, 1976-3 C.B. (Vol. 1) 507]); and (3) corrects a cross reference.

QUALIFYING AS AN EXPORT TRADE CORPORATION

Section 505 (c) of the Revenue Act of 1971 [*3] amends *section 971 (a)* to provide that a controlled foreign corporation may not qualify as an export trade corporation for a taxable year beginning after October 31, 1971, unless it so qualified for a taxable year beginning before such date and the corporation continues to qualify. Section 1.971-1 (a) (1) is amended to reflect this rule.

FILING REQUIREMENTS FOR DISCS

Section 504 of the Revenue Act of 1971 amends *sections 6011, 6072, and 6501*, and adds a new *section 6686*. *Section 6011* is amended to require a DISC or former DISC to furnish such information to its shareholders and to the Secretary or his delegate and to keep such records as may be required by regulations. Also, a DISC is required to file such return for its taxable year as may be required by forms or regulations. A new § 1.6011-2 is added to provide that a DISC must maintain the records prescribed pursuant to *section 6001* and must furnish to each of its shareholders a copy of Schedule K (Form 1120-DISC) disclosing the amount of distributions to such shareholder for the taxable year. Section 1.6011-2 also requires that a DISC or former DISC file a return on Form 1120-DISC, which return is an income tax return.

Section 6072 [*4] is amended to require that a return of a DISC be filed on or before the 15th day of the 9th month following the close of its taxable year. Section 1.6072-2 is amended to reflect this rule. In addition, §§ 1.6071-1, 1.6081-1, and 1.6081-3 are amended to provide that a DISC shall not be allowed an extension of time for filing of its return.

Section 6501 is amended to provide that a corporation which determines in good faith that it is a DISC and files a return as such will have such return deemed to be the return of a corporation which is not a DISC if such corporation is later held not to be a DISC during the taxable year for such year. Section 301.6501 (g)-1 is amended to reflect this rule.

New *section 6686* sets forth penalties for failure to file a DISC return or to supply information not excused by reasonable cause. Section 301.6686-1 elaborates upon these penalties.

DRAFTING INFORMATION

The principal author of this regulation was Marcus B. Blumkin of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue

1978-1 C.B. 248; T.D. 7533;
1978 IRB LEXIS 733, *4

Service and Treasury Department participated in developing the regulation, both [*5] on matters of substance and style.

Adoption of amendments to the regulations

Accordingly, the proposed amendments are adopted as set forth below:

Paragraph 1. Section 1.971 is deleted.

Par. 2. Section 1.971-1 (a) (1) is revised by adding the following material to the end thereof:

§ 1.971-1 Definitions with respect to export trade corporations.

(a) *Export trade corporations* -(1) *In general.* * * * However, no controlled foreign corporation may qualify as an export trade corporation for any taxable year beginning after October 31, 1971, unless it qualified as an export trade corporation for any taxable year beginning before such date. In addition, if a corporation fails to qualify as an export trade corporation for a period of any 3 consecutive taxable years beginning after October 31, 1971, then for any taxable year beginning after such 3 year period, such corporation shall not be included within the term "export trade corporation".

* * *

Par. 3. Section 1.6011 is deleted.

Par. 4. A new § 1.6011-2 is added immediately after § 1.6011-1. This added provision reads as follows:

§ 1.6011-2 Returns, etc., of DISC's and former DISC's.

(a) *Records and information.* Every DISC and former DISC (as defined in section 992 (a)) [*6] must comply with section 6001 and the regulations thereunder, relating to required records, statements, and special returns. Thus, for example a, DISC is required to maintain the books of account or records described in § 1.6001-1 (a). In addition, every DISC must furnish to each of its shareholders on or before the last day of the second month following the close of the taxable year of the DISC a copy of Schedule K (Form 1120-DISC) disclosing the amounts of actual distributions and deemed distributions from the DISC to such shareholder for the taxable year of the DISC. In the case of a deficiency distribution to meet qualification requirements, see § 1.992-3 (a) (4) for requirements that distribution be designated in the form of a communication sent to a shareholder and service, center at the time of distribution.

1978-1 C.B. 248; T.D. 7533;
1978 IRB LEXIS 733, *6

(b) *Returns -(1) Requirement of return.* Every DISC (as defined in section 992 (a) (1)) shall make a return of income. A former DISC (as defined in section 992 (a) (3)) shall also make a return of income in addition to any other return required. The return required of a DISC or former DISC under this section shall be made on Form 1120-DISC. The provisions of § 1.6011-1 shall [*7] apply with respect to a DISC and former DISC. A former DISC should indicate clearly on Form 1120-DISC that it is making a return of income as a former DISC (for example, by labeling at the top of the Form 1120-DISC "FORMER DISC"). In the case of a former DISC, those items on the form which pertain to the computation of taxable income shall not be completed, but Schedules J, K, L, and M must be completed. Except as otherwise specifically provided in the Code or regulations, the return of a DISC or former DISC is considered to be an income tax return.

(2) *Existence of DISC.* A corporation which is a DISC and which is in existence during any portion of a taxable year is required to make a return for that fractional part of its taxable year during which it was in existence.

Par. 5. Section 1.6071-1 (b) is revised to read as follows:

§ 1.6071-1 Time for filing returns and other documents.

* * *

(b) *Return for a short period.* In the case of a return with respect to tax under subtitle A of the Code for a short period (as defined in section 443), the district director or director of the Internal Revenue Service Center may, upon a showing by the taxpayer of unusual circumstances, prescribe a time for [*8] filing the return for such period later than the time when such return would otherwise be due. However, the district director or director of the Internal Revenue Service Center may not extend the time when the return for a DISC (as defined in section 992 (a) (1)) must be filed, as specified in section 6072 (b).

* * *

Par. 6. Section 1.6072 is deleted.

Par. 7. Section 1.6072-2 is revised by redesignating paragraph (e) as paragraph (f) and by adding a new paragraph (e). This added provision reads as follows:

§ 1.6072-2 Time for filing returns of corporations.

* * *

(e) *DISC's and former DISC's.* The return required under section 6011 (c) (2) of a corporation which is a DISC (as defined in section 992 (a)) shall be filed on or before the

1978-1 C.B. 248; T.D. 7533;
1978 IRB LEXIS 733, *8

15th day of the 9th month following the close of the taxable year. For the rule that a DISC may not have an extension of time in which to file such return, see §§ 1.6071-1 (b), 1.6081-1 (a), and 1.6081-3 (e). The return required under § 1.6011-2 (b) (1) by a former DISC shall be filed at the time it is required to file its income tax return.

* * *

Par. 8. Section 1.6081-1 (a) is amended by revising the second sentence thereof to read as follows:

§ 1.6081-1 Extension of time for filing returns.

(a) [*9] *In general.* * * * However, other than in the case of taxpayers who are abroad, such extensions of time shall not be granted for more than 6 months, and an extension of time for the filing of a return of a DISC (as defined in section 992 (a)), as specified in section 6072 (b), shall not be granted. * * *

Par. 9. Section 1.6081-3 is amended by adding a new paragraph (e) immediately after paragraph (d) to read as follows:

§ 1.6081-3 Automatic extension of time for filing corporation income tax returns.

* * *

(e) Paragraphs (a) through (d) of this section shall not apply to returns filed by a DISC pursuant to section 6011(c) (2)

PROCEDURE AND ADMINISTRATION REGULATIONS (26 CFR Part 301)

Par. 10. Section 301.6011 is deleted.

Par. 11. Section 301.6072 is deleted.

Par. 12. Section 301.6501 (g) is deleted.

Par. 13. Section 301.6501 (g)-1 is revised by adding a new paragraph (c). This added provision reads as follows:

§ 301.6501 (g)-1 Certain income tax returns of corporations.

1978-1 C.B. 248; T.D. 7533;
1978 IRB LEXIS 733, *9

* * *

(c) *DISC*. If a corporation determines in good faith that it is a *DISC* (as defined in section 992 (a) (1) for a taxable year and files a return as such pursuant to section 6011 (c) (2), and if the corporation is thereafter held to be a [*10] corporation which is not a *DISC* for the taxable year for which the return was filed, then-

- (1) Such return shall be deemed to be the return of the corporation for the purpose of section 6501,
- (2) Such return if filed within the time required by section 6072 (b) for filing a *DISC* return shall be deemed to be filed within the time required by section 6072 (b) for filing of a return by a corporation which is not a *DISC*, and
- (3) Interest on underpayment and overpayments allowed by Chapter 67 of the Code and additions to the tax, additional amounts and assessable penalties allowed by Chapter 68 of the Code, when determined by reference to the time for filing of a return, shall be determined by reference to the time required by section 6072 (b) for filing of a return by a *DISC*.

Par. 14. New § 301.6686-1 is added immediately after § 301.6685-1. This added provision reads as follows:

§ 301.6686-1 Failure of *DISC* to file returns.

(a) *In general*. In addition to the penalty imposed by section 7203 (relating to willful failure to file a return, supply information, or pay tax) any person who is required to supply information or to file a return under section 6011 (c) [*11] (relating to records and returns of *DISC*'s) and who fails to supply such information or file such return at the time prescribed in section 6072 (b) and § 1.6072-2 (e) shall pay a penalty of \$100 for each failure to supply information (provided that the total amount imposed on the delinquent person for all such failures during a calendar year shall not exceed \$25,000) and a penalty of \$1,000 with respect to each failure to file a return, unless it is shown that such failure is due to a reasonable cause.

1978-1 C.B. 248; T.D. 7533;
1978 IRB LEXIS 733, *11

(b) *Showing of reasonable cause.* The penalty imposed by section 6686 shall not apply to any person with respect to a failure to supply information, or to file a return, under section 6011 (c) if it is established to the satisfaction of the district director or director of the Internal Revenue Service Center that such failure was due to reasonable cause. An affirmative showing of reasonable cause must be made in the form of a written statement, which contains a declaration by such person that the statement is made under the penalties of perjury, and sets forth all the facts alleged as reasonable cause.

This Treasury decision is issued under the authority contained in *section 7805 of the Internal Revenue Code of 1954* [*12] (68A Stat. 917, 26 U.S.C. 7805).

WILLIAM E. WILLIAMS,

Acting Commissioner of Internal Revenue

Approved January 27, 1978

DONALD C. LUBICK,

Acting Assistant Secretary of the Treasury

(Filed by the Office of the Federal Register on February 14, 1978, 8:45 a.m., and published in the issue of the Federal Register for February 15, 1978, 43 F.R. 6602)

FOOTNOTES:

n1

This publication of the Treasury Decision contains the full text of the regulations. The individual instructions for modifying the notice of proposed rulemaking have been omitted.