

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Person To Contact:
, ID No.

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PLR-128124-03

Date:

Attention:

LEGEND:

Taxpayer =

P =

A =

Date 1 =

Date 2 =

Date 3 =

Dear :

This ruling is in reply to the letter submitted by P that requested an extension of time under section 301.9100-1(c) of the Procedure and Administration Regulations to file the required Form 970, Application to use LIFO Inventory Method for Taxpayer. This request is made in accordance with section 301.9100-3.

P was the parent corporation of an affiliated group of corporations that filed consolidated federal income tax returns. Included in these returns were various subsidiaries, including A and Taxpayer.

Taxpayer was formed on Date 1 by A. On Date 2, Taxpayer acquired inventory and other assets from A in a § 351 transaction. The inventory acquired by Taxpayer had been accounted for under the last-in, first-out (LIFO) method by A prior to the transfer. Taxpayer

has consistently used the LIFO method of accounting since it acquired this inventory. However, P failed to attach Form 970 to the federal tax return for the tax year ending Date 3. The LIFO inventory method has also been consistently used for these inventory items for financial reporting purposes by Taxpayer since Date 2.

The failure to file the required Form 970 was discovered by A in early 2003. Soon thereafter, P submitted this request for relief.

Section 472 of the Internal Revenue Code provides that a taxpayer may use the LIFO method of inventorying goods specified in an application to use such method filed at such time and in such manner as the Secretary may prescribe.

Section 1.472-3 of the Income Tax Regulations provides that the LIFO inventory method may be adopted and used only if the taxpayer files with its income tax return for the tax year as of the close of which the method is first to be used a statement of its election to use such inventory method.

Rev. Rul. 70-564, 1970-1 C.B. 109, holds that a corporation that acquires inventories in a transfer under section 351 must file a Form 970 in order to adopt the LIFO inventory method.

Under section 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of the time to make a regulatory election under all subtitles of the Code except subtitles E, G, H, and I, provided that the taxpayer acted reasonably and in good faith and granting relief will not prejudice the interests of the Government. Section 301.9100-1(b) defines a regulatory election as 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.

Section 301.9100-2 sets forth rules governing automatic extensions for regulatory elections. If the provisions of section 301.9100-2 do not apply to a taxpayer's situation, the provisions of section 301.9100-3 may apply.

Section 301.9100-3 sets forth the standards that the Commissioner will use in determining whether to grant an extension of time to make a regulatory election. It also sets forth information and representations that must be furnished by the taxpayer to enable the Internal Revenue Service to determine whether the taxpayer has satisfied these standards. The standards to be applied in this case are whether the taxpayer acted reasonably and in good faith and whether granting relief would prejudice the interests of the Government.

Under section 301.9100-3(b)(1)(i), a taxpayer that applies for relief for failure to make an election before the failure is discovered by the Service ordinarily will be deemed to have acted reasonably and in good faith. However, pursuant to section 301.9100-3(b)(3), a taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer

seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires or permits a regulatory election for which relief is requested or if the taxpayer was informed in all material respects of the required election and related tax consequences but chose not to file the election. Furthermore, a taxpayer ordinarily will not be considered to have acted reasonably and in good faith if the taxpayer uses hindsight in requesting relief.

Section 301.9100-3(c)(1)(i) provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all tax years affected by the regulatory election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Likewise, if the tax consequences of more than one taxpayer are affected by the election, the Government's interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made.

Further, the interests of the Government are ordinarily prejudiced if the tax year in which the regulatory election should have been made or any tax years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under section 301.9100-3.

The information and representations furnished by P and Taxpayer establish that P and Taxpayer have acted reasonably and in good faith in this request. Furthermore, granting an extension will not prejudice the interests of the Government. Accordingly, an extension of time is hereby granted to file the necessary Form 970, for the tax year ended Date 3. This extension shall be for a period of 30 days from the date of this ruling. Please attach a copy of this ruling to the Form 970 when it is filed.

No opinion is expressed as to the application of any other provisions of the Code or the regulations which may be applicable to the transaction. Specifically, no opinion is expressed regarding the propriety of the LIFO inventory methods used by Taxpayer.

This ruling is directed only to P and Taxpayer, who had requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

THOMAS A. LUXNER
Chief, Branch 6
Office of Associate Chief Counsel
(Income Tax & Accounting)