

**Internal Revenue Service**

Number: **200452028**

Release Date: 12/24/2004

Index Number: 472.01-00, 9100.11-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

In Re:

Refer Reply To:

CC:ITA:B06

PLR-152737-03

Date: September 13, 2004

**LEGEND:**

P =

A =

B =

C =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear

This ruling is in reply to the letter submitted by P that requested an extension of time under § 301.9100-1(c) of the Procedure and Administration Regulations to file the required Forms 970, Applications to use LIFO Inventory Method for two of its subsidiaries, A and B. This request is made in accordance with § 301.9100-3.

On Date 1, A, B, and C became wholly owned Qualified Subchapter S Subsidiaries (QSSS) of P, the parent subchapter S corporation. As a result of the QSSS elections, A, B, and C were treated as divisions of P for federal income tax reporting purposes.

For the tax year ending Date 2, P properly elected the last-in, first-out (LIFO) inventory method by filing Form 970 with its timely filed tax return for that year. P consistently used the LIFO method for both tax reporting and financial statement purposes until Date 3. On Date 3, the QSSS elections for A, B, and C were revoked, and as a result, A, B, and C were no longer treated as divisions of P for tax purposes. Rather, A, B, and C began their status as subchapter C corporations on that date. B is the wholly owned subsidiary of A, which is the wholly owned subsidiary of C, which in turn is wholly owned by P.

All inventory is maintained by A and B. For the initial short year beginning Date 3 and ending Date 4 and for all subsequent years, A and B have consistently accounted for their inventories using the identical LIFO method used by P. However, P failed to attach the required Forms 970 for A and B to the consolidated federal tax return for the tax year ending Date 4. The LIFO inventory method has also been consistently used by A and B for their inventories for financial reporting purposes for the relevant period.

The failure to file the required Forms 970 was recently discovered by P. 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.

Under § 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 § 301.9100-2 do not apply to a taxpayer's situation, the provisions of § 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 § 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 § 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 § 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 § 6501(a) before the taxpayer's receipt of a ruling granting relief under § 301.9100-3.

The information and representations furnished by P, A, B, and C establish that they 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 P to file the necessary Forms 970 for A and B, for the tax year ended Date 4. 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 Forms 970 when they are 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 P, A, or B.

Additionally, recognizing that P has filed several Forms 3115, Applications for Change in Accounting Method, to change the LIFO inventory methods of A and B, no opinion is expressed regarding these method change requests. Finally, no opinion is expressed regarding the QSSS elections by A, B, and C or the revocation of such elections.

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

Pursuant to a power of attorney on file in this office, copies of this letter are being sent to P and to P's second designated representative.

Sincerely,

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