

Internal Revenue Service

Department of the Treasury
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Attn:

Refer Reply To:
CC:ITA:B06
PLR-102056-11
Date:
April 22, 2011

Legend:

Taxpayer =

Parent

Acquiring Corporation =

Entity =

Subsidiary =

Old Firm =

New Firm =

Date 1 =

Date 2 =

Date 3 =

Dear :

This ruling responds to a letter dated December 29, 2010 requesting an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file Form 970, Application To Use LIFO Inventory Method, for the taxable year ending Date 2.

Facts

The following facts have been obtained from the above referenced letter, the accompanying affidavit, and a completed draft of Form 970. Prior to Date 1, Subsidiary, a subsidiary of Parent, owned Entity, a disregarded entity for federal tax purposes. Parent had filed a Form 970 on behalf of Subsidiary to adopt the LIFO method for the inventory held by Entity. On Date 1, Subsidiary formed Taxpayer, and Subsidiary transferred its interest in Entity to Taxpayer in a transaction qualifying as a tax free contribution of assets under § 351 of the Internal Revenue Code. These assets included Entity's inventory. Taxpayer continued to use the LIFO method to account for this inventory, but Parent did not file the required Form 970. Further, Parent represents that the LIFO conformity requirement of § 1.472-2(e)(6) of the Income Tax Regulations is satisfied as Taxpayer has continually used since the taxable year ended Date 2 the LIFO inventory method for financial reporting purposes.

Parent engaged Old Firm to prepare its consolidated federal income tax return for the taxable year ending Date 2. Old Firm was informed of the Date 1 transaction between Subsidiary and Taxpayer, but Old Firm did not advise Parent that it was required to file Form 970 on behalf of Taxpayer. On Date 3, Acquiring Corporation acquired Parent. Acquiring Corporation engaged New Firm to prepare an accounting method change application. While preparing the application, New Firm discovered that a Form 970 had not been filed on behalf of Taxpayer.

Law and Analysis

Section 472 provides that a taxpayer may use the LIFO method in 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 provides that the LIFO inventory method may be adopted and used only if the taxpayer files with its income tax return for the taxable year as of the close of which the method is first to be used a statement of its election to use such inventory method. The statement shall be made on Form 970.

Rev. Rul. 70-564, 1970-2 C.B. 109, provides that a taxpayer must file a Form 970 if that taxpayer wants to use the LIFO inventory method to account for LIFO inventory received in a transfer that qualifies under section 351(a).

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 301.9100-1(b) also defines an election to include an application for relief in respect to tax, or a request to adopt, change, or retain an accounting method or accounting period.

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 that does not meet the standards of section 301.9100-2. It also sets forth information and representations that the taxpayer must furnish to enable the Internal Revenue Service to determine whether the taxpayer has satisfied these standards. The applicable standards are whether the taxpayer acted reasonably and in good faith and whether granting relief would prejudice the interests of the Government.

Under section 301.9100-1(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, the 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. Additionally, if the taxpayer was informed in all material respects of the required election and related tax consequences but chose not to file the election, or uses hindsight in requesting relief, the taxpayer ordinarily will not be considered to have acted reasonably and in good faith. Section 301.9100-3(b)(3).

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 taxable 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, when 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 an 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 taxable year in which the regulatory election should have been made or any taxable 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. Section 301.9100-3(c)(1)(ii).

Conclusion:

The information and representations submitted by Parent (and accompanied by a penalty of perjury statement executed by an appropriate party) establish that it 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 taxable year ending Date 2. 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.

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.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) 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 Parent's authorized representatives.

The rulings contained in this letter are based upon information and representations submitted by Parent 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,

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

Enclosure (1)
Copy of letter for section 6110 purposes

cc: