Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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, ID No.

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Refer Reply To:
CC:ITA:B06
PLR-115751-19

Date:
December 18, 2019

LEGEND

Taxpayer =

Former Common Parent =

Subconsolidated Group 1 =

Subcon Group 1 Parent =

Subconsolidated Group 2 =

Subcon Group 2 Parent =

Industry =

Date 1 =

Date 2 =

Date 3 =

Month =

Year =

Old Tax Advisor =

New Tax Advisor =

Dear :

This ruling responds to a recent letter submitted on behalf of Taxpayer and its subsidiaries dated July 3, 2019 requesting that the Commissioner of Internal Revenue give Taxpayer an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file a Form 970, Application To Use LIFO Inventory Method on behalf of the subsidiaries in its two subconsolidated groups, Subconsolidated Group 1 and Subconsolidated Group 2. A Form 970 was filed on behalf of the Subcon Group 1 Parent and Subcon Group 2 Parent. However, a Form 970 also should have been filed on behalf of each of the individual subsidiaries of Subconsolidated Group 1 and Subconsolidated Group 2.

FACTS

Taxpayer and its subsidiaries, including the members of Subconsolidated Group 1 and Subconsolidated Group 2, are Industry.

Former Common Parent (now Subcon Group 1 Parent) was the common parent of an affiliated group of corporations that included the subsidiaries in Subconsolidated Group 1 and the parent and subsidiaries in Subconsolidated Group 2. Taxpayer acquired Former Common Parent and its subsidiaries on Date 1. Following the acquisition, it was determined that Subcon Group 1 Parent and Subcon Group 2 Parent are using the “Last-In First-Out” (LIFO) method to identify inventory, but that Former Common Parent failed to file Forms 970 on behalf of the individual subsidiaries of Subconsolidated Group 1 and Subconsolidated Group 2. It was also determined that Subcon Group 1 Parent and Subcon Group 2 Parent are performing LIFO computations on a combined basis rather than an entity basis.

It is represented that Former Common Parent was advised by Old Tax Advisor regarding the use of the LIFO method prior to its acquisition by Taxpayer. Old Tax Advisor failed to advise Former Common Parent that the LIFO computations needed to be done on an entity by entity basis and that it was required to file Forms 970 on behalf of the individual entities that are now the subsidiaries of Subconsolidated Group 1 and Subconsolidated Group 2 in order for them to be able to use the LIFO method.

It is further represented that, Former Common Parent, which holds inventory, filed Form 970 to use the LIFO method effective for the taxable year ending Date 2 and has used the LIFO method since. Former Common Parent (now Subcon Group 1 Parent) performs LIFO computations on a combined basis (as if Subcon Group 1 Parent and its subsidiaries are a single entity) and failed to file Forms 970 on behalf of the subsidiaries of Subconsolidated Group 1 as required by the Regulations.

Former Common Parent filed a Form 970 on behalf on behalf of Subcon Group 2 Parent, which does not hold inventory, to use the LIFO method effective for taxable year ending Date 3. Subcon Group 2 Parent performs LIFO computations on a combined basis (as if Subcon Group 2 Parent and its subsidiaries are a single entity) and Former Common Parent failed to file Forms 970 on behalf of the subsidiaries of Subcon Group 2 Parent as required by the Regulations.

After the acquisition of Former Common Parent, Taxpayer engaged New Tax Advisor who uncovered the failure to make the elections in Month 1 of Year 1.

RULING REQUESTED

Taxpayer respectfully requests that it be granted an extension of time under Treas. Reg. § 301-9100 to file Forms 970 on behalf of the subsidiaries in its two subconsolidated groups, Subconsolidated Group 1 and Subconsolidated Group 2, to adopt the LIFO method effective for each subsidiary for the taxable year, set forth in Appendix A.

LAW AND ANALYSIS

Section 472(a) provides that a taxpayer may use the method provided in subsection (b) 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(a) 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.

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

Section 301.9100-3 provides the standards that the Commissioner will use in determining whether to grant an extension of time to make a regulatory election. It also provides 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 relevant standards are whether the taxpayer acted reasonably and in good faith and whether granting relief would prejudice the interest of the Government.

Section 301.9100-3(b)(1)(i) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief under this section before the failure to make the regulatory election is discovered by the Internal Revenue Service.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relies 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.

Section 301.9100-3(b)(3) provides that 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 may not be considered to have acted reasonably and in good faith if the taxpayer uses hindsight in requested 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). Similarly, if the taxes 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.

Section 301.9100-3(c)(1)(ii) provides that 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 this section.

The information and representations furnished by Taxpayer on behalf of itself and Subconsolidated Group 1 and Subconsolidated Group 2 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 file the necessary Forms 970, for the taxable years ended as set forth in Appendix A. 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.

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. Specifically, no opinion is expressed regarding the propriety of the LIFO inventory methods used by Taxpayer on behalf of itself and Subconsolidated Group 1 and Subconsolidated Group 2.

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 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,

CHRISTINA A. MORRISON
Senior Technician Reviewer, Branch 6
(Income Tax & Accounting)

Appendix A

Name	Tax Year Ending