

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:6

PLR-165646-04

Date:

February 14, 2005

LEGEND:

Parent	=	
Taxpayer	=	
Old CPA Firm	=	
New CPA Firm	=	
Date	=	

Dear :

We received New CPA Firm's letter of December 22, 2004, which notes Parent's request for an extension of time under §301.9100-1(c) of the Procedure and Administration Regulations to file a Form 970, Application To Use LIFO Inventory Method, on Taxpayer's behalf. See *also* §301.9100-3.

The following facts have been obtained from the above-referenced letter, the accompanying affidavit, and a completed draft of Form 970. Prompted by state and local tax concerns, and after being advised by Old CPA Firm, Parent decided to restructure its organization and to cause Taxpayer to be incorporated. On Date, Parent contributed a portion of its inventories to Taxpayer in a transaction that qualified under §351(a) of the Internal Revenue Code. Though Parent used the last-in, first-out ("LIFO") inventory method and wanted Taxpayer to use the LIFO inventory method, Old CPA Firm failed to inform Parent that a Form 970 must be filed on Taxpayer's behalf with the federal income tax return for the taxable year ending Date ("year of transfer"). Parent never filed the required Form 970. Furthermore, when computing Taxpayer's opening LIFO reserve for the year of transfer, Parent did not comply with §1.472-8(g)(2) of the Income Tax Regulations and Rev. Rul. 85-176, 1985-2 C.B. 159. Specifically,

instead of removing the transferred inventory from its own LIFO layers on a pro rata basis, Parent, which performed its LIFO calculations on a consolidated basis, allocated a portion of its LIFO reserve to Taxpayer. Notwithstanding these election defects, Taxpayer used the LIFO inventory method for both tax and financial reporting purposes for the year of transfer and for all subsequent taxable years.

In December of 2003, Parent engaged New CPA Firm to advise it regarding its inventory method of accounting under §263A. During this engagement, New CPA Firm determined that for the year of transfer, Parent did not file a Form 970 on Taxpayer's behalf and did not properly compute Taxpayer's opening LIFO reserve. Thus, New CPA Firm advised Parent to request an extension of time for filing the required Form 970 for the year of transfer. In addition, New CPA Firm advised Parent and Taxpayer to file a Form 3115, Application for Change in Accounting Method, to obtain consent to divide the combined inventories between themselves and to use the LIFO inventory method on an entity basis.

Section 472(a) provides that a taxpayer may use the method provided in subsection (b) [LIFO inventory 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(a) provides in relevant part 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 regulatory 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 interests 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 relied 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 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). Similarly, 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.

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.

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

The information and representations furnished by Parent and Taxpayer 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 Form 970, for the taxable year

ended Date. 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 Parent and Taxpayer.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the provisions of a power of attorney on file with this office, we are sending a copy of this ruling letter to the taxpayer=s authorized representatives.

Please contact the person whose name and telephone number are shown above if you have any questions.

Sincerely,

Jeffery G. Mitchell
Chief, Branch 6
Office of Associate Chief Counsel
(Income Tax & Accounting)