

Internal Revenue Service

Department of the Treasury

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Person to Contact:

Telephone Number:

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Date:

October 26, 1999

LEGEND:

X =

Y =

Date 1 =

Dear

This ruling is in reply to the letter and enclosures requesting an extension of time under § 301.9100-1(c) of the Procedure and Administration Regulations for X to file a Form 970, Application To Use LIFO Inventory Method, which is to be effective for the tax year ended Date 1. This request is made in accordance with § 301.9100-3.

Y transferred assets, including inventory, to a newly formed partnership, X. Prior to the transfer, Y accounted for certain of its inventory items using the last-in, first-out (LIFO) method. Following the transfer, X began to use the LIFO method to account for certain inventory items, including items transferred to it by Y that were previously accounted for by Y on the LIFO method. However, X failed to attach a Form 970 to its initial partnership return for the tax year ended Date 1 to properly elect to use the LIFO method. Further, X has used the LIFO inventory method for certain inventory items for both book and tax purposes for all tax years following the transfer.

During preparation of a Form 3115, Application for Change in Accounting Method, for X, it was determined that the Form 970 had not been attached to X's initial partnership return. This failure was not intentional, but was an oversight resulting from a change in personnel responsible for the preparation and review of X's Date 1 tax return. Soon thereafter, this request for relief was submitted.

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.

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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. The statement shall be made on Form 970 pursuant to the instructions printed with respect thereto and to the requirements of this section, or in such other manner as may be acceptable to the Commissioner.

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. An election is defined in § 301.9100-1(b) to include 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 § 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

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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.

The information and representations furnished by X establish that X has 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 for X to file Form 970 for the tax year ending Date 1. 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. It should be understood that this ruling only addresses the request to extend the time period for filing Form 970 and does not, directly or indirectly, approve X's overall use of the LIFO method. This determination is to be made by the district director in connection with an examination of X's income tax returns.

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

In accordance with the terms of a power of attorney on file with this office, copies of this ruling are being sent to X's authorized representatives.

Sincerely yours,

Heather Maloy
Acting Assistant Chief Counsel
(Income Tax and Accounting)

By

Richard L. Carlisle
Acting Deputy Assistant Chief Counsel