

INTERNAL REVENUE SERVICE

Number: **200223017**

Release Date: 6/7/2002

Index Numbers: 0472.01-00
9100.11-00

CC:ITA:B07/PLR-143141-01

Attention:

LEGEND:

The taxpayer =

CPA firm 1 =

CPA firm 2 =

Date 1 =

Year 1 =

Dear :

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

In the tax year ending Date 1, the taxpayer elected to use the Alternative Last-in, First-out (LIFO) inventory method as described in Rev. Proc. 97-36, 1997-2 C.B. 450. The taxpayer relied on an outside accounting firm, CPA firm 1, to prepare and file the necessary Form 970. The Form 970 was to be included with the taxpayer's Form 1120S, U.S. Income Tax Return for an S Corporation, for the tax year ending Date 1. However, the Form 970 was inadvertently not included with this return. Effective for Year 1, the taxpayer engaged CPA firm 2 to prepare its income tax returns. During the preparation of the Year 1 tax return, CPA firm 2 discovered that Form 970 was never attached to the Form 1120S as required. Upon discovery, the taxpayer submitted this request for relief. The taxpayer has used the LIFO inventory method for its new vehicles for both federal income tax and financial statement purposes for the year ended Date 1 and all subsequent years.

Section 472 of the Internal Revenue Code 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 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.

Rev. Proc. 97-36 allows a taxpayer engaged in the trade or business of retail sales of new automobiles or new light-duty trucks to change to the "Alternative LIFO Method" described in section 4.

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 making certain 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 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 and chose not to make 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).

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 are closed by the period of limitations on assessment before the taxpayer receives the ruling granting relief under § 301.9100-1(c).

The information and representations furnished establish that the taxpayer 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 the taxpayer to file Form 970 with respect to its new vehicles for the tax year ended 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.

The accounting method change granted in this letter ruling is directed only to the taxpayer who requested it and may not be used or cited as precedent. See § 6110(k)(3)

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 designated representative.

Sincerely yours,
Cheryl Oseekey
CC:ITA:B7