

Internal Revenue Service

Department of the Treasury

Index Numbers: 472.01-00; 9100.11-00

Washington, DC 20224

Number: **200005024**
Release Date: 2/4/2000

Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:IT&A:7-PLR-115628-99

Date:

November 8, 1999

LEGEND:

P =

S =

Date 1 =

Month 1 =

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

In Month 1, P transferred various assets, including inventory, to S in a non-taxable transfer under § 351 of the Internal Revenue Code. Prior to the transfer, P accounted for a portion of its inventory using the last-in, first-out (LIFO) method. Following the transfer, S began to use the LIFO method to account for a portion of its inventory, including the items transferred to it by P that were previously accounted for by P on the LIFO method. However, P failed to attach a Form 970 to its consolidated federal income tax return for the tax year ended Date 1 for S to properly elect to use the LIFO method. S has used the LIFO inventory method for a portion of its inventory for all tax years following the transfer.

P has an internal tax department that prepares and files its own corporate tax returns without review by an outside tax advisor. During a discussion of various tax matters with its outside tax advisor, P determined that it should have filed a Form 970 on behalf of S with its Date 1 return. This failure to file was not intentional, but was due to the fact that its internal tax personnel were not aware that a new subsidiary that acquires LIFO inventory in a § 351 transaction must file a Form 970 to enable it to use the LIFO method. Soon after discovery of the need to file a Form 970, this request for relief was submitted.

PLR-115628-99

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.

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. Rul. 70-564, 1970-2 C.B. 109, holds that a new corporation that acquires inventory in a transfer under § 351 must file a Form 970 in order to adopt the LIFO inventory method.

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

PLR-115628-99

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). 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.

The information and representations furnished by P establish that P and S 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 for P to file Form 970 on behalf of S 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, determine that S is otherwise eligible to make an election to use the LIFO inventory method. This determination is to be made by the district director in connection with an examination of P's consolidated income tax returns. Furthermore, no opinion is expressed regarding whether the transfer of assets, including inventory, from P to S qualifies for treatment under § 351.

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, a copy of this ruling is being sent to S's authorized representative.

Sincerely yours,

Heather Maloy

Acting Assistant Chief Counsel

(Income Tax and Accounting)

Richard L. Carlisle

Acting Deputy Assistant Chief Counsel