

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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CC:ITA:B06 – PLR-131181-04

Date:

October 20, 2004

Legend:

Taxpayer =

X =

Date 1 =

Date 2 =

Dear

This ruling is in reply to the letter submitted by Taxpayer that requested an extension of time under § 301.9100-1(c) of the Procedure and Administration Regulations to file the required Form 970, Application to use LIFO Inventory Method. This request is made in accordance with § 301.9100-3.

Taxpayer, a subchapter S corporation, was formed on Date 1. Later that same month, Taxpayer purchased from another business various assets, including inventories of X. Taxpayer has consistently used the last-in, first-out (LIFO) method of accounting for federal income tax purposes since it acquired these inventories of X. However, Taxpayer failed to attach Form 970 to its federal tax return for the tax year ending Date 2, and also failed to indicate on Schedule A of that return that the LIFO inventory method had been adopted for these inventories of X. The LIFO inventory method has also been consistently used for these inventory items for financial reporting purposes by Taxpayer since acquisition.

Taxpayer had relied on its certified public accountant, and this accountant failed to advise Taxpayer that it was necessary to file the Form 970. Taxpayer has submitted affidavits from both itself and this accountant, which affidavits attest to this fact. The failure to file the required Form 970 was recently discovered by Taxpayer when it hired a new tax preparer. Soon thereafter, Taxpayer submitted this request for relief.

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.

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 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.

Section 301.9100-3(b)(1)(i) provides that 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 have had if the election had been timely made (taking into account the time value of money).

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 § 301.9100-3.

The information and representations furnished by Taxpayer establish that it 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 to file the necessary Form 970 for Taxpayer's inventories of X, for the tax year ended Date 2. 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 method used by Taxpayer.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to Taxpayer's designated representative.

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

Sincerely,

THOMAS A. LUXNER
Chief, Branch Six
Office of Associate Chief Counsel
(Income Tax & Accounting)