

INTERNAL REVENUE SERVICE

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LEGEND:

A =

B =

C =

D =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Country X =

Dear :

This letter is in reply to a request, submitted on behalf of A by A's authorized representatives, for an extension of time under § 301.9100-1(c) of the Procedure and Administration Regulations. Specifically, A has requested an extension of time to file a Form 970, Application To Use LIFO Inventory Method, for the year ended Date 1. This ruling request is made in accordance with § 301.9100-3.

On Date 2, A was organized by B and C under the laws of Country X. B and C were also organized under the laws of Country X. Since its organization, A has been classified as a partnership for federal income tax purposes and has used a fiscal year ending on Date 3. During its fiscal year ended Date 1, A did not carry on any trade or business in the United States, nor did it derive any U.S. source income. On Date 1, B and C owned all of the interests in A. On that same date, D, a United States corporation, owned all of the interests in B and C.

On Date 4, an authorized representative of A and B executed a Form 970 to elect the last-in, first-out (LIFO) method for A's fiscal year ended Date 1. This Form 970 was included with a Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations, that was filed on behalf of B and included as part of D's consolidated income tax return for its tax year ended Date 5. The Form 5471 and Form 970 were also separately filed with the Internal Revenue Service Center in Philadelphia, Pennsylvania and with the Service in Washington, D.C. For its fiscal year ended Date 1 and for all subsequent years, A used the LIFO method to account for its inventories for both financial reporting purposes and to determine federal taxable income.

Recently, a question has arisen as to whether A effected a valid LIFO election when it submitted the Form 970 with the Form 5471. Consequently, A requests that the Commissioner grant it an extension of time to file another Form 970 with a Form 1065.

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.

Section 703(b) provides that any election affecting the taxable income derived from a partnership must be made by the partnership.

Section 6031(a) generally provides that every partnership is required to file a return for each taxable year.

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 includes an application for relief in respect of tax and 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 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). 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.

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 year that would have been affected by the election had it been timely 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 by A 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 for A to file Form 970 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. Specifically, no opinion is expressed in regard to A's use of the LIFO method.

Pursuant to a power of attorney on file in this office, copies of this ruling are being sent to A's authorized representatives.

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.

Sincerely yours,
Heather Maloy
Associate Chief Counsel
(Income Tax and Accounting)
By James Atkinson
Acting Deputy Associate Chief Counsel