

Internal Revenue Service

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Department of the Treasury

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CC:ITA:B06 – PLR-112768-02

Date:

May 20, 2002

In re:

Attention:

LEGEND:

A =

B =

C =

D =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

X =

Y =

Dear :

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

C was incorporated on Date 2. Five days later on Date 3, C acquired inventory and other assets from D in exchange for all of the stock of C in a transaction represented as described in section 351 of the Internal Revenue Code. The inventory received had been consistently accounted for under the last-in, first-out (LIFO) inventory method by the transferor since the early X's. On Date 1, all of the stock of C was acquired by A from D. C's name was changed to B. A and its affiliated corporations file consolidated returns. Accordingly, C filed a separate return for the period Date 2 to Date 1. Thereafter, B was included in A's consolidated return for the short period Date 4 to Date 5, and for the year ended Date 6.

C used the LIFO method to account for its inventory, but failed to attach Form 970 to its initial return to make a proper election. As a result, C reported its income using the LIFO method on its return for the year ended Date 1. B also used the LIFO method to account for its inventory for all tax periods beginning with Date 5. Furthermore, the LIFO inventory method was used for financial reporting purposes beginning with the period ending Date 1.

A represents that the tax manager who was responsible for preparing C's income tax return for the period ended Date 1 was not aware of the necessity to file Form 970 where a section 351 transaction is involved based on his experience. In addition, a paid tax preparer reviewed the return, but signed it without Form 970 attached. B continued the LIFO method used by C without filing said form.

In mid Y, A discovered that Form 970 had not been filed with C's income tax return for the period ended Date 1. On Date 7, A notified D that Form 970 was not filed with C's return. Soon thereafter, A submitted this request for relief on behalf of its subsidiary B (f/k/a C).

Section 472 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.

Rev. Rul. 70-564, 1970-1 C.B. 109, holds that a corporation that acquires inventories in a transfer under section 351 must file a Form 970 in order to adopt the LIFO inventory method.

Under section 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 section 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 section 301.9100-2 do not apply to a taxpayer's situation, the provisions of section 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 section 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 section 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 section 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). 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 section 6501(a) before the taxpayer's receipt of a ruling granting relief under section 301.9100-3.

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, on behalf of its subsidiary B, 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. Specifically, no opinion is expressed regarding whether C acquired the inventory at issue in a section 351 transaction.

This ruling is directed only to the taxpayer requesting 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 A. In addition, a copy of this ruling is being sent to the second named authorized representative.

Sincerely,
James Atkinson
Deputy Associate Chief Counsel
(Income Tax & Accounting)