

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B06

PLR-131215-07

Date:

December 12, 2007

Attention:

LEGEND

Taxpayer =

S =

A =

B =

C =

Year 1 =

Year 2 =

Year 3 =

Date 1 =

Date 2 =

Date 3 =

Tax Professional 1 =

Tax Professional 2 =

Dear :

This ruling is in reply to a request submitted by the Taxpayer, requesting 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, on behalf of its affiliated entity, S. This request is made in accordance with § 301.9100-3.

FACTS

In Year 1, A purchased all of the assets of a business unit of C through B, a single member limited liability company that was a disregarded entity for federal income tax purposes. These assets included inventory, and A filed Form 970, electing the LIFO inventory method for the inventory for the taxable year ended Date 1.

B subsequently elected to be treated as a corporation under § 301.7701-3(a) of the Income Tax Regulations, effective on Date 2. The conversion from disregarded entity to corporation was treated as if A contributed all of B's assets and liabilities (including its inventory) to S, a subsidiary of the Taxpayer, in exchange for stock in S in accordance with § 301.7701-3(g)(1)(iv).

The Taxpayer failed to file a Form 970 on behalf of S, effective on Date 2. Tax Professional 1 advised the Taxpayer regarding the restructuring, but did not advise the Taxpayer that it was required to file Form 970 on behalf of S, effective the date of the conversion for S to be able to use the LIFO inventory method.

In June Year 2, the Taxpayer engaged Tax Professional 2 to review the Taxpayer's inventory methods for federal income tax purposes. During the review, Tax Professional 2 determined that the Taxpayer had not filed the required Form 970 on behalf of S. Pursuant to Tax Professional 2's recommendation, the Taxpayer filed this request for an extension of time to file Form 970 on behalf of S, effective on Date 2.

The Taxpayer filed its consolidated federal income tax returns for the taxable year of the conversion and subsequent years consistent with its having made a timely LIFO election on behalf of S, in that the inventory held by S was accounted for under the LIFO inventory method on those returns. The statute of limitations under § 6501(a) of the Internal Revenue Code is open for Year 3 and all subsequent taxable years.

LAW AND ANALYSIS

Section 1.1502-77(a)(1) provides generally that the common parent of a group filing a consolidated income tax return for a given year is the sole agent for the group regarding

all matters relating to the tax liability for that consolidated return year for each member of the group. Section 1.1502-77(a)(2)(i) expressly includes a subsidiary's election to change its method of accounting, or to amend an election or choice previously made by the subsidiary, in a list of examples of matters for which a parent is its subsidiary's sole agent.

Section 472 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 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 is to be made on Form 970.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of 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 provided that 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 to include a request to adopt, change, or retain an accounting method.

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 instead.

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 applying 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). 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, § 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 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.

RULING

The information and representations furnished by the 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 S for the taxable year ended Date 3. 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.

The ruling contained in this letter is based upon information and representations submitted by the Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

No opinion is expressed as to the application of any other provisions of the Code or regulations that may be applicable to the transaction. Specifically, no opinion is expressed regarding the Year 3 restructuring. This ruling addresses only the request to extend the time period for filing Form 970 and does not, directly or indirectly, approve the overall use of the LIFO inventory method used by S. Such a determination is to be made by the field in connection with an examination of the Taxpayer's consolidated federal income tax returns.

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

Pursuant to a power of attorney on file in this office, copies of this letter are being sent to the Taxpayer's two designated representatives.

Sincerely,

JEFFERY G. MITCHELL
Branch Chief, Branch 6
(Income Tax & Accounting)