

INTERNAL REVENUE SERVICE

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Person to Contact:

Telephone Number:

Refer Reply to:
CC:IT&A:7/PLR-113500-00 &
PLR-113503-00
Date: August 29, 2000

LEGEND:

- A = [REDACTED]
EIN: [REDACTED]
- B = [REDACTED]
EIN: [REDACTED]
- C = [REDACTED]
EIN: [REDACTED]
- D = [REDACTED]
EIN: [REDACTED]
- E = [REDACTED]
- Date 1 = [REDACTED]
- Date 2 = [REDACTED]
- X = [REDACTED]
- Y = [REDACTED]

Dear [REDACTED]:

You have requested a ruling be issued to A under § 301.9100-1(c) of the Procedure and Administration Regulations, on behalf of its subsidiaries B and C. Specifically, you have requested permission for B and C to each 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.

During the tax year ended Date 1, A's wholly-owned subsidiary, D, transferred certain assets and liabilities to two newly-created corporations, B and C. Specifically, D transferred the assets and liabilities comprising its X and Y business to respectively B and C. A has represented that these transfers were made in pursuance of plans to distribute all of B and C's stock to itself in transactions qualifying under § 355 of the Internal Revenue Code and that the transfers were governed by § 368(a)(1)(D). Included in the assets transferred was inventory that D had historically identified using the last-in, first-out (LIFO) method. Subsequent to their receiving their respective inventory, both B and C began to use the LIFO method that had been used previously by D. However, A failed to file the required Form 970 for either B or C. The LIFO method has continued to be used by B and C to the current time for federal income tax purposes. The LIFO method has also been used for this inventory for financial reporting purposes.

Recently, A changed the accounting firm that reviews and signs its federal income tax returns. During a review of the Date 2 return, the new accounting firm, E, noticed that A had not filed the required Form 970s for B and C. A is requesting a ruling so that these missing documents may be deemed to have been timely filed.

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. 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.

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 interest 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, B and C 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 A to file a Form 970 for B and C. The Forms 970 shall be filed 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 Forms 970 when they are 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 B, C, or D's use of the LIFO method.

Pursuant to a power of attorney on file in this office, a copy of this ruling is being sent to A and A's authorized representative.

This ruling is directed only to the taxpayer who requested it. Section 6110(l)(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