Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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CC:ITA:6 – PLR-123926-04
Date: July 15, 2004

LEGEND:

Parent

Subsidiary # 1

Subsidiary # 2

Subsidiary # 3

Date 1

Date 2

Inventory A

Inventory B

Dear :

This ruling replies to the letter and enclosures requesting an extension of time under § 301.9100-1(c) of the Procedure and Administration Regulations for Parent to file the required Forms 970, Application to use LIFO Inventory Method, on behalf of

Subsidiary #1 and Subsidiary #2. This request was made in accordance with § 301.9100-3.

FACTS

Subsidiary # 3, a member of Parent's consolidated group, acquired Subsidiary # 1 during the year ended Date 1. Subsidiary # 1 accounted for Inventory A using the last-in, first-out (LIFO) inventory method during the year ended Date 1, but Parent failed to attach the required Form 970 to its consolidated federal income tax return for that year. Subsidiary # 1 has consistently accounted for its Inventory A using the LIFO method for its tax year ended Date 1, and all subsequent years to determine federal income tax. Further, for these years, Subsidiary # 1 consistently used the LIFO inventory method to account for its Inventory A for financial reporting purposes.

Subsidiary # 3 acquired Subsidiary # 2 during the year ended Date 2. Subsidiary # 2 accounted for Inventory B using the LIFO inventory method during the year ended Date 2, but Parent failed to attach the required Form 970 to its consolidated federal income tax return for that year. Subsidiary # 2 has consistently accounted for its Inventory B using the LIFO method for its tax year ended Date 2, and all subsequent years to determine federal income tax. Further, for these years, Subsidiary # 2 consistently used the LIFO inventory method to account for its Inventory B for financial reporting purposes.

LAW AND ANALYSIS

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 federal 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 must 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 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make certain regulatory elections. 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.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

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 Internal Revenue 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).

CONCLUSION

Based solely on the facts and representations submitted, Parent has established that it had satisfied the requirements of §§ 301.9100-1 and 301.9100-3. It has shown that it, as well as Subsidiary #1 and Subsidiary #2, 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 Parent to file the required Forms 970 on behalf of Subsidiary #1 and Subsidiary #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 Forms 970 when they are filed.

Except as specifically ruled upon above, no opinion is expressed or implied concerning the federal income tax consequences arising from Parent's and its subsidiaries' activities. Further, we express no opinion regarding the propriety of the LIFO inventory methods used by Subsidiary #1 and Subsidiary #2.

Pursuant to the power of attorney on file with this office, a copy of this letter is being sent to Parent's authorized representatives.

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

Sincerely,

THOMAS A. LUXNER
Chief, Branch 6
Office of Associate Chief Counsel
(Income Tax & Accounting)