

**Internal Revenue Service**

Department of the Treasury

Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number/Fax Number:

Attention:

Refer Reply To:

CC:ITA:6

PLR-120468-13

Date: October 31,2013

In Re: Request for Extension of Time to File Form 970, Application To Use LIFO Inventory Method.

Legend

Parent = EIN:

Taxpayers = &  
EIN: &

Date 1 =

Date 2 =

Year 1 =

Dear :

This letter is in reply to a private letter ruling request filed by Parent on behalf of Taxpayers. Parent requests an extension of time under § 301.9100-1(c) of the Procedure and Administration Regulations to file Form 970s, Application To Use LIFO Inventory Method, on behalf of Taxpayers. Taxpayers elected the last-in, first-out inventory method described in § 472 of the Internal Revenue Code (LIFO inventory method) for their inventory and Parent was required by § 1.472-3(a) of the Income Tax Regulations to file Form 970s on behalf of Taxpayers.

On Date 1, in a transaction Parent states qualifies as a nontaxable § 351 exchange, Parent transferred assets and liabilities to Taxpayers (two newly formed subsidiaries). The Form 970s were to have been filed by Parent on behalf of Taxpayers for the taxable year ending Date 2, but Parent failed to file either Form 3115.

Upon switching accounting firms to provide audit services, Parent discovered in Year 1 that it had failed to complete the Form 970s, for the taxable year ending Date 2. Parent states that Taxpayers were each required to file a Form 970 because as held in Rev. Rul. 70-564, 1970-1 C.B. 109, a corporation that acquires inventories in a transfer under § 351 must file a Form 970 in order to adopt the LIFO inventory method. Promptly after discovery of this failure to timely file Form 970s, Parent filed this request on behalf of Taxpayers for an extension of time to file the Form 970s.

For federal income tax purposes, Taxpayers implemented the LIFO inventory method described in § 472 in the year ending Date 2, and have used the LIFO inventory method for all subsequent taxable years. Parent also represents that the LIFO inventory method was used by Taxpayers in their reports to shareholders, partners, or other proprietors, to beneficiaries, and for credit purposes for the taxable year ending Date 2 and for all subsequent taxable years.

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 taxable year as of the close of which the method is first to be used in a statement of its election to use such inventory method. The statement is to be made on Form 970.

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.

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 a taxpayer provides evidence to establish to the satisfaction of the Commissioner (1) that the taxpayer acted reasonably and in good faith, and (2) that granting relief will not prejudice the interests of the Government. See § 301.9100-3(a).

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 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 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 taxable 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, § 301.9100-3(c)(1)(ii) provides that the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable 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.

Based solely on the facts and representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, we hereby grant an extension of time for Parent to file the missing Form 970s for Taxpayers. This extension shall be for a period of 30 days from the date of this ruling. Please attach a copy of this ruling to each Form 970, and send it to the service center in which Parent filed its federal consolidated tax return that included the Taxpayers' returns for the year ended Date 2.

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

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express no opinion as to whether each Taxpayer has

correctly used the LIFO inventory method. We also have no opinion as to the asset and liability transfer that occurred on Date 1.

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

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Parent's authorized representative. We are also sending a copy of this letter to the appropriate operating division director.

Sincerely,

ROY HIRSCHHORN  
Chief, Branch 6  
Office of Associate Chief Counsel  
(Income Tax & Accounting)