

This letter is in reply to a private letter ruling request dated June 10, 2014, filed by Parent on behalf of Taxpayer1, Taxpayer2, and Taxpayer3, requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations to file Forms 970, Application To Use LIFO Inventory Method.

Parent and its wholly owned subsidiaries manufacture, supply, and market Products to customers throughout the world in the Products industries.

During the fiscal year ending Date1, Parent restructured its consolidated group, transferring certain assets and liabilities, including inventory, to newly formed, wholly owned entities including Taxpayer1, Taxpayer2, and Taxpayer3, in a transaction that Parent represents qualified as a tax-free exchange under § 351 of the Internal Revenue Code. The inventory transferred had been identified using the last-in, first out (LIFO) inventory method described in § 472. Taxpayer1, Taxpayer2, and Taxpayer3 have identified their inventory using the LIFO inventory method upon receipt of their respective inventory.

Parent was required by § 1.472-3(a) of the Income Tax Regulations to file a Form 970 on behalf of Taxpayer1, Taxpayer2, and Taxpayer3 for the fiscal year ending Date1. Parent used B, an accounting firm, to review its consolidated tax return as prepared by Parent for fiscal year ending Date1 and to inform Parent of the need to make any required elections. B was aware of the fact that Parent used the LIFO inventory method for Taxpayer1, Taxpayer2, and Taxpayer3. Parent was not informed by B to attach the required Forms 970 to its tax return.

To perform a routine internal review of Parent's LIFO calculations, Parent engaged C in Year1. C requested copies of the Forms 970 filed on behalf of Taxpayer1, Taxpayer2, and Taxpayer3. When it was determined that the Forms 970 had not been filed, C advised Parent to file this private letter ruling request. Parent promptly filed this request on behalf of Taxpayer1, Taxpayer2, and Taxpayer3 for an extension of time to file the Forms 970.

Parent represents that Taxpayer1, Taxpayer2, and Taxpayer3 have used the LIFO inventory method described in § 472 for the fiscal year ending Date1 and have used the LIFO inventory method for all subsequent taxable years. Parent also represents that the LIFO inventory method was used in the reports for the three entities to shareholders, partners, or other proprietors, to beneficiaries, and for credit purposes for the fiscal year ending Date1 and all subsequent fiscal 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 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).

Section 301.9100-3(b)(1) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer: (i) requests relief before the failure to make the regulatory election is discovered by the Internal Revenue Service; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the written advice of the Service; or (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(b)(3) provides that a taxpayer is deemed not to have acted reasonably and in good faith if the taxpayer: (i) seeks to alter a return position for which an accuracy-related penalty was 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; (ii) was informed in all material respects of the required election and related tax consequences and chose not to file the election; or (iii) 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 the taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). The section also provides that, 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, in part, 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 this section.

The requested election is a regulatory election as defined under § 301.9100-1(b) because the due date of the election is prescribed in § 1.472-3. Parent's request is analyzed under the requirements of § 301.9100-3 because the automatic provisions of § 301.9100-2 are not applicable.

On the basis of the facts, representations, and affidavits submitted, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, we hereby grant an extension of time for Parent to file the missing Forms 970 on behalf of Taxpayer1, Taxpayer2, and Taxpayer3. 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 filed pursuant to this private letter ruling request.

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 a ruling, 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 Taxpayer1, Taxpayer2, or Taxpayer3 has correctly used the LIFO inventory method. We also have no opinion as to the internal restructuring of Parent that occurred in the fiscal year ending Date1. Further, we have no opinion as to the correctness of the use of the LIFO inventory method by any entity that obtained inventory in the tax-free exchange that occurred during the fiscal year ending Date1 other than Taxpayer1, Taxpayer2, and Taxpayer3.

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.

Sincerely,

CHERYL L. OSEEKEY
Senior Counsel, Branch 6
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enc: copy for section 6110 purposes

cc: