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Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
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Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
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PLR-128374-14

Date:
October 24, 2014

Legend

Current Accounting Firm:

Common Member:

Taxpayer 1:

Taxpayer 2:

Taxpayer 3:

Taxpayer 4:

:

Product:

Clients:

Industry:

Date 1:

Date 2:

Date 3:

Year A:

Year B:

Year C:

Dear :

We received Current Accounting Firm's letter of July 18, 2014, which notes Taxpayer 1, Taxpayer 2, Taxpayer 3, and Taxpayer 4 request for an extension of time under § 301.9100-1(c) of the Procedure and Administration Regulations for each to file a Form 970, Application To Use LIFO Inventory Method. *See also* § 301.9100-3.

The following facts have been obtained from the above-referenced letter, the accompanying affidavits, and completed draft of a Form 970. Common Member is a distributor of Product to Clients in the Industry. The Common Member is also a holding company owning a 100 percent capital interest in each of the operating companies, Taxpayer 1, Taxpayer 2, Taxpayer 3, and Taxpayer 4. The Common Member acquired each company in taxable transactions pursuant to which the companies became disregarded single-member LLCs of the Common Member. On Date 1, Common Member acquired Taxpayer 1, Taxpayer 2, and Taxpayer 3. On Date 2, Common Member acquired Taxpayer 4.

Subsequent to the acquisitions, the Common Member granted “Class B Units” representing profits interests to certain executives of those four acquired companies, in exchange for services to be rendered to or for the benefit of the companies by the executives. These profit interests were subject to a five-year vesting period and became partially vested during Year A. On the initial vesting dates of the Class B units, Taxpayer 1, Taxpayer 2, Taxpayer 3, and Taxpayer 4 began filing separate partnership returns in Year A. Prior to the filings of partnership returns, Taxpayer 1, Taxpayer 2, Taxpayer 3, and Taxpayer 4 were disregarded as separate entities, and their activity was included in the partnership return of the Common Member.

For tax purposes, Common Member adopted the LIFO method of accounting for it and its disregarded single-member LLCs by filing a Form 970 with its timely filed partnership return for Year B. Common Member also valued this inventory using the LIFO method for financial reporting purposes. Taxpayer 1, Taxpayer 2, Taxpayer 3, and Taxpayer 4 continued to use the LIFO method when they filed their initial separate returns for Year

A. Taxpayer 1, Taxpayer 2, Taxpayer 3, and Taxpayer 4 however did not file the necessary Form 970s to properly make their elections to use the LIFO method. Taxpayer 1, Taxpayer 2, Taxpayer 3, and Taxpayer 4 did check the box on line 9c of their Forms 1125-A, Cost of Goods Sold, to adopt the LIFO method for Year A, and line 9d of the Forms 1125-A indicated the amounts of closing inventory computed under the LIFO method. Furthermore, inventory has continually been valued using the LIFO method for both tax and financial reporting purposes by each entity since Year A.

On Date 3, Common Member engaged Current Accounting Firm to prepare the Year C partnership returns for Taxpayer 1, Taxpayer 2, Taxpayer 3, and Taxpayer 4. It was then discovered that the necessary Form 970s were not included with the Year A as-filed first year partnership returns that had been prepared by a predecessor accounting firm.

Section 472(a) of the Internal Revenue Code provides that a taxpayer may use the method provided in subsection (b) [LIFO inventory 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(a) of the Income Tax Regulations provides, in relevant part, 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.

Section 301.9100-1(b) defines “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 301.9100-1(c) provides, in relevant part, that 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, if the taxpayer has acted reasonably and in good faith and if granting that relief will not prejudice the interests of the Government.

Section 301.9100-3 provides the standards that the Commissioner will use in determining whether to grant an extension of time to make a regulatory election. It also provides 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 relevant standards are whether the taxpayer acted reasonably and in good faith and whether granting relief would prejudice the interests of the Government.

Section 301.9100-3(b)(1)(i) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief under this section before the

failure to make the regulatory election is discovered by the Internal Revenue Service.

Section 301.9100-3(b)(3) provides that 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). Similarly, 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 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.

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 Taxpayer 1, Taxpayer 2, Taxpayer 3, and Taxpayer 4 to each file a Form 970 for the Year A. 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 rulings contained in this letter are based upon facts, representations, and affidavits submitted by Current Accounting Firm on behalf of Taxpayer 1, Taxpayer 2, Taxpayer 3, and Taxpayer 4 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. 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, no opinion is expressed regarding the propriety of the LIFO method used by Taxpayer 1, Taxpayer 2, Taxpayer 3, or Taxpayer 4.

This ruling is directed only to Taxpayer 1, Taxpayer 2, Taxpayer 3, and Taxpayer 4 who are requesting 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 Taxpayer 1, Taxpayer 2, Taxpayer 3, and Taxpayer 4's authorized representative.

Sincerely,

Cheryl L. Oseekey
Senior Counsel, Branch 6
(Income Tax & Accounting)

Enc: copy of section 6110 purposes