Internal Revenue Service

Number: **201610014**
Release Date: 3/4/2016

Index Number: 9100.11-00

Attn:

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number/Fax Number:

Refer Reply To:
CC:ITA:B6
PLR-128761-15

Date:
December 03, 2015

Legend

Parent =

Taxpayer1 =

Taxpayer2 =

Products =

Activities =

Year1 =

Year2 =

Year3 =

Year4 =

B =

C =

D =

Operations1 =

Operations2 =

LLC1 =

LLC2 =

LLC3 =

Corp =

Date1 =

Dear :

This letter is in reply to a private letter ruling request dated August 25, 2015, filed by Parent on behalf of Taxpayer1 and Taxpayer2, 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, to use the last-in first-out (LIFO) inventory method of accounting effective for Year1.

Parent is a designer and manufacturer of Products. Prior to Year1, Parent used the LIFO method of accounting for inventory used in Activities.

In Year2, Parent underwent a restructuring of its domestic and international operations (the Restructuring). B and C advised Parent concerning the planning and implementation of the Restructuring. D prepared the federal income tax returns and audited Parent's financial statements for all relevant years to this request. Prior to Year3, Parent did not have full-time, in-house tax resources and relied exclusively on the advice and expertise of B, C, and D for tax matters.

Parent represents that the Restructuring was designed to be a set of transactions with several new subsidiaries formed and capitalized that qualified as tax-free exchanges under § 351 of the Internal Revenue Code. Under the Restructuring, Parent created Taxpayer1 and Taxpayer2.

Taxpayer1 was formed to hold Parent's Operations1. Taxpayer2 was formed to hold Parent's Operations2. Taxpayer2 has three single member limited liability companies (treated as disregarded entities for federal income tax purposes) and one corporation: LLC1, LLC2, LLC3, and Corp. The operating agreements for Taxpayer1 and Taxpayer2 became effective on Date1.

As part of the Restructuring, Parent contributed its LIFO inventory to Taxpayer1, LLC1, and LLC2. For federal income tax purposes, Taxpayer1, LLC1, and LLC2 continued to identify the contributed inventory using the identical LIFO inventory method that had been used by Parent.

However, with the Parent's consolidated Form 1120, US Corporation Income Tax Return, for Year1, Parent did not file the required Forms 970 for Taxpayer1 or Taxpayer2. Parent was required by § 1.472-3(a) of the Income Tax Regulations to file Forms 970 on behalf of Taxpayer1 and Taxpayer2 for Year1 in order to continue to account for the contributed inventory on a LIFO basis after the Restructuring. Parent represents that Taxpayer1 and Taxpayer2 used the LIFO inventory method described in § 472 for Year1 and used the LIFO inventory method for all subsequent tax years to Year1. Parent also represents that the relevant LIFO inventory for Taxpayer1, LLC1, and LLC2 was accounted for on the LIFO method for financial statement purposes for Year1 and all subsequent fiscal years.

B and C did not advise Parent that Forms 970 were required to be filed to continue the LIFO treatment for inventory contributed to Taxpayer1, LLC1, and LLC2 pursuant to the Restructuring. Further, D did not prepare Forms 970 that were required to be filed with Parent's federal income tax return for Year1.

Parent recently discovered that Forms 970 had not been filed for Year1 for Taxpayer1 and Taxpayer2. When Parent determined that the Forms 970 had not been filed for Taxpayer1 and Taxpayer2, D advised Parent to file this request. Parent promptly filed this request on behalf of Taxpayer1 and Taxpayer2 for an extension of time to file the Forms 970 to be effective for Year1 and all subsequent tax 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 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 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 tax 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 tax year in which the regulatory election should have been made, or any tax 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 and Taxpayer2. 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 Parent, Taxpayer1, or Taxpayer2 (through LLC1 and LLC2) have correctly used the LIFO inventory method. We also have no opinion as to the Restructuring of Parent that occurred in Year1; specifically, whether the Restructuring qualified as a tax-free exchange under § 351. Further, we have no opinion as to the correctness of the use of the LIFO inventory method by any entity that may have obtained inventory in the Restructuring that occurred during Year1 other than Taxpayer1, LLC1, and LLC2.

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, copies of this letter are being sent to Parent's authorized representatives.

Sincerely,

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

Enclosure: copy for section 6110 purposes

cc: