

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **201847009**  
Release Date: 11/23/2018  
Index Number: 9100.00-00

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:ITA:B06  
PLR-122398-18

Date:  
August 14, 2018

LEGEND

Taxpayer =

Tax Year =

Dear :

This letter is in reply to a request for a private letter ruling made by Taxpayer. Taxpayer requests an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file Form 970, Application to Use LIFO Inventory Method, for the Tax Year.

FACTS

Prior to the Tax Year, Taxpayer owned an interest in a partnership. During the Tax Year the partnership liquidated and the partnership's inventory, which had previously been accounted for using the last-in-first-out (LIFO) inventory method, was distributed to Taxpayer. Prior to the Tax Year Taxpayer did not own inventory. Taxpayer began to use the LIFO inventory method for both tax and financial reporting purposes for the Tax Year and all subsequent tax years. However, Taxpayer failed to file Form 970 with its tax return for the Tax Year. Taxpayer assumed the Form 970 which was attached to the partnership's return in a previous year satisfied the necessary requirements for

Taxpayer to use the LIFO inventory method. It was not until a review of Taxpayer's accounting methods by an outside accounting firm that the error became apparent.

After realizing that Taxpayer failed to file the necessary Form 970, it promptly filed this request for a private letter ruling.

#### RULING REQUESTED

Taxpayer requests an extension of time to file Form 970 and for it to be considered timely for the Tax Year under sections 301.9100-1 and 301.9100-3.

#### LAW AND ANALYSIS

Section 472 of the Internal Revenue Code 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 of the Income Tax Regulations 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 the discretion to grant a reasonable extension of time under the rules set forth in sections 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 regulations published in the Federal Register, or in a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-2 provides for automatic extensions of time for making certain elections. Section 301.9100-3 provides for extensions of time for making elections that do not meet the requirements of section 301.9100-2.

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

Requests for relief under section 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 interest of the government. See section 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 a regulatory election is discovered by the Internal Revenue Service (IRS); (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 of the election; (iv) reasonably relied on written advice of the IRS; 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 has been or could be imposed under section 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)(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, section 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 be 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 section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

## CONCLUSION

On the basis of Taxpayer's representations, we conclude that the requirements of section 301.9100-3 have been satisfied. Accordingly, we hereby grant an extension of time for Taxpayer to file the missing Form 970 for the Tax Year. This extension shall be for a period of 45 days from the date of this ruling. Please attach a copy of this ruling to the Form 970 filed pursuant to this private letter ruling request.

Except as expressly set forth above, this office neither expresses nor implies any opinion concerning the tax consequences of the facts described above under any other

provision of the Code or regulations. Specifically, we have no opinion, either express or implied: (1) as to whether Taxpayer may permissibly use the LIFO inventory method; (2) as to whether Taxpayer has correctly used or is correctly using the LIFO inventory method; (3) as to whether Taxpayer was required to file a Form 970 in order to use the LIFO inventory method; (4) as to whether the partnership was or is required to file a Form 970; (5) as to whether the partnership's distribution of assets to Taxpayer was a liquidating distribution.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer 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 this request for an extension of time to file the required Form 970, all material is subject to verification on examination.

This ruling is directed only to Taxpayer 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 Taxpayer's authorized representatives.

Sincerely,

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

cc: