

Internal Revenue Service

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Date:

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LEGEND

Taxpayer =

Shareholder 1 =

Shareholder 2 =

CPA =

LIFO Inventory =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Dear _____ :

This letter is in reply to a request for a private letter ruling made by Taxpayer. Taxpayer requests an extension of time under § 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file Form 970, Application to Use LIFO Inventory Method, for Year 4.

FACTS

Taxpayer represents the following facts:

Taxpayer represents that it was incorporated as a limited liability company during Year 1 and that it filed its Federal income tax returns as a partnership from Year 1 through Year 3. Taxpayer represents that it files its Federal income tax return on a calendar year basis.

During Year 2, Shareholder 1, an individual, who at that time owned a profit and loss interest and no capital interest in Taxpayer, purchased all other profit, loss, and capital interests from all other partners of Taxpayer. Simultaneous with this purchase, Shareholder 1 gifted a certain percentage of the profit, loss, and capital interest of Taxpayer to his spouse, Shareholder 2. Taxpayer represents that the purchase of all of the interests in Taxpayer by Shareholder 1 resulted in a technical termination of Taxpayer in Year 2, which caused Taxpayer to file short period returns for the portion of Year 2 predating the technical termination, and for the portion of Year 2 following the technical termination.

As part of Taxpayer's trade or business, it carries certain items in inventory. In Year 2, Taxpayer elected to account for a certain subset of those inventory items under the last-in, first-out (LIFO) method (hereinafter, the "LIFO Inventory") by filing a Form 970 along with the tax return that it filed for portion of Year 2 following the technical termination. Taxpayer represents that during the period that it has accounted for the LIFO inventory using the LIFO method for tax purposes, it has also accounted for the LIFO inventory using the LIFO method for book accounting purposes.

In Year 5, Taxpayer, with the assistance of CPA, prepared a Form 2553, Election by a Small Business Corporation, to elect to be treated as an S corporation for the Year 4 taxable year. However, although the Form 2553 was prepared by CPA, it was never filed by Taxpayer due to an administrative oversight. Not realizing that the Form 2553 was never filed, Taxpayer filed its Federal income tax return for the Year 4 taxable year as though the S corporation election had been made. Only after receiving communication from the Internal Revenue Service during Year 5 enquiring about Taxpayer's entity status did Taxpayer and CPA realize that the Form 2553 had never

been filed. Consequently, Taxpayer filed a second Form 2553 under the automatic provisions of § 301.9100 to elect S corporation treatment for the Year 4 taxable year.

In Year 6, Taxpayer engaged another external tax advisor to prepare its Federal income tax returns. During the transition to the new tax advisor, Taxpayer discovered that it did not file a new Form 970 in Year 4 when it converted to being treated as an S corporation. Taxpayer represents that, because of its conversion from a partnership to an S corporation, it was required to file a new Form 970 in the first year that Taxpayer was considered an S corporation in order to continue using the LIFO method. However, despite not filing a new Form 970, Taxpayer has continued using the same LIFO method for its LIFO Inventory that it has been using since Year 2. Therefore, Taxpayer has filed this request for a private letter ruling requesting an extension of time to file the missing Form 970 for Year 4.

RULING REQUESTED

Taxpayer requests an extension of time under §§ 301.9100-1 and 301.9100-3 to file Form 970, effective for Year 4.

LAW AND ANALYSIS

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 the 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 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 automatic extension 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.

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. Taxpayer's request is analyzed under the requirements of § 301.9100-3 because the automatic provisions of

§ 301.9100-2 are not applicable.

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.

CONCLUSION

On the basis of Taxpayer's representations, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, we hereby grant an extension of time

for Taxpayer to file the missing Form 970 for Year 4. 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 expressed or implied: (1) as to whether Taxpayer qualifies to use the LIFO inventory method, (2) as to whether Taxpayer has been properly applying its LIFO inventory method; (3) as to whether the purchase of all of the profit, loss, and capital interests in Taxpayer by Shareholder 1 caused a technical termination of Taxpayer; (4) as to any Federal tax consequences of the gift of certain profit, loss and capital interests from Shareholder 1 to Shareholder 2; (5) as to whether Taxpayer properly received relief under § 301.9100 to elect S corporation status for the Year 4 taxable year; and (6) as to whether Taxpayer is required to file a Form 970 in Year 4 to elect to use the LIFO inventory method.

The ruling contained in this letter ruling is based upon facts and representations submitted by Taxpayer, with accompanying penalties of perjury statements executed by appropriate parties. 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 our office, we are sending copies of this letter to Taxpayer's authorized representative.

Sincerely,

CHRISTINA MORRISON
Senior Technician Reviewer
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enc.: Copy for § 6110 purposes

CC: