

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202126002**
Release Date: 7/2/2021
Index Number: 9100.00-00

[Third Party Communication:
Date of Communication: Month DD, YYYY]

Person To Contact: _____, ID No.

Telephone Number: _____

Refer Reply To:
CC:ITA:B06
PLR-117997-20

Date:
April 08, 2021

Legend

Taxpayer =
EIN:

Taxable Year =

X =

Y =

Accounting Firm =

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 Taxable Year. This letter ruling is being issued electronically in accordance with Rev. Proc. 2020-29, 2020-21 I.R.B. 859. A paper copy will not be mailed to Taxpayer.

FACTS

Taxpayer is an S Corporation. Taxpayer is in the business of X. Taxpayer is on a calendar year and reports income and expenses under the accrual method of accounting. Taxpayer is part of Y. None of the entities of Y are filed on a consolidated basis. Taxpayer files its own tax return.

Prior to the Taxable Year all issued shares of stock of Taxpayer were purchased via a Stock Purchase Agreement. During the Taxable Year Taxpayer made a timely filed election to be treated as an S-Corporation as of the beginning of Taxable Year, and the Taxpayer believed it was known that the entity would be making an S Election, and thus the initial last-in-first-out (LIFO) Method election was not made in prior to Taxable Year.

After the initial stock purchase, Taxpayer conveyed to Accounting Firm that it would be making an election under section 472 of the Internal Revenue Code to adopt the LIFO Method for new inventory for Taxable Year in order to be consistent with its other holdings.

Taxpayer relied on Accounting Firm to file Form 970 to make a valid election under section 472 for use of the LIFO Method for its new inventory. However, during the preparation of Taxable Year tax return, the Form 970 was not prepared or filed.

The failure to file the required Form 970 was discovered by the Internal Revenue (IRS) during an audit of Taxpayer's Taxable Year tax return. While working with the Revenue Agent on the audit, Accounting Firm prepared and filed this letter request for relief.

Taxpayer has consistently accounted for all of its inventory using the LIFO method for Taxable Year and all subsequent years for U.S. Federal income tax purposes. Taxpayer represents that it has not violated the LIFO conformity requirement provided in section 472(c) and section 1.472-2(e) Income Tax Regulations for Taxable Year and all subsequent years.

RULING REQUESTED

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

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 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 Taxable Year. No form other than a Form 970 may be filed and the Form 970 to be filed by Taxpayer must reflect exactly the LIFO method it has used since Taxable Year for U.S. Federal income tax purposes. 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 as to whether: (1) Taxpayer may permissibly use the LIFO inventory method; (2) Taxpayer has correctly used or is correctly using the LIFO inventory method; (3) Taxpayer was required to file a Form 970 in order to use the LIFO inventory method; and (4) Taxpayer properly elected S-Corporation status.

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,

Christina A. Morrison
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: