Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:ITA:6
PLR-137219-11
Date:
September 15, 2011

DO:

TY:

LEGEND:

Parent	=	
Taxpayer 1	=	
Taxpayer 2	=	
products	=	
specifics	=	
Target Corporation	=	
Subsidiary	=	
LLC 1	=	
LLC 2	=	
LLC 1's Subsidiary	=	
Date 1	=	
Date 2	=	
Date 3	=	
Old CPA Firm	=	
Old Law Firm	=	
New CPA Firm	=	
Tax Year 1	=	
Tax Year 2	=	

Dear :

We received New CPA Firm's letter of July 18, 2011, which notes Parent's request for an extension of time under § 301.9100-1(c) of the Procedure and Administration Regulations to file a Form 970, Application To Use LIFO Inventory Method, on behalf of Taxpayer 1 and Taxpayer 2. *See also* § 301.9100-3.

The following facts have been obtained from the above-referenced letter, the accompanying affidavit, and completed drafts of two Forms 970. On Date 1, the Parent consolidated group acquired Target Corporation in the following manner. Subsidiary, a subsidiary of Parent, set up two single-member limited liability companies, LLC 1 and LLC 2. In turn, LLC 1 created LLC 1's Subsidiary as a wholly owned subsidiary, and LLC 2 created Taxpayer 1 as a wholly owned subsidiary. LLC 1's Subsidiary and Target Corporation merged, and Target Corporation became the surviving entity.

Target Corporation transferred its operating assets (including inventories) and its liabilities to Taxpayer 1, which canceled the promissory note it had received from LLC 1's Subsidiary before the latter's merger with Target Corporation. Following this transaction, Taxpayer 1 became engaged in the wholesale and retail sales and distribution of products, including "specifics." For the taxable year ending Tax Year 1, Taxpayer 1 used the LIFO method even though Parent had failed to file a Form 970 on Taxpayer 1's behalf as required under § 1.472-3(a) of the Income Tax Regulations. Parent engaged Old CPA Firm to prepare its consolidated tax return for the taxable year ending Tax Year 1, but Old CPA Firm failed to advise Parent that it had to file a Form 970 on Taxpayer 1's behalf if Taxpayer 1 wanted to elect the LIFO method for its initial taxable year.

On Date 2, Taxpayer 1 was converted from a corporation to a single-member limited liability company and became Taxpayer 2, and LLC 2 was dissolved. Effective Date 3, Taxpayer 2 elected to be treated as a corporation under § 301.7701-3(a). Under § 301.7701-3(g)(1)(iv), the conversion of Taxpayer 2 from disregarded entity to corporation is treated as if Subsidiary had contributed all the assets and liabilities of Taxpayer 2 to the corporation in exchange for the corporation's stock. Parent failed, however, to file a Form 970 on behalf of Taxpayer 2 to elect the LIFO method effective for the date of conversion as required by Rev. Rul. 70-564, 1970-2 C.B. 109. Parent engaged Old Law Firm to advise it regarding this restructuring, but Old Law Firm failed to advise Parent that it had to file a Form 970 on behalf of Taxpayer 2 if Taxpayer 2 wanted to elect the LIFO method effective as of the date of its conversion to a corporation.

In March of 2011, Parent engaged New CPA Firm to perform a review of its inventory methods for federal income tax purposes. New CPA Firm determined that

Parent had failed to file a Form 970 on behalf of Taxpayer 1 for the taxable year ending Tax Year 1 and had failed to file a Form 970 on behalf of Taxpayer 2 for the taxable year ending Tax Year 2. Nevertheless, Parent filed consolidated federal income tax returns for the taxable year that included the acquisition of Target Corporation and for all subsequent taxable years consistent with its having timely filed Forms 970 on behalf of Taxpayer 1 and Taxpayer 2. The statute of limitations on assessments under § 6501 has expired for the taxable year ending Tax Year 1, but remains open for the taxable year ending Tax Year 2. New CPA Firm has advised Parent to request an extension of time for filing the required Forms 970.

Section 472(a) 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) 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 301.7701-3(a) provides, in relevant part, that a business entity that is not classified as a corporation under § 301.7701–2(b) (1), (3), (4), (5), (6), (7), or (8) (an *eligible entity*) can elect its classification for federal tax purposes as provided in this section.

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)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer 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 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 tax 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 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.

Rev. Rul. 70-564, 1970-2 C.B. 109, provides that a new corporation must file a Form 970 if that corporation wants to use the LIFO inventory method to account for LIFO inventory received in a transfer that qualifies under § 351(a).

The information and representations furnished by Parent and Taxpayer 2 establish that they have acted reasonably and in good faith in this request. Furthermore, granting an extension will not prejudice the interests of the Government. Accordingly, an extension of time is hereby granted to file the necessary Form 970, for the taxable years ended Tax Year 2. This extension shall be for a period of 30 days

from the date of this ruling. Please attach a copy of this ruling to the Forms 970 when filed.

No opinion is expressed as to the application of any other provisions of the Code or the regulations which may be applicable to the transactions described in this letter. Specifically, no opinion is expressed regarding the propriety of the LIFO inventory methods used by Taxpayer 2 or the propriety of Taxpayer 1's conversion from a corporation to a single-member limited liability company and Taxpayer 2's subsequent election to be treated as a corporation.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the provisions of a power of attorney on file with this office, we are sending a copy of this ruling letter to the taxpayer's authorized representatives.

Please contact the person whose name and telephone number are shown above if you have any questions.

Sincerely,

ROY A. HIRSCHHORN
Chief, Branch 6
Office of Associate Chief Counsel
(Income Tax & Accounting)