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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:B6
PLR-135089-17

Date:
April 23, 2018

LEGEND:

Parent =

Applicant =

Entity =

Tax Preparer =

Year 1 =

Year 2 =

Year 3 =

Dear _____ :

This letter is in reply to a request for a private letter ruling made by Parent on behalf of Applicant. Parent 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, on behalf of Applicant for Year 1.

FACTS

Parent represents the following facts on behalf of Applicant:

Parent files a consolidated corporate income tax return for federal tax purposes on behalf of an affiliated group, which includes Entity and Applicant; Parent wholly directly owns Entity and wholly indirectly owns Applicant through Entity.

In Year 1, Entity contributed assets, including inventory accounted for using the last-in-first-out (LIFO) inventory accounting method, to Applicant in a transaction described in § 351 of the Internal Revenue Code. Entity had timely filed its LIFO inventory election in a prior tax year.

Parent retained Tax Preparer for Year 1 to prepare the necessary federal tax returns as well as provide various tax consulting services. Tax Preparer erroneously concluded the Form 970 was not required for Year 1, as it thought Year 2 was when the § 351 transaction occurred. However, Applicant filed its federal tax return for Year 1 using the LIFO inventory method to identify inventory.

Applicant has used the LIFO inventory method to identify inventory for tax reporting purposes since Year 1. Further, Applicant has used the LIFO inventory method for financial reporting purposes for Year 1 and all subsequent taxable years.

In Year 3, Parent realized that a Form 970 should have been filed in Year 1, not Year 2, and immediately sought to request relief under § 9100 for permission to file a late LIFO inventory method election. Parent notes that this request for relief was made before the failure to make the election was discovered by the Internal Revenue Service.

RULING REQUESTED

Parent requests an extension of time under §§ 301.9100-1 and 301.9100-3 to file Form 970 on behalf of Applicant to adopt the LIFO inventory method effective for Year 1.

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 §§ 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 in a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-2 provides an 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. Parent'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 Parent's representations, the requirements of § 301.9100-3 have been satisfied. Accordingly, an extension of time for Parent to file the missing Form 970 on behalf of Applicant for Year 1 is granted. This extension is for a period of 60 days from the date of this letter ruling. Please attach a copy of this letter 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, no opinion is expressed as to whether any member of Parent's consolidated group, including Entity and Applicant, have correctly used or are correctly using the LIFO inventory method.

The ruling contained in this letter ruling is based upon facts and representations submitted by Parent on behalf of Applicant, 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 Parent, the taxpayer that 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, a copy of this letter ruling is being sent to Parent's authorized representative.

Sincerely,

Cheryl L. Oseekey

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