INTERNAL REVENUE SERVICE

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Person to Contact:

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LEGEND:

A =
EIN:

B =
EIN:

C =
EIN:

D =

E =

F =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Year 1 =

Dear :

Your authorized representative has requested two rulings be issued to A under § 301.9100-1(c) of the Procedure and Administration Regulations, on behalf of its wholly owned subsidiary B. One ruling requests permission for B to file a Form 970, Application To Use LIFO Inventory Method. The other ruling requests permission for B to file the statement referred to in § 1.263A-1T(e)(10)(iii) of the temporary Income Tax Regulations, which identifies that B will retain the LIFO layers for certain LIFO inventories acquired by B in a transfer under § 351 of the Internal Revenue Code. Both ruling requests are made in accordance with § 301.9100-3.

Corporation C adopted the last-in, first-out (LIFO) inventory method for some of its inventory about 25 years ago. About 15 years ago, C's stock was acquired by D. Subsequently on Date 1, D's stock was acquired by E.

Because E desired to sell portions of C, C transferred some of its business, including the inventory identified by the LIFO method that would be later acquired by B, to a new subsidiary, F. The transfer occurred on Date 1, and A represents that this transfer is described by § 351. F used the LIFO inventory method with regard to the inventory it acquired from C. However, E failed to file the required Form 970 on behalf of F.[1]

A desired to acquire F. Therefore, on Date 3, A incorporated B to accomplish this purpose. During the latter months of Year 1, A and various other corporations, some of which were not related to A, participated in multiple restructuring activities. An initial restructuring step occurred on Date 4, when F left E's consolidated group. The result of all the restructuring steps was that B owned F as of year end, Date 5. These restructuring activities caused B to acquire inventory from various corporations, all of which was identified by the first-in, first-out (FIFO) inventory method. Subsequently on Date 6, F was liquidated into B. All inventory acquired by B from F was identified using the LIFO inventory method.[2]

E was required to apply the uniform capitalization rules of § 263A beginning with the tax year ended Date 5. A states that E applied these rules and A represents that E filed the documents required by § 263A except for the election statement required by

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[1] This Form 970 should have been included with the consolidated federal income tax return filed by E for the tax year ended Date 2. A has stated that no inventory activity occurred between Date 1 and Date 2.

[2] A represents that the rules of § 381(c)(5) permitted B to continue to identify the inventory it acquired by the inventory method used immediately prior to B's acquisition. Accordingly, A states that B identifies the inventory it acquired from F using the LIFO inventory method while all the other acquired inventory is identified using the FIFO inventory method.

§ 1.263A-1T(e)(10)(iii).[3] This statement was required to be filed because C had transferred inventory identified using the LIFO inventory method to F on Date 1, in a transaction described in § 351 and F had maintained C's LIFO layers. The statement was to have been included in E's consolidated federal tax return for the year ended Date 5. F was included in this return from the beginning of the year until it left E's consolidated group on Date 4.

During a recent review of its inventory accounting methods, A discovered that E failed to file the Form 970 and § 1.263A-1T(e)(10)(iii) election statement. A is requesting two rulings so that these missing documents may be deemed to have been timely filed by E.

Section 472 provides that a taxpayer may use the LIFO method of 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 tax 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 shall be made on Form 970 pursuant to the instructions printed with respect thereto and to the requirements of this section, or in such other manner as may be acceptable to the Commissioner.

Rev. Rul. 70-564, 1970-1 C.B. 109, holds that a corporation that acquires inventories in a transfer under § 351 must file a Form 970 in order to adopt the LIFO inventory method.

Section 1.263A-1T(e)(10) was enacted to prevent taxpayers from transferring inventories identified using the LIFO inventory method to related corporations in transactions described in § 351 prior to the effective date of § 263A so as to avoid having to revalue these inventories using the rules of § 263A. Generally, the acquiring corporation had to revalue the acquired inventory under § 263A as if the § 351 transfer had never occurred and the inventory was still held by the transferor. Section 1.263A-1T(e)(10)(ii)(B)(1). The acquiring corporation was able to elect to use the transferor's LIFO layers and did so by allocating the acquired inventory to LIFO layers corresponding to the layers to which such inventory was properly allocated by the transferor, prior to their transfer. This election was to be made on a statement attached to the timely filed federal income tax return of the acquiring corporation for the first tax year § 263A applies to that corporation. Section 1.263A-1T(e)(10)(iii).

Under § 301.9100-1(c), 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, provided that the taxpayer acted reasonably and in good

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[3] This election is currently in § 1.263A-7(c)(4)(iii) of the Income Tax Regulations. These regulations generally took effect in 1997.

faith and granting relief will not prejudice the interest of the Government. 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 a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. An election includes an application for relief in respect of tax and a request to adopt, change, or retain an accounting method or accounting period.

Section 301.9100-2 sets forth rules governing automatic extensions for regulatory elections. If the provisions of § 301.9100-2 do not apply to a taxpayer's situation, the provisions of § 301.9100-3 may apply.

Section 301.9100-3 sets forth the standards that the Commissioner will use in determining whether to grant an extension of time to make a regulatory election. It also sets forth 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 standards to be applied are whether the taxpayer acted reasonably and in good faith and whether granting relief would prejudice the interests of the Government.

Under § 301.9100-3(b)(1)(i), a taxpayer that applies for relief for failure to make an election before the failure is discovered by the Service ordinarily will be deemed to have acted reasonably and in good faith. However, pursuant to § 301.9100-3(b)(3), 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 and chose not to make 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). Likewise, 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 year that would have been affected by the election had it been timely made are closed by the period of limitations on assessment before the taxpayer receives the ruling granting relief under § 301.9100-1(c).

The information and representations furnished by A establish that B has 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 for A to file both a Form 970 and the election statement referred to in § 1.263A-1T(e)(10) on behalf of B. The Form 970 shall be filed for the tax year ended Date 2. The statement shall be filed for the tax year ended Date 5. 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 Form 970 and statement when they are filed.

No opinion is expressed as to the application of any other provisions of the Code or the regulations which may be applicable. Specifically, no opinion is expressed regarding the applicability of § 381(c)(5) to determine B's inventory method(s) after it acquired inventory. Further, no opinion is expressed regarding whether B or its predecessor properly accounted for its inventory under §§ 263A, 471, or 472. It should be understood that this ruling's extension of time to file Form 970 and the § 263A election statement is not a determination that B or its predecessor was otherwise eligible to make the elections. See § 301.9100-1(a).

Pursuant to a power of attorney on file in this office, a copy of this ruling is being sent to A's authorized representative.

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

Sincerely yours,

Heather Maloy
Acting Assistant Chief Counsel
(Income Tax and Accounting)

By_____
Irwin A. Leib
Deputy Assistant Chief Counsel