Index Numbers: 0472.01-00
9100.11-00

200017047

CC:DOM:IT&A:7/PLR-106855-99

JAN 10 2000

LEGEND

A =

B =

Date 1 =

Date 2 =

Date 3 =

Dear

You have requested that a ruling be issued to A under § 301.9100-1(c) of the Procedure and Administration Regulations, on behalf of its subsidiary B. A wishes to file a Form 970, Application To Use LIFO Inventory Method, for one of B's two divisions. This ruling request is being made under § 301.9100-3.

On Date 1, B acquired inventory in a transaction it represents is described in § 351 of the Internal Revenue Code. This inventory had been identified by the transferor using the last-in, first-out (LIFO) inventory method. This inventory was placed by B into one of its two divisions. This inventory has been identified by B using the LIFO inventory method, and this method is used for both federal income tax and financial reporting purposes. In Date 2, A's failure to file a Form 970, to enable B to use the LIFO inventory method, was discovered.

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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 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 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.

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 faith and granting relief will not prejudice the interests 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 making certain 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 mad 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 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 establish that A and B 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 for A to file a Form 970 on behalf of B. The Form 970 shall be filed for the tax year ended Date 3. 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 when it is 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 whether B acquired the inventory at issue in a § 351 transaction. Further, no opinion is expressed regarding B's corporate structure, that is, no opinion is expressed that B is correctly treating its two divisions as separate trades or businesses as defined in § 446(d).

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

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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_____
James L. Atkinson
Acting Deputy Assistant Chief Counsel