199912038

INTERNAL REVENUE SERVICE

Department of the Treasury
Washington, DC 20224

Index Numbers: 0472.01-00
9100.11-00

Person to Contact:

Telephone Number:

Refer Reply to:
CC:DOM:IT&A:7/PLR-114550-98

Date: DEC 23, 1998

ATTN:

LEGEND:

P =

S =

S2 =

date 1 =

date 2 =

date 3 =

Dear Mr.

This ruling is in reply to the letter and enclosures filed by your authorized representative requesting an extension of time under § 301.9100-1 of the Procedure and Administration Regulations for P to file Form 970, Application To Use LIFO Inventory Method, which is to be effective for the tax year ending date 2. This request is made in accordance with § 301.9100-3.

In its tax year ending date 1, P obtained the operating assets, including the inventory, of a business and named it S. In its tax year ending date 2, P obtained the operating assets, including the inventory, of another business and named it S2. The businesses were obtained via distributions under § 301 of the Internal Revenue Code from two wholly owned subsidiaries of P. Both subsidiaries had accounted for their inventories using the last-in, first-out (LIFO) inventory method of accounting. Upon receiving the inventories, P continued to use the LIFO inventory method for S and S2. P filed Form 970 to formally elect the LIFO

inventory method of accounting for S for the tax year ending date 1. However, P did not file Form 970 to elect the LIFO inventory method for S2.

In date 3, an accounting firm discovered that P had failed to file a Form 970 for S2. Subsequently this ruling request was filed.

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.

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 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.

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 in this case are whether the taxpayer acted reasonably and in good faith in requesting the extension 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 or 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 and the new position requires or permits an election for which relief is requested or if the taxpayer was fully informed in all material respects of the required election and related tax consequences but the taxpayer chose not to make it. Furthermore, a taxpayer 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 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). 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.

Further, 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 § 301.9100.

The information and representations furnished establish that P 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 P to file Form 970 on behalf of S2 for the tax year ending date 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 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 to the transaction. It should be understood that this ruling only addresses the request to extend the time period for filing Form 970 and does not, directly or indirectly, approve S2's overall use of the LIFO method. This determination is to be made by the district director in connection with an examination of P's income tax returns. Furthermore, no opinion is expressed regarding whether or not the transfers in the tax years ending dates 1 and 2 qualify under § 301. 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 P's authorized representative named therein.

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

Sincerely yours,

Jody J. Brewster
Assistant Chief Counsel
(Income Tax and Accounting)

By Irwin A. Leib
Irwin A. Leib
Deputy Assistant Chief Counsel