

Internal Revenue Service

Department of the Treasury

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Date: March 10, 2003

Attention:

LEGEND:

P =
EIN:

S1 =
EIN:

S2 =
EIN:

S3 =
EIN:

A: =

B: =

C: =

D: =

E: =

F: =

G: =

H: =

I: =

Dear _____ :

This ruling is in reply to the letter submitted by P's authorized representative that requested an extension of time under section 301.9100-1(c) of the Procedure and Administration Regulations for P to file the required Forms 970, Applications to use LIFO Inventory Method, on behalf of its subsidiaries, S1 and S2. This request is made in accordance with section 301.9100-3.

P is the parent corporation of an affiliated group of corporations that files consolidated federal income tax returns on the basis of a fiscal year ending A. Included in these returns are various subsidiaries, including S1 and S2.

S1 was formed B, and on that date received certain inventory items from P in exchange for its stock in a transaction represented as described in section 351 of the Internal Revenue Code. The inventory items received by S1 had been consistently accounted for under the last-in, first-out (LIFO) inventory method by P. S1 continued to account for these inventory items using the LIFO inventory method, but P failed to attach the required Form 970 to its consolidated federal income tax return for the fiscal year ended C. The LIFO inventory method continued to be used for these inventory items for financial reporting purposes.

On D, the predecessor of S2, E, received certain inventory items from another P subsidiary, S3, in exchange for its stock in a transaction represented as described in section 351. The inventory items received by E had been consistently accounted for under the LIFO inventory method by S3. E continued to account for these inventory items using the LIFO inventory method, but P failed to attach the required Form 970 to its consolidated federal income tax return for the fiscal year ended F. The LIFO inventory method continued to be used for these inventory items for financial reporting purposes.

E received additional inventory items from S1 and S3 on G in exchange for its stock in transactions represented as described in section 351. The inventory items received by E had been consistently accounted for under the LIFO inventory method by S1 and S3. E continued to account for these inventory items using the LIFO inventory method, but P failed to attach the required Form 970 to its consolidated federal income tax return for the fiscal year ended H. The LIFO inventory method continued to be used for these inventory items for financial reporting purposes. Additionally, on G, E reorganized in a transaction represented as described in section 368(a)(1)(F) and changed its name to S2.

P's failure to file the required Forms 970 was discovered during the fall of 2002 while P was preparing a Form 3115, Application for Change in Accounting Method, for the fiscal year ending I. Soon thereafter, P's authorized representative submitted this request for relief.

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.

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

Under section 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.

Section 301.9100-2 sets forth rules governing automatic extensions for regulatory elections. If the provisions of section 301.9100-2 do not apply to a taxpayer's situation, the provisions of section 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 and whether granting relief would prejudice the interests of the Government.

Under section 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 section 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 section 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). 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 section 6501(a) before the taxpayer's receipt of a ruling granting relief under section 301.9100-3.

The information and representations furnished by P establish that it 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 it to file the necessary Forms 970, on behalf of its subsidiaries, S1 and S2, for the fiscal years ended C, F, and H. 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 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 to the transaction. Specifically, no opinion is expressed regarding whether S1 and E acquired the inventory items at issue in section 351 transactions. No opinion is expressed regarding E's reorganization on G in a section 368(a)(1)(F) transaction. No opinion is expressed regarding the propriety of the LIFO inventory methods used by any member of P's affiliated group. Further, recognizing that P has filed a Form 3115 to change some of these methods for the fiscal year ending I, we express no opinion regarding this method change request.

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

In accordance with the terms of a power of attorney on file with this office, a copy of this ruling is being sent to P's two designated representatives.

Sincerely,

Lewis J. Fernandez
Acting Associate Chief Counsel
(Income Tax & Accounting)