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Legend

A =

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Dear :

FACTS

This ruling is in reply to a request submitted by P, requesting an extension of time under § 301.9100-1(c) of the Procedure and Administration Regulations to file the required Forms 970, Application To Use LIFO Inventory Method, on behalf of five of its affiliated entities, A, B, C, D, and E. This request is made in accordance with § 301.9100-3.

P and the electing entities, A, B, C, D, and E (collectively referred to as the "Companies"), are limited liability companies organized under the laws of State. Each company uses the last-in, first-out ("LIFO") method under § 472 of the Internal Revenue Code to value its inventory, maintaining a LIFO pool for new cars and trucks. Additionally, D has a LIFO pool for its parts inventory.

Before Date 1, there were five Subchapter S corporations, organized under the laws of State, with F as their majority shareholder. During the summer of Date 2, to accommodate F's interest in selling a portion of its interest in the five entities, the five original S corporations were merged into a single Subchapter S corporation, G. After the combination, their new car inventories and respective LIFO pools were contributed as capital to P. Additionally, certain unrelated assets were either sold or contributed as capital to P. The contributed assets were then dropped down into five new LLCs to enable each company to operate independently and maintain a separate and distinct relationship with its manufacturer.

When the assets were contributed to the Companies, the opening inventory of each LLC consisted of the transferred LIFO inventory. Their LIFO inventories and the other assets were contributed in exchange for ownership interests under § 721 of the Internal Revenue Code, resulting in recognition of neither gain nor loss.

After the asset transfers, management retained supervisory responsibility over the same staff and locations that had existed before the exchange. Meanwhile, F had reduced substantially its investment in the operations of the Companies.

During the period in question, H provided tax services for the Companies, preparing and reviewing their returns. J, who was experienced in both LIFO and the industry in question, was the engagement partner assigned to the Companies' account. Although Company personnel assisted in preparing returns and supporting documentation, J dealt with all technical issues, including Forms 970.

Each of the original Subchapter S corporations had elected the LIFO inventory method and had filed a Form 970 that was approved by the Internal Revenue Service. Because the prior entities were already on the LIFO method and the entity changes were primarily for reorganization, P concluded that new Forms 970 would not be required for each of the newly formed LLCs solely on account of the reorganization. Consequently, the reorganized Companies did not file Forms 970 after Date 2, with one exception. At the time of the reorganization, E did not account for its new car inventory under the LIFO method. E's original LIFO election was terminated during the reorganization, and E later filed a Form 970 in Date 3. Subsequent to the reorganization, all tax returns filed by the Companies identified that they were using the LIFO inventory method, and that the method was consistently applied.

During Date 4, K was retained to perform unrelated tax services for one of P's shareholders. The work, which was done on or about Date 5, was performed under separate agreement and did not apply to the Companies. During the engagement, K's personnel raised with P and J the issue of whether the reorganized Companies were required to file Forms 970. At the time, the Companies' tax preparer, J, was not convinced that new elections were required. Because of business disruptions that K incurred during Date 6, K was unable to pursue the matter further with P. Subsequently, K's personnel on the engagement departed the firm, and the pertinent files and work papers were locked away in a storage facility. Accordingly, J's advice to P that Forms 970 were not required, coupled with K's failure to pursue the issue with P, resulted in no additional work being performed on the issue.

In Date 7, during the course of reviewing a proposed transaction that would merge two related LLCs into a surviving entity named E, P's management again raised the question of whether a new Form 970 might be required. After further research, P concluded that it might be necessary to File a new Form 970 for the transaction in question, and that Forms 970 potentially should have been filed after the Date 2 reorganization as well. Immediately after concluding this, P contacted L, its current

provider of audit services, for advice as to whether it would be necessary to file a request for extension of time pursuant to §§ 301.9100-1 and 301.9100-3 (“9100 relief”). L affirmed P’s conclusion, whereupon P has submitted this request for 9100 relief.

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 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 is to be made on Form 970.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of 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 provided that 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 is defined to include a request to adopt, change, or retain an accounting method.

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 instead.

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 § 301.9100-3(b)(1)(i), a taxpayer applying 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 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, § 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 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 § 301.9100-3.

Under the facts represented by P, the Companies, except for E, have reported taxes as if they had been on LIFO since Date 2, the date of their reorganization. E has reported its taxes as if it had been on LIFO since Date 3, the date that it filed Form 970. Therefore, the Companies will not, by virtue of the election, have a lower tax liability than they would have had if the election had been timely. Accordingly, the government's interests are not prejudiced under § 301.9100-3(c)(1)(i).

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 to file the necessary Forms 970 for the Companies for the tax year ended Date 8. 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 regulations that may be applicable to the transaction. This ruling addresses only the request to extend the time period for filing Forms 970 and does not, directly or indirectly, approve the overall use of the LIFO methods used by the Companies. Such a determination is to be made by the field in connection with an examination of the Companies' federal income tax returns.

This ruling is directed only to the Companies, in whose behalf P requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file in this office, copies of this letter are being sent to P and to P's first designated representative.

Sincerely,

ROBERT M. BROWN
Associate Chief Counsel
(Income Tax & Accounting)

By_____
Jeffery G. Mitchell
Branch Chief, Branch 6
(Income Tax & Accounting)

cc: