Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
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Date:
October 5, 2017

LEGEND

Parent =

Applicant =

Entity 1 =

Entity 2 =

Entity 3 =

Entity 4 =

Year 1 =

Year 2 =

Year 3 =

Dear

This letter is in reply to a request for a private letter ruling made by Parent on behalf of Applicant. Parent requests an extension of time under § 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file Form 970, Application to Use LIFO Inventory Method, on behalf of Applicant for Year 1.

FACTS

Parent represents the following facts on behalf of Applicant:

Entity 1 was the common parent of a consolidated group that included Entity 2 and Entity 3. Entity 1, Entity 2, and Entity 3 all used the last-in-first-out (LIFO) inventory method of accounting. Parent states that each entity had attached a Form 970 to the appropriate Federal income tax return for the taxable year the method was first used by that entity, in accordance with § 1.472-3 of the Income Tax Regulations.

Subsequently, in Year 2, Entity 2 and Entity 3 merged with Entity 1, with Entity 1 surviving the merger. Parent states that the merger transactions qualified as non-taxable mergers under § 368(a)(1)(A) of the Internal Revenue Code, subject to § 381. Entity 1 continued to use the LIFO method for its own inventories and the inventories acquired from Entity 2 and Entity 3 after the merger.

Subsequently, in Year 1, Entity 1 decided to restructure its organization and formed Entity 4, later renamed Applicant. Entity 1 transferred its manufacturing business, operating assets, and inventory to Entity 4 (Applicant) in Year 1 in a transaction that Parent states qualified as a tax free transfer of assets under § 351. However, Entity 1 was unaware that it was required to file Form 970 on behalf of Entity 4 (Applicant) in order for Entity 4 (Applicant) to use the LIFO method. See Rev. Rul. 70-564, 1970-2 C.B. 109. As a result, Entity 1 failed to file the required Form 970 on behalf of Entity 4 (Applicant) following the transfer of assets. Entity 4 (Applicant) has used the LIFO inventory method to identify inventory for both tax and financial reporting purposes for Year 1 and all subsequent taxable years.

Subsequently, in Year 3, Parent acquired Entity 4, which has since renamed itself Applicant. Parent is currently the common parent of a consolidated group that includes Applicant and Entity 1. Parent realized recently that Applicant never properly adopted the LIFO inventory method and, as such, has filed this request for a private letter ruling.

RULING REQUESTED

Parent requests an extension of time under §§ 301.9100-1 and 301.9100-3 to file Form 970 on behalf of Applicant to adopt the LIFO method effective for Year 1.

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 taxable 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.

Section 301.9100-1(c) provides that the Commissioner has the discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make certain regulatory elections. Section 301.9100-1(b) defines a regulatory election as an election whose due date is prescribed by a regulations published in the Federal Register, or in a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Section 301.9100-2 provides automatic extension of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

The requested election is a regulatory election as defined under § 301.9100-1(b) because the due date of the election is prescribed in § 1.472-3. Parent's request is analyzed under the requirements of § 301.9100-3 because the automatic provisions of § 301.9100-2 are not applicable.

Requests for relief under § 301.9100-3 will be granted when a taxpayer provides evidence to establish to the satisfaction of the Commissioner (1) that the taxpayer acted reasonably and in good faith, and (2) that granting relief will not prejudice the interests of the government. See § 301.9100-3(a).

Section 301.9100-3(b)(1) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer: (i) requests relief before the failure to make the regulatory election is discovered by the Internal Revenue Service; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the written advice of the Service; or (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3(b)(3) provides that a taxpayer is deemed not to have acted reasonably and in good faith if the taxpayer: (i) seeks to alter a return position for which an accuracy-related penalty was 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; (ii) was informed in all material respects of the required election and related tax consequences and chose not to file the election; or (iii) 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 the taxpayer having a lower tax liability in the aggregate for all taxable 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). The section also provides that, 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, in part, that the interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made, or any taxable 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 this section.

CONCLUSION

On the basis of Parent's representations, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, we hereby grant an extension of time for Parent to file the missing Form 970 on behalf of Applicant for Year 1. This extension shall be for a period of 45 days from the date of this ruling. Please attach a copy of this ruling to the Form 970 filed pursuant to this private letter ruling request.

Except as expressly set forth above, this office neither expresses nor implies any opinion concerning the tax consequences of the facts described above under any other provision of the Code or regulations. Specifically, we have no opinion, either expressed or implied, as to whether Applicant, Entity 1, Entity 2, Entity 3, or Entity 4 have correctly used or are correctly using the LIFO inventory method. We have no opinion as to the propriety of the merger between Entity 1, Entity 2, and Entity 3 in Year 2; specifically, whether such merger constituted a non-taxable merger for purposes of §§ 368 and 381. We have no opinion as to whether Entity 1 was required to file Form 970 to continue to use the LIFO inventory method following the Year 2 merger. Finally, we have no opinion as to the propriety of the restructuring activities between Entity 1 and Applicant in Year 1; specifically, whether such transfer of assets between Entity 1 and Applicant constituted a tax-free transfer of assets under § 351.

The ruling contained in this letter ruling is based upon facts and representations submitted by Parent on behalf of Applicant, with accompanying penalties of perjury statements executed by appropriate parties. While this office has not verified any of the material submitted in support of this request for an extension of time to file the required Form 970, all material is subject to verification on examination.

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

In accordance with the power of attorney on file with our office, we are sending copies of this letter to Parent's authorized representatives.

Sincerely,

CHERYL L. OSEEKEY
Senior Counsel, Branch 6
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enc.: Copy for § 6110 purposes

cc: