

Taxpayer is a limited partnership that was formed on Date 1. On Date 2, P, a corporation, contributed all of its assets and liabilities to Taxpayer in return for an interest in the partnership. In addition, P's subsidiary, S, contributed all of its assets and liabilities to L, a single-member limited liability company owned by Taxpayer that is treated as a disregarded entity for tax purposes. Taxpayer continued with the same accounting methods used by P and S, including the use of the last-in, first-out (LIFO) inventory method. Taxpayer has consistently accounted for all inventory items under the LIFO inventory method, but it failed to attach the required Form 970 to its partnership tax return for its initial tax year ended Date 3. The LIFO inventory method has also been consistently used for these inventory items for financial reporting purposes beginning with the year ended Date 3.

Taxpayer had relied on its certified public accountants, and these accountants failed to advise Taxpayer that it was necessary to file the Form 970. The failure to file the required Form 970 was discovered by the Internal Revenue Service during an audit of Taxpayer's returns. Soon thereafter, Taxpayer's authorized representative submitted this request for relief.

Section 472 of the Internal Revenue Code 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.

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 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.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer 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)(2) provides that for purposes of this provision, a taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not (1) competent to render advice on the regulatory election or (2) aware of all relevant facts.

Under 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).

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 you establish that Taxpayer 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 Taxpayer to file the necessary Form 970, 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 to the transaction. Specifically, no opinion is expressed regarding the propriety of the LIFO inventory method used by Taxpayer or of any adjustments made by Taxpayer to the LIFO layers it acquired from

P and S on Date 2. Also, no opinion is expressed regarding the tax status of Taxpayer or of L.

This ruling is directed only to Taxpayer, 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 Taxpayer.

Sincerely,

THOMAS A. LUXNER
Chief, Branch 6
Office of Associate Chief Counsel
(Income Tax & Accounting)