**Internal Revenue Service**

Number: **200329042**
Release Date: 7/18/2003
Index Numbers: 0472.01-00
9100.11-00

**Department of the Treasury**

**Washington, DC 20224**

**Person to Contact:**

**Telephone Number:**

**Refer Reply To:**
CC:ITA:B07 – PLR-161834-02
**Date:**
April 10, 2003

Attention:

LEGEND:

P =

$S_1$ =

$S_2$ =

$S_3$ =

$S_4$ =

K =

W =

X =

Y =

Z =

A =

B =

C =

D =

E =

F =

G =

H =

Dear :

This ruling is in reply to the letter submitted by K's authorized representative that requested an extension of time under § 301.9100-1(c) of the Procedure and Administration Regulations for K to file the required Form 970, Application to use LIFO Inventory Method which is to be effective for the taxable year ended B. This request is made in accordance with § 301.9100-3.

K is a joint venture partnership of four subsidiaries of P. P was formed on A, under the laws of the State of X and is the parent corporation of an affiliated group of corporations that files consolidated federal income tax returns on the basis of a calendar year. During the tax years ending B, C, D, and E, P filed consolidated federal income tax returns. Included in these returns are various subsidiaries, including $S_1$, $S_2$, $S_3$, and $S_4$, the partners in K. P and its subsidiaries are also referred to as the "Consolidated Group."

Each of the subsidiaries is engaged in the business of selling and servicing new and used vehicles and selling vehicle parts and accessories in the State of X. Each subsidiary adopted the LIFO method of accounting pursuant to § 472 of the Internal Revenue Code prior to its tax year ended on date B. At that time, each subsidiary had two LIFO pools of used vehicles, one used car pool and one used truck pool. For LIFO accounting purposes, the subsidiaries collectively had a total of eight pools of used vehicles: four used car pools and four used truck pools.

On date F, the subsidiaries transferred their respective used vehicle pools to a joint-venture partnership referred to as K (the taxpayer) formed to conduct business at one common location. These transfers were undertaken to take advantage of economies of scale. As a result of these transfers, the eight LIFO accounting pools of used vehicles were consolidated into two LIFO accounting pools of used vehicles, one used car pool and one used truck pool. The subsidiaries $S_1$, $S_2$, $S_3$, and $S_4$ each reported a share of the profits and losses on K's operations on their own returns for tax years ended B,C,D,and E pursuant to an oral agreement (still not reduced to writing) setting the share of each subsidiary.

In connection with the transfer of used vehicles to the partnership, the Consolidated Group sought the advice of Y, a firm of tax professionals knowledgeable about LIFO. The Consolidated Group made Y aware of all the relevant facts about the formation of the partnership and the contribution of the used vehicles to the partnership. After considering the matter, Y advised the Consolidated Group that the transfer of the used vehicles to the partnership would not impact the Consolidated Group's income tax liability or LIFO reserve, including the proper manner of reporting these items, because these transfers were within the Consolidated Group and were undertaken merely for the convenience of management. Based on Y's good faith belief that the transfers had no income tax significance, the Consolidated Group made no change in the manner it reported its income from operations (including the partnership's operations) for its taxable year ending B. Consequently, the Consolidated Group did not file an initial partnership return with respect to K, the taxpayer for that year, nor did it file a Form 970 on behalf of the partnership as part of this initial return.

Late in P's taxable year ending B, Y advised the Consolidated Group to change its accounting method for determining cost of used vehicles because of TAM 9853003. To obtain consent to this change, the Consolidated Group filed an Application for Change in Accounting Method, Form 3115 for the taxable year ending C. The Form 3115 was attached to the consolidated income tax return for the taxable year ending C. On the Form 3115, the Consolidated Group additionally provided information regarding the transfer of the used cars and the used trucks from the subsidiaries to one location and the combination of the eight LIFO pools into two LIFO pools. This disclosure was made because Y felt, after reconsidering the question, that a Form 3115 should have been filed in connection with the transfer of the used vehicles from the subsidiaries to the partnership.

In a letter dated G, the Service denied the Consolidated Group's application because the Consolidated Group failed to respond to requests for additional information. The Consolidated Group represents that the failure to respond to requests for additional information was not purposeful. W, the former President of Y, sold Y and retired from work during H. During this time period, the Service attempted to contact W regarding the Consolidated Group's Form 3115 via telephone and left several voice mail messages. At the time those calls were made, W had already left Y and was no longer checking voice mail messages. Unbeknownst to Y's management, W's voice mail mistakenly had not been turned off. As a result, the first actual notice received by Y from the Service regarding P's Form 3115 was the letter dated G. P was unaware of any problems with the Form 3115 because it was relying on Y to handle any issues relating to that filing and Y had not been notified of any problems.

The Consolidated Group retained Z as legal counsel after receiving the letter from the Service dated G. On balance, Z concluded that the transfer of the used vehicles to K created a joint-venture partnership within the meaning of § 761 of the Internal Revenue Code. As a result, the Consolidated Group should have filed an initial partnership tax return (Form 1065) on behalf of the partnership for its taxable year ended B and with that initial return should have filed a Form 970 to adopt the LIFO inventory method.

The Consolidated Group desires to correct this by having K file the initial Form 1065 and Form 970 for the partnership for the taxable year ending B. K will also file Forms 1065 for the tax years ended C, D, and E. K requested this ruling before its failure to file Form 970 was discovered by the IRS. Further, the Consolidated Group's tax returns for the tax years ended B, C, D, and E will not have to be amended.

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.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of the time to make a regulatory election under subtitle A of the Code (including § 472), 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 § 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 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 § 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, 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.

The information and representations furnished by the Consolidated Group in this request establish that it has acted reasonably and in good faith. 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 Form 970, on behalf of K, for the taxable year ended B. 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. No opinion is expressed regarding the propriety of the LIFO inventory methods used by any member of The Consolidated Group including K.

This ruling is directed only to K, who 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 designated representative.

Sincerely,

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

cc: