

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; (Also Part , §§ 1361, 1362; 301.7701-1, 301.7701-2, 301.7701-3, 301.9100-1, 301.9100-3.)

Rev. Proc. 2004-48

SECTION 1. PURPOSE

This revenue procedure provides a simplified method for taxpayers to request relief for a late S corporation election and a late corporate classification election which was intended to be effective on the same date that the S corporation election was intended to be effective. Generally, this revenue procedure provides that certain eligible entities may be granted relief if the entity satisfies the requirements of section 4 of this revenue procedure.

SECTION 2. BACKGROUND

.01 S Corporation Elections.

(1) In general. Section 1361(a)(1) of the Internal Revenue Code provides that the term "S corporation" means, with respect to any taxable year, a small business corporation for which an election under § 1362(a) is in effect for that year.

Section 1362(b)(1) provides that a corporation may make an election to be treated as an S corporation for any taxable year (A) at any time during the preceding taxable year, or (B) at any time during the taxable year and on or before the 15th day of the 3rd month of the taxable year.

Section 1362(b)(3) provides that if (A) a small business corporation makes an election under § 1362(a) for any taxable year, and (B) the election is made after the 15th day of the 3rd month of the taxable year and on or before the 15th day of the 3rd month of the following taxable year, then the election shall be treated as made for the following taxable year.

(2) Late S corporation elections. Section 1362(b)(5) provides that if (A) an election under § 1362(a) is made for any taxable year (determined without regard to § 1362(b)(3)) after the date prescribed by § 1362(b) for making the election for the taxable year or no election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make the election, the Secretary may treat the election as timely made for the taxable year (and § 1362(b)(3) shall not apply).

.02 Entity Classification Elections.

(1) In general. Section 301.7701-2(a) of the Procedure and Administration Regulations defines a “business entity” as any entity recognized for federal tax purposes that is not properly classified as a trust under § 301.7701-4 or otherwise subject to special treatment under the Code.

Section 301.7701-3(a) provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an “eligible entity”) can elect its classification for federal tax purposes as provided in this section.

Section 301.7701-3(b)(1) provides that, except as otherwise provided in paragraph (b)(3) of that section, unless the entity elects otherwise, a domestic eligible entity is (i) a partnership if it has two or more members; or (ii) disregarded as an entity separate from its owner if it has a single owner.

Section 301.7701-3(c)(1) provides that an eligible entity may elect to be classified other than as provided in § 301.7701-3(b) by filing Form 8832, Entity Classification Election, with the service center designated on Form 8832.

Section 301.7701-3(c)(iii) provides that the entity classification election will be effective on the date specified by the entity on the Form 8832 or on the date filed if no date is specified on the election form. The effective date specified on Form 8832 cannot be more than 75 days before or more than 12 months after the date the election is filed. If an election specifies a date more than 75 days prior to the date it was filed, the election will be effective 75 days prior to the date it was filed. If an election specifies a date more than 12 months after the date it was filed, the election will be effective 12 months after it is filed.

(2) Late Entity Classification Elections. Under § 301.9100-1(c) the Commissioner may grant a reasonable extension of time under the rules set forth in § 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I.

Section 301.9100-1(b) defines the term “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 301.9100-3 provides that requests for relief under that section will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

Rev. Proc. 2002-59, 2002-2 C.B. 615, provides relief for an entity newly formed under local law that requests relief for a late initial classification election filed by the due date of the entity's first federal income tax return (excluding extensions).

Rev. Proc. 2003-43, 2003-23 I.R.B. 998 provides a simplified method for taxpayers to request relief for late S corporation elections where the entity fails to qualify as an S corporation solely because of the failure to file the election timely with the applicable service center. Under the revenue procedure certain eligible entities may be granted relief for failing to file these elections in a timely manner if the request for relief is filed within 24 months of the due date of the election.

Under § 301.7701-3T(c)(1)(v)(C), an eligible entity that timely elects to be an S corporation under section 1362(a)(1) is treated as also having made an election to be classified as an association, provided that (as of the effective date of the election under section 1362(a)(1)) the entity meets all other requirements to qualify as a small business corporation under section 1361(b). Section 301.7701-3T(c)(1)(v)(C) further provides that the deemed election to be classified as an association generally is effective as of the effective date of the S corporation election and will remain in effect until the entity makes another entity classification election under § 301.7701-3(c)(1)(i).

SECTION 3. SCOPE

.01 In General. An eligible entity that seeks to be classified as a subchapter S corporation must elect to be classified as an association under § 301.7701-3(c)(1)(i) by filing Form 8832 and must elect to be an S corporation under § 1362(a) by filing Form 2553, Election by a Small Business Corporation. In many situations, an entity may timely file Form 2553 but fail to file the Form 8832. Section 301.7701-3T(c)(1)(v)(C) applies to these situations and deems an eligible entity that timely files a Form 2553 to also have filed a Form 8832. In other situations, an eligible entity fails to file a timely Form 2553. In these situations, § 301.7701-3T(c)(1)(v)(C) does not apply and the entity would be required to obtain relief in a letter ruling. This revenue procedure provides a simplified method for requesting relief for those situations not covered by § 301.7701-3T, provided that the requirements of sections 4.01 and 4.02 of this revenue procedure are satisfied. The method provided in this revenue procedure is in lieu of to the letter ruling process ordinarily used to obtain relief for late elections under §§ 1362(b)(5), 301.9100-1, and 301.9100-3. Accordingly, user fees do not apply to corrective action under this revenue procedure.

.02 Relief if this Revenue Procedure is not Applicable An entity that does not meet the requirements for relief or is denied relief under this revenue procedure may seek relief by requesting a letter ruling. The procedural requirements for requesting a letter ruling are described in Rev. Proc. 2004-1, 2004-1 I.R.B. 1., or its successors.

SECTION 4. RELIEF FOR LATE S CORPORATION ELECTION AND LATE CORPORATE CLASSIFICATION ELECTION

.01 Eligibility for Relief. An entity may request relief under this revenue procedure if the following requirements are met:

- (1) The entity is an eligible entity as defined in § 301.7701-3(a);
- (2) The entity intended to be classified as a corporation as of the intended effective date of the S corporation status;
- (3) The entity fails to qualify as a corporation solely because Form 8832 was not timely filed under § 301.7100-3(c)(1)(i), or Form 8832 was not deemed to have been filed under § 301.7701-3T(c)(1)(v)(C);
- (4) In addition to section 4.01(3) of this section, the entity fails to qualify as an S corporation on the intended effective date of the S corporation status solely because the S corporation election was not filed timely pursuant to § 1362(b); and
- (5) The entity has reasonable cause for its failure to file timely the S corporation election and the entity classification election.

.02 Procedural Requirements for Relief. Within 6 months after the due date for the tax return, excluding extensions, for the first year the entity intended to be an S corporation), the corporation must file a properly completed Form 2553 with the applicable service center. The Form 2553 must state at the top of the document "FILED PURSUANT TO REV. PROC. 2004-48." Attached to the Form 2553 must be a statement explaining the reason for the failure to file timely the S corporation election and a statement explaining the reason for the failure to file timely the entity classification election.

.03 Relief for Late S Corporation Election and Relief for a Late Corporate Classification Election. Upon receipt of a completed application requesting relief under section 4 of this revenue procedure, the Service will determine whether the requirements for granting additional time to file the elections have been satisfied and will notify the entity of the result of this determination. An entity receiving relief under this revenue procedure is treated as having made an election to be classified as an association taxable as a corporation under § 301.7701-3(c) as of the effective date of the S corporation election.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective July 20, 2004. Any entity that meets the requirements of this revenue procedure as of July 20, 2004 may seek relief under this revenue procedure. This revenue procedure applies to requests pending with the

Service on July 20, 2004.

SECTION 6. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1548.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are in section 4.02. This information is required to be submitted to the applicable service center in order to obtain relief for a late Election Under Subchapter S. This information will be used to determine whether the eligibility requirements for obtaining relief have been met. The collection of information is required to obtain a benefit. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting burden is 25,000 hours.

The estimated annual burden per respondent varies from .5 hours to 1 hour, depending on individual circumstances, with an estimated average burden of 1 hour to complete the statement. The estimated number of respondents is 25,000.

The estimated annual frequency of responses is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Rebekah A. Myers of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure contact Ms. Myers on (202) 622-3050 (not a toll free call).