



IRS Offers Relief for Late S Corporation Elections

IR-2007-166, Oct. 9, 2007

WASHINGTON — Businesses that are eligible to elect S corporation tax treatment now have a simpler process for requesting relief for late elections under a change announced by the Internal Revenue Service today.

Revenue Procedure 2007-62 allows small businesses that missed filing Form 2553, Election by a Small Business Corporation, before filing their first Form 1120S, U.S. Income Tax Return for an S Corporation, to file both forms simultaneously. The change is effective for taxable years that end on or after Dec. 31, 2007. Internal Revenue Bulletin 2007-41, published on Oct. 9, 2007, includes this new guidance.

The IRS cautioned that the requirement for filing Form 2553 to establish the election in advance of filing the initial Form 1120S remains in effect. However, the new process will save time and effort for those taxpayers who can establish reasonable cause for making a late election.

Form 2553 will be updated to reflect the new rules, so taxpayers filing paper Forms 2553 should download the most recent revision from IRS.gov. Form 2553 can also be submitted electronically as an attachment to an e-filed Form 1120S.

There is relief under earlier guidance for late elections for taxpayers who meet certain conditions. Previously, taxpayers had to submit Form 2553 along with a statement explaining the reasons for the late election. The new guidance provides a simplified method to request relief by permitting taxpayers to file their first Form 1120S along with Form 2553 and include the statement on the form.

Small business corporations that are eligible for tax treatment under Subchapter S of the Internal Revenue Code enjoy the advantages of the corporate structure while being taxed similarly to a partnership or sole proprietorship.

The new procedure will reduce taxpayer burden by allowing the agency to process a properly completed tax return and its corresponding election without delays or additional contacts with taxpayers to resolve the issue of a missing election.

The change, based on suggestions from tax professionals and small business owners, resulted from the work of an IRS process improvement team led by the Office of Taxpayer Burden Reduction.

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Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also Part I, §§ 1361, 1362; 1.1361-1, 1.1361-3, 1.1362-4, 1.1362-6, 301.9100-1, 301.9100-3.)

Rev. Proc. 2007-62

SECTION 1. PURPOSE

This revenue procedure provides an additional simplified method for taxpayers to request relief for late S corporation elections and supplements Rev. Proc. 2003-43, 2003-1 C.B. 998. In addition, this revenue procedure provides a simplified method for taxpayers to request relief for a late S corporation election and a late corporate classification election intended to be effective on the same date that the S corporation election was intended to be effective and supplements Rev. Proc. 2004-48, 2004-2, C.B. 172. Generally, this revenue procedure provides that certain eligible entities may be granted relief if the entity satisfies the requirements of sections 4 or 5 (as applicable) of this revenue procedure.

SECTION 2. BACKGROUND

.01 S Corporation Elections.

(1) In General. Section 1361(a)(1) of the Internal Revenue Code (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 small business corporation may make an election to be 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 1.1362-6(a)(2) of the Income Tax Regulations provides that a small business corporation makes an election to be an S corporation by filing a completed Form 2553, Election by a Small Business Corporation.

Under § 1362(b)(3), if an S corporation 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 S corporation election is 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).

Rev. Proc. 97-48, 1997-2 C.B. 521 provides special procedures to obtain automatic relief for certain late S corporation elections. Generally, relief is available in

situations in which a corporation intends to be an S corporation, the corporation and its shareholders reported their income consistent with S corporation status for the taxable year the S corporation election should have been made and for every subsequent year, and the corporation did not receive notification from the Internal Revenue Service regarding any problem with the S corporation status within 6 months of the date on which the Form 1120S, U.S. Income Tax Return for an S Corporation, for the first year was timely filed.

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

.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.

Section 301.7701-3(b)(1) provides that, except as otherwise provided in paragraph (b)(3) of the 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, except as provided in § 301.7701-3(c)(1)(iv) and (v), 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 campus 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 can not be more than 75 days prior to the date on which the election is filed and can not be more than 12 months after the date on which the election is filed. If an election specifies an effective date more than 75 days prior to the date on which the election is filed, the election will be effective 75 days prior to the date it was filed. If an election specifies an effective date more than 12 months from the date on which the election is filed, the election will be effective 12 months after the date the election was 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 6 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.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Rev. Proc. 2002-59, 2002-2 C.B. 615, provides guidance 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).

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

Rev. Proc. 2004-48 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 the S corporation election was intended to be effective. Under Rev. Proc. 2004-48, generally, certain eligible entities may be granted relief if the requirements of section 4 of the revenue procedure are satisfied. To obtain

relief under Rev. Proc. 2004-48, the entity must file a properly completed Form 2553 with the applicable campus within 6 months after the due date for the tax return, excluding extensions, for the first taxable year the entity intended to be an S corporation. 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.

SECTION 3. SCOPE

.01 In General. This revenue procedure supplements Rev. Proc. 2003-43 and provides an additional simplified method for obtaining relief for a late S corporation election, provided that the requirements of section 4 of this revenue procedure are satisfied. This revenue procedure also supplements Rev. Proc. 2004-48 and provides an additional simplified method for obtaining relief for a late S corporation election and a late corporate classification election, provided that the requirements of section 5 of this revenue procedure are satisfied.

Section 4.01 of this revenue procedure provides the eligibility requirements for relief for a late S corporation election, and section 4.02 of this revenue procedure provides the procedural requirements for relief. Section 5.01 of this revenue procedure provides the eligibility requirements for relief for a late S corporation election and a late corporate classification election, and section 5.02 of this revenue procedure provides the procedural requirements for relief.

This revenue procedure provides procedures in lieu of the letter ruling process ordinarily used to obtain relief for a late S corporation election and a late corporate classification election filed pursuant to ' 1362(b)(5), ' 301.9100-1 and ' 301.9100-3.

Accordingly, user fees do not apply to corrective actions under this revenue procedure. .02 Entities T

(1) Rev. Procs. 97-48, 2003-43, and 2004-48. An entity that does not meet the requirements for relief under this revenue procedure may request relief for a late S corporation election following the procedures of Rev. Proc. 97-48, or Rev. Proc. 2003-43, or, for relief for a late S corporation election and a late corporate classification election following the procedures of Rev. Proc. 2004-48.

(2) Letter Rulings. If an entity does not qualify for relief for a late S corporation election, or relief for a late S corporation election and a late corporate classification election, under Rev. Proc. 97-48, Rev. Proc. 2003-43, or Rev. Proc. 2004-48, as appropriate, the entity may request relief by requesting a letter ruling. The Service will not ordinarily issue a letter ruling if the period of limitations on assessment under § 6501(a) has lapsed for any taxable year for which an election should have been made or any taxable year that would have been affected by the election had it been timely made. The procedural requirements for requesting a letter ruling are described in Rev. Proc. 2007-1, 2007-1 I.R.B. 1 (or its successor).

SECTION 4. RELIEF FOR LATE S CORPORATION ELECTION UNDER THIS REVENUE PROCEDURE

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

(1) The entity fails to qualify for its intended status as an S corporation on the first day that status was desired solely because of the failure to file a timely Form 2553 with the applicable campus;

- (2) The entity has reasonable cause for its failure to file a timely Form 2553;
- (3) The entity seeking to make the S corporation election has not filed a tax return for the first taxable year in which the election was intended;
- (4) The application for relief is filed under this revenue procedure no later than 6 months after the due date of the tax return (excluding extensions) of the entity seeking to make the election for the first taxable year in which the election was intended; and
- (5) No taxpayer whose tax liability or tax return would be affected by the S corporation election (including all shareholders of the S corporation) has reported inconsistently with the S corporation election, on any affected return for the year the S corporation election was intended.

.02 Procedural Requirements for Relief.

An entity may request relief for a late S corporation election by filing with the applicable campus a properly completed Form 2553 (see Form 2553 and Instructions) with a Form 1120S for the first taxable year the entity intended to be an S corporation. A properly completed Form 2553 includes a statement establishing reasonable cause for the failure to file the S corporation election timely. The Form 2553 will be modified to allow for the inclusion of such statement. The forms must be filed together no later than 6 months after the due date of the tax return (excluding extensions) of the entity for the first taxable year in which the S corporation election was intended. These items constitute the application requesting relief.

.03 Relief for Late S Corporation Election. Upon receipt of a completed application requesting relief under section 4.02 of this revenue procedure, the Service will determine whether the requirements for granting relief for the late S corporation

election have been satisfied.

SECTION 5. RELIEF FOR LATE S CORPORATION ELECTION AND LATE CORPORATE CLASSIFICATION ELECTION UNDER THIS REVENUE PROCEDURE

.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 § 301.7701-3(c)(1)(i), or Form 8832 was not deemed to have been filed under § 301.7701-3(c)(1)(v)(C);
- (4) In addition to section 5.01(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 timely filed pursuant to § 1362(b);
- (5) The entity has reasonable cause for its failure to file a timely Form 2553 and a timely Form 8832;
- (6) The entity seeking to make the S corporation election has not filed a tax return for the first taxable year in which the election was intended;
- (7) The application for relief is filed under this revenue procedure no later than 6 months after the due date of the S corporation return (excluding extensions) of the entity seeking to make the election for the first taxable year in which the election was intended, and
- (8) No taxpayer whose tax liability or tax return would be affected by the S

corporation election (including all shareholders of the S corporation) has reported inconsistently with the S corporation election, on any affected return for the year the S corporation election was intended.

.02 Procedural Requirements for Relief.

An entity may request relief for a late S corporation election and a late corporate classification election by filing a properly completed Form 2553 (see Form 2553 and Instructions) with a Form 1120S for the first taxable year the entity intended to be an S corporation. A properly completed Form 2553 includes a statement explaining the reason for the failure to file the S corporation election timely and a statement explaining the reason for the failure to file the entity classification election timely. The Form 2553 will be modified to allow for the inclusion of such statements. The forms must be filed together no later than 6 months after the due date of the tax return (excluding extensions) of the entity for the first taxable year in which the S corporation election was intended. These items constitute the application requesting relief.

.03 Relief for Late S Corporation Election and Late Corporate Classification Election. Upon receipt of a completed application requesting relief under section 5.02 of this revenue procedure, the Service will determine whether the requirements for granting relief for the late S corporation election and late corporate classification election have been satisfied. 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 6. EFFECT ON OTHER DOCUMENTS

This revenue procedure supplements Rev. Procs. 2003-43 and 2004-48.

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for S corporation elections and corporate classification elections intended to be effective for taxable years that end on or after December 31, 2007.

SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is Jian H. Grant of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure, contact Ms. Grant at (202) 622-3050 (not a toll free call).