

IRM PROCEDURAL UPDATE

DATE: 06/09/2014

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SUBJECT: Revenue Procedure 2013-30 – Relief for Late S Corporation Election

AFFECTED IRM(s)/SUBSECTION(s): 21.7.4.4.4.11.2.1

CHANGE(s):

IRM 21.7.4.4.4.11.2.1 Updated the subsection with information on Revenue Procedure 2013-30 – Relief for Late S Corporation Election.

1. IRC 1362(b)(1) provides that a small business corporation may make an election to be an "S" Corporation for any taxable year:
 - At any time during the preceding taxable year, or
 - At any time during the taxable year and on or before the 15th day of the 3rd month of the taxable year.
2. Under IRC 1362(b)(3), if an S corporation election is made after the 15th day of the third 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.
3. If an election is made after the date prescribed in IRC 1362(b) or no election is made for any taxable year, the secretary may determine whether there is reasonable cause to treat the election as timely.
4. IRC 1362(b)(5) provides that if (A) an election under IRC 1362(a) is made for any taxable year (determined without regard to IRC 1362(b)(3)) after the date prescribed by IRC 1362(b) for making the election for the taxable year, or no election is made for any taxable year, and (B) the Secretary may treat the election as timely made for the taxable year (and IRC 1362(b)(3) shall not apply) if the Secretary determines that there was reasonable cause for the failure to timely make the election.
5. Previously the following revenue procedures provided procedures by which taxpayers could request relief:
 - Rev. Proc. 97-48
 - Rev. Proc. 2002-59
 - Rev. Proc. 2003-43
 - Rev. Proc. 2004-48
 - Rev. Proc. 2007-62
6. Rev. Proc. 2013-30 facilitates the granting of relief to taxpayers that request relief previously provided in numerous other revenue procedures by consolidating the provisions of those revenue procedures into one revenue procedure and extending relief in certain circumstances. It is the controlling

- revenue procedure for all late elections including those that were pending under the older revenue procedures.
7. Rev. Proc. 2013-30 provides special procedures to obtain automatic relief for certain S corporation's elections. Generally, relief is available in situations where 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 taxpayer did not receive notification within the past six-months of the date on which the Form 1120S for the first year was timely filed.
 8. Rev. Proc. 2013-30 provides a simplified method to request relief for a late S corporation election when the entity fails to qualify solely because of the failure to timely file the election. This provision allows that certain entities may be granted relief for failure to timely file the election if the request for relief is filed within 24 months of the due date of the election.
 9. An eligible entity may elect to be classified by filing Form 8832, *Entity Classification Election*. The election is effective on the date specified on the Form 8832. The election cannot be more than 75 days prior to the date on which the election is filed and cannot be more than 12 months after the date on which the election is filed. The Commissioner may grant a reasonable extension of time to make a regulatory election or a statutory election.
 10. Rev. Proc 2013-30 modifies and supersedes the revenue procedures below for taxpayers to request relief for late S corporation elections, Electing Small Business Trust (ESBT) elections, Qualified Subchapter S Trust (QSST) elections, Qualified Subchapter S Subsidiary (QSub) elections, and late corporate classification elections which the taxpayer intended to take effect on the same date that the taxpayer intended that an S corporation election for the entity should take effect:
 - Rev. Proc. 2003-43, 2003-1 C.B. 998
 - Rev. Proc. 2004-2, 2004-2 C.B. 172
 - Rev. Proc. 2007-2, 2007-2 C.B. 786
 11. Revenue Procedure 2013-30 also:
 - Incorporates certain relief provisions included in: Rev. Proc 97-48, 1997-2 C.B. 521 and Rev. Proc. 2004-49, 2004-2 C.B. 210.
 - Supersedes the relief provided in Situation 1 of Rev. Proc. 97-48.
 - Obsoletes the relief provided in Situation 2 of Rev. Proc. 97-48 because such relief is no longer available.
 - Modifies and supersedes the relief provided in sections 4.01 and 4.02 of Rev. Proc. 2004-49.
 - Obsoletes the relief provided in section 4.03 of Rev. Proc. 2004-49 because the time period for its narrow scope of relief has expired.
 12. Rev. Proc. 2013-30 provides the exclusive simplified methods for taxpayers to request relief for late S corporation elections, ESBT elections, QSST elections, QSub elections, and late corporate classification elections which the taxpayer intended to take effect on the same date that the taxpayer intended that an S corporation election for the entity should take effect.
 13. This revenue procedure provides procedures for situations within its scope that are in lieu of the letter ruling process ordinarily used to obtain relief for a late Election Under Subchapter S (as defined in Section 4.01(5)) pursuant to

- IRC 1362(b)(5), IRC 1362(f), or section 301.9100-1 and section 301.9100-3. Accordingly, user fees do not apply to corrective actions under this revenue procedure.
14. Section 4.01 of Rev. Proc. 2013-30 provides the definitions of various terms. Section 4.02 provides the requirements for relief and section 4.03 provides the general procedural requirements for relief. Section 5 of this revenue procedure provides a simplified method for taxpayers to request relief for late S corporation elections (which may or may not include a Deemed Entity Classification Election (as defined in Section 4.01(1) of this revenue procedure).
 15. A requesting entity seeking relief for a late S corporation election under section 5.01 of this revenue procedure must file a completed Form 2553, signed by (1) an officer of the corporation authorized to sign, and (2) all persons who were shareholders at any time during the period that began on the first day of the taxable year for which the election is to be effective and ends on the day the completed Election Form is filed.
 16. Taxpayer's may file the required forms electronically through Modernized e-File (MeF) or on paper. Code and Edit (C & E) will edit Error Resolution System (ERS) Action Code (AC) 347 on paper returns and MeF will generate ERS AC 347 for electronically filed Forms 1120S citing Rev. Proc. 2013-30. See IRM 3.12.2.7.5.1, ERS Action Code 347 - Revenue Procedure 2013-30, for more information.
 17. Section 6 of this revenue procedure provides a simplified method for taxpayers to request relief for late ESBT and QSST elections. Section 7 of this revenue procedure provides a simplified method for taxpayers to request relief for late QSub elections.
 18. Per section 8.01, except as provided in Section 8.02, this revenue procedure is effective September 3, 2013, the date of publication of this revenue procedure in the Internal Revenue Bulletin. This revenue procedure applies to requests pending with the IRS Service Center pursuant to Rev. Proc. 97-48, Rev. Proc. 2003-43, Rev. Proc. 2004-48, and Rev. Proc. 2007-62 on September 3, 2013, and to requests received thereafter. It also applies to all ruling requests pending in the IRS national office on September 3, 2013, and to requests for relief received thereafter.
 19. 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. 2014-1, 2014-1 I.R.B. 1, or its successors.
 20. Rev. Proc. 2013-30 provides relief if the taxpayer satisfies the general requirements of Section 4 and the specific requirements applicable to that taxpayer under Sections 5 through 7 of this revenue procedure. See IRM 3.12.2.7.5.1, ERS Action Code 347 - Revenue Procedure 2013-30, for Entity's procedures for processing returns requesting relief under Rev. Proc. 2013-30.