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From:

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To:

Cc:

Subject: RE: Invalid Check the box to be S Corp and also S Corp Election invalid, now partnership by default?

says that the default would be to a partnership. First, 301.7701-3 (c)(2) says that the election must be filed by all members or by an officer authorized (under local law or entity's organizational docs) to make such an election. If the election wasn't authorized and thus is invalid, the LLC would default into partnership.

So if the election is a valid S corp election, we would issue notices of deficiency directly to the ultimate husband/wife partners in the shareholder partnerships. It appears that the husband/wife partnerships are not TEFRA since they would fall under the small partnership exception to TEFRA absent an affirmative election into TEFRA. No notice of deficiency would go to the entity electing S corp status unless they have a tax on built-in gain under section 1374.

If the election is invalid, the entity would be a TEFRA partnership since it has pass-through entities as partners (the husband/wife partnerships). We would issue an FPAA within 3 years of the date a partnership return is filed. [REDACTED]