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*26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability. (Also Part I, § 1362; 1.1362–6.)*

Rev. Proc. 97–48

## SECTION 1. PURPOSE

This revenue procedure grants automatic relief under § 1362(b)(5) of the Internal Revenue Code for certain late S corporation elections.

## SECTION 2. BACKGROUND

Section 1361(a)(1) defines an “S corporation,” with respect to any taxable year, as a small business corporation for which an S election is in effect for that year.

Section 1362(a)(1) provides that, except in a situation described in § 1362(g), a small business corporation may elect to be treated as an S corporation.

Section 1362(b)(1) provides that the corporation may make an election to be treated as an S corporation (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. Under § 1362(b)(3), if an S corporation election is made for a taxable year after the 15th day of the 3rd month of that 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.

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).

### SECTION 3. SCOPE

This revenue procedure provides special procedures to obtain relief for certain late S corporation elections. The revenue procedure only applies to the following two situations:

(1) 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 Service regarding any problem with the S corporation status within 6 months of the date on which the Form 1120S for the first year was timely filed; and

(2) For periods prior to January 1, 1997, a corporation intends to be an S corporation; however, due to a late S corporation election the corporation was not permitted to be an S corporation for the first taxable year specified in the election (because late S corporation election relief was not available during this period), the corporation and the shareholders treated the corporation as an S corporation for all succeeding years, and all relevant taxable years for both the corporation and all of its shareholders are open.

This revenue procedure does not provide relief for late shareholder elections including a qualified subchapter S trust (QSST) election or electing small business trust (ESBT) election.

The procedures in this revenue procedure are in lieu of the letter ruling procedure that is used to obtain relief for a late S corporation election under § 1362(b)(5). Accordingly, user fees do not apply to corrective action under this revenue procedure.

A corporation that is not eligible for relief under this revenue procedure may request relief by applying for a private letter ruling. The Service will not ordinarily

issue a private letter ruling under § 1362(b)(5) if the period of limitations on assessment under § 6501(a) has lapsed for any taxable year in 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 private letter ruling are described in Rev. Proc. 97-1, 1997-1 I.R.B. 11 (or its successor). See, also, Rev. Proc. 97-40, 1997-33 I.R.B. 50, for the special procedure to request relief for late S corporation elections that are filed within 6 months of the original due date of the election.

### SECTION 4. AUTOMATIC RELIEF FOR LATE S CORPORATION ELECTIONS UNDER THIS REVENUE PROCEDURE

*.01 Situation 1: Automatic Relief Where Return Filed as an S Corporation.*

(1) *Eligibility for Automatic Relief.* Automatic relief is available in situation 1 if all of the following conditions are met:

(a) The corporation fails to qualify as an S corporation solely because the Form 2553 (Election by a Small Business Corporation) was not filed timely;

(b) The corporation and all of its shareholders reported their income consistent with S corporation status for the year the S corporation election should have been made, and for every subsequent taxable year (if any);

(c) At least 6 months have elapsed since the date on which the corporation filed its tax return for the first year the corporation intended to be an S corporation; and

(d) Neither the corporation nor any of its shareholders was notified by the Internal Revenue Service of any problem regarding the S corporation status within 6 months of the date on which the Form 1120S for the first year was timely filed.

(2) *Procedural Requirements for Automatic Relief.* The corporation must file with the applicable service center (or district director if under examination) a completed Form 2553, signed by an officer of the corporation authorized to sign and all persons who were shareholders at any time during the period that the corporation intended to be an S corporation. The Form 2553 must state at the top of the document "FILED PURSUANT TO REV.

PROC. 97-48." Attached to the Form 2553 must be a dated declaration signed by an officer of the corporation authorized to sign and all persons who were shareholders at any time during the period that the corporation intended to be an S corporation, attesting (but, in the case of a shareholder, only with respect to that shareholder) that:

(a) the corporation and the shareholder reported their income (on all affected returns) consistent with S corporation status for the year the S corporation election should have been made, and for every subsequent taxable year; and

(b) "Under penalties of perjury, to the best of my knowledge and belief, the facts presented in support of this election are true, correct, and complete."

*.02 Situation 2: Automatic Relief Where First Intended S Corporation Year Filed as a C Corporation.*

(1) *Eligibility for Automatic Relief.* Automatic relief is available in situation 2 if all of the following conditions are met:

(a) The corporation fails to qualify as an S corporation solely because the Form 2553 (Election by a Small Business Corporation) was not filed timely for a taxable year that began prior to January 1, 1997;

(b) The corporation received notification from the Service that the Form 2553 was not filed timely, that the corporation must file as a C corporation for the first taxable year the corporation intended to be an S corporation, and that the election would be treated as an S corporation election for the following taxable year;

(c) The corporation and all of its shareholders reported their income (if any) properly treating the corporation as a C corporation for the first taxable year the corporation intended to be an S corporation;

(d) The corporation and all of its shareholders reported their income consistent with S corporation status for all subsequent years;

(e) The period of limitations on assessment under § 6501(a) has not lapsed for any of the taxable years of the corporation beginning on or after the date the corporation intended to be taxable as an S corporation; and

(f) The period of limitations on assessment under § 6501(a) has not lapsed for any taxable year of any of the corporation's shareholders in which any taxable

year described in paragraph (e) above ends.

(2) *Procedural Requirements for Automatic Relief.* The corporation must file with the applicable service center (or district director if under examination) a completed Form 2553, signed by an officer of the corporation authorized to sign and all persons who were shareholders at any time during the period that the corporation intended to be an S corporation. The Form 2553 must state at the top of the document "FILED PURSUANT TO REV. PROC. 97-48." Attached to the Form 2553 must be a dated declaration signed by an officer of the corporation authorized to sign and all persons who were shareholders at any time during the period that the corporation intended to be an S corporation, attesting (but, in the case of a shareholder, only with respect to that shareholder) that:

(a) the corporation and the shareholder reported their income (on all affected returns) consistent with the requirements for automatic relief under section 4.02 of this revenue procedure;

(b) the corporation and the shareholder agree to amend their tax returns for the first year and any other affected returns to reflect S corporation status; and

(c) "Under penalties of perjury, to the best of my knowledge and belief, the facts presented in support of this election are true, correct, and complete."

.03 *Relief for Late S Corporation Elections.* A corporation that satisfies the requirements of either section 4.01 or 4.02 of this revenue procedure will be deemed to have reasonable cause for the failure to file a timely S corporation election and will automatically be granted relief to file the election for S corporation status to commence on the date that it intended to have the S corporation election become effective. The Service will notify the corporation of the acceptance of its untimely filed S corporation election under this revenue procedure, or the denial of a request that fails to satisfy the requirements of this revenue procedure.

.04 *Deemed Shareholders.* Any reference in this revenue procedure to a shareholder of an S corporation shall be treated as including a reference to those persons whose consent is required under § 1.1362-6(b) of the Income Tax Regulations.

## SECTION 5. EXAMPLES

.01 *S corporation return filed and no notification from the Service.* A, B, and C formed X corporation on January 1, 1996. X intended to file an S corporation election; however, X did not file a timely Form 2553 (Election by a Small Business Corporation). On March 13, 1997, X files a Form 1120S (S corporation income tax return) for the 1996 taxable year, and A, B, and C file their individual tax returns as if X were an S corporation. In November 1997, X realizes that an S corporation election was not timely filed. Neither X nor its shareholders received any notification from the Service of any problem regarding the S corporation status of X. In this case, the shareholders and X meet the requirements of section 4.01 of this revenue procedure. Consequently, X will be granted automatic late S corporation election relief if A, B, C, and X file a request for relief in accordance with the procedures described in this revenue procedure.

.02 *C corporation return for first year.* A formed X corporation on January 1, 1990. X intended to file an S corporation election effective as of January 1, 1995; however, X did not file a Form 2553 (Election by a Small Business Corporation) until May 5, 1995. On June 15, 1995, X received a letter from the Service notifying X that its S corporation election was denied for the 1995 taxable year because the S corporation election was not timely filed, and that the election would be treated as effective for the 1996 taxable year. X filed a Form 1120 (C corporation income tax return) for the 1995 taxable year and A filed the individual tax return for 1995 as if X were a C corporation. For the 1996 taxable year, X filed a Form 1120S (S corporation income tax return) and A filed the individual tax return as if X were an S corporation. The period of limitations on assessment under § 6501(a) has not lapsed for either the 1995 or the 1996 taxable years for either X or for A. In this case, A and X meet the requirements of section 4.02 of this revenue procedure. Consequently, X will be granted automatic late S corporation election relief if X and A file a request for relief in accordance with the procedures described in this revenue procedure.

## SECTION 7. EFFECTIVE DATE

This revenue procedure is effective for all applications for relief satisfying the requirements of section 4 of this revenue procedure, including those applications now being considered by the Service.

## SECTION 8. 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 1545-1562.

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 control number.

The collection of information in this revenue procedure is in Sections 4.01(2) and 4.02(2). This information is required to be submitted to the applicable service center in order to obtain relief for late S corporation elections. This information will be used to satisfy the reasonable cause requirement in § 1362(b)(5). 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 100 hours.

The estimated annual burden per respondent varies from .5 hours to 1.5 hours, depending on individual circumstances, with an estimated average of 1 hour. The estimated number of respondents is 100.

The estimated annual frequency of responses is once.

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 Mark D. Harris of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure contact Mr. Harris at (202) 622-3050 (not a toll-free call).