

Draft Date: 5/21/12

CASE MIS No.: RP-137505-09

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, 301.7701-3, 301.9100-1, 301.9100-3.)

Rev. Proc. [XXXX-XX]

SECTION 1. PURPOSE

The purpose of this revenue procedure is to facilitate taxpayers that are requesting relief provided in numerous other revenue procedures by consolidating those provisions into one revenue procedure and extending relief in certain circumstances. This revenue procedure modifies and supersedes Rev. Proc. 2003-43, 2003-1 C.B. 998; Rev. Proc. 2004-48, 2004-2 C.B. 172; and Rev. Proc. 2007-62, 2007-2 C.B. 786 for taxpayers to make 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 intended to be effective on the same date that an S corporation election for the entity was intended to be effective. This revenue procedure also incorporates certain relief provisions included in Rev. Proc. 97-48, 1997-2 C.B. 521, and supersedes the relief provided in Situation 1

of Rev. Proc. 97-48. This revenue procedure obsoletes the relief provided in Situation 2 of Rev. Proc. 97-48 because relief is no longer available. Furthermore, this revenue procedure also incorporates certain relief provisions included in Rev. Proc. 2004-49, 2004-2 C.B. 210, and modifies and supersedes the relief provided in sections 4.01 and 4.02 of Rev. Proc. 2004-49. This revenue procedure 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.

This revenue procedure 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 intended to be effective on the same date that an S corporation election for the entity was intended to be effective. A taxpayer may be granted relief under this revenue procedure 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. Accompanying this document is a flowchart designed to aid taxpayers in applying 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 that 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 and Rev. Proc. 2003-43 provide simplified methods for taxpayers to request relief for a late S corporation election in certain circumstances.

.02 ESBT and QSST Elections.

(1) In General. Section 1361(b)(1)(B) limits the permitted shareholders of an S corporation to domestic individuals, estates, certain trusts, and certain exempt organizations.

Section 1361(d)(1)(A) provides that a QSST (as defined in § 1361(d)(3)(A)) is a permitted S corporation shareholder if the beneficiary of the QSST makes an election under § 1361(d)(2). Pursuant to § 1361(d)(2)(A) and § 1.1361-1(j)(6)(i), the election by

a current income beneficiary of a QSST may be made by the beneficiary's guardian or legal representative (or a natural or an adoptive parent of the current income beneficiary if a legal representative has not been appointed) if the current income beneficiary is a minor. A QSST election is made by signing and filing an election statement with the applicable IRS Service Center. Section 1.1361-1(j)(6)(iii)(A) provides that the QSST election must be made within the 16-day-and-2-month period beginning on the day that the S corporation stock is transferred to the trust.

Section 1361(c)(2)(A)(v) provides that an ESBT (as defined in § 1361(e)) is a permitted S corporation shareholder. To qualify as an ESBT, the trustee of the trust must make an ESBT election by signing and filing an election statement with the applicable IRS Service Center. Section 1.1361-1(m)(2)(iii) provides that the ESBT election must be filed within the time requirements prescribed in § 1.1361-1(j)(6)(iii) for filing a QSST election (described above).

(2) Late ESBT and QSST Elections. Failure to properly make an election to be treated as an ESBT or a QSST may result in a shareholder who is not an eligible S corporation shareholder under § 1361(b)(1)(B) holding stock of the corporation. As a result, the failure to properly file an ESBT or QSST election may result in an inadvertently invalid S corporation election, or in an inadvertent termination of an S corporation election.

Section 1362(f) grants the Secretary authority to provide relief if a corporation's S corporation election was not effective for the taxable year for which it was made by reason of a failure to meet the requirements of § 1361(b) or to acquire the required shareholder consents. Under § 1362(f), the Secretary may also grant relief if the

corporation's S corporation election terminated under § 1362(d)(2) or (3). A corporation is eligible for relief under this provision if (1) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (2) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (i) so that the S corporation is a small business corporation, or (ii) to acquire the required shareholder consents, and (3) the corporation, and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make any adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to the period. If a corporation is eligible for relief under this provision, then, notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Section 1.1362-4 sets forth additional guidance regarding inadvertent termination relief. Section 1.1362-4(b) provides that the corporation has the burden of establishing that under the relevant facts and circumstances the Commissioner should determine that the termination was inadvertent. The fact that the terminating event was not reasonably within the control of the corporation and was not part of a plan to terminate the election, or the fact that the event took place without the knowledge of the corporation, notwithstanding its due diligence to safeguard against such an event, tends to establish that the termination was inadvertent.

Section 1.1362-4(c) provides that a corporation may request inadvertent termination relief by submitting a request for a letter ruling. Section 1.1362-4(d)

provides that the Commissioner may condition the granting of a ruling request on any adjustments that are appropriate. Section 1.1362-4(e) requires the corporation and all persons who were shareholders of the corporation at any time during the time specified by the Commissioner to consent to any adjustments that the Commissioner may require.

The Internal Revenue Service (Service) will grant relief for both the late ESBT and QSST elections and the inadvertent termination of the S corporation election (or inadvertently invalid S corporation election) if the standard described in § 1362(f) for an inadvertent termination of an S corporation election or an inadvertently invalid S corporation election is satisfied.

Rev. Proc. 2003-43 provides a simplified method for taxpayers to request relief for late ESBT and QSST elections if the request for relief is filed within 24 months of the due date of the election.

.03 Qualified Subchapter S Subsidiary (QSub) Elections.

(1) In General. Section 1361 generally provides that an S corporation may elect to treat certain wholly owned subsidiaries as QSubs (as defined in § 1361(b)(3)(B)). Section 1.1361-3 describes the time and manner for a corporation to make a QSub election. Section 1.1361-3(a)(2) provides that an S corporation may make a QSub election by filing the election form with the applicable IRS Service Center. Form 8869, *Qualified Subchapter S Subsidiary Election*, is used to make a QSub election. Under § 1.1361-3(a)(3), the election to treat a subsidiary as a QSub may be filed at any time during the taxable year. Section 1.1361-3(a)(4) provides that the effective date is the date specified on the form (provided the date specified is not earlier than 2 months and

15 days before the date of the filing and the date specified is not more than 12 months after the date of the filing), or on the date the election form is filed if no date is specified. If an election form specifies an effective date more than 2 months and 15 days prior to the date on which the election form is filed, it will be effective 2 months and 15 days prior to the date it is filed. If an election form specifies an effective date more than 12 months after the date on which the election is filed, it will be effective 12 months after the date it is filed.

(2) Late QSub 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, 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.

Sections 301.9100-1 through 301.9100-3 provide the standards that the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

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. Section 301.9100-3(b)(1) provides that subject to paragraphs (b)(3)(i) through (b)(3)(iii) of § 301.9100-3, a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer meets one of the requirements in § 301.9100-3(b)(1)(i)-(v). Section 301.9100-3(b)(1)(v) includes situations in which the taxpayer reasonably relied on a qualified tax professional (including a tax professional employed by the taxpayer), and the tax professional failed to make, or advise the taxpayer to make, the election.

Rev. Proc. 2003-43 provides a simplified method for taxpayers to request relief for a late QSub election if the request for relief is filed within 24 months of the due date of the election. Rev. Proc. 2004-49 provides alternative relief where the QSub election terminated as a result of a transfer (whether by sale or as part of a reorganization under § 368(a)(1)(A), (C), or (D) (but not as part of a reorganization under § 368(a)(1)(F)) by the S corporation of 100 percent of the QSub stock to another S corporation. Section 4.01 of Rev. Proc. 2004-49 allows the S corporation to request prospective relief by attaching a completed Form 8869 to its timely filed return (including extensions) for the taxable year during which the transfer occurred, and section 4.02 of Rev. Proc. 2004-49 provides alternative relief as provided by Rev. Proc. 2003-43. Section 4.03 of Rev. Proc. 2004-49 also provides retroactive relief for such transactions if they occurred prior to August 16, 2004, provided that the relief requests were filed before August 16, 2005. Based on the limited time period for relief, section 4.03 of Rev. Proc. 2004-49 is obsolete.

.04 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 § 301.7701-3(b)(3), unless the entity elects otherwise, a domestic eligible entity is (i) a partnership if it has 2 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)(i) 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 applicable IRS Service Center designated on Form 8832.

Section 301.7701-3(c)(1)(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 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. 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, 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.

Sections 301.9100-1 through 301.9100-3 provide the standards that the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2. 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. 2009-41, 2009-2 C.B. 439, provides guidance for late entity classification relief for an eligible entity's initial classification election or change in classification election. Eligible entities meeting the requirements under Section 4 of that revenue procedure must request relief within 3 years and 75 days of the requested effective date of the eligible entity's classification election.

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 and Rev. Proc 2007-62 provide simplified methods 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.

SECTION 3. SCOPE

.01 In General. This revenue procedure expands and consolidates relief provisions included in prior revenue procedures that provide a simplified method for taxpayers to request relief for late S corporation elections, ESBT elections, QSST elections, QSub elections, and late corporate classification elections intended to be effective on the same date that an S corporation election for the entity was intended to be effective.

This revenue procedure provides procedures 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)) filed pursuant to § 1362(b)(5), § 1362(f), or § 301.9100-1 and

§ 301.9100-3. Accordingly, user fees do not apply to corrective actions under this revenue procedure.

Section 4.01 of this revenue procedure provides a glossary of certain terms as they are used in this revenue procedure.

Section 4.02 of this revenue procedure provides the general requirements for relief for all late Elections Under Subchapter S. Section 4.03 of this revenue procedure provides procedural requirements for relief for all late Elections Under Subchapter S.

Section 4.04 of this revenue procedure provides additional procedural requirements for relief when one or more Requesting Entities (as defined in Section 4.01(6)) request relief for multiple late elections with respect to a single S corporation. However, there is no requirement that all Requesting Entities must file requests for relief under this revenue procedure with respect to a single S corporation simultaneously. An application for relief under this revenue procedure by a Requesting Entity will not prejudice subsequent relief requests by the same Requesting Entity, or other Requesting Entities, with respect to a single S corporation.

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)). 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.

.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. 2012-1, 2012-1 I.R.B. 1, or its successors.

SECTION 4. DEFINITIONS AND REQUIREMENTS FOR RELIEF UNDER THIS REVENUE PROCEDURE.

.01 Definitions.

(1) Deemed Entity Classification Election. For purposes of this revenue procedure, a Deemed Entity Classification Election occurs when 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 under § 301.7701-3(c)(1)(v)(C), 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).

(2) Due Date of the Election Under Subchapter S. For purposes of this revenue procedure, the Due Date of the Election Under Subchapter S will vary depending on the type of election sought. For a corporation that requests to be treated as an S corporation (which includes a Deemed Entity Classification Election under § 301.7701-3(c)(1)(v)(C)), the Due Date of the Election Under Subchapter S is specified by § 1362(b). For ESBT or QSST elections, the Due Date of the Election Under Subchapter S is specified by § 1.1361-1(m)(2)(iii) or § 1.1361-1(j)(6)(iii), respectively. The Due Date of the Election Under Subchapter S for a parent S corporation to make an election to treat a subsidiary as a QSub on a given date is specified by § 1.1361-3(a)(3).

(3) Effective Date. For purposes of this revenue procedure, the Effective Date is the date on which the S corporation election, ESBT election(s), QSST election(s), QSub

election(s), or corporate classification election is intended to be effective.

(4) Election Form. For purposes of this revenue procedure, the Election Form refers to Form 2553 for S corporation elections (including a Deemed Entity Classification Election under § 301.7701-3(c)(1)(v)(C)), separate statements made by electing ESBTs under § 1.1361-1(m)(2), Form 2553 and separate statements made by electing QSSTs under § 1.1361-1(j)(6), and Form 8869 for QSub Elections.

(5) Election Under Subchapter S. For purposes of this revenue procedure, Election Under Subchapter S refers to an election by a corporation (or an eligible entity to which a Deemed Entity Classification Election under § 301.7701-3(c)(1)(v)(C) will apply), an election by a trustee to treat a trust as an ESBT under § 1361(e), an election by a trust beneficiary to treat a trust as a QSST under § 1361(d), and an election by a parent S corporation to treat a subsidiary as a QSub under § 1361(b)(3).

(6) Requesting Entity. For purposes of this revenue procedure, the Requesting Entity is a corporation (or an eligible entity to which a Deemed Entity Classification Election under § 301.7701-3(c)(1)(v)(C) will apply) seeking to be treated as an S corporation under § 1362, a parent S corporation seeking to treat a subsidiary as a QSub under § 1361(b)(3), a trustee seeking to treat a trust as an ESBT under § 1361(e), or a trust beneficiary seeking to treat a trust as a QSST under § 1361(d).

.02 General Requirements for Relief. In addition to the specific requirements for relief described in Sections 5, 6, or 7 of this revenue procedure, the Requesting Entity must meet the following requirements:

(1) The Requesting Entity intended to be classified as an S corporation, intended the trust to be an ESBT, intended the trust to be a QSST, or intended to treat a

subsidiary corporation as a QSub as of the Effective Date;

(2) The Requesting Entity requests relief under this revenue procedure within 3 years and 75 days after the Effective Date (except in the case of corporations requesting relief under Section 5.04 of this revenue procedure);

(3) The Requesting Entity fails to qualify as an S corporation, ESBT, QSST, or QSub as of the Effective Date solely because the Election Under Subchapter S was not filed timely by the Due Date of the Election Under Subchapter S; and

(4) The Requesting Entity has reasonable cause for its failure to timely file the Election Under Subchapter S and has acted diligently to correct the mistake upon its discovery.

.03 General Procedural Requirements for Relief.

(1) In general. The Requesting Entity may request relief for a late Election Under Subchapter S by properly completing the Election Form(s) and attaching the supporting documents as described in Sections 5, 6, and 7, as applicable. In addition to any supporting documents described in Sections 5, 6, and 7, as applicable, a properly completed Election Form must include a statement from the Requesting Entity, which complies with Section 4.03(3) of this revenue procedure, that describes (i) its reasonable cause for failure to timely file the Election Under Subchapter S, and (ii) its diligent actions to correct the mistake upon its discovery (the "Reasonable Cause Statement"). The applicable Election Form must state at the top of the document "FILED PURSUANT TO REV. PROC. **2012-XX**."

(2) Filing the Election Form with the IRS Service Center. The Requesting Entity must file the applicable Election Form with the applicable IRS Service Center by either:

(a) Attaching the Election Form to the S corporation's current year Form 1120S.

In the case of an S corporation that has filed all Forms 1120S for tax years between the Effective Date and the current year, the Election Form(s) can be attached to the current year Form 1120S so long as the current year Form 1120S is filed within 3 years and 75 days after the Effective Date. An extension of time to file the current year Form 1120S will not extend the due date for relief under this revenue procedure beyond 3 years and 75 days following the Effective Date. For example, if the extended due date of tax year 2011 Form 1120S is September 15, 2012, an Election Form for a late QSST Election with an Effective Date of June 1, 2009 can be attached to the 2011 Form 1120S only if the 2011 Form 1120S is filed before August 15, 2012 (which is 3 years and 75 days following the June 1, 2009 Effective Date). The Form 1120S must state at the top "INCLUDES LATE ELECTION(S) FILED PURSUANT TO REV. PROC. 2012-XX" or comply with specific instructions included with the Form 1120S instructions;

(b) Attaching the Election Form to the S corporation's prior year Form 1120S.

In the case of an S corporation that has not filed Form 1120S (nor any other income tax return or information return (within the meaning of Subpart A of Part III of Subchapter A of Chapter 61)) for the tax year including the Effective Date or any year following the Effective Date, an Election Form may be attached to any Form 1120S as long as (i) the Form 1120S for the year including the Effective Date is filed within 3 years and 75 days after the Effective Date, and (ii) all other delinquent Forms 1120S are filed simultaneously and consistently with the requested relief. The Form 1120S must state at the top "INCLUDES LATE ELECTION(S) FILED PURSUANT TO REV. PROC. 2012-XX" or comply with specific instructions included with the Form 1120S instructions; or

(c) Filing Election Form independent of Form 1120S. The Requesting Entity can submit the Election Form directly to the applicable IRS Service Center within 3 years and 75 days after the Effective Date.

(3) Supporting statements must be signed under Penalties of Perjury. The Reasonable Cause Statement (required by Section 4.03(1)) and other statements required by Sections 5, 6, and 7, as applicable, must each contain a dated declaration that states: "Under penalties of perjury, I (we) declare that I (we) have examined this election, including accompanying documents, and, to the best of my (our) knowledge and belief, the election contains all the relevant facts relating to the election, and such facts are true, correct, and complete." An officer of the S corporation authorized to sign, the trustee of the ESBT, the current income beneficiary of the QSST, or a shareholder, as applicable, must sign the declaration.

.04 Supplemental procedural requirements when seeking relief for multiple late elections. If one or more Requesting Entities are seeking relief under this revenue procedure with respect to a single S corporation, all of the Election Forms can be filed at the same time using one of the methods described in Section 4.03(2). When multiple requests for relief are submitted simultaneously, each application for relief must independently comply with the procedural requirements in Section 4.03(1).

.05 Relief for Late Election Under Subchapter S. Upon receipt of a completed request for relief under this revenue procedure, the Service will determine whether the requirements for granting additional time to file the Election Under Subchapter S have been satisfied and will notify the Requesting Entity(s) of the result of this determination.

SECTION 5. RELIEF FOR LATE S CORPORATION ELECTIONS.

.01 Form 2553. A Requesting Entity seeking relief for a late S corporation election 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.

.02 Supplemental materials. The completed Election Form must include statements from all shareholders during the period between the date the S corporation election was to have become effective and the date the completed election was filed, which comply with the requirement in Section 4.03(3) of this revenue procedure, that they have reported their income (on all affected returns) consistent with the S corporation election for the year the election should have been filed and for all subsequent years.

.03 Additional materials for a late corporate classification election intended to be effective on the same date that the S corporation election was intended to be effective. In addition to the materials required under Section 5.02 of this revenue procedure, the completed Election Form must also include the following representations, which comply with the requirement in Section 4.03(3) of this revenue procedure:

- (1) The Requesting Entity is an eligible entity as defined in § 301.7701-3(a);
- (2) The Requesting Entity intended to be classified as a corporation as of the Effective Date of the S corporation status;
- (3) The Requesting 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) The Requesting Entity fails to qualify as an S corporation on the Effective

Date of the S corporation status solely because the S corporation election was not filed timely pursuant to § 1362(b); and

(5)(i) The Requesting Entity timely filed all required federal tax returns and information returns consistent with its requested classification as an S corporation for all of the years the entity intended to be an S corporation and no inconsistent tax or information returns have been filed by or with respect to the entity during any of the taxable years, or

(ii) The Requesting Entity has not filed a federal tax or information return for the first year in which the election was intended because the due date has not passed for that year's federal tax or information return.

.04 Relief where all returns filed as an S corporation. The requirement for relief imposed by Section 4.02(2) is not applicable in the case of corporations (which are not seeking late corporate classification election relief concurrently with a late S corporation election under this revenue procedure) if the following conditions are met:

(1) The corporation fails to qualify as an S corporation solely because the Form 2553 was not filed timely;

(2) 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);

(3) 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

(4) Neither the corporation nor any of its shareholders was notified by the 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, and

(5) The completed Election Form includes the statement(s) described in Section 5.02 of this revenue procedure.

SECTION 6. RELIEF FOR LATE ESBT AND QSST ELECTIONS.

.01 ESBT or QSST Election. The trustee of an ESBT or the current income beneficiary of a QSST must sign and file the appropriate Election Form. The completed Election Form must include the following statements (each of which must comply with the requirement in Section 4.03(3) of this revenue procedure):

(1) A statement from the trustee of the ESBT or the current income beneficiary of the QSST that includes the information required by § 1.1361-1(m)(2)(ii) (in the case of ESBT elections) or § 1.1361-1(j)(6)(ii) (in the case of QSST elections);

(2) In the case of a QSST, a statement from the trustee that the trust satisfies the QSST requirements of § 1361(d)(3) and that the income distribution requirements have been and will continue to be met;

(3) In the case of an ESBT, a statement from the trustee that all potential current beneficiaries meet the shareholder requirements of § 1361(b)(1) and that the trust satisfies the requirements of an ESBT under § 1361(e)(1) other than the requirement to make an ESBT election; and

(4) Statements from all shareholders during the period between the date the S corporation election terminated (or was to have become effective) and the date the completed election was filed that they have reported their income (on all affected returns) consistent with the S corporation election for the year the election should have been made and for all subsequent years.

SECTION 7. RELIEF FOR LATE QSUB ELECTIONS.

.01 Form 8869. An S corporation seeking relief for a late QSub election for a subsidiary must file a completed Form 8869.

.02 Supplemental materials. The completed Election Form must include a statement signed by an officer of the S corporation, which complies with the requirement in Section 4.03(3) of this revenue procedure, that the subsidiary corporation satisfies the QSub requirements of § 1361(b)(3)(B), and that all assets, liabilities, and items of income, deduction, and credit of the QSub have been treated as assets, liabilities, and items of income, deduction, and credit of the S corporation (on all affected returns) consistent with the QSub election for the year the election was intended and for all subsequent years.

SECTION 8. EFFECTIVE DATE

.01 In general. Except as provided in Section 8.02, this revenue procedure is effective [IRB DROP DATE], 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. Procs. 97-48, 2003-43, 2004-48, and 2007-62 on [IRB DROP DATE], and to requests received thereafter. It also applies to all ruling requests pending in the national office on [IRB DROP DATE], and to requests for relief received thereafter.

.02 Transition rule for pending letter ruling requests. If an entity has filed a request for a letter ruling seeking relief for a late Election Under Subchapter S covered by this revenue procedure that is pending in the national office on [IRB DROP DATE], the entity may rely on this revenue procedure, withdraw that letter ruling request, and receive a

refund of its user fee. However, the national office will process letter ruling requests pending on [IRB DROP DATE], unless, prior to the earlier of [IRB DROP DATE + 45 days], or the issuance of the letter ruling, the entity notifies the national office that it will rely on this revenue procedure and withdraw its letter ruling request.

SECTION 9. EFFECT ON OTHER DOCUMENTS

This revenue procedure modifies and supersedes Rev. Procs. 2003-43, 2004-48, and 2007-62. This revenue procedure supersedes Situation 1 and obsoletes Situation 2 of Rev. Proc. 97-48. This revenue procedure modifies and supersedes sections 4.01 and 4.02 and obsoletes section 4.03 of Rev. Proc. 2004-49.

SECTION 10. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-XXXX.

The collection of information in this revenue procedure is in Section 4.03 and Sections 5 through 7. The information will help the Service to determine whether a taxpayer has met the requirements of Sections 4 through 7 of this revenue procedure and whether a taxpayer has reasonable cause for failing to make a timely election. The collection of information is required to make a late election pursuant to this revenue procedure. 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 50,000 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 50,000.

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.

SECTION 11. DRAFTING INFORMATION

The principal author of this revenue procedure is David H. Kirk of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure contact Mr. Kirk on (202) 622-3060 (not a toll free call).