

Part III

Administrative, Procedural, and Miscellaneous

[26 CFR 301.9100-1]: Extensions of time to make elections
(Also: § 301.9100-3)

Rev. Proc. [XXXX-XX]

SECTION 1. PURPOSE

This revenue procedure provides a streamlined method for persons, including foreign persons with no obligation to file U.S. federal returns, (hereinafter referred to as "taxpayers") that satisfy the requirements of §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to obtain an extension of time under § 301.9100-3 to make certain regulatory elections that are specified in this revenue procedure. Accompanying this document is a Required Questionnaire in Appendix A for taxpayers to complete under penalties of perjury (prior to making such late regulatory elections) in determining whether they satisfy the requirements of §§ 301.9100-1 and 301.9100-3 and, therefore, qualify for relief under this revenue procedure.

SECTION 2. BACKGROUND

.01 Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code (Code), except subtitles E, G, H, and I. Section 301.9100-1(b) defines the term regulatory election to mean 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 (“published guidance”).

.02 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 a regulatory election.

.03 Section 301.9100-2 provides automatic extensions of time for making certain elections.

.04 Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

.05 Section 301.9100-3(a) provides that requests for relief under § 301.9100-3 will be granted when the taxpayer provides 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.

.06 Section 301.9100-3(b)(1) provides that subject to § 301.9100-3(b)(3)(i) through (iii), 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) through (v).

.07 Section 301.9100-3(b)(2) provides circumstances in which a taxpayer will not be considered to have reasonably relied on a qualified tax professional.

.08 Section 301.9100-3(b)(3) provides that a taxpayer is deemed not to have acted reasonably and in good faith if the taxpayer—(i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 of the Code at the time the taxpayer requests relief (taking into account any qualified amended return filed within the meaning of § 1.6664-2(c)(3) of the Income Tax Regulations) and the new position requires or permits a regulatory election for which relief is requested; (ii) was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or (iii) uses hindsight in requesting relief. If specific facts have changed since the due date for making the election that make the election advantageous to a taxpayer, the Internal Revenue Service (IRS) will not ordinarily grant relief. In such a case, the IRS will grant relief only if the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

.09 Section 301.9100-3(c) provides that an extension will be granted only when the interests of the Government will not be prejudiced. First, the interests of the Government are prejudiced if granting relief would result in the taxpayer having a lower aggregate tax liability for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). If the tax consequences of more than one taxpayer are affected by the election, the Government's interests are prejudiced if extending the time for making the

election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made. Second, the interests of the Government ordinarily are prejudiced if the taxable year in which the regulatory election should have been made, or any taxable years that would have been affected by the election had it been made timely, are closed by the period of limitations on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting relief under § 301.9100-3. The IRS may condition a grant of relief on the taxpayer providing a statement from an independent auditor (other than an auditor providing an affidavit pursuant to § 301.9100-3(e)) certifying that the interests of the Government are not prejudiced under the standards set forth in § 301.9100-3(c)(1)(i).

SECTION 3. SCOPE

.01 Section 4 of this revenue procedure provides procedures and requirements for taxpayer self-certification to obtain relief to make a late election ("late election relief") for certain regulatory elections for which relief under § 301.9100-3 is available and not otherwise excluded. However, this revenue procedure does not provide for revocation of any prior election that a taxpayer has made.

.02 The procedures in this revenue procedure are in lieu of the letter ruling procedure that is currently used to obtain relief for such late regulatory elections. Except as otherwise provided in this revenue procedure, taxpayer self-certification described in section 4 of this revenue procedure generally is the exclusive means to obtain relief under §§ 301.9100-1 and 301.9100-3 for the elections specified in section 5 of this revenue procedure, and the IRS national office will not ordinarily issue a letter

ruling granting relief for the listed elections. “Not ordinarily” means that a taxpayer must demonstrate unique circumstances not susceptible to self-certification before the IRS national office will consider a letter ruling request, and the IRS national office may limit the scope of the ruling to only a specific issue in the request or may decline to issue a letter ruling. For example, the death of the individual who was responsible for acting on behalf of a taxpayer with respect to an election or the destruction by natural disaster of all of a taxpayer’s records relating to an election may constitute unique circumstances not susceptible to self-certification. A taxpayer’s refusal to consent to extend the period of limitations on assessment pursuant to § 6501(c)(4) as required in section 4.03(3) of this revenue procedure does not constitute a unique circumstance not susceptible to self-certification. In addition, the lack of cooperation by the qualified tax professional that a taxpayer reasonably relied on does not in and of itself constitute a unique circumstance not susceptible to self-certification. However, the lack of cooperation by the tax professional may be part of a set of circumstances that would be considered unique and not susceptible to self-certification. If a taxpayer believes unique circumstances not susceptible to self-certification may exist, a taxpayer may contact the Office of Associate Chief Counsel having jurisdiction for the election for which the taxpayer seeks late election relief before preparing the letter ruling request to discuss whether the IRS national office will consider issuing a letter ruling in the taxpayer’s circumstances. In appropriate cases, it may be advantageous to both the Associate office and the taxpayer to hold a pre-submission conference as described in section 10.07 of Rev. Proc. 2018-1, 2018-1 I.R.B. 1, 59, or its successors, before the taxpayer

submits a letter ruling request, to discuss substantive or procedural issues relating to the late election relief the taxpayer seeks.

.03 A taxpayer does not qualify for late election relief by self-certification under this revenue procedure if the taxpayer: (i) has submitted a letter ruling request for late election relief; (ii) is notified by the appropriate Associate office (pursuant to section 8.06 or 10.02 of Rev. Proc. 2018-1 or its successors) that the office has taken an adverse or tentatively adverse position or is going to rule adversely; and (iii) either withdraws the letter ruling request, receives an adverse letter ruling, or causes the letter ruling request to be closed by the Associate office under Rev. Proc. 2018-1 or its successors.

.04 Section 5 of this revenue procedure specifies the exclusive list of regulatory elections that qualify for late election relief under this revenue procedure. For regulatory elections not covered under this revenue procedure, a taxpayer may request relief by applying for a letter ruling or by following other revenue procedures that may be applicable. The procedural requirements for requesting a letter ruling are described in Rev. Proc. 2018-1 or its successors. Subsequent revenue procedures published in the Internal Revenue Bulletin might, as appropriate, add or remove regulatory elections that qualify for late election relief under this revenue procedure.

.05 A taxpayer obtaining late election relief under this revenue procedure is not required to pay a user fee pursuant to Rev. Proc. 2018-1 or its successors. However, as in the case of a taxpayer receiving a private letter ruling, the taxpayer is subject to examination and may owe additional tax, interest, and penalties if, for example, the IRS later determines that the taxpayer does not satisfy the requirements for relief under

§§ 301.9100-1 and 301.9100-3.

.06 This revenue procedure does not provide a taxpayer an extension of time to file a federal tax return beyond the time prescribed by law for filing such return. For regulatory elections listed in section 5 of this revenue procedure that are required to be made on or with the taxpayer's return as prescribed in applicable published guidance, the provisions of this revenue procedure provide an extension of time for making the election, but do not provide an extension of time to file the taxpayer's return.

SECTION 4. RELIEF FOR LATE ELECTIONS

.01 Eligibility for late election relief. Except as otherwise provided in this revenue procedure, a taxpayer is eligible for an extension of time to file an election under this section 4 if the taxpayer determines that it satisfies the requirements for late election relief under §§ 301.9100-1 and 301.9100-3 and the election is listed in section 5 of this revenue procedure. In seeking relief under this section 4, the taxpayer is certifying under penalties of perjury that it satisfies the requirements for relief under §§ 301.9100-1 and 301.9100-3 and, therefore, qualifies for relief. References in this revenue procedure to the taxpayer shall be read to include references to the consolidated group or common parent of the consolidated group of which the taxpayer is a member, where appropriate. See § 1.1502-77.

.02 Documentation requirements. The taxpayer must keep detailed records, which must be retained as long as the election remains relevant in the administration of any internal revenue law, in accordance with § 6001 and the regulations thereunder, relating to: (i) all relevant facts, such as when the original election was due, why the

taxpayer failed to make a valid election, when and how the taxpayer discovered the failure to make the election, and what, if any, professional advice regarding the election the taxpayer received; and (ii) how the taxpayer satisfies each of the applicable requirements in §§ 301.9100-1 and 301.9100-3. The taxpayer must also retain any evidence of intent to make the election or, alternatively, any evidence showing why, at the due date of the election, the taxpayer would have wanted to make the election had it known about the election (in situations in which the taxpayer did not know about the election). Additionally, the taxpayer must retain in its records all properly executed affidavits and declarations (signed and dated under penalties of perjury) required under § 301.9100-3(e), a copy of the completed Required Questionnaire in Appendix A (signed and dated under penalties of perjury) provided at the end of this revenue procedure, any correspondence regarding the election received from the IRS, and copies of all amended returns filed pursuant to section 4.03 of this revenue procedure.

.03 Procedural requirements.

(1) Return elections. Except as otherwise provided in this revenue procedure, for regulatory elections listed in section 5 of this revenue procedure that are required to be made on, with, or by the taxpayer's return (such as in a statement attached to or made on an IRS form or schedule filed with a return) as prescribed in applicable published guidance, a taxpayer that satisfies the applicable requirements in §§ 301.9100-1 and 301.9100-3 makes the late election by filing an original or amended return for the taxable year for which the late election applies or is effective. The late election should be filed as soon after its discovery as practicable. The original or amended return must

include the late election (on or with the return, as prescribed) with, if applicable, the requested effective date, and must be filed in accordance with the return's instructions for the taxable year to which the late election made under this revenue procedure relates. The electing taxpayer and any other person whose tax consequences are affected by the election (affected taxpayer) must also file all original or amended returns for all taxable years affected by the election (affected years) that are still subject to assessment of tax under § 6501 to the extent necessary to be consistent with the late election. For this purpose, if a previously filed return must be amended, it must be amended and filed in accordance with the return's instructions within 120 days of the date the late election is filed. If the return is not amended within this time period, then the late election is not valid. In addition, section 4.03(3) of this revenue procedure contains information on when a taxpayer is required to extend the period of limitations on assessment pursuant to § 6501(c)(4) for late election relief.

(2) Non-return elections. For regulatory elections listed in section 5 of this revenue procedure that are required to be made in any manner other than on, with, or by the taxpayer's return as prescribed in applicable published guidance, a taxpayer that satisfies the applicable requirements in §§ 301.9100-1 and 301.9100-3 makes the late election in the current year in the manner prescribed for making the election (for example, by filing a statement or an IRS form). The late election should be filed as soon after its discovery as practicable. The filed late election must include the requested effective date, if applicable. The electing taxpayer and any affected taxpayer must have filed, or must file, all original returns, and must have amended, or must

amend, all tax returns for the taxable year for which the late election applies or is effective and all affected years that are still subject to assessment of tax under § 6501 to the extent necessary to be consistent with the late election. (For late elections made under § 301.7701-3(c), the period of limitations under § 6501 must not have expired with respect to any taxable year of the electing taxpayer or any affected taxpayer for which any returns were not filed consistent with the election.) For this purpose, if a previously filed return must be amended, it must be amended and filed in accordance with the return's instructions within 120 days of the date the late election is filed. If the return is not amended within this time period, then the late election is not valid. If the original return was not timely filed (including extensions), it must be filed in accordance with the return's instructions within 120 days of the date the late election is filed. If the return is not filed within this time period, then the late election is not valid. In addition, section 4.03(3) of this revenue procedure contains information on when a taxpayer is required to extend the period of limitations on assessment pursuant to § 6501(c)(4) for late election relief.

(3) All elections. The electing taxpayer must attach Form 9100, Notice of Late Election/Consent To Extend the Time to Assess Tax, with the original or amended return, as applicable, for the first taxable year for which the late election applies or is effective and, if made separate from the return, also with the election. Form 9100 gives notice to the IRS service center(s) that a late election has been made and ensures that the return will be processed. For example, the IRS service center(s) may not process the return of a taxpayer that previously filed corporate returns if the taxpayer files,

without such notice, a partnership return upon determining that it satisfies the requirements of §§ 301.9100-1 and 301.9100-3 for late election relief for change of entity classification under this revenue procedure. In addition, the form enables electing taxpayers and affected taxpayers to consent to extend the period of limitations on assessment when required. The IRS intends to create this new Form 9100. However, until Form 9100 is created, the original or amended return must include the election, or a copy of the election if separate from the return, and at the top of the first page of the return and the election, the taxpayer must write, "LATE ELECTION(S) FILED PURSUANT TO REV. PROC. 2018-XX."

The electing taxpayer or any affected taxpayer must extend the period of limitations on assessment under § 6501(a) if: (i) as of the date that is 240 days prior to the date on which the period of limitations on assessment would expire (240-day threshold) for the taxable year of the election or any affected year of the electing taxpayer or affected taxpayer, the federal tax returns for the electing taxpayer or affected taxpayer have not been filed consistent with the election having been timely filed, and (ii) the late election is made within the 240-day threshold for the taxable year of the election or any affected year of the electing taxpayer or affected taxpayer. An affected taxpayer may include, for example, a partner of a partnership, a shareholder of an S corporation, a beneficiary of a trust or estate (except any open classes of beneficiaries, such as those of any § 501(c) organizations), and a seller and/or purchaser of stock in the case of a § 336(e) or § 338 election.

If, prior to the 240-day threshold, a federal return has not been filed consistent

with the election having been timely filed and the late election pursuant to the revenue procedure is being filed within the 240-day threshold for any affected year of the taxpayer or any affected taxpayer, the taxpayer or affected taxpayer must extend the period of limitations pursuant to § 6501(c)(4) for a period of one year from the date the time to assess tax would otherwise expire. An electing taxpayer or any affected taxpayer that is required under this revenue procedure to extend the period of limitations for any taxable year must consent to extend the period of limitations on Form 9100 when it becomes available. The taxpayer filing the late election must attach Form 9100 for each affected taxpayer required under this revenue procedure to extend the period of limitations to the electing taxpayer's Form 9100.

If the taxpayer is an entity that is making an election under § 301.7701-3(c) to change its classification, any of the deemed transactions under § 301.9100-3(g)(3) relating to the election is generally treated as occurring immediately before the close of the day before the election is effective. Thus, if the classification election is effective at the start of the first day of the entity's taxable year, the immediately preceding taxable year would be an affected year.

Upon the IRS's receipt of a properly completed election and Form 9100 (including all required Forms 9100 for affected taxpayers), signed under penalties of perjury, filed in accordance with the provisions of this revenue procedure and the applicable guidance for making the election, the Commissioner's consent to extend the period of limitations under § 301.6501(c)-1(d) shall be effective. The failure by the electing taxpayer or any affected taxpayer to consent to extend the period of limitations

on assessment under § 6501(c)(4) as required under this revenue procedure will invalidate the election.

SECTION 5. ELECTIONS COVERED BY THIS REVENUE PROCEDURE

The following elections within the jurisdiction of the Associate offices in the Office of Chief Counsel qualify for late election relief under this revenue procedure:

.01 Under the jurisdiction of the Associate Chief Counsel (Corporate).

Regulatory elections under §§ 1.302-4, 1.336-2(h), 1.336-4(c), 1.337(d)-2(c), 1.337(d)-7(c), 338(g), 1.338-5(d)(2), 1.338(h)(10)-1, 1.362-4(d), 1.381(b)-1(b)(2), 1.382-2T(h)(4)(vi)(B), 1.382-6(b), 1.1502-13(f)(5)(ii), 1.1502-21(b)(3)(i), 1.1502-21(b)(3)(ii)(B), 1.1502-21T (in effect prior to its expiration on June 21, 2013), 1.1502-35(c)(5), 1.1502-75(a), 1.1502-76(b)(2), 1.1502-91(d)(4), and 1504(c)(2); and elections pursuant to Rev. Proc. 89-56, 1989-2 C.B. 643 (as modified by Rev. Proc. 2006-21, 2006-1 C.B. 1050); Rev. Proc. 90-39, 1990-2 C.B. 365 (as modified by Rev. Proc. 2006-21, and as clarified by Rev. Proc. 90-39A, 1990-2 C.B. 367); Rev. Proc. 2002-32, 2002-1 C.B. 959 (as modified by Rev. Proc. 2006-21); and Notice 2005-70, 2005-2 C.B. 694.

.02 Under the jurisdiction of the Associate Chief Counsel (International).

Regulatory elections under §§ 1.911-7(a) and 1.1296-1(h). Until Form 9100 is available, a late election under § 1.921-1T(b)(1) will not be valid unless the taxpayer discloses in a separate statement attached to the late election: (1) whether the interest charge domestic international sales corporation ("IC-DISC") is owned directly or indirectly by a Roth IRA; and (2) whether there is a familial relationship (including through marriage) between the direct or indirect owners (including any trusts for the

benefit of family members) of the IC-DISC and the direct or indirect owners (including any trusts for the benefit of family members) of any related suppliers of the IC-DISC, and the ownership interest of any such family member or trust in the IC-DISC is disproportionate to its ownership interest in any such related supplier.

.03 Under the jurisdiction of the Associate Chief Counsel (Passthroughs and Special Industries).

(1) Regulatory elections under §§ 41(c)(5) (excluding elections with respect to taxable years ending on or after June 3, 2014), 41(e)(6)(D), 42 (elections made on Form 8609, Low-Income Housing Credit Allocation and Certification), 45C(d)(4) (§ 1.28-1(d)(7) (applies to renumbered § 45C)), 45G, 48(a)(5), 48(b), 50(d)(4), 50(d)(5), 59(e) (excluding elections with respect to taxable years in which there is an existing election under § 59(e) for any portion of any qualified expenditure paid or incurred by the taxpayer in the same taxable year), 165(i) (for timber, trees, or mineral property only), 169(b), 169(c), 179C(a), 194(b), 216(b)(3), 263(c) (§ 1.612-4(b)(4)), 263(c) (§ 1.612-4(d)), 263(i)(2)(A), 465, 469, 528, 613A(c)(4), 616(b), 616(d), 631(a), and 631(b); subchapter I of chapter 1; subchapter J of chapter 1 (excluding §§ 643(i), 679, and 684); subchapter K of chapter 1; § 1022; subchapter S of chapter 1 (excluding § 1374); chapters 11, 12, 13, 14, 15; and § 301.7701-3(c).

SECTION 6. EFFECT ON OTHER DOCUMENTS

This revenue procedure has no effect on other revenue procedures relating to relief for late regulatory elections except as follows: This revenue procedure obsoletes Rev. Proc. 2003-33, 2003-1 C.B. 803. To the extent that a taxpayer qualifies for relief

under Rev. Proc. 2009-41, 2009-39 I.R.B. 439, Rev. Proc. 2011-34, 2011-24 I.R.B. 875, or Rev. Proc. 2013-30, 2013-36 I.R.B. 173, or Rev. Proc. 2017-34, 2017-26 I.R.B. 1282, those procedures remain the exclusive means to obtain relief.

SECTION 7. EFFECTIVE DATE

.01 In general. This revenue procedure is effective **[INSERT DATE OF PUBLICATION]**, the date of publication of this revenue procedure in the Internal Revenue Bulletin.

.02 Transition rule for pending letter ruling requests. If a taxpayer has filed a request for a letter ruling seeking relief for a late regulatory election covered by this revenue procedure that is pending in the IRS national office on **[INSERT DATE OF PUBLICATION]**, the taxpayer may rely on this revenue procedure, withdraw the letter ruling request, and receive a refund of its user fee. However, the IRS national office will process letter ruling requests pending on **[INSERT DATE OF PUBLICATION]**, unless, prior to the earlier of **[INSERT DATE THAT IS 45 DAYS AFTER PUBLICATION]**, or the issuance of the letter ruling, the taxpayer notifies the IRS national office that it will rely on this revenue procedure and withdraws its letter ruling request.

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 (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-1488.

The collection of information in this revenue procedure is in section 4 and in the

Required Questionnaire in Appendix A. The information is required to help the IRS to determine whether a taxpayer has met the requirements of section 4 of this revenue procedure and whether the taxpayer has reasonable cause for failing to make an election. The collection of information is required to make a late regulatory election pursuant to this revenue procedure in lieu of the letter ruling procedure. This information will be used to determine whether the eligibility requirements for obtaining relief under §§ 301.9100-1 and 301.9100-3 to make a late election were met. The collection of information is required to obtain a benefit.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may be material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by § 6103.

SECTION 9. DRAFTING INFORMATION

The principal author of this revenue procedure is Deane M. Burke of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this revenue procedure, please contact Deane M. Burke at (202) 317-5279 (not a toll free call).

Appendix AREQUIRED QUESTIONNAIRE
(For Qualifying for Late Election Relief)

1. Name, address, and Taxpayer Identification Number of the taxpayer for which an extension of time is sought.

2. Was the taxpayer in Line 1 a member of a consolidated group in the year for which the election should have been filed? yes ___ no ___

3. If the answer to Line 2 is yes, insert name, address, and EIN of the common parent of the consolidated group for the year in which the election should have been filed. Otherwise, write N/A.

4. Taxable year for which the extension of time is sought.

5. Describe the election, including relevant Internal Revenue Code section, Income Tax Regulations section, or other provision, for which the extension of time is sought.

6. Is the election a covered election under section 5 of Rev. Proc. 2018-XX? If no, self-certification for late election relief under Rev. Proc. 2018-XX is not available. yes _____ no _____ (relief not available)

7. What was the due date for the election?

8. Is the taxpayer seeking to make an election to replace a revoked election? If yes, proceed to Line 9. If no, skip Lines 9, 10, and 11 and proceed to Line 12. yes _____ no _____

9. Is the election irrevocable? If yes, self-certification for late election relief under Rev. Proc. 2018-XX is not available. yes _____ (relief not available) no _____

10a. Is the election revocable only with the consent of the IRS? If yes, proceed to Line 10b. If no, skip Line 10b and proceed to Line 11. yes _____ no _____

10b. Has consent been obtained? If yes, proceed to Line 11. If no, do not seek relief until consent has been obtained. yes _____ no _____ (do not seek relief until consent obtained)

11. Has the prior election been revoked? If yes, proceed to Line 12. If no (when affirmative revocation is required after consent of the IRS), do not file a late election under § 301.9100-3 until the prior election has been revoked. yes _____ no _____

12. Reasonable action and good faith. Answer yes or no to each of Lines 12a, 12b, 12c, 12d, and 12e. You must answer yes to at least one of Lines 12a, 12b, 12c, 12d, or 12e to obtain an extension of time under § 301.9100-3.

12a. Is the election being filed before the IRS discovered the failure to timely make the election? yes _____ no _____

12b. Was the election not timely filed because of intervening events beyond the taxpayer's control? If yes, retain a statement explaining the intervening events and how they prevented the timely filing of the election. yes _____ no _____

12c. Was the election not timely filed because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election? If yes, retain a statement explaining the taxpayer's reasonable diligence. yes _____ no _____

12d. Was the election not timely filed because the taxpayer reasonably relied on the written advice of the IRS? If yes, retain a copy of the written advice. yes _____ no _____

12e. Was the election not timely filed because 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? If yes, retain an affidavit (along with all other affidavits required under § 301.9100-3(e)) from such tax professional indicating that the taxpayer relied upon the tax professional to advise the taxpayer about the election and that the tax professional failed to advise the taxpayer to make the election. (If the taxpayer knew, or should have known, that the tax professional was not competent to render advice on the election or that the tax professional was not aware of all the relevant facts, the answer to this question is no.)
yes _____ no _____

13. Is the taxpayer seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 at the time of the filing of the late election (taking into account any qualified amended return filed within the meaning of

§ 1.6664-2(c)(3)) and the new position requires or permits a regulatory election for which relief is requested? If yes, do not file a late election under § 301.9100-3. Relief under § 301.9100-3 is not available. yes _____ (relief not available) no _____

14. Was the taxpayer informed in all material respects of the required election and related tax consequences, but chose not to file the election? If yes, do not file a late election under § 301.9100-3. Relief under § 301.9100-3 is not available. yes _____ (relief not available) no _____

15. Are there any facts that took place after the due date for the election or any change in law after the due date for the election that make the election more advantageous to the taxpayer? If yes, an extension of time is only available if the taxpayer can document strong proof that the change in facts or change in law is not the reason for the taxpayer wanting to make the election. Retain a detailed statement describing such facts or change in law and why, even if such facts or change in law had not occurred, it would have been unreasonable for the taxpayer to have not wanted to make the election. Proof may include evidence that the taxpayer filed its tax returns consistent with the election having been made; the existence of corporate minutes or other documents that were prepared on or before the due date of the election describing the taxpayer's intention to make the election; or an explanation, in narrative form, including the opinion of a qualified tax professional, unrelated to the failure to make the election, who is both competent to render advice on the hindsight issue and aware of all relevant facts demonstrating that no reasonable taxpayer, having full knowledge of the taxpayer's specific facts and the law as it existed at the due date for the election would not have made the election. Examples of a change in facts are an increase or decrease in the taxpayer's income or loss or tax liability, or any item comprising such, from that expected at the due date for the election and an examination of the taxpayer's return by the IRS in which an increase or decrease in the taxpayer's income or loss or tax liability, or any item comprising such, has been either proposed or applied. yes _____ (retain statement) no _____

16. Will an extension of time to make the election result in the taxpayer (or if the election affects the tax consequences of more than one taxpayer, all affected taxpayers) having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer(s) would have had if the election had been timely made (taking into account the time value of money)? If yes, do not file a late election under § 301.9100-3. Relief under § 301.9100-3 is not available. yes _____ (relief not available) no _____

17. Has the period of limitations on assessment under § 6501(a) expired for any taxable years of the taxpayer or any affected taxpayer, or will it expire, prior to the date that is 240 days after filing a late election? In answering this question, consider both the taxable year for which the election should have been made and any taxable year

that would have been affected by the election had it been timely made. As an example of an affected year, if an entity elects under § 301.7701-3(c) to change its classification, any deemed transactions under § 301.9100-3(g)(3) relating to that election are generally treated as occurring immediately before the close of the day before the election is effective. Thus, if the classification election is effective at the start of the first day of the entity's taxable year, the immediately preceding taxable year would be an affected year. Be sure that the period of limitations on assessment for the entity and any affected taxpayer has not expired or will not expire prior to the date that is 240 days after filing a late election. If no, skip Lines 18a and 18b. yes _____ no _____

18a. Would making the election result in a higher tax liability for the taxpayer (or if the election affects the tax consequences of more than one taxpayer, any affected taxpayer) in a tax year for which assessment would be barred under § 6501(a)? If yes, do not file a late election under § 301.9100-3. Relief under § 301.9100-3 is not available. If no, proceed to Line 18b. yes _____ (relief not available) no _____

18b. Would making the election result in a higher tax liability for the taxpayer (or if the election affects the tax consequences of more than one taxpayer, any affected taxpayer) in a tax year for which assessment will be barred under § 6501(a) within 240 days after filing the election? If the answer to this Line 18b is yes, to make the election the taxpayer (or the common parent of the consolidated group of which the taxpayer is a member, if applicable) must consent to an extension of the statute of limitations pursuant § 6501(c)(4) for a period of 1 year from the date that the period of limitations would run without a valid extension. yes _____ (must extend the statute of limitations when filing Form 9100 (or the prescribed alternative until Form 9100 is available)) no _____

19. Have the affidavits required in § 301.9100-3 been obtained and retained? If no, do not seek late election relief until required affidavits have been obtained. yes _____ no _____ (do not seek relief until obtained).

20. If the taxpayer previously submitted a letter ruling request for late election relief, was the taxpayer notified by the appropriate Associate office, pursuant to sections 8.06 or 10.02 (when the letter ruling request is withdrawn before a conference of right) of Rev. Proc. 2018-1, 2018-1 I.R.B. 1, or its successors, that the office was taking an adverse position or was going to rule adversely, after which the taxpayer either withdrew the letter ruling request, received an adverse letter ruling, or caused the letter ruling request to be closed by the Associate office under Rev. Proc. 2018-1 or its successors? If yes, self-certification for late election relief under Rev. Proc. 2018-XX is not available. yes _____ (relief not available) no _____

Declaration of Taxpayer

Under penalties of perjury, I declare that I have examined this Required Questionnaire for qualifying for late election relief, including accompanying documents, and to the best of my knowledge and belief, the information contains all relevant facts relating to self-certification for late election relief under Rev. Proc. 2018-XX, such facts are true, correct, and complete, and the taxpayer for whom the extension is sought qualifies for late election relief.

Signature of Taxpayer
(or common parent of consolidated group)

Date