

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

Justification of Non-material Change Request

IRS is issuing a new Revenue Procedure, which creates a streamlined procedure for taxpayers to request an extension of time for certain late regulatory elections. IRS is requesting a non-material change to OMB Control Number 1545-1488 in order to cover the new Form 9100 created pursuant to this Revenue Procedure. While IRS expects that this form will reduce the administrative burden for taxpayers, no change in the burden estimates is being requested at present.

This revenue procedure provides a streamlined method for taxpayers that satisfy the requirements of sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to obtain an extension of time under section 301.9100-3 to make the late regulatory elections that are specified in this revenue procedure. Accompanying this document is a sample of the 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 sections 301.9100-1 and 301.9100-3 and, therefore, qualify for relief under this revenue procedure.

The taxpayer must keep detailed records, which must be retained so long as the election remains relevant in the administration of any internal revenue law, in accordance with section 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 sections 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 under penalties of perjury) required under section 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

New Form 9100, Notice of Late Election, was created under the authority of Regulations sections 301.9100-1 and 301.9100-3. This form is created for the purposes of reducing the administrative burden for taxpayers and to simplify the IRS process for granting routine letter rulings for late regulatory elections.

The taxpayer must attach Form 9100 with the original or amended return, as applicable, for the first taxable year for which the late election is effective and, if separate from the return, 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.