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Chapter 6: Corporate Elections Under Subchapter S

[¶6.10. Remedying S Corporation Election and Shareholder Consent Problems](#)

## ¶ 6.10 Remedying S Corporation Election and Shareholder Consent Problems

### ¶ 6.10[1] Remedies for Avoiding S Corporation Disqualification

Much of S corporation tax planning concerns avoiding the many traps of the qualification rules and seeking relief when those rules have not been satisfied. In numerous situations, the S corporation status may be adversely impacted by certain actions that the corporation or its shareholders have taken or have failed to take. Earlier segments of this chapter have discussed the impact of potential inadvertent terminations of S corporation status in the context of requirements concerning different types of trusts eligible to be S corporation shareholders. See [¶ 6.04](#) (grantor trusts), [¶ 6.05](#) (QSSTs), and [¶ 6.06](#) (ESBTs).

This segment addresses some of the more general inquiries concerning the possible termination of the S corporation election and mechanisms to remedy the situation. [IRC § 1362\(f\)](#) provides the IRS with the authority to reverse the effects of certain inadvertent S corporation terminations. One of the most common mistakes leading to an inadvertent S corporation termination is that the appropriate forms either have not been timely filed or have been incorrectly filed. Obviously, these mistakes should be avoided, but if made they can often be rectified.

There are many reasons why forms are not filed and not timely filed. Sometimes the mistake occurs at the time the corporation is organized. For example, the shareholders may have contemplated that the corporation would have S status from its inception, but the necessary forms were inadvertently not filed, such as the shareholder consent form. The Code and the IRS (through its administrative procedures) provide significant liberality in remedying a filing failure. Ordinarily, a timely filed S corporation election will not be invalid because a shareholder failed to file a timely consent to that election if (1) a reasonable cause for failure to file such consent (or consents) is shown, (2) proper consent is filed within an extended period granted by the IRS, and (3) new consents are filed by all persons who were shareholders at any time during the taxable year with respect to which the failure to consent occurred.

### ¶ 6.10[2] IRS Requirements for Relief

In order for the IRS to grant relief under [IRC § 1362\(f\)](#) and, consequently, to treat the corporation as an S corporation, the following general conditions must be met:

1. The IRS must determine that the S corporation election termination was inadvertent;
2. Steps must have been taken to correct the situation causing the termination within a reasonable period after discovering the termination event; and
3. The corporation and shareholders must agree to make those adjustments as may be required by the IRS (consistent with treatment of the corporation as an S corporation).

[Rev. Proc. 2003-43, 2003-1 CB 998](#), provides simplified procedures to remedy late S corporation elections (and many other types of filing difficulties involving S corporations).

### ¶ 6.10[3] Eligible Corporation But Late S Corporation Election

#### ¶ 6.10[3][a] Available Relief

A corporation must elect to be an S corporation no later than the fifteenth day of the third month of the taxable year for which the election is effective. Under [IRC § 1362\(b\)\(5\)](#), the Secretary is authorized to treat an S election as timely filed if either it is made after the date prescribed or no such election was made, provided the Secretary determines there was reasonable cause for the failure to timely file the election. For example, relief could be available where a corporation had been filing S corporation returns under the mistaken belief that an S election had been filed but none was found during a later audit. This provision relates to missing as well as to late election forms. [Rev. Proc. 2003-43, 2003-1 CB 998](#), provides a simplified method for taxpayers to request relief for late S corporation elections. This revenue procedure also provides relief for ESBT elections (see [¶ 6.06](#)), QSST elections (see [¶ 6.05](#)), and QSub elections (see [¶ 6.07](#)).

Generally, [Rev. Proc. 2003-43](#) provides that certain eligible entities may be granted relief for failing to file these elections in a timely manner if the request for relief is filed within twenty-four months of the due date of the election. [Rev. Proc. 2003-43](#), does note that [Rev. Proc. 97-48, 1997-2 CB 521](#), also provides special procedures to obtain automatic relief for certain late S corporation elections. [Rev. Proc. 2012-3, 2012-1 IRB 113, § 4.01\(44\)](#), specifies that the IRS will not ordinarily issue a private letter ruling where an automatic approval or administrative procedure is available.

Relief is available under [Rev. Proc. 2003-43](#) if the following conditions are met:

1. The entity fails to qualify for its intended status as an S corporation on the first day that status was desired solely because of its failure to timely file the appropriate election under subchapter S with the applicable IRS Service Center;
2. Less than twenty-four months have passed since the original due date of the election under subchapter S; and
3. Either
  - a. The entity is seeking relief for a late S corporation (or QSub) election and the entity has reasonable cause for its failure to make the timely election under subchapter S, or
  - b. The S corporation and the entity are seeking relief for an inadvertent invalid S corporation election (or an inadvertent termination of an S corporation election due to the failure to timely make the ESBT or QSST election) and the failure to timely file the election under subchapter S was inadvertent.

Furthermore, all of the following requirements must be met:

1. (a) The entity seeking to make the election has not filed a tax return (in the case of QSubs, the parent has not filed a tax return) for the first year in which the election was intended, (b) the application for relief is filed under this revenue procedure no later than six months after the due date of the tax return (excluding extensions) of the entity seeking to make the election (in the case of QSubs, the due date of the tax return of the parent) for the first year in which the election was intended, and (c) no taxpayer whose tax liability or tax return would be affected by the election under subchapter S (including all shareholders of the S corporation) has reported inconsistently with the S corporation election (as well as any ESBT, QSST, or QSub elections) on any affected return for the year the election under subchapter S was intended; or
2. (a) The entity seeking to make the election has filed a tax return (in the case of QSubs, the parent has filed a tax return) for the first year in which the election was intended within six months of the due date of the tax return (excluding extensions) and (b) all taxpayers whose tax liability or tax returns would be affected by the election under subchapter S (including all shareholders of the S corporation) have reported consistently with the S corporation election (as well as any ESBT, QSST, or QSub elections) on all affected returns for the year the election under subchapter S was intended, as well as for any subsequent years.

See [Rev. Proc. 2003-43, § 4.02](#), identifying the criteria applicable in determining eligibility for relief under this revenue procedure.

### **¶ 6.10[3][b] Corporate-Level Relief When No Return Previously Filed**

If a corporation has not filed a tax return for the first taxable year of the intended S election, it may request relief under [Rev. Proc. 2003-43](#) for the late election by filing with the applicable IRS Service Center the properly completed election form. The form must be filed within eighteen months of the original due date of the intended S election (but in no event later than six months after the due date

of the tax return (excluding extensions) of the entity (in the case of QSubs, the due date of the tax return of the parent) for the first year in which the election was intended) and must state at the top of the document "FILED PURSUANT TO [REV. PROC. 2003-43](#)." Attached to the form must be either a statement establishing reasonable cause for the failure to timely file the election under subchapter S (in the case of S corporations or QSub elections) or a statement establishing that the failure to timely file the election under subchapter S was inadvertent (in the case of ESBT or QSST elections). See [Rev. Proc. 2003-43, § 4.03\(1\)](#), and [Form 6.10\(a\)](#).

### **¶ 6.10[3][c] Corporate-Level Relief When Return Previously Filed**

If a corporation has filed a tax return for the first taxable year of the intended S election within six months of the due date of that return (excluding extensions), it may request relief under [Rev. Proc. 2003-43](#) for the late election by filing with the applicable IRS Service Center the properly completed election form and the supporting documents described below. The election form must be filed within twenty-four months of the original due date for the S election and must state at the top of the document "FILED PURSUANT TO [REV. PROC. 2003-43](#)." Attached to the election form must be either a statement establishing reasonable cause for the failure to timely file the S election (in the case of S corporation or QSub elections) or a statement establishing that the failure to timely file the S election was inadvertent (in the case of ESBT or QSST elections). Certain additional documents specified in [Rev. Proc. 2003-43](#) must be attached to the election form. See [Rev. Proc. 2003-43, § 4.03\(2\)](#), and [Form 6.10\(b\)](#).

### **¶ 6.10[3][d] Late Corporate Elections—Rev. Proc. 97-48**

Automatic relief is also provided in [Rev. Proc. 97-48, 1997-2 CB 521](#), for late elections or elections never made. See [Rev. Proc. 2003-43, § 3.02\(2\)](#). The automatic nature of this relief also removes the need for a private letter ruling request and the payment of any attendant user fees. The IRS has specified in [Rev. Proc. 2012-3, 2012-1 IRB 113, § 6.06](#), that it will not rule on situations in which the S corporation qualifies for automatic relief under this [Rev. Proc. 97-48](#).

To be eligible for automatic relief under [Rev. Proc. 97-48](#), all of the following conditions must be met:

1. The corporation failed to qualify as an S corporation *solely* because Form 2553 was not timely filed;
2. The corporation and its shareholders reported income consistent with S corporation status for the year the S election should have been made and for every subsequent year;
3. At least six months have elapsed since the date on which the corporation filed its first return as an intended S corporation; and
4. Neither the corporation nor any of its shareholders were notified by the IRS of any problem regarding the S corporation status within six months of the date on which its first Form 1120S was timely filed.

The crux of automatic relief is that the corporation and its shareholders report the corporation's income as if it were an S corporation from the first year it intended to be treated as such.

Automatic relief is accomplished by filing a completed Form 2553 (see [Form 6.10\(c\)](#)). The form must be signed by an officer of the corporation authorized to sign *and* by all shareholders of the corporation during the period it intended to be an S corporation. The top of the form must state: "FILED PURSUANT TO [REV. PROC. 97-48](#)." Attached to the form must be a statement, signed by an officer of the corporation authorized to sign and by all shareholders of the corporation during the period it intended to be an S corporation, attesting full reporting of the S corporation income.

### **¶ 6.10[3][e] Failure to Qualify for Automatic Relief**

A corporation or trust that does not meet the requirements for relief or is denied relief under [Rev. Proc. 2003-43](#) may request inadvertent termination relief, inadvertent invalid election relief, or late election relief (as appropriate) by requesting a letter ruling. The IRS will not ordinarily issue a letter ruling if the period of limitations on assessment under [IRC § 6501\(a\)](#) has lapsed for any taxable year for which an election should have been made or any taxable year that would have been affected by the election had it been timely made.

### **¶ 6.10[4] Late Corporate Classification Election and Late S Corporation Election**

## ¶ 6.10[4][a] Late Corporate Classification Election for S Corporation

A corporation whose default entity classification is as a partnership or a disregarded entity may seek to be classified as an S corporation for federal tax purposes. The corporation (1) must elect to be classified as an association under [Reg. § 301.7701-3\(c\)\(1\)\(i\)](#) by filing IRS Form 8832 and (2) must elect to be an S corporation under [IRC § 1362\(a\)](#) by filing IRS Form 2553. In some cases, an entity may timely file the IRS Form 2553 but fail to file the IRS Form 8832. The entity must then submit a letter ruling request for an extension of time under Reg. § 301.9100 to file a late entity classification election. IRS Form 8832 is provided at [Form 2.02\(c\)](#).

In [TD 9203](#), 70 Fed. Reg. 29,452 (May 23, 2005), a regulation was promulgated to provide relief for these entities. This regulation amends [Reg. § 301.7701-3\(c\)\(1\)\(v\)](#) to provide that if an eligible entity makes a timely and valid election to be an S corporation under [IRC § 1362\(a\)\(1\)](#), it is treated as having made an election to be classified as an association under [Reg. § 301.7701-3](#). However, if its S corporation election is not timely and valid, the default classification rules provided in [Reg. § 301.7701-3\(b\)](#) (causing nonassociation treatment) will apply to the entity unless the IRS provides late S corporation election relief or inadvertent invalid election relief. If the late or invalid election is not perfected, the default rules will maintain the pass-through taxation treatment by classifying the entity as a partnership or a disregarded entity.

## ¶ 6.10[4][b] Late S Corporation and Corporate Classification Election

The IRS also provides a simplified method to request relief for both late S elections and late corporate classification elections intended to be effective on the same date. [Rev. Proc. 2004-48, 2004-2 CB 172](#). The method provided in this revenue procedure is in lieu of the letter ruling process ordinarily used to obtain relief for late elections under [IRC § 1362\(b\)\(5\)](#) and [Reg. §§ 301.9100-1](#) and [301.9100-3](#). Accordingly, user fees do not apply to corrective actions under this revenue procedure. An "eligible entity" that seeks to be classified as an S corporation must elect to be classified as an association under [Reg. § 301.7701-3\(c\)\(1\)\(i\)](#) by filing IRS Form 8832 and must elect to be an S corporation under [IRC § 1362\(a\)](#) by filing IRS Form 2553.

If an eligible entity fails to timely file IRS Form 2553, it may request relief under [Rev. Proc. 2004-48](#) if the following requirements are met:

1. It is an "eligible entity" as defined in [Reg. § 301.7701-3\(a\)](#);
2. It intended to be classified as a corporation as of the intended effective date of S corporation status;
3. It fails to qualify as a corporation solely because IRS Form 8832 was not timely filed under Reg. § 301.7100-3(c)(1)(i), or IRS Form 8832 was not deemed to have been filed under [Reg. § 301.7701-3\(c\)\(1\)\(v\)\(C\)](#);
4. It fails to qualify as an S corporation on the intended effective date solely because the S election was not timely filed pursuant to [IRC § 1362\(b\)](#); and
5. It has reasonable cause for its failure to timely file the S election and the entity classification election.

Within six months after the due date for the tax return for the first year the entity intended to be an S corporation (excluding extensions), the corporation must file a properly completed IRS Form 2553 with the applicable IRS Service Center. The IRS Form 2553 must state at the top of the document "FILED PURSUANT TO [REV. PROC. 2004-48](#)." Attached to the IRS Form 2553 must be a statement explaining the reason for the failure to timely file the S election and a statement explaining the reason for the failure to timely file the entity classification election. Upon receipt of a completed application requesting relief under this revenue procedure, the IRS will determine whether the requirements for granting additional time to file the elections have been satisfied and will notify the entity of the result of this determination. An entity receiving relief under this revenue procedure is treated as having made an election to be classified as an association taxable as a corporation under [Reg. § 301.7701-3\(c\)](#) as of the effective date of the S election. See [Form 6.10\(d\)](#).

## ¶ 6.10[4A] Additional Simplified Method for Seeking Subchapter S Procedural Relief

In [Rev. Proc. 2007-62, 2007-2 CB 786](#), which supplements [Rev. Proc. 2004-48, 2004-2 CB 172](#), and [Rev. Proc. 2003-43, 2003-1 CB 998](#), the IRS provided an additional simplified method for taxpayers to request relief for late S corporation elections. In addition,

[Rev. Proc. 2007-62](#) provides a simplified method for taxpayers to request relief for a late S corporation election and a late corporate classification election intended to be effective on the same date that the S corporation election was intended to be effective.

An entity may request relief under [Rev. Proc. 2007-62](#) for a late S corporation election if the following requirements are met:

1. The entity fails to qualify for its intended status as an S corporation on the first day that status was desired solely because of the failure to file a timely IRS Form 2553 with the "applicable campus"
2. The entity has reasonable cause for its failure to file a timely IRS Form 2553
3. The entity seeking to make the S corporation election has not filed a tax return for the first taxable year in which the election was intended
4. The application for relief is filed under this revenue procedure no later than six months after the due date of the tax return (excluding extensions) of the entity seeking to make the election for the first taxable year in which the election was intended
5. No taxpayer whose tax liability or tax return would be affected by the S corporation election (including all shareholders of the S corporation) has reported inconsistently with the election on any affected return for the year the election was intended

The applicant for such relief must be able to adequately demonstrate a reasonable cause for the failure to make a timely S corporation election. See, e.g., [Priv. Ltr. Rul. 200827019](#), where the IRS concluded that relief under [IRC § 1362\(b\)\(5\)](#) was denied because the corporation did not establish reasonable cause for failing to make a timely S corporation election.

Relief for a late S corporation election and a late corporate classification election may be obtained under this [Rev. Proc. 2007-62](#) if the following conditions are met:

1. The entity is an eligible entity as defined in [Reg. § 301.7701-3\(a\)](#)
2. The entity intended to be classified as a corporation as of the intended effective date of the S corporation status
3. The entity fails to qualify as a corporation solely because IRS Form 8832 was not timely filed under [Reg. § 301.7701-3\(c\)\(1\)\(i\)](#) or it was not deemed to have been filed under [Reg. § 301.7701-3\(c\)\(1\)\(v\)\(C\)](#)
4. The entity fails to qualify as an S corporation on the intended effective date of the S corporation status solely because the S corporation election was not timely filed pursuant to [IRC § 1362\(b\)](#)
5. The entity has reasonable cause for its failure to file a timely IRS Form 2553 and a timely IRS Form 8832
6. The entity seeking to make the S corporation election has not filed a tax return for the first taxable year in which the election was intended
7. The application for relief is filed under [Rev. Proc. 2007-62](#) no later than six months after the due date of the S corporation return (excluding extensions) of the entity seeking to make the election for the first taxable year in which the election was intended
8. No taxpayer whose tax liability or tax return would be affected by the S corporation election (including all shareholders of the S corporation) has reported inconsistently with the election on any affected return for the year the election was intended

Upon receipt of a completed application requesting relief under this revenue procedure, the IRS will determine whether the requirements for granting relief have been satisfied. An entity receiving relief under this revenue procedure is treated as having made an election to be classified as an association taxable as a corporation under [Reg. § 301.7701-3\(c\)](#) as of the effective date of the S corporation election.

## ¶ 6.10[5] State Law Termination of Corporate Charter

In some situations, the existence of a corporation may be terminated for state law purposes. The question then becomes whether corporate status and subchapter S eligibility remain unaffected for federal tax purposes. Sometimes a corporate charter is canceled under state law, often for failure to pay necessary statutory fees, but the business of the corporation continues unaffected. The IRS may agree that no corporate termination has actually occurred. For example, in [Priv. Ltr. Rul. 200548012](#), the corporation's state law violation of its articles of incorporation was without federal tax impact where state law provided that the corporation remained organized under the state corporate law statute. In [Priv. Ltr. Rul. 200539005](#), the corporation was administratively dissolved by state

action for failure to pay applicable annual registration fees, and, upon learning of the dissolution, it immediately reincorporated. In [Priv. Ltr. Rul. 200535017](#), the IRS indicated that a corporation is subject to federal corporate income taxation as long as it continues to do business in a corporate manner, despite the situation that its recognized legal status under state law may have been terminated. For a discussion of [Priv. Ltr. Rul. 200535017](#), see Streng, "IRS Treatment of the State Law Dissolution (and Revitalization) of a Corporation," located at [http://www.bnatax.com/tm/insights\\_streng.htm](http://www.bnatax.com/tm/insights_streng.htm). If corporate status is deemed to continue for federal tax purposes, S status should also be unaffected (assuming no other disqualification events have occurred), but any inquiry to the IRS concerning corporate status should also seek to confirm that S status remains unaffected.

For another example of a situation where a corporation's S election was not terminated as the result of state law administrative dissolution, see [Priv. Ltr. Rul. 201237001](#). The corporation was administratively dissolved for failing to file a report with state authorities. The corporation reincorporated when it became aware of the dissolution. During the period it was unaware of the dissolution, it continued to file federal income tax returns as an S corporation. The IRS indicated that, for purposes of federal income tax, the determination of whether an organization is taxed as a corporation is made under federal law, not state law. If a corporation's recognized legal status is terminated under state law but it continues to do business in a corporate manner, the corporation will be taxed as a corporation for federal income tax purposes. Further, the corporation's status as an S corporation was not deemed terminated as a result of its dissolution. In addition, administrative dissolution and later reincorporation of the corporation under state law did not result in a disposition or transfer of property for purposes of [IRC § 301\(a\)](#) (dividends), [IRC § 311\(a\)\(2\)](#) (gain on property distributions), [IRC § 331\(a\)](#) (liquidation effects to shareholders), [IRC § 336\(a\)](#) (liquidation effects to the distributing corporation), and [IRC § 351](#) (transfers to controlled corporations).

## ¶ 6.10[6] Ineligible Shareholder

### ¶ 6.10[6][a] Inadvertent Termination for Transfer to Ineligible Shareholder

Sometimes S corporation stock is transferred by an existing shareholder to an ineligible transferee, such as a nonresident alien, partnership, or corporation. To avoid this from happening, an S corporation should have in place documentation to assure that such transfers can be unwound retroactively and to regard those transfers as void from their inception. See [¶ 6.11](#). If the parties do not know that a transfer to an ineligible shareholder is being made, they will need to obtain "inadvertent termination" relief from the IRS under [IRC § 1362\(f\)](#).

### ¶ 6.10[6][b] Relief From Inadvertent Termination

[IRC § 1362\(f\)](#) and [Reg. § 1.1362-4\(a\)](#) provide that a corporation is treated as continuing to be an S corporation during the period specified by the IRS if the following conditions are met:

1. The corporation made a valid election under [IRC § 1362\(a\)](#) and the election terminated.
2. The IRS determines that the termination was inadvertent.
3. Steps were taken by the corporation to return to small business corporation status within a reasonable period after discovery of the terminating event; and
4. The corporation and shareholders agree to adjustments that the IRS may require for the period.

[Reg. § 1.1362-4\(b\)](#) specifies that the IRS must determine whether a termination was inadvertent. The corporation has the burden of establishing that under the facts and circumstances the IRS should determine that the termination was inadvertent. The fact that the terminating event was not reasonably within the corporation's control, was not part of a plan to terminate, or took place without the corporation's knowledge, notwithstanding its due diligence to safeguard itself against such an event, tends to establish that the termination was inadvertent.

[Reg. § 1.1362-4\(c\)](#) indicates that a corporation that believes its election was terminated inadvertently may request a determination of inadvertent termination from the IRS. The request is made in the form of a private letter ruling request, which must set forth all of the relevant facts pertaining to the event, including the following:

1. The circumstances for the termination of the election;
2. The date of the corporation's election under [IRC § 1362\(a\)](#);
3. A detailed explanation of the event causing termination;
4. When and how the event was discovered; and
5. The steps taken to return the corporation to small business corporation status.

## ¶ 6.10[7] Shareholder Consents Not Properly Signed

### ¶ 6.10[7][a] Shareholder Consent Required But Not Obtained

Sometimes shareholders' consents are not properly signed or obtained and, therefore, the S corporation's status is not perfected. Relief can be obtained under [IRC § 1362\(f\)](#) when shareholders' consents have not been adequately obtained. The IRS issues numerous private letter rulings in response to taxpayers seeking to correct their mistakes in this area.

### ¶ 6.10[7][b] Community Property Ownership

If S shares are acquired with community property funds, the shares will themselves become community property. These shares may be issued only in the name of one spouse, yet, under applicable state community property rules, they constitute community property. Often, only that spouse signs the S corporation shareholder consent. However, because both spouses are owners of the shares, both must sign the consent and, consequently, S corporation status is not perfected if both have not consented.

Because this is a common occurrence, the IRS has issued [Rev. Proc. 2004-35, 2004-1 CB 1029](#), providing automatic filing relief in this context. This revenue procedure provides that automatic relief is available if the following conditions are met:

1. The S corporation election is invalid solely because IRS Form 2553 failed to include the signature of a community property spouse who was a shareholder solely pursuant to state community property law; and
2. Both spouses have reported all items of income, gain, loss, deduction, or credit consistent with the S corporation election on all affected federal income tax returns.

To obtain this relief, the corporation must file with the IRS Service Center with which it files its tax return a dated statement that includes certain identifying information and a signed statement from each spouse.

[Rev. Proc. 2004-35](#) notes that the IRS will notify the shareholder of the acceptance or denial of relief. The revenue procedure also indicates that if a corporation does not meet the requirements for relief under this revenue procedure, it may request relief under [Reg. § 1.1362-6\(b\)\(3\)\(iii\)](#) or may request inadvertent invalid election relief by private letter ruling. See [Form 6.10\(f\)](#).

## ¶ 6.10[8] Description of Accompanying Transactional Forms

[Form 6.10\(a\)](#) is a request for IRS relief when the S election has not been timely filed and a tax return has not been previously filed. [Form 6.10\(b\)](#) provides a similar request for IRS relief when the S election has not been timely filed and a tax return has been previously filed. [Form 6.10\(c\)](#) is a request for relief under [Rev. Proc. 97-48](#) when the corporation and the shareholders have been reporting as if S status was established and no notification to the contrary has been received from the IRS.

[Form 6.10\(d\)](#) is a request for IRS relief under [Rev. Proc. 2004-48](#) when both the subchapter S election and the entity classification election have not be timely filed for an unincorporated entity.

[Form 6.10\(e\)](#) is a request for IRS relief for an inadvertent termination of an S election where shares of the S corporation have been transferred to an ineligible shareholder. [Form 6.10\(f\)](#) is a request for IRS relief when a late shareholder election is made because of an earlier failure to recognize a community property ownership interest in S corporation stock.

## ¶ 6.10[9] Additional References

See *Bittker & Eustice*, Chapter 6; [Eustice & Kuntz, Federal Income Taxation of S Corporations ¶ 5.03 \(Warren, Gorham & Lamont 2001\)](#); [Christian & Grant, Subchapter S Taxation ch. 31 \(Warren, Gorham & Lamont 2000\)](#); Starr, "S Corporations: Formation and Termination," Tax Mgmt. Portfolio (BNA) No. 730-2d (2001); Starr, "S Corporations—Operations," Tax Mgmt. Portfolio (BNA) No. 731-2d (2005).

### **Form 6.10(a). Reasonable Cause Statement for Failure to File S Corporation Election When No Return Filed**

#### **"FILED PURSUANT TO REV. PROC. 2003-43"**

Taxpayer: ABC, Inc.

Address \_\_\_\_\_

TIN \_\_\_\_\_

The purpose of this statement is to establish reasonable cause for the failure of ABC, Inc. to timely file the election under subchapter S. ABC, Inc. has not filed a tax return for the first taxable year (ended December 31, 20) of the intended election under subchapter S within six months of the due date of that tax return (excluding extensions). Under [Rev. Proc. 2003-43](#), ABC, Inc. may request relief under [Rev. Proc. 2003-43](#) when an election has not been filed under subchapter S by filing with the applicable IRS Service Center the properly completed election form(s) and the supporting documents described below. The election form(s) must be filed within eighteen months of the original due date of the intended election under subchapter S (but in no event later than six months after the due date of the tax return (excluding extensions) of the entity for the first year in which the election was intended). Further, the following statement is included, which should establish reasonable cause for the failure to timely file the election under subchapter S: "ABC, Inc.'s president delegated the responsibility to file this election to legal counsel. Thereafter, legal counsel prepared the election form and transmitted it to ABC, Inc.'s president. The document was misplaced by president's personal assistant. It was located, and it is now immediately being filed with the IRS."

\_\_\_\_\_  
Signature

### **Form 6.10(b). Reasonable Cause Statement for Failure to File S Corporation Election When Return Filed**

#### **"FILED PURSUANT TO REV. PROC. 2003-43"**

Taxpayer: ABC, Inc.

Address \_\_\_\_\_

TIN \_\_\_\_\_

The purpose of this statement is to establish reasonable cause for the failure of ABC, Inc. to timely file the election under subchapter S. ABC, Inc. has filed a tax return for the first taxable year (ended December 31, 20) of the intended election under subchapter S within six months of the due date of that tax return (excluding extensions). Under [Rev. Proc. 2003-43](#), ABC, Inc. may request relief under [Rev. Proc. 2003-43](#) for the late election under subchapter S by filing with the applicable IRS Service Center the properly completed election form(s) and the supporting documents described below. The election form(s) must be filed within twenty-four months of the original due date for the election under subchapter S. These filings are being accomplished with this notice. Attached to the election form is a statement that should establish reasonable cause for the failure to timely file the election under subchapter S.

\_\_\_\_\_  
Signature

### **Form 6.10(c). Automatic Relief Under Rev. Proc. 97-48 for Failure to File S Corporation Election**



**“FILED PURSUANT TO REV. PROC. 97-48”**

Taxpayer: ABC, Inc.

Address \_\_\_\_\_

TIN \_\_\_\_\_

The purpose of this statement is to demonstrate qualification for automatic relief under [Rev. Proc. 97-48](#) for the failure of ABC, Inc. to timely file the election under subchapter S. ABC, Inc. notes that, as required under [Rev. Proc. 97-48](#):

1. ABC, Inc. failed to qualify as an S corporation solely because IRS Form 2553 was not timely filed;
2. ABC, Inc. and its shareholders reported income consistent with S corporation status for the year the S election should have been made and for every subsequent year;
3. At least six months have elapsed since the date on which ABC, Inc. filed its first return as an intended S corporation; and
4. Neither ABC, Inc. nor any of its shareholders were notified by the IRS of any problem regarding the S corporation status within six months of the date on which its first Form 1120S was timely filed.

Completed IRS Form 2553 is attached. Attached to the form is a statement [omitted] signed by an officer of ABC, Inc. authorized to sign and by all shareholders of ABC, Inc. during the period ABC, Inc. intended to be an S corporation. This statement attests (under penalties of perjury) to the full reporting of ABC, Inc.'s S corporation income since its inception.

\_\_\_\_\_  
Signature

**Form 6.10(d). Late S Corporation and Entity Classification Elections**

**“FILED PURSUANT TO REV. PROC. 2004-48”**

Taxpayer: ABC, Inc.

Address \_\_\_\_\_

TIN \_\_\_\_\_

**Request for Relief** ABC, Inc. requests relief under this [Rev. Proc. 2004-48](#) for its failure to timely file its S corporation and entity classification elections. The purpose of this statement is to establish reasonable cause for the failure of ABC, Inc. to timely file (1) the election under subchapter S and (2) the entity classification election as a corporation. A procedure for relief for both a late S corporation election and a late corporate classification election intended to be effective on the same date is provided in [Rev. Proc. 2004-48, 2004-2 CB 172](#). An entity may request relief under [Rev. Proc. 2004-48](#) if the following requirements are met:

1. The entity is an “eligible entity” as defined in [Reg. § 301.7701-3\(a\)](#);
2. The entity intended to be classified as a corporation as of the intended effective date of the S corporation status;
3. The entity fails to qualify as a corporation solely because IRS Form 8832 was not timely filed under Reg. § 301.7100-3(c) (1)(i), or IRS Form 8832 was not deemed to have been filed under [Reg. § 301.7701-3\(c\)\(1\)\(v\)\(C\)](#);
4. The entity fails to qualify as an S corporation on the intended effective date of the S corporation status solely because the election was not timely filed pursuant to [IRC § 1362\(b\)](#); and
5. The entity has reasonable cause for its failure to timely file the S corporation election and the entity classification election.

ABC, Inc. satisfies all of these criteria. As required by [Rev. Proc. 2004-48](#), ABC, Inc. is filing the attached IRS Form 2553 with the IRS Service Center within six months after the due date of the tax return.

**Statement Explaining Failure to Timely File** As attached to IRS Form 2553, this statement explains the reason for the failure to timely file the S corporation election and a statement explaining the reason for the failure to timely file the entity classification election. ABC, Inc. (acting through its primary manager) delegated the responsibility for the filing of these documents to its accounting firm. Shortly after assigning that responsibility, the office of the accounting firm was severely damaged by a hurricane. ABC, Inc. believed the documents had previously been filed with the IRS, but they had not been filed. ABC, Inc. has only recently discovered that these documents were not filed and has now taken expeditious action to remedy this situation.

## **Form 6.10(e). Request for IRS Letter Ruling for Relief From Inadvertent Termination Caused by Ineligible Shareholder**

Internal Revenue Service  
Attn: CC:PA:LPD:DRU  
PO Box 7604  
Ben Franklin Station  
Washington, DC 20044

Attention: Associate Chief Counsel (Passthroughs)

Re: Request for Letter Ruling Concerning [IRC § 1362\(f\)](#) Relief

Dear Sir:

This request for relief is submitted to obtain a letter ruling under [IRC § 1362\(f\)](#).

**Factual Summary** ABC, Inc. made an election to be treated as an S corporation effective (Date 1). On (Date 2), one share of ABC Inc.'s common stock was purchased by Y, an ineligible shareholder. On (Date 3), the share held by Y was transferred to an eligible shareholder. ABC, Inc. and its shareholders agree to make any adjustments consistent with the treatment of ABC, Inc. as an S corporation as may be required by the Secretary with respect to the period specified by [IRC § 1362\(f\)](#).

**Ruling Requested** ABC, Inc. requests relief under [IRC § 1362\(f\)](#).

**Statement of Law and Analysis** [IRC § 1361\(a\)\(1\)](#) defines an "S corporation" as a small business corporation for which an election under [IRC § 1362\(a\)](#) is in effect. [IRC § 1361\(b\)\(1\)](#) defines a "small business corporation" as a domestic corporation that is not an ineligible corporation and does not (1) have more than 100 shareholders, (2) have as a shareholder a person (other than an estate or a trust described in subsection [IRC § 1361\(c\)\(2\)](#)) who is not an individual, (3) have a nonresident alien as a shareholder, and (4) have more than one class of stock. [IRC § 1362\(d\)\(2\)\(A\)](#) provides that an election under [IRC § 1362\(a\)](#) shall be terminated whenever the corporation ceases to be a small business corporation. [IRC § 1362\(f\)](#) provides that if (1) an election under [IRC § 1362\(a\)](#) by any corporation was terminated under [IRC § 1362\(d\)](#), (2) the Secretary determines that the circumstances resulting in the termination were inadvertent, (3) no later than a reasonable period of time after the discovery of the circumstances resulting in the termination, steps were taken so that the corporation is a small business corporation, and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period of inadvertent termination of the S election, agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in the termination, the corporation is treated as an S corporation during the period specified by the Secretary. Based on these facts submitted and representations made, ABC Inc.'s election to be treated as an S corporation did terminate on Date 2. However, you should conclude that the termination constituted an "inadvertent termination" within the meaning of [IRC § 1362\(f\)](#). Consequently, under the provisions of [IRC § 1362\(f\)](#), ABC, Inc. should be treated as continuing to be an S corporation from Date 2, and thereafter, provided that ABC, Inc.'s S corporation election is not otherwise terminated under [IRC § 1362\(d\)](#).

**Procedural Matters** [Rev. Proc. 2006-1](#) Statements [omitted]. See [Rev. Proc. 2012-1, 2012-1 IRB 1, Appendix B](#) (Sample Format for a Letter Ruling Request), for a listing concerning various statements to be included. Administrative Requirements [omitted]. See [Rev. Proc. 2012-1, 2012-1 IRB 1, Appendix B](#) (Sample Format for a Letter Ruling Request), for a listing concerning various administrative requirements to be satisfied.

Very truly yours,

Taxpayer

By: \_\_\_\_\_

\_\_\_\_\_  
Typed or printed name

**Declaration** Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the request contains all of the relevant facts relating to the request, and such facts are true, correct, and complete.

Taxpayer

By: \_\_\_\_\_

\_\_\_\_\_  
Typed or printed name

**Form 6.10(f). Statement to Be Filed Pursuant to Rev. Proc. 2004-35 to Enable Community Property Election Relief**

Internal Revenue Service Center  
Austin, TX 73301

Re: S Corporation Eligibility—Shareholder Consent of Community Property Spouses

Pursuant to [Rev. Proc. 2004-35](#), ABC, Inc. is filing with the Austin, Texas, Service Center (where ABC, Inc. files its income tax return) this statement to obtain relief:

1. This statement is being furnished pursuant to [Rev. Proc. 2004-35](#) for a late filing of shareholder consents for community property spouses of S corporation shareholders in community property states.
2. The name of the corporation, its TIN, its address, date of incorporation, state of incorporation, and the intended effective date of its initially filed Form 2553 are as follows:

ABC, Inc. (incorporated in the State of on January 2, 20)

Address: \_\_\_\_\_

TIN: \_\_\_\_\_

Intended effective date of the previously filed Form 2553: January 2, 20

3. Each spouse's name, SSN, tax year end, and the total number of shares owned (as community property) at the date of the intended election are as follows:

WS (timely signed the shareholder consent) and

SS (*did not* sign the shareholder consent)

WS SSN: \_\_\_\_\_

SS SSN: \_\_\_\_\_

Their tax years end: December 31

Total shares owned at time of intended election: 1,000 shares (as community property)

4. WS and SS will report all items of income, gain, loss, deduction, or credit consistent with the S corporation election on all affected returns, since no tax year prior to the current tax year is relevant.

5. Under penalties of perjury, I, SS, declare that I consent to the election to treat ABC, Inc. as an S corporation under [IRC § 1362\(a\)](#) as of January 2, 20, and to the best of my knowledge and belief, the facts presented in support of this election are true, correct, and complete.

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SS signature