

Private companies should take advantage of Rev. Proc. 2013-30, which provides significant relief for late S corporation elections

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In brief

As part of year-end tax diligence, sell-side due diligence, or prior to an Internal Revenue Service (IRS) examination, it is advisable that private companies operating as S corporations confirm whether they have timely S corporation elections in place.

In this regard, the IRS recently released Rev. Proc. 2013-30, which provides relief to taxpayers who failed to timely file certain elections, including S corporation elections, electing small business trust (ESBT) elections, qualified subchapter S trust (QSST) elections, qualified subchapter S subsidiary (QSub) elections, and corporate classification elections. Rev. Proc. 2013-30 also consolidates the relief provisions provided for in prior revenue procedures and extends the time period for relief in certain circumstances.

In detail

Scope of relief

Rev. Proc. 2013-30 consolidates and expands relief provisions

provided for in prior revenue procedures. It provides relief for the following late elections by a "Requesting Entity" by

completing certain "Election Forms".

Late elections	Requesting entity	Election forms
S corporation	Corporation seeking to be treated as an S corporation	Form 2553, <i>Election by a Small Business Corporation</i>
Corporate classification	Entity seeking to be classified as a corporation to concurrently elect to be treated as an S corporation	Form 8832, <i>Entity Classification Election</i> , and Form 2553, including representations
ESBT	Trustee seeking to treat a trust as an ESBT	Separate statements
QSST	Trust beneficiary seeking to treat a trust as a QSST	Form 2553 and separate statements
QSub	Parent S corporation seeking to treat a subsidiary as a QSub	Form 8869, <i>Qualified Subchapter S Subsidiary Election</i>

General requirements

To apply for relief under Rev. Proc. 2013-30, the following general requirements all must be met:

- 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, on the “Effective Date,” the date on which the election was intended to be effective;
- The Requesting Entity requests relief within three years and 75 days after the Effective Date; and
- The failure to qualify as an S corporation, ESBT, QSST, or QSub as of the Effective Date was solely because the election was not timely filed by the due date of the election.

When requesting relief for a late S election or QSub election, the Requesting Entity must demonstrate reasonable cause for its failure to file a timely election and show that it has acted diligently to correct the mistake. In the case of an inadvertent invalid S corporation election or inadvertent termination of an S corporation election due to the failure to make a timely QSST or ESBT election, the failure must have been inadvertent. The S corporation and the person

or entity seeking relief must also show that they have acted diligently to correct the mistake upon its discovery.

It is important to note that the above timing requirement to request relief within three years and 75 days after the Effective Date does not apply when the corporation and all of its shareholders have reported their income consistent with S corporation status for each year the S corporation election should have been made. In this situation, relief under Rev. Proc. 2013-30 may be requested at any time.

Observation: Rev. Proc. 2013-30 extends the deadline for the late S corporation election to three years and 75 days, which coincides with the deadline for late check-the-box elections described in Rev. Proc. 2009-41. It also eliminates the deadline for late S corporation elections in some situations.

Procedural requirements

Under Rev. Proc. 2013-30, the Requesting Entity may request relief by properly completing the appropriate Election Forms and attaching the requested supporting documents plus the “Reasonable Cause/Inadvertence Statement” described in the revenue procedure.

Observation: The Reasonable Cause/Inadvertence Statement and other statements required in Rev.

Proc. 2013-30 all must contain a dated declaration under the penalties of perjury and be signed by an authorized officer. Rev. Proc. 2013-30 provides an alternative method for relief for certain late elections in lieu of a private letter ruling. User fees do not apply to the relief provisions described in Rev. Proc. 2013-30. However, when taxpayers cannot satisfy the requirements in Rev. Proc. 2013-30, they may seek relief by requesting private letter rulings from the IRS.

The takeaway

As part of tax diligence, taxpayers should review S corporation elections, including ESBT, QSST, and QSub elections, as well as corporate classification elections accompanying S corporation elections, to determine whether such elections were timely filed. Rev. Proc. 2013-30 provides generous late-election relief to taxpayers that failed to file certain elections under subchapter S.

Taxpayers that find they have failed to file such elections in a timely manner should analyze whether Rev. Proc. 2013-30 applies to their particular situation. If a particular late election fails to qualify for the relief provided in Rev. Proc. 2013-30, relief still may be available through the letter ruling process.

Let's talk

For a deeper discussion of how this might affect your business, please contact the PwC professional listed below or your local [PCS contact](#):

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