Internal Revenue
bulletin

Bulletin No. 2013-36
September 3, 2013

# HIGHLIGHTS OF THIS ISSUE

**These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.**

## INCOME TAX

### T.D. 9628, page 169.

Section 6103(l)(21) of the Code was enacted under the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)) to permit the disclosure of return information in order to determine a taxpayer's eligibility in certain health insurance affordability programs. In addition to items specifically enumerated in the statute, section 6103(l)(21)(A)(v) permits the disclosure of items prescribed by the Secretary by regulation as might indicate whether the taxpayer is eligible for a tax credit under section 36B of the Code, or a cost-sharing reduction under section 1402 of the Affordable Care Act. This document contains final regulations detailing items of return information that may be disclosed under section 6103(l)(21).

### Notice 2013–53, page 173.

2013 Marginal Production Rates. This notice announces that under § 613A(c)(6)(C) of the Code, the applicable percentage for purposes of determining percentage depletion on marginal properties for calendar year 2013 is 15 percent.

### Rev. Proc. 2013–30, page 173.

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 which the taxpayer intended to take effect on the same date that the taxpayer intended that an S corporation election for the entity should take effect. This revenue procedure facilitates the grant of relief to taxpayers that request relief previously provided in numerous other revenue procedures by consolidating the provisions of those revenue procedures into one revenue procedure and extending relief in certain circumstances. Rev. Procs. 97–48, 2003–43, 2004–48, 2004–49, and 2007–62 are affected.

## ESTATE TAX

### T.D. 9628, page 169.

Section 6103(l)(21) of the Code was enacted under the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)) to permit the disclosure of return information in order to determine a taxpayer's eligibility in certain health insurance affordability programs. In addition to items specifically enumerated in the statute, section 6103(l)(21)(A)(v) permits the disclosure of items prescribed by the Secretary by regulation as might indicate whether the taxpayer is eligible for a tax credit under section 36B of the Code, or a cost-sharing reduction under section 1402 of the Affordable Care Act. This document contains final regulations detailing items of return information that may be disclosed under section 6103(l)(21).

## GIFT TAX

### T.D. 9628, page 169.

Section 6103(l)(21) of the Code was enacted under the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)) to permit the disclosure of return information in order to determine a taxpayer's eligibility in certain health insurance affordability programs. In addition to items specifically enumerated in the statute, section 6103(l)(21)(A)(v) permits the disclosure of items prescribed by the Secretary by regulation as might indicate whether the taxpayer is eligible for a tax credit under section 36B of the Code, or a cost-sharing reduction under section 1402 of the Affordable Care Act. This document contains final regulations detailing items of return information that may be disclosed under section 6103(l)(21).

**(Continued on the next page)**

**Finding Lists begin on page ii.**

Department of the Treasury
Internal Revenue Service

## EMPLOYMENT TAX

**T.D. 9628, page 169.**
Section 6103(l)(21) of the Code was enacted under the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)) to permit the disclosure of return information in order to determine a taxpayer's eligibility in certain health insurance affordability programs. In addition to items specifically enumerated in the statute, section 6103(l)(21)(A)(v) permits the disclosure of items prescribed by the Secretary by regulation as might indicate whether the taxpayer is eligible for a tax credit under section 36B of the Code, or a cost-sharing reduction under section 1402 of the Affordable Care Act. This document contains final regulations detailing items of return information that may be disclosed under section 6103(l)(21).

## EXCISE TAX

**T.D. 9628, page 169.**
Section 6103(l)(21) of the Code was enacted under the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)) to permit the disclosure of return information in order to determine a taxpayer's eligibility in certain health insurance affordability programs. In addition to items specifically enumerated in the statute, section 6103(l)(21)(A)(v) permits the disclosure of items prescribed by the Secretary by regulation as might indicate whether the taxpayer is eligible for a tax credit under section 36B of the Code, or a cost-sharing reduction under section 1402 of the Affordable Care Act. This document contains final regulations detailing items of return information that may be disclosed under section 6103(l)(21).

## TAX CONVENTIONS

**Announcement 2013–38, page 185.**
This announcement provides a copy of the Competent Authority Agreement entered into by the competent authorities of the United States and Belgium regarding application of the principles set forth in the Organization for Economic Cooperation and Development Report on the Attribution of Profits to Permanent Establishments in the interpretation of Article 7 (Business Profits) of the Convention Between the Government of the United States of America and the Government of the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, and accompanying Protocol, signed at Brussels on November 27, 2006.

## ADMINISTRATIVE

**T.D. 9628, page 169.**
Section 6103(l)(21) of the Code was enacted under the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)) to permit the disclosure of return information in order to determine a taxpayer's eligibility in certain health insurance affordability programs. In addition to items specifically enumerated in the statute, section 6103(l)(21)(A)(v) permits the disclosure of items prescribed by the Secretary by regulation as might indicate whether the taxpayer is eligible for a tax credit under section 36B of the Code, or a cost-sharing reduction under section 1402 of the Affordable Care Act. This document contains final regulations detailing items of return information that may be disclosed under section 6103(l)(21).

# The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

# Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

**Part I.—1986 Code.**
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

**Part II.—Treaties and Tax Legislation.**
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

**Part III.—Administrative, Procedural, and Miscellaneous.**
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

**Part IV.—Items of General Interest.**
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

# Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

## Section 6103.—Confidentiality and Disclosure of Returns and Return Information

## T.D. 9628

## DEPARTMENT OF THE TREASURY
## Internal Revenue Service
## 26 CFR Part 301

## Regulations Pertaining to the Disclosure of Return Information to Carry Out Eligibility Requirements for Health Insurance Affordability Programs

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains final regulations relating to the disclosure of return information under section 6103(l)(21) of the Internal Revenue Code, as enacted by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010. The regulations define certain terms and prescribe certain items of return information in addition to those items prescribed by statute that will be disclosed, upon written request, under section 6103(l)(21).

DATES: *Effective Date:* These regulations are effective on August 14, 2013.

*Applicability Date:* For date of applicability, see §301.6103(l)(21)–1(d).

FOR FURTHER INFORMATION CONTACT: Steven Karon, (202) 622–4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

**Background**

Section 6103(l)(21) of the Internal Revenue Code (the Code) permits the disclosure of return information to assist Exchanges in performing certain functions set forth in the Patient Protection and Affordable Care Act, Public Law 111–148 (124 Stat. 119 (2010)) (the Affordable Care Act) for which income verification is required (including determinations of eligibility for the insurance affordability programs described in the Affordable Care Act), as well as to assist State agencies administering a State Medicaid program under title XIX of the Social Security Act, a State's children's health insurance program under title XXI of the Social Security Act (CHIP), or a basic health program (BHP) under section 1331 of the Affordable Care Act (if applicable). Section 6103(l)(21) identifies specific items of return information that will be disclosed. For taxpayers whose income is relevant in determining eligibility for an insurance affordability program, Medicaid, CHIP, or BHP, section 6103(l)(21) explicitly authorizes the disclosure of the following items of return information: taxpayer identity information, filing status, the number of individuals for whom a deduction is allowed under section 151 of the Code, the taxpayer's modified adjusted gross income as defined under section 36B of the Code (MAGI), and the taxable year to which any such information relates or, alternatively, that such information is not available. Section 6103(l)(21) also authorizes the disclosure of such other information prescribed by regulation that might indicate whether an individual is eligible for the premium tax credit under section 36B of the Code, or cost-sharing reductions under section 1402 of the Affordable Care Act, and the amount thereof.

The Treasury Department and the IRS published a notice of proposed rulemaking (REG–119632–11) in the **Federal Register,** 77 FR 25378, on April 30, 2012, proposing additional items to be disclosed pursuant to section 6103(l)(21). A public hearing was scheduled for August 31, 2012. The IRS did not receive any requests to testify at the public hearing, and the public hearing was cancelled. Five written comments responding to the proposed regulations were received. All comments were considered and are available for public inspection at *http://www.regulations.gov* or upon request. Additionally, the IRS received information from the Department of Health and Human Services (HHS) that pertains to the disclosure of items pursuant to section 6103(l)(21). After consideration of the written comments and the information provided to the IRS by HHS, the proposed regulations under section 6103(l)(21) are adopted as revised by this final regulation. The public comments, the information HHS provided to the IRS, and the revisions are discussed in the following section.

**Summary of Comments and Explanation of Provisions**

The IRS received five written comments in response to the proposed regulations. Two commentators expressed support for the proposed regulations and had no suggested changes. A third commentator provided a comment, discussed in this section, concerning the items disclosed under section 6103(l)(21) and the proposed regulations. The remaining commentators made comments, also discussed in this section, pertaining to section 6103 generally, but did not make comments specific to the proposed regulations under section 6103(l)(21) and the additional items to be disclosed under that section.

A commentator stated that the premium tax credit under section 36B applies to low income filers. The commentator stated that, when a filer's income exceeds the maximum income allowable for the credit, the IRS should only disclose that the individual's income is above the maximum allowable amount, and not provide the return information as described by section 6103(l)(21) or the proposed regulations. As noted in the preamble to the proposed regulations, the Affordable Care Act and HHS's final regulations (77 FR at 18456–18458) require that Exchanges use alternative means to verify income where information is not available from, or verified by, the IRS. Providing the specific delineated items described by section 6103(l)(21) and these regulations, as opposed to simply stating that an applicant's income is above the threshold for a premium tax credit, will inform an Exchange

of the degree to which alternative verification may be needed. Therefore, disclosing these items to an Exchange will assist the Exchange in determining an individual's eligibility for, and the amount of, any advance payment of the premium tax credit or cost-sharing reductions. Accordingly, after careful consideration of the comment, the regulations remain unchanged.

The commentator additionally noted that taxpayers should be able to request that the IRS tell them if anyone requested information about their return using this regulation. No changes were made to these regulations as a result of this comment. Section 6103(l)(21) and these regulations concern the disclosure of items of return information to HHS, Exchanges, and certain State agencies, and not the disclosure of whether anyone requested a taxpayer's return information under section 6103 in general. Section 6103(p)(3) describes certain requirements with respect to the maintenance of a system of records or accountings of all requests for inspection or disclosure of return or return information under section 6103 generally.

The commentator also stated that the regulation should contain a penalty for individuals that fraudulently request information. The commentator further suggested that the regulation should contain a penalty for HHS, Exchanges, and any other organizations that do not comply with the data protection requirements. No changes were made in response to these comments. Section 6103(l)(21) does not permit the Treasury Department or the IRS to establish penalties under these regulations. The Treasury Department and the IRS note, however, that section 1411(h)(1)(B) of the Affordable Care Act states that any person who knowingly and willfully provides false or fraudulent information shall be subject to a penalty of not more than $250,000 in addition to any other penalties prescribed by law. Additionally, penalties may be imposed under sections 7213, 7213A, and 7431 of the Code for unauthorized disclosures of return information obtained under section 6103(l)(21).

One commentator expressed concerns about taxpayer privacy and wanted assurances that HHS and other agencies receiving return information are required to adopt the safeguarding requirements of section 6103. By operation of law, the safeguards established by section 6103(p)(4) apply to those entities described in section 6103(l)(21), namely HHS, the Exchanges established under the Affordable Care Act, and the State agencies administering a State program described under section 6103(l)(21), as well as their contractors. No regulatory changes are needed to have section 6103(p)(4) apply to those entities. The commentator also noted that section 1411(g)(2)(b) of the Affordable Care Act imposes penalties on HHS employees and contractors who improperly use or disclose tax return information, and suggested that the regulations should clarify that this penalty may be imposed in addition to the penalty imposed under section 7213 of the Code when there are certain unauthorized disclosures of return information. The commentator is correct that both statutory provisions provide for civil or criminal penalties for the improper use or disclosure of tax return information. Because those provisions govern the imposition of those penalties, no changes are needed with respect to these regulations.

Finally, another commentator remarked about the timing and characteristics of particular communications made from Exchanges to an applicant, stating that notices should be sent throughout the application process. The commentator stated the notices should be in language appropriate for all populations, suggesting that existing guidance from the Department of Justice (DOJ) and HHS on providing appropriate documents to limited English proficiency populations may be helpful. These comments regarding the timing and characteristics of such communications are outside the scope of section 6103(l)(21) and these regulations.

After the Treasury Department and the IRS published the proposed regulations, HHS informed the IRS that it may be receiving certain items of information from the Social Security Administration (SSA). One of the items that HHS expects to receive from SSA is the total amount of the social security benefits for each individual whose income is relevant to the determination of eligibility for health insurance affordability programs described in the Affordable Care Act. If the IRS also provides HHS with the amount of social security benefits included in gross income under section 86, an Exchange or State agency will be generally able to determine the amount of social security benefits not included in gross income under section 86. This amount is one of the components of an individual's MAGI. Eligibility for the premium tax credit, and advance payments of the credit, is based on the household income of the applicant, which is the sum of the MAGI of those individuals who comprise the household. As a result, providing the amount of social security benefits included in gross income under section 86, along with other items contained in these regulations, will help an Exchange determine whether a taxpayer is eligible for the premium tax credit under section 36B or cost-sharing reductions under section 1402 of the Affordable Care Act, and the amount of the credit or reductions. Section 301.6103(l)(21)–1(a) of these final regulations, therefore, includes the amount of social security benefits included in gross income under section 86 as an item that will be disclosed to HHS pursuant to section 6103(l)(21).

In the proposed regulations, a relevant taxpayer, for whom return information would be disclosed under section 6103(l)(21), was defined as any individual listed by name and social security number or adoption taxpayer identification number (ATIN) on an application submitted pursuant to Title I, Subtitle E, of the Affordable Care Act whose income may bear upon a determination of eligibility for a health insurance affordability program. Subsequent to the publication of the proposed regulations, the IRS recognized that requests relating to ATINs would not be received because individuals' identification numbers will first be verified against SSA records. Under section 1411(c) of the Affordable Care Act, HHS is to provide the name, date of birth, and social security number of each individual on the application to the SSA for a determination that the information provided is consistent with the information in SSA records. HHS will only request return information for those individuals whose numbers are verified. Since the SSA has no records of ATINs, these numbers will not be verified and HHS will not request return information for individuals using adoption taxpayer identification numbers. While the income of an individual with an ATIN may be relevant for determining household income and, therefore, eligibility for a health

insurance affordability program, an Exchange or State agency will use alternate verification procedures as provided under regulations prescribed by HHS, including procedures under part 155.320 of chapter 45 of the Code of Federal Regulations, instead of getting return information under section 6103(l)(21). Accordingly, §301.6103(l)(21)–1(b) of these final regulations removes the reference to ATINs.

**Special Analyses**

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that, because the regulations proposed do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received from that office.

**Drafting Information**

The principal author of the regulations is Steven L. Karon of the Office of the Associate Chief Counsel, Procedure and Administration.

* * * * *

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 301 is amended as follows:

PART 301 — PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding the entry for §301.6103(l)(21) to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6103(l)(21)-(1) also issued under 26 U.S.C. 6103(l)(21) and 6103(q). * * *

Par. 2. Add §301.6103(l)(21)–1 to read as follows:

*§301.6103(l)(21)–1 Disclosure of return information to the Department of Health and Human Services to carry out eligibility requirements for health insurance affordability programs.*

(a) *General rule*. Pursuant to the provisions of section 6103(l)(21)(A) of the Internal Revenue Code, officers and employees of the Internal Revenue Service will disclose, upon written request, for each relevant taxpayer on a single application those items of return information that are described under section 6103(l)(21)(A) and paragraphs (a)(1) through (7) of this section, for the reference tax year, as applicable, to officers, employees, and contractors of the Department of Health and Human Services. Such information shall be provided solely for purposes of, and to the extent necessary in, establishing an individual's eligibility for participation in an Exchange established under the Patient Protection and Affordable Care Act, verifying the appropriate amount of any premium tax credit under section 36B or cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act, or determining eligibility for the State programs described in section 6103(l)(21)(A).

1. With respect to each relevant taxpayer for the reference tax year where the amount of social security benefits not included in gross income under section 86 of the Internal Revenue Code of that relevant taxpayer is unavailable:
   i. The aggregate amount of the following items of return information —
      A. Adjusted gross income, as defined by section 62 of the Internal Revenue Code;
      B. Any amount excluded from gross income under section 911 of the Internal Revenue Code; and
      C. Any amount of interest received or accrued by the taxpayer during the taxable year that is exempt from tax.
   ii. Information indicating that the amount of social security benefits not included in gross income under section 86 of the Internal Revenue Code is unavailable.
2. Adjusted gross income, as defined by section 62 of the Internal Revenue Code, of a relevant taxpayer for the reference tax year, in circumstances where the modified adjusted gross income (MAGI), as defined by section 36B(d)(2)(B) of the Internal Revenue Code, of that relevant taxpayer is unavailable, as well as information indicating that the components of MAGI other than adjusted gross income must be taken into account to determine MAGI;
3. The amount of social security benefits of the relevant taxpayer that is included in gross income under section 86 of the Internal Revenue Code for the reference tax year;
4. Information indicating that certain return information of a relevant taxpayer is unavailable for the reference tax year because the relevant taxpayer jointly filed a U.S. Individual Income Tax Return for that year with a spouse who is not a relevant taxpayer listed on the same application;
5. Information indicating that, although a return for an individual identified on the application as a relevant taxpayer for the reference tax year is available, return information is not being provided because of possible authentication issues with respect to the identity of the relevant taxpayer;
6. Information indicating that a relevant taxpayer who is identified as a dependent for the tax year in which the premium tax credit under section 36B of the Internal Revenue Code would be claimed, did not have a filing requirement for the reference tax year based upon the U.S. Individual Income Tax Return the relevant taxpayer filed for the reference tax year; and
7. Information indicating that a relevant taxpayer who received advance payments of the premium tax credit in the reference tax year did not file a tax return for the reference tax year reconciling the advance payments of the premium tax credit with any premium tax credit under section 36B of the Internal Revenue Code available for that year.

(b) *Relevant taxpayer defined*. For purposes of paragraph (a) of this section, a relevant taxpayer is defined to be any individual listed, by name and social security number, on an application submitted

pursuant to Title I, Subtitle E, of the Patient Protection and Affordable Care Act, whose income may bear upon a determination of any advance payment of any premium tax credit under section 36B of the Internal Revenue Code, cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act, or eligibility for any program described in section 6103(l)(21)(A) of the Internal Revenue Code.

(c) *Reference tax year defined.* For purposes of section 6103(l)(21)(A) of the Internal Revenue Code and this section, the reference tax year is the first calendar year or, where no return information is available in that year, the second calendar year, prior to the submission of an application pursuant to Title I, Subtitle E, of the Patient Protection and Affordable Care Act.

(d) *Effective/applicability date.* This section applies to disclosures to the Department of Health and Human Services on or after August 14, 2013.

Beth Tucker,
*Acting Deputy Commissioner for Services and Enforcement.*

Approved July 10, 2013.

Mark J. Mazur,
*Assistant Secretary of the Treasury (Tax Policy).*

(Filed by the Office of the Federal Register on August 13, 2013, 8:45 a.m., and published in the issue of the Federal Register for August 14, 2013, 78 F.R. 49367)

# Part III. Administrative, Procedural, and Miscellaneous

## 2013 Marginal Production Rates

## Notice 2013–53

This notice announces the applicable percentage under § 613A of the Internal Revenue Code to be used in determining percentage depletion for marginal properties for the 2013 calendar year.

Section 613A(c)(6)(C) defines the term "applicable percentage" for purposes of determining percentage depletion for oil and gas produced from marginal properties. The applicable percentage is the percentage (not greater than 25 percent) equal to the sum of 15 percent, plus one percentage point for each whole dollar by which $20 exceeds the reference price (determined under § 45K(d)(2)(C)) for crude oil for the calendar year preceding the calendar year in which the taxable year begins. The reference price determined under § 45K(d)(2)(C) for the 2012 calendar year is $94.53.

The following table contains the applicable percentages for marginal production for taxable years beginning in calendar years 1991 through 2013.

Notice 2013–53

APPLICABLE PERCENTAGE FOR MARGINAL PRODUCTION

| *Calendar Year* | *Applicable Percentage* |
|---|---|
| 1991 | 15 percent |
| 1992 | 18 percent |
| 1993 | 19 percent |
| 1994 | 20 percent |
| 1995 | 21 percent |
| 1996 | 20 percent |
| 1997 | 16 percent |
| 1998 | 17 percent |
| 1999 | 24 percent |
| 2000 | 19 percent |
| 2001 | 15 percent |
| 2002 | 15 percent |
| 2003 | 15 percent |
| 2004 | 15 percent |
| 2005 | 15 percent |
| 2006 | 15 percent |
| 2007 | 15 percent |
| 2008 | 15 percent |
| 2009 | 15 percent |
| 2010 | 15 percent |
| 2011 | 15 percent |
| 2012 | 15 percent |
| 2013 | 15 percent |

The principal author of this notice is Martha M. Garcia of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice contact Ms. Garcia at (202) 622–3110 (not a toll-free call).

---

*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. 2013–30

SECTION 1. PURPOSE

This revenue procedure facilitates the grant of relief to taxpayers that request relief previously provided in numerous other revenue procedures by consolidating the provisions of those revenue procedures 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 which the taxpayer intended to take effect on the same date that the taxpayer intended that an S corporation election for the entity should take effect. 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 such relief is no longer available. Furthermore, this revenue procedure 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 which the taxpayer intended to take effect on the same date that the taxpayer intended that an S corporation election for the entity should take effect. This revenue procedure provides relief 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 is a permitted S corporation shareholder if the beneficiary of the QSST makes an election under § 1361(d)(2). A QSST is defined in § 1361(d)(3) as a trust that (1) distributes or is required to distribute all of its income to a citizen or resident of the United States, (2) has certain trust terms, including the requirement that there be only one income beneficiary, (3) does not distribute any portion of the trust corpus to anyone other than the current income beneficiary during the income beneficiary's lifetime, including the time at which the trust terminates, and (4) the income interest of the current income beneficiary ceases on the earlier of such beneficiary's death or the termination of the trust. Section 1361(d)(1) provides, in pertinent part, that in the case of a QSST with respect to which a beneficiary makes an election under § 1361(d)(2): (A) the trust is treated as owned by a citizen or resident of the United States, and (B) for purposes of § 678(a), the beneficiary of the trust is treated as the owner of that portion of the trust that consists of stock in an S corporation with respect to which the election under § 1361(d)(2) is made. A QSST election is made by signing and filing an election statement with the applicable Internal Revenue Service (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. Section 1361(e)(1) defines an Electing Small Business Trust (ESBT) as any trust if: (1) the trust does not have as a beneficiary any person other than an individual, an estate, or an organization described in § 170(c)(2) through (5); (2) no interest in the trust was acquired by purchase; and (3) an election has been made with respect to the trust. 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 that the corporation and all persons who were shareholders of the corporation at any time during the time specified by the Commissioner consent to any adjustments that the Commissioner may require.

The IRS will grant relief for both the late ESBT and QSST elections and the inadvertently invalid S corporation election or inadvertent termination of the S corporation election if the standard described in § 1362(f) for an inadvertently invalid S corporation election or an inadvertent termination of an 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 1361(b)(3)(B) defines a QSub as a domestic corporation that is not an ineligible corporation if (1) an S corporation holds 100 percent of the stock of the corporation, and (2) that S corporation elects to treat the subsidiary as a QSub. Section 1361(b)(3)(A) provides that a corporation that is a QSub is not treated as a separate corporation, and all assets, liabilities, and items of income, deduction, and credit of the QSub are treated as assets, liabilities, and items of income, deduction, and credit of the parent S corporation. 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. Because a QSub election is a regulatory election, the Commissioner may permit a late QSub election under the rules set forth in section 301.9100–3.

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 when 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 acquiring 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.

.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 two 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. Because an entity classification election is a regulatory election, the Commissioner may permit a late entity classification election under the rules set forth in § 301.9100–3.

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 relief with respect to late entity classification elections 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 intended to be effective on the same date as the S corporation election.

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 corporate classification elections intended to be effective on the same date as the S corporation election for the entity.

This revenue procedure provides procedures for situations within its scope that are 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)) 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 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. 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. 2013–1, 2013–1 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 (or an eligible entity to which a Deemed Entity Classification Election under § 301.7701–3(c)(1)(v)(C) applies) that requests to be treated as an S corporation, 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), or 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 trustee seeking to treat a trust as an ESBT under § 1361(e), a trust beneficiary seeking to treat a trust as a QSST under § 1361(d), or a parent S corporation seeking to treat a subsidiary as a QSub under § 1361(b)(3).

.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 following requirements must be met:

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

(4) In the case of a request for relief for a late S corporation or QSub election, the Requesting Entity has reasonable cause for its failure to make the timely Election Under Subchapter S and has acted diligently to correct the mistake upon its discovery. In the case of a request for relief for an inadvertently invalid S corporation election or an inadvertent termination of an S corporation election due to the failure to make the timely ESBT or QSST election, the failure to file the timely Election Under Subchapter S was inadvertent and the S corporation and the person or entity seeking relief 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 (the "Reasonable Cause/Inadvertence Statement") from the Requesting Entity that complies with Section 4.03(3) of this revenue procedure and that describes (i) its reasonable cause for failure to timely file the Election Under Subchapter S (in the case of late S corporation or QSub elections) or that the failure to timely file the Election Under Subchapter S was inadvertent (in the case of late QSST or ESBT elections), and (ii) its diligent actions to correct the mistake upon its discovery. The applicable Election Form must state at the top of the document "FILED PURSUANT TO REV. PROC. 2013–30."

(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 as 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 2016 Form 1120S is September 15, 2017, an Election Form for a late QSST Election with an Effective Date of June 1, 2014 can be attached to the 2016 Form 1120S only if the 2016 Form 1120S is filed before August 15, 2017 (which is 3 years and 75 days following the June 1, 2014 Effective Date). The Form 1120S must state at the top "INCLUDES LATE ELECTION(S) FILED PURSUANT TO REV. PROC. 2013–30" or comply with specific instructions included with the Form 1120S instructions;

(b) *Attaching the Election Form to one of the S corporation's late filed prior year Forms 1120S.* In the case of an S corporation that has not filed Form 1120S (or 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 the Form 1120S for the year including the Effective Date 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. For example, if an S corporation intended to make a QSub Election with an Effective Date of June 1, 2012, but it failed to file any income tax returns, it can attach an Election Form to a late filed 2012 Form 1120S only if the late filed 2012 Form 1120S is filed before August 15, 2015 (which is 3 years and 75 days following the June 1, 2012 Effective Date) and 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. 2013–30" 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/Inadvertence 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). 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.

.05 *Relief for Late Election Under Subchapter S*. Upon receipt of a completed request for relief under this revenue procedure, the IRS 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 Form is 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 filed and for all subsequent years. Such statements must comply with the requirement in Section 4.03(3) of this revenue procedure.

.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, in the case of a late corporate classification election intended to be effective on the same date that the S corporation election was intended to be effective, the completed Election Form must also include the following representations, which must 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 timely filed 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 to be effective 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) (providing that relief must be sought within three years and 75 days of the Effective Date) is not applicable in the case of corporations if the following conditions are met:

(1) The corporation is not seeking late corporate classification election relief concurrently with a late S corporation election under this revenue procedure;

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

(3) 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);

(4) 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

(5) Neither the corporation nor any of its shareholders was notified by the IRS 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

(6) 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 was to have become effective or was terminated and the date the completed Election Form is 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 to be effective and for all subsequent years.

SECTION 8. EFFECTIVE DATE

.01 *In general*. Except as provided in Section 8.02, this revenue procedure is effective September 3, 2013, 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 September 3, 2013, and to requests received thereafter. It also applies to all ruling requests pending in the IRS national office on September 3, 2013, 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 September 3, 2013, 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 September 3, 2013, unless, prior to the earlier of October 18, 2013, 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 1545–1548.

The collection of information in this revenue procedure is in Section 4.03 and Sections 5 through 7. The information will help the IRS 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.

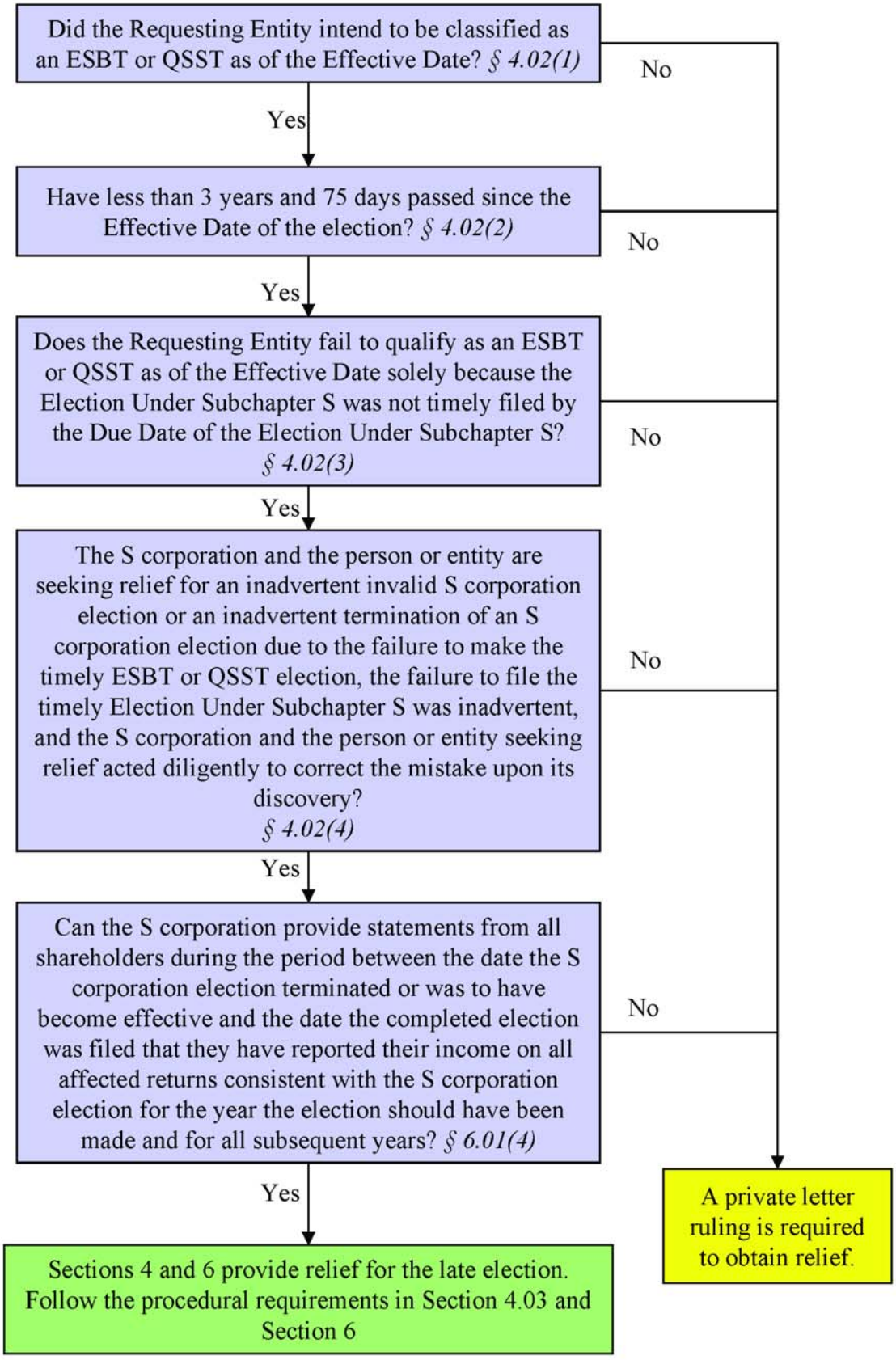
The estimated annual frequency of responses is on occasion.

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 section 6103.

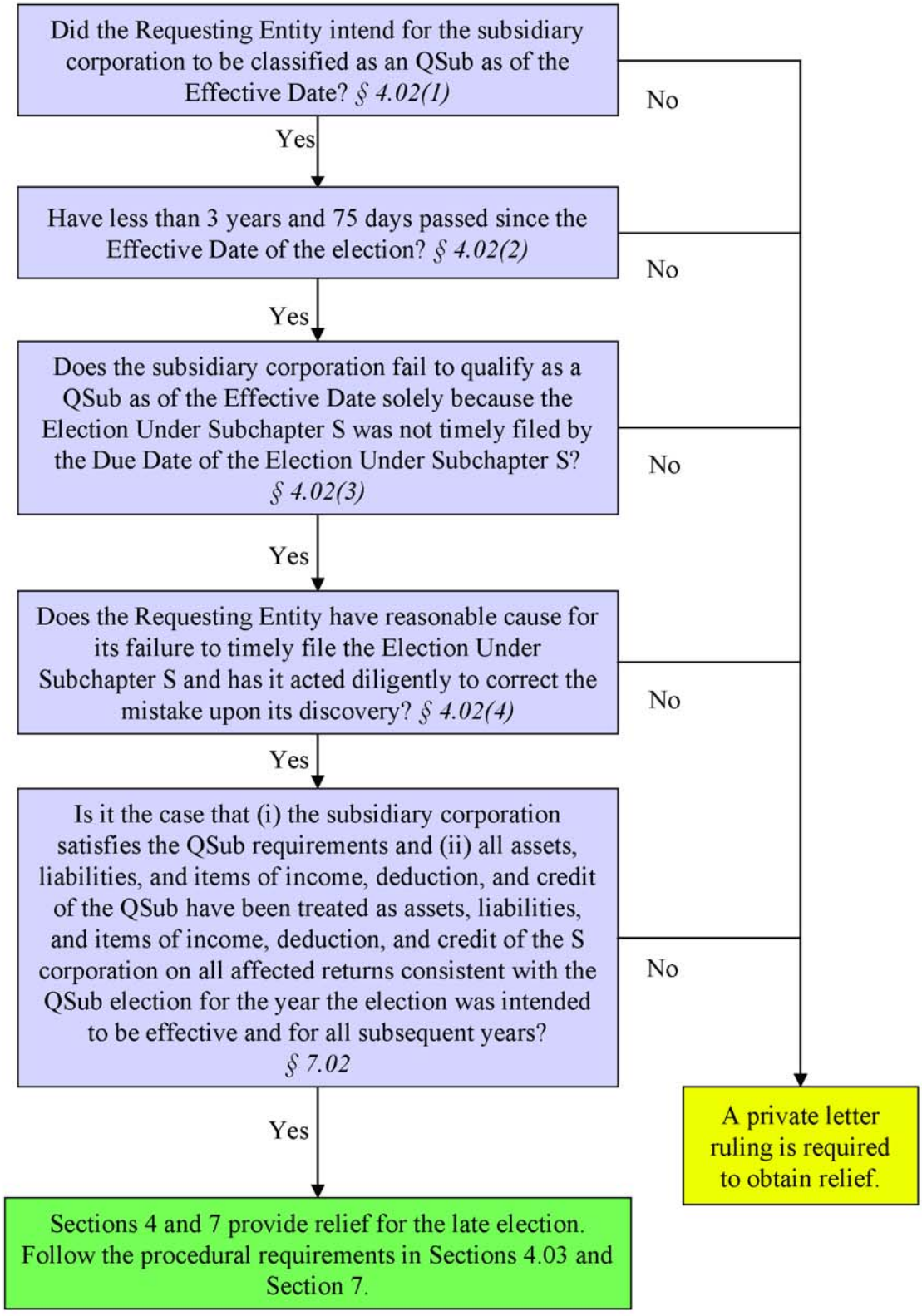
## SECTION 11. DRAFTING INFORMATION

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).

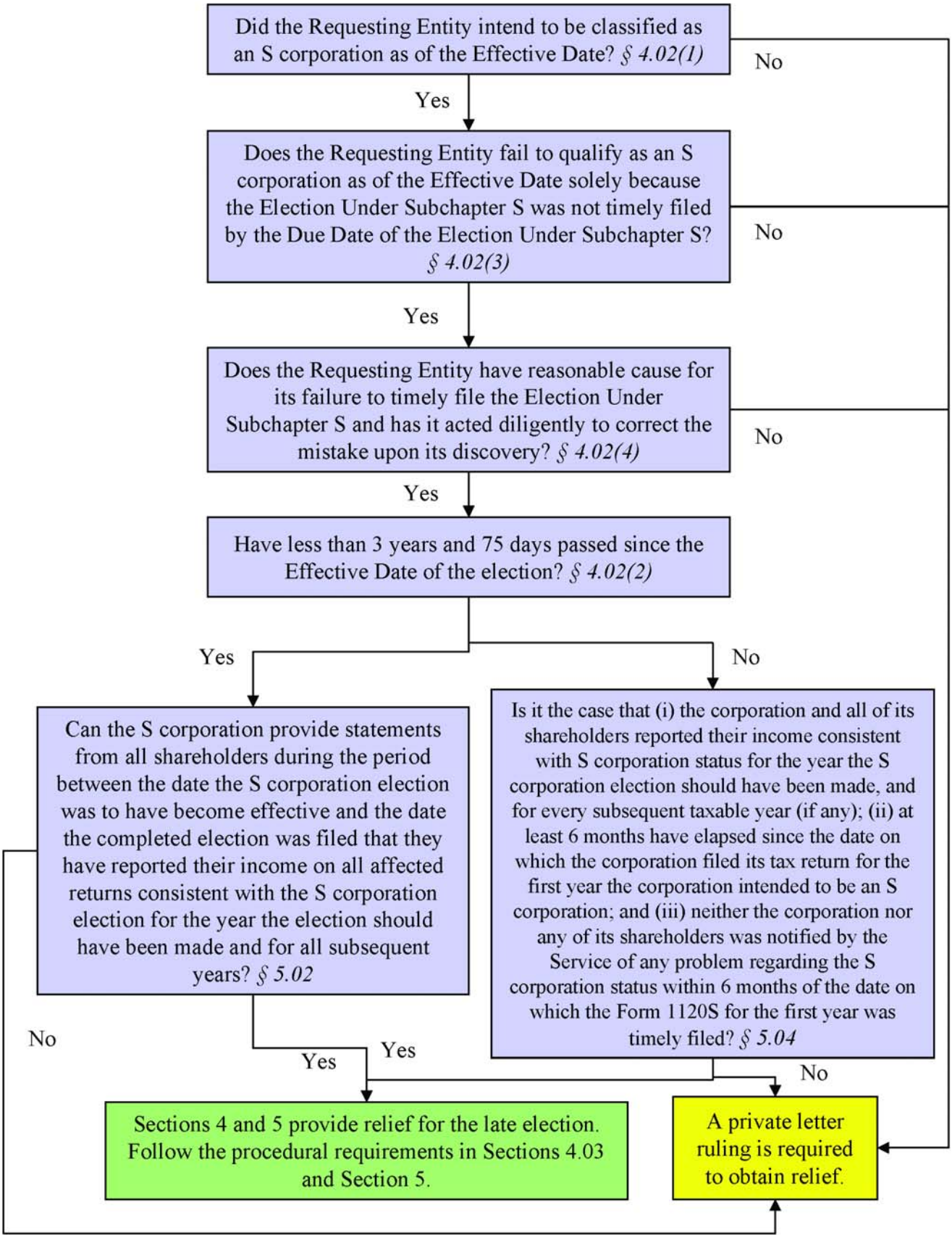
# Relief for Late QSST & ESBT Elections



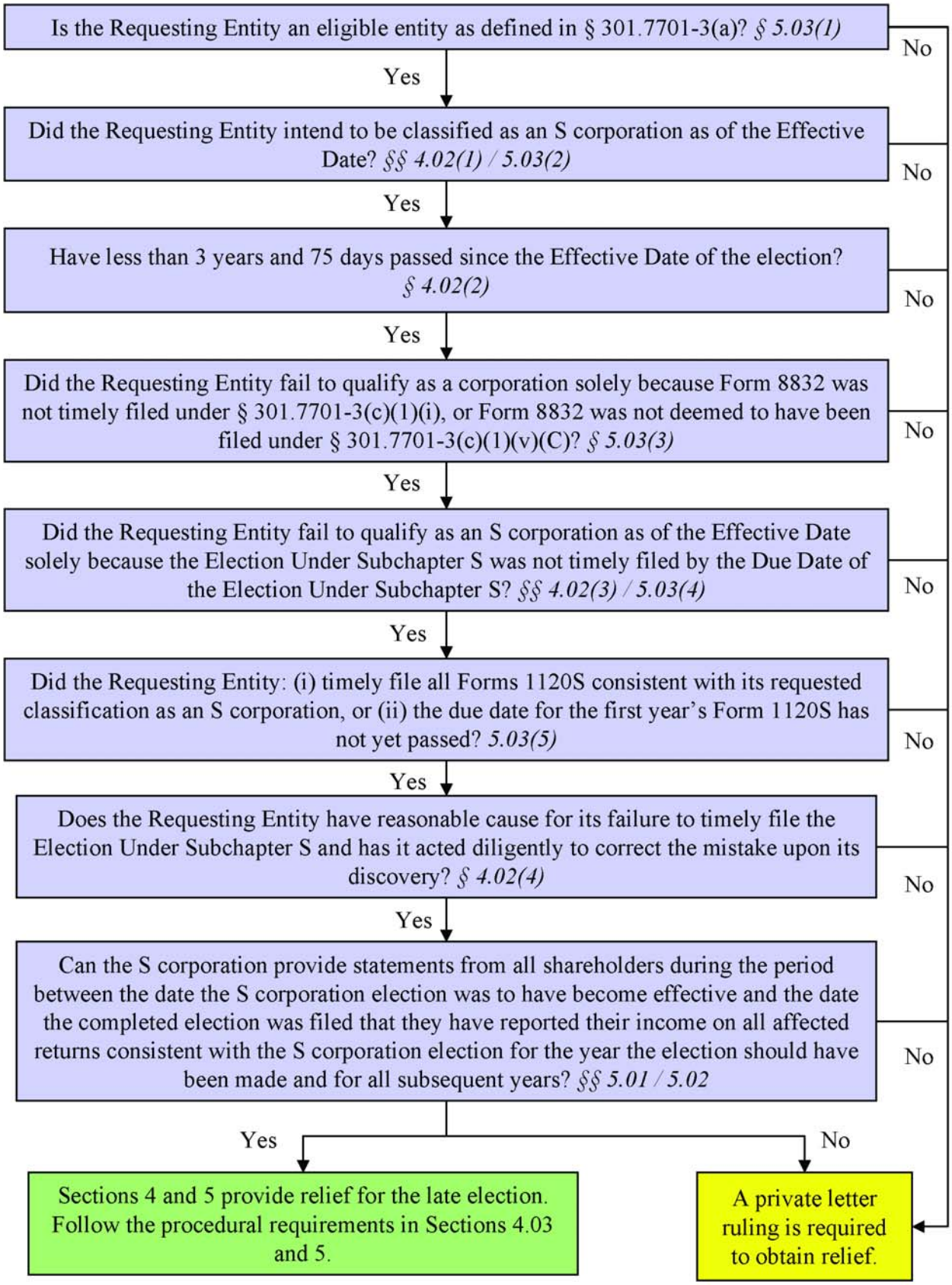
# Relief for Late QSub Elections



# Relief for Late S Corporation Elections



# Relief for Late S Corporation and Entity Classification Elections for the Same Entity



# Part IV. Items of General Interest

## U.S.-Belgium Agreement Regarding OECD Report on the Attribution of Profits to Permanent Establishments

## Announcement 2013–38

The following is a copy of the Competent Authority Agreement entered into by the competent authorities of the United States and Belgium regarding application of the principles set forth in the Organization for Economic Cooperation and Development Report on the Attribution of Profits to Permanent Establishments in the interpretation of Article 7 (Business Profits) of the Convention Between the Government of the United States of America and the Government of the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, and accompanying Protocol, signed at Brussels on November 27, 2006.

The text of the Competent Authority Agreement is as follows:

**Competent Authority Agreement**

The competent authorities of the United States and Belgium hereby enter into the following agreement regarding the application of Article 7 (Business Profits) of the Convention between the Government of the United States of America and the Government of the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, and accompanying Protocol, signed at Brussels on November 27, 2006 in view of the agreed understanding set out in paragraph 1 of the Protocol. This agreement is entered into under paragraph 3 of Article 24 (Mutual Agreement Procedure) of the Convention.

With reference to Article 7 of the Convention, paragraph 1 of the Protocol refers to the applicability of the Organization for Economic Cooperation and Development (the "OECD") Transfer Pricing Guidelines, by analogy, for the purposes of determining the business profits attributable to a permanent establishment. The OECD Report on the Attribution of Profits to Permanent Establishments (the "Report") was finalized in 2008 and revised in 2010 without change to the conclusions of the Report (the "authorized OECD approach" ("full AOA")). The competent authorities of the United States and Belgium understood at the time of the adoption of the Protocol that the principles of the full AOA as set out in the Report would apply even though the Report was not finalized at that time.

The competent authorities of the United States and Belgium therefore agree that, under paragraph 1 of the Protocol, Article 7 of the Convention is to be interpreted in a manner entirely consistent with the full AOA as set out in the Report. All other provisions of the Convention that require a determination of whether an asset or amount is effectively connected or attributable to a permanent establishment are also to be interpreted in a manner entirely consistent with the full AOA as set out in the Report.

Where, in accordance with the full AOA as set out in the Report, a Contracting State adjusts the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting States and taxes accordingly profits of the enterprise that have been charged to tax in the other State, the competent authorities of the United States and Belgium agree that the other Contracting State shall, to the extent necessary to eliminate double taxation, make an appropriate adjustment if it agrees with the adjustment made by the first-mentioned State; if the other Contracting State does not so agree, the Contracting States shall eliminate any double taxation resulting therefrom by mutual agreement.

The competent authorities understand that this agreement will not alter the process by which double taxation arising due to the application of Article 7(2) and (3) is eliminated in accordance with Article 22 (Relief from Double Taxation) of the Convention. Therefore, for example, when double taxation arises due to the application of the principles of the full AOA, the United States will continue to eliminate double taxation by allowing the foreign tax credit provided by the laws of the United States, subject to the limitations of those laws. Where a taxpayer can demonstrate to the U.S. competent authority that such double taxation has been left unrelieved after the application of mechanisms under U.S. law such as the utilization of foreign tax credit limitation created by other transactions, the United States will relieve such additional double taxation.

This agreement generally applies to taxable years that begin on or after January 1, 2013; however, a taxpayer may choose to apply the entirety of this agreement in both Contracting States for all taxable years beginning after December 31, 2008.

Agreed to by the undersigned competent authorities:

Michael Danilack,
United States Competent Authority
Date: June 17, 2013

Sandra Knaepen,
Belgian Competent Authority
Date: July 16, 2013

# Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

# Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

*A*—Individual.
*Acq.*—Acquiescence.
*B*—Individual.
*BE*—Beneficiary.
*BK*—Bank.
*B.T.A.*—Board of Tax Appeals.
*C*—Individual.
*C.B.*—Cumulative Bulletin.
*CFR*—Code of Federal Regulations.
*CI*—City.
*COOP*—Cooperative.
*Ct.D.*—Court Decision.
*CY*—County.
*D*—Decedent.
*DC*—Dummy Corporation.
*DE*—Donee.
*Del. Order*—Delegation Order.
*DISC*—Domestic International Sales Corporation.
*DR*—Donor.
*E*—Estate.
*EE*—Employee.
*E.O.*—Executive Order.
*ER*—Employer.
*ERISA*—Employee Retirement Income Security Act.
*EX*—Executor.
*F*—Fiduciary.
*FC*—Foreign Country.
*FICA*—Federal Insurance Contributions Act.
*FISC*—Foreign International Sales Company.
*FPH*—Foreign Personal Holding Company.
*F.R.*—Federal Register.
*FUTA*—Federal Unemployment Tax Act.
*FX*—Foreign corporation.
*G.C.M.*—Chief Counsel's Memorandum.
*GE*—Grantee.
*GP*—General Partner.
*GR*—Grantor.
*IC*—Insurance Company.
*I.R.B.*—Internal Revenue Bulletin.
*LE*—Lessee.
*LP*—Limited Partner.
*LR*—Lessor.
*M*—Minor.
*Nonacq.*—Nonacquiescence.
*O*—Organization.
*P*—Parent Corporation.
*PHC*—Personal Holding Company.
*PO*—Possession of the U.S.
*PR*—Partner.
*PRS*—Partnership.
*PTE*—Prohibited Transaction Exemption.
*Pub. L.*—Public Law.
*REIT*—Real Estate Investment Trust.
*Rev. Proc.*—Revenue Procedure.
*Rev. Rul.*—Revenue Ruling.
*S*—Subsidiary.
*S.P.R.*—Statement of Procedural Rules.
*Stat.*—Statutes at Large.
*T*—Target Corporation.
*T.C.*—Tax Court.
*T.D.* —Treasury Decision.
*TFE*—Transferee.
*TFR*—Transferor.
*T.I.R.*—Technical Information Release.
*TP*—Taxpayer.
*TR*—Trust.
*TT*—Trustee.
*U.S.C.*—United States Code.
*X*—Corporation.
*Y*—Corporation.
*Z* —Corporation.

## Numerical Finding List[1]

Bulletins 2013–27 through 2013–36

**Announcements:**



**Notices:**



**Proposed Regulations:**



**Revenue Procedures:**



**Revenue Rulings:**



**Treasury Decisions:**



[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2013–1 through 2013–26 is in Internal Revenue Bulletin 2013–26, dated June 24, 2013.

## Finding List of Current Actions on Previously Published Items[1]

Bulletins 2013–27 through 2013–36

### Notices:

**2012-74**
Obsoleted by
Notice 2013-51, 2013-34 I.R.B. *153*

**2013-39**
Amplified by
Notice 2013-47, 2013-31 I.R.B. *120*

**2013-40**
Amplified by
Notice 2013-47, 2013-31 I.R.B. *120*

### Revenue Procedures:

**81-60**
Modified by
Rev. Proc. 2013-32, 2013-28 I.R.B. *55*

**83-59**
Modified by
Rev. Proc. 2013-32, 2013-28 I.R.B. *55*

**86-42**
Modified by
Rev. Proc. 2013-32, 2013-28 I.R.B. *55*

**90-52**
Modified by
Rev. Proc. 2013-32, 2013-28 I.R.B. *55*

**96-30**
Modified by
Rev. Proc. 2013-32, 2013-28 I.R.B. *55*

**97-48**
Situation 1 superseded, Situation 2 obsoleted by
Rev. Proc. 2013-30, 2013-36 I.R.B. *173*

**2003-43**
Modified and superseded by
Rev. Proc. 2013-30, 2013-36 I.R.B. *173*

**2003-48**
Obsoleted in part and superseded in part by
Rev. Proc. 2013-32, 2013-28 I.R.B. *55*

**2004-34**
Modified and clarified by
Rev. Proc. 2013-29, 2013-33 I.R.B. *141*

**2004-48**
Modified and superseded by
Rev. Proc. 2013-30, 2013-36 I.R.B. *173*

**2004-49**
Sections 4.01 & 4.02 modified and superseded,
Section 4.03 obsoleted by
Rev. Proc. 2013-30, 2013-36 I.R.B. *173*

**Revenue Procedures— Continued:**

**2007-44**
Modified by
Ann. 2013-37, 2013-34 I.R.B. *155*

**2007-62**
Modified and superseded by
Rev. Proc. 2013-30, 2013-36 I.R.B. *173*

**2009-25**
Pilot program discontinued by
Rev. Proc. 2013-32, 2013-28 I.R.B. *55*

**2011-18**
Modified and clarified by
Rev. Proc. 2013-29, 2013-33 I.R.B. *141*

**2011-49**
Modified by
Ann. 2013-37, 2013-34 I.R.B. *155*

**2012-25**
Obsoleted in part by
Rev. Proc. 2013-28, 2013-27 I.R.B. *28*

**2013-1**
Amplified and modified by
Rev. Proc. 2013-32, 2013-28 I.R.B. *55*

**2013-3**
Amplified and modified by
Rev. Proc. 2013-32, 2013-28 I.R.B. *55*

### Treasury Decisions:

**9612**
Corrected by
Ann. 2013-35, 2013-27 I.R.B. *46*

**9622**
Corrected by
Ann. 2013-39, 2013-35 I.R.B. *167*

[1] A cumulative list of current actions on previously published items in Internal Revenue Bulletins 2013–1 through 2013–26 is in Internal Revenue Bulletin 2013–26, dated June 24, 2013.

**Internal Revenue Service**
Washington, DC 20224



# INTERNAL REVENUE BULLETIN

The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at *www.irs.gov/irb/*.

# CUMULATIVE BULLETINS

The contents of the weekly Bulletins were consolidated semiannually into permanent, indexed, Cumulative Bulletins through the 2008–2 edition.

# INTERNAL REVENUE BULLETINS ON CD-ROM

Internal Revenue Bulletins are available annually as part of Publication 1796 (Tax Products CD-ROM). The CD-ROM can be purchased from National Technical Information Service (NTIS) on the Internet at *www.irs.gov/cdorders* (discount for online orders) or by calling 1-877-233-6767. The first release is available in mid-December and the final release is available in late January.

# WE WELCOME COMMENTS ABOUT THE INTERNAL REVENUE BULLETIN

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page (*www.irs.gov*) or write to the IRS Bulletin Unit, SE:W:CAR:MP:P:SPA, Washington, DC 20224.