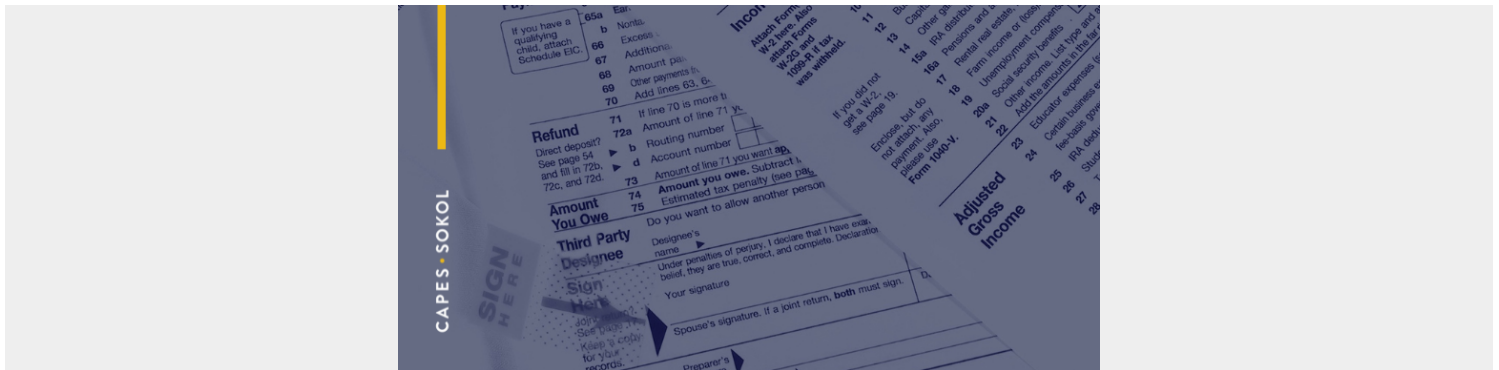


MAINTAINING S CORPORATION STATUS – GETTING EASIER AND LESS COSTLY

Posted on January 11, 2023 by Laura E. Krebs Al-Shathir



Tags: [Internal Revenue Service](#), [IRS](#), [PLR](#), [Private Letter Ruling](#), [Revenue Code](#), [S Corporation](#)



Preventing a late or invalid S corporation election or termination is a high priority for S corporations, their owners, and their advisors. It requires relentless attention to detail because the very existence of an S corporation involves a proverbial minefield of traps for the unwary. Subchapter S (Internal Revenue Code §§ 1361-1379) is filled with technical requirements that, if violated, could cause a host of catastrophes.

Fortunately, the Internal Revenue Code provides relief for late S corporation elections and inadvertent invalid S corporation elections and terminations (Internal Revenue Code § 1362(b)(5) and Internal Revenue Code § 1362(f)), but often such relief comes at a very high cost through the necessity of a private letter ruling request. The most typical user fee for a private letter ruling for an invalid S corporation election or an inadvertent S corporation termination is a whopping \$38,000, and the general user fee to seek a private letter ruling for a late S corporation election is \$12,600. (Rev. Proc. 2022-1, Appendix A, § A(4), 2022-1 I.R.B. 1.)

The Internal Revenue Service (the “IRS”) has provided several means by which an S corporation may secure relief from a late election (Rev. Proc. 2013-30, §4.02, 2013-36 I.R.B. 173.) or inadvertent election or termination (Rev. Proc. 2022-19) without the necessity of obtaining a private letter ruling. More

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often than not, to secure simplified relief under Revenue Procedure 2013-30, the S corporation must act within three years and 75 days of the intended date of the S election. If that deadline is missed and the other criteria set forth in Revenue Procedure 2013-30 are not satisfied, then the S corporation would need to file a request for a private letter ruling for late election relief and pay a \$12,600 user fee.

Most recently, in October 2022, the IRS identified circumstances under which an inadvertent invalid election or termination might be resolved without a private letter ruling. (Rev. Proc. 2022-19, 2022-41 I.R.B. 282.) Such circumstances include many of the “foot-faults” that typically haunt S corporation advisors, including governing provisions in entity documents, such as limited liability company operating agreements that contain partnership tax distribution and allocation provisions, rather than provisions in compliance with Subchapter S that ensure no disproportionate distributions.

Many S corporation owners and tax practitioners are overwhelmingly pleased with the IRS’s relief in these circumstances. That said, more can be done to facilitate securing expeditious and cost-effective relief. In December of 2022, the [ABA Tax Section sent to the IRS recommendations](#) for revising user fees in making private letter ruling (“PLR”) requests. The recommendations included a user fee for PLR requests lower than the current standard \$38,000 when relief is not otherwise available under Rev. Proc. 2013-30 or Rev. Proc. 2022-19, based on the relatively low complexity of the request.

Until such time (if ever) as additional relief is granted by the IRS or through legislation, S corporations, their owners, and advisors, should consider taking advantage of current opportunities to maintain S corporation status in a cost-effective manner.

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