



May 05, 2011

Ms. Yvette B. Lawrence
Internal Revenue Service
Room 6129
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Ms. Lawrence:

The American Institute of Certified Public Accountants appreciates the opportunity to respond to an Internal Revenue Service request for comments on Form 2553, *Election by a Small Business Corporation*. The request was part of the government's ongoing efforts to "reduce paperwork and respondent burden." Accordingly, we offer the following four recommendations which we have explained in more detail below.

- 1. Permit the Electronic Filing of Form 2553 and Better Coordinate with Form SS-4 Filings**
- 2. Improve the Identification of the Type of Shareholder and How Stock is Held**
- 3. Clarify that Non-Corporate Officers May Sign Form 2553**
- 4. Eliminate the Disclosure of Personal Taxpayer Information to Other Shareholders**

Permit the Electronic Filing of Form 2553 and Better Coordinate With Form SS-4 Filings

We recommend that Form 2553 be added to those forms permitted to be electronically filed with the Service. This certainly would reduce paperwork. Respondent burden and correspondence with the Service would be reduced by the removal of doubt as to when, or whether, this critical election was filed by the taxpayer and received and acknowledged by the government. Taxpayers would have immediate, verifiable assurance of S election status through the e-Services program.

We agree with a similar recommendation to allow electronic filing of Form 2553 contained in the *National Taxpayer Advocate's 2010 Annual Report to Congress* which identifies the S corporation election process as a "most-serious-problem" (MSP #20) that unduly burdens small businesses when this election form is neither timely filed nor verified and creates significant "re-work" for the IRS.¹ The processing of S corporation returns is, in many cases, delayed due to, among other things, doubt as to the existence of a valid election.

While the automated, electronic filing of an Application for an Employer Identification Number asks whether the entity will be an S corporation, the government does not currently utilize that process to verify whether a Form 2553 has been filed. If an EIN request is made for an entity that

¹In general, see <http://www.irs.gov/advocate/article/0,,id=233846,00.html>. Specifically, see http://www.irs.gov/pub/irs-utl/execsummary_2010arc.pdf, page 22 for an executive summary of the issue and page 39 for a legislative recommendation related to S corporation elections; see also http://www.irs.gov/pub/irs-utl/vol_1_msp_16_21.pdf, pp. 278-290.

indicates the entity desires to be an S corporation and an electronic S election is not on file, the system could immediately generate a notice to the entity detailing the S election procedures and deadline, in addition to the notice of Form 1120S filing requirements that is currently provided. This additional notification could occur *even if* e-filing of Form 2553 is not approved.

Improve the Identification of the Type of Shareholder and How Stock is Held

We recommend that Form 2553 be modified to identify each type of shareholder holding an interest and how that interest is held. Individuals eligible to own S corporation stock include US citizens and resident aliens. The stock can be held, however, in a variety of forms of joint ownership, including community property. The stock can be held through a disregarded entity such as a single member limited liability company. As you are aware, in addition to individuals, a variety of trusts (including grantor trusts, voting trusts, electing small business trusts and qualified Subchapter S trusts) and estates are eligible to be S corporation shareholders. Identification of the type of owner, in an electronic format, should permit, in conjunction with electronic filing of the Form 2553, fast automated requests for any additional information needed to satisfy the Service as to eligibility of stockholder. This could be done with the addition of a box for each shareholder where a code could be entered by reference to a table in the instructions. This could be similar to how items on a Form K-1 are identified. The table could be integrated with the existing section of the instructions to Form 2553 that indicates the signature requirements for each type of shareholder. This would reduce delayed or rejected elections based on inappropriate or missing signatures related to the type of interest held.

Clarify that Non-Corporate Officers May Sign Form 2553

The instructions to Form 2553 recognize that an entity other than a corporation can elect to be taxed as an S corporation. This is most commonly a limited liability company. However, the instructions presently indicate that the signer must be a corporate officer. This should be modified to make it clear which members of a limited liability company may sign and that such members are, in fact, permitted to sign the Form 2553 on behalf of the electing entity. They should further indicate any special requirements, if any, related to how they should sign the form.

Eliminate the Disclosure of Personal Taxpayer Information to Other Shareholders

We recommend that the amount of personal taxpayer identification information that is shown on Form 2553 be reduced. This form is required to be signed by all shareholders which means that as many as, and in special cases more than, 100 shareholder consents must be obtained. The form design, in its present format, exposes the name, address and taxpayer identification number of each shareholder to every other shareholder. We believe that such disclosure often represents an inappropriate disclosure of sensitive personal identification information from one taxpayer to another. The Form 2553 could be redesigned to prevent this inappropriate disclosure by requiring the inclusion of only information related to the corporation on the Form 2553 itself, with shareholder information and consents to be completed on a separate form. The Service, in the instructions for Form 2553, already permits shareholder elections to be made separately as long as

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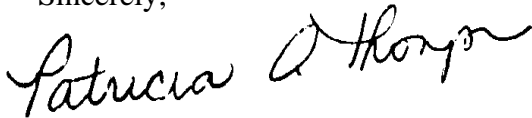
May 05, 2011

Page 3 of 3

all required information and the “penalties of perjury” statement are included on each separate statement filed. Nevertheless, in order to prevent unintended, inappropriate disclosure, we believe it would be better to completely separate this item from the form itself.

We are available to discuss any of these recommendations in greater depth. If we can be of further assistance, please contact me at (401) 831-0200 or patt@pgco.com; Kevin J. Walsh, Chair of the S Corporation Taxation Technical Resource Panel at (907) 456-2222 or kwalsh@wkscpa.com; or Marc A. Hyman, AICPA Technical Manager at (202) 434-9231 or mhyman@aicpa.org.

Sincerely,



Patricia A. Thompson
Chair, Tax Executive Committee

cc: Nina E. Olson, National Taxpayer Advocate
William J. Wilkins, IRS Chief Counsel
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Faris R. Fink, IRS Commissioner, SB/SE Division