

UPDATE TO MANUAL PAGE 1-6

E. Procedures for Late Filing Relief

Rev. Proc. 2009-41, effective September 28, 2009, expanded the relief previously provided by Rev. Proc. 2002-59. The procedure provides a simplified method to request relief for late filing of an initial classification election. This is in lieu of a private letter ruling and no user fees will apply.

The updated ruling greatly expanded the time period during which automatic relief will be granted. Now automatic relief can be granted up to 3 years and 75 days after the taxpayer had originally intended the entity classification to take effect.

1. To be eligible for relief the following conditions must be met:
 - a. The sole reason for failure to obtain the appropriate classification was the late filing of Form 8832,
 - b. Either the entity has not yet filed a tax return for the first year the classification would take effect because the due date has not yet passed for the return or the entity has filed returns consistent with its requested classification for each year since the intended effective date. If the entity is not required to file a tax return (for instance, as a disregarded entity) each affected person must have filed its return consistent with the form of the requested entity,
 - c. There is reasonable cause for the late filing and
 - d. 3 years and 75 days from the requested effective date of the eligible entity's classification have not yet passed.
2. Form 8832 must be filed on or before the within 3 years and 75 days from the effective date of the eligible entity's classification with the notation on top "FILED PURSUANT TO REV. PROC. 2009-39," a statement of reasonable cause must be attached and a declaration signed under penalty of perjury that states the following:

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.