Documents for Podcast 015
Get of Deadline Free Card—Regulations 301.9100-1, 2 and 3
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Due dates are a fact of life in tax practice, and not just the tax return deadlines most clients know about. A number of elections are required to be made by a date specified by code or regulations. If a taxpayer misses the deadline, the benefits of the election become unavailable—sometimes creating a significant tax burden that did not otherwise have to exist. In most cases, the deadline exists for items where Congress did not want to allow taxpayers to be able to game the system by changing positions continually or getting a benefit open only to those willing to take risk, so the taxpayer was required to "declare" his/her position early on.

Recognizing the somewhat arbitrary nature of such deadline rules, but still needing to keep taxpayers from being able to do what Congress did not want done, the IRS has created rules that allow for relief for missing a deadline in most cases. Some relief is automatic, while other relief is granted solely at the discretion of the IRS. This relief is found at Regulations §§301.9100-1 through 301.9100-3.

General Outline

Regulation §301.9100-1 provides the general standard for an extension of time to make an election. An election is defined as "an application for relief in respect of tax; a request

to adopt, change, or retain an accounting method or accounting period..."[1] However, the IRS goes on to note that a request for an extension of time to file a tax return pursuant to §6081[2]—so if you miss a return filing deadline, you can't use these procedures to get another chance to ask for an extension of time to file the return.

There are also two types of elections defined, and the rules are different depending on the type of deadline. A *regulatory election* is defined as "means 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 (see §601.601(d)(2) of this chapter)."[3] The other type of election is a *statutory election* which is defined, as you might expect, as an election is due date is prescribed by statute, as opposed to being defined by one of the regulatory sources noted above.[4]

This distinction is important, since generally the relief is broader for regulatory elections than statutory elections, reflecting the fact that the IRS is in control of the latter dates and thus has broader authority to give relief to dates that they set up as opposed to dates fixed in the law by Congress.

The general standard for relief is found at Regulation §301.9100-1(c) and reads as follows:

> (c) General standards for relief. — The Commissioner in exercising the Commissioner's discretion 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 (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

The excluded subtitles are generally not going to be of concern to most taxpayers—subtitles A (on income taxes), B (estate and gift taxes), C (employment and withholding taxes) , D (miscellaneous excise taxes), F (procedure and administration) and K (group health plan requirements) are covered and generally will be where most of the elections we are concerned with are found.

This does bring up an important point, though—you will need to "walk through" each specific election due date to see how it interacts with these rules. So, whether you like it or not, you'll likely need to have these regulations out along with the primary source documents involved in setting the deadline in question.

Which brings us to the first issue that is found in this regulation—regardless of the rest of what you find here, there are elections that are excluded from relief under the general

1 Regulation §301.9100-1(b)
2 Regulation §301.9100-1(b)
3 Regulation §301.9100-1(b)
4 Regulation §301.9100-1(b)

standards of these regulations. The exclusion rules are:

> (d) Exceptions. --Notwithstanding the provisions of paragraph (c) of this section, an extension of time will not be granted --
>
> (1) For elections under section 4980A(f)(5); or
>
> (2) For elections that are expressly excepted from relief or where alternative relief is provided by a statute, a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter).

The good news is that §4980A(f)(5) was the grandfather election related to the tax on excess distributions from qualified plans—a tax that was repealed back in 1997. So the real limitation is found in the second provision. That tells us that the IRS or Congress can override these general rules by specific rules to grant relief for a specific provision and can also provide a provision is not eligible for any relief.

So the starting point for your analysis in a missed election date is to see if there is something in the statute or other primary source materials that either prohibits relief or provides separate procedures for relief.

Automatic Relief

Regulation §301.9100-2 provides the easiest solution to many late election problems by granting automatic extensions in certain cases. There is a specified class of elections eligible for automatic 12 month relief under Regulation §301.9100-2(a), and then a broader class eligible for an automatic 6 month extension under §301.9100-2(b). In both cases, the taxpayer must take "corrective action" as defined in §301.9100-2(c).

The major advantage of falling under the automatic provision is that no letter ruling request (and associated costs) are involved, nor does the IRS's specific consent have to be obtained.

Corrective Action and Procedural Rules

The corrective action rule apply to both 12 and 6 month extensions. Those rules, found at Regulation §301.9100-2(c) provide:

> (c) Corrective action. --For purposes of this section, corrective action means taking the steps required to file the election in accordance with the statute or the regulation published in the Federal Register, or the revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter). For those elections required to be filed with a return, corrective action includes filing an original or an amended return for

> the year the regulatory or statutory election should have been made and attaching the appropriate form or statement for making the election. Taxpayers who make an election under an automatic extension (and all taxpayers whose tax liability would be affected by the election) must file their return in a manner that is consistent with the election and comply with all other requirements for making the election for the year the election should have been made and for all affected years; otherwise, the IRS may invalidate the election.

Basically, the taxpayer needs to take all steps that would have been required had the election been timely made, including amending the tax return if necessary either to make the election or reflect the effects of that election.

If the taxpayer qualifies for this automatic relief, the IRS is to notified using a notation at the top of the document in question that specifically refers to these regulations, as well as meet the other requirements noted below found at Regulation §301.9100-2(d):

> (d) Procedural requirements. --Any return, statement of election, or other form of filing that must be made to obtain an automatic extension must provide the following statement at the top of the document: "FILED PURSUANT TO §301.9100-2". Any filing made to obtain an automatic extension must be sent to the same address that the filing to make the election would have been sent had the filing been timely made. No request for a letter ruling is required to obtain an automatic extension. Accordingly, user fees do not apply to taxpayers taking corrective action to obtain an automatic extension.

12 Month Extensions

If an election is eligible for the 12 month rule, the taxpayer gets a full 12 months beyond the stated due date to make an election. Generally this is the most liberal option available under these rules and is available only for a limited class of items.

All of these elections fall under the general rule found at §301.9100-2(a)(1), which states:

> In general. --An automatic extension of 12 months from the due date for making a regulatory election is granted to make elections described in paragraph (a)of this section provided the taxpayer takes corrective action as defined in paragraph (c) of this section within that 12-month extension period. For purposes of this paragraph (a), the due date for making a regulatory election is the extended due date of the return if the due date of the election is the due date of the return or the due date of the return including extensions and the taxpayer has obtained an extension of time to file the return. This extension is available regardless of whether the taxpayer timely filed its return for the year the election should have been made.

It is important to note that final sentence—this option is available even if the return for the year in question itself was not timely filed.

The specific items available for this relief are outlined below. For the specific details of each election please check the provision in question.

- The election to use other than the required taxable year under section 444;
- The election to use the last-in, first-out (LIFO) inventory method under section 472;
- The 15-month rule for filing an exemption application for a section 501(c)(9), 501(c) (17), or 501(c) (20) organization under section 505;
- The 15-month rule for filing an exemption application for a section 501(c)(3) organization under section 508;
- The election to be treated as a homeowners association under section 528;
- The election to adjust basis on partnership transfers and distributions under section 754;
- The estate tax election to specially value qualified real property (where the Internal Revenue Service (IRS) has not yet begun an examination of the filed return) under section 2032A(d)(1)
- The chapter 14 gift tax election to treat a qualified payment right as other than a qualified payment under section 2701(c)(3)(C)(i); and
- The chapter 14 gift tax election to treat any distribution right as a qualified payment under section 2701(c)(3)(C)(ii).

Since this is the most liberal automatic provision, you should always check a missed election against the list above to see if the taxpayer qualifies for extended automatic relief. You can be a real hero to a new client if you can fix what may appear to the client to be a hopeless foul up they've gotten into—and a real goat if you've told them they have no recourse and they miss the extended date only to discover this option later (not to mention potential liability now for someone else's original mistake).

Six Month Relief

The six month relief is primarily meant to assure that taxpayers aren't penalized for filing their returns on time rather than holding them until the last day available on the last extension available for filing a return. The IRS isn't stupid, and realizes that tax professional might advise their clients to hold off on filing returns until the last possible day to keep the options open for all possible elections that are required to be made on a timely filed return.

Regulation §301.9100-2(b) provides an automatic six month extension to make an

election in the following case:

> (b) Automatic 6-month extension. --An automatic extension of 6 months from the due date of a return excluding extensions is granted to make regulatory or statutory elections whose due dates are the due date of the return or the due date of the return including extensions provided the taxpayer timely filed its return for the year the election should have been made and the taxpayer takes corrective action as defined in paragraph (c) of this section within that 6-month extension period. This paragraph (b) does not apply to regulatory or statutory elections that must be made by the due date of the return excluding extensions.

Note that the 6 month period runs from the *original* due date of the return—so for individual returns, this period expires on October 15 of the year following the year in question. Filing an extension for the return in question doesn't buy the taxpayer an extension of the six month "oops" period—rather, filing on extension actually provides a shorter period for a change of heart after the return is filed. The point is to give all taxpayers, whether or not they filed for an extension of time to file, the same "drop dead" date to file the election.

As well, note that this provision does not apply to any election that is tied to the original due date of the return in question that applies without regard to extensions. Otherwise this rule would provide an effective "end run" around that provision in the code or regulations.

Preparers need to be aware of this rule because it provides preparers with a "second chance" to correct oversights made during the heat of tax season that otherwise might harm the client and to provide the option for a client to perhaps change their mind on the treatment of an item if the advantage of an election is discovered after the return is filed, but before what would have been the final date to file the return on extension.

For instance, a taxpayer who had incurred a net operating loss on the current year's return and who now wants to carry forward the net operating loss but had failed to attach such an election to the return in question could make that election within six months of the original due date no matter when his/her original return had been filed.

Similarly, a taxpayer that had reported an installment obligation on the installment basis and who now decides it would have been better to elect out of the installment method can go back and make the election out of the installment method so long as the taxpayer does so within the six month period.

There are a number of other such elections to which this provision can apply, so if your taxpayers' issue wasn't covered by the twelve month automatic list, this list becomes the next "stopping point" for potential relief if the taxpayer is within the six month period.

Nonautomatic Extensions

A taxpayer whose problem doesn't fall within §301.9100-2's automatic relief provisions and isn't prohibited from using these relief provisions by §301.9100-1(d)(2) has one more chance, though it's a much tougher road without a guarantee of success—asking for the IRS to grant discretionary relief under §301.9100-3.

When a taxpayer comes under this provision, the taxpayer must make a formal request for a private letter ruling granting the relief[5] and then the IRS will consider the request. The IRS will grant the request if it meets the following tests:

- The taxpayer provides evidence that the taxpayer acted both reasonably and in good faith *and*
- The grant of relief will not prejudice the interests of the Government.[6]

Note that this is a dual test and that *both* conditions must be satisfied in order for the IRS to grant relief. A taxpayer may act reasonably and in good faith and nevertheless still not be deemed eligible for relief because such relief would prejudice the interest of the Government. Similarly, even if the interests of the Government is not prejudiced, if the taxpayer did not act reasonably or in good faith, the taxpayer fails the test.

The one piece of good news about the letter ruling requirement is that this means the IRS will publish those rulings they do make—so a tax professional considering advising a taxpayer to make such a request for relief can look to see under what conditions the IRS has granted relief on the election in question and come to a conclusion about the client's chances of success.

Since the letter ruling process is an expensive one, it's important to the client have a realistic view of the chances of success and the potential costs before deciding whether to start the process. As well, you need to be extremely careful to be sure the client has considered the cost/benefit considerations before starting this process, and understands that the professional adviser fees could be considerable higher than estimated if there is a long process of back and forth discussions with the IRS in attempting to get a positive ruling.

Reasonable Action and Good Faith

Regulation §301.9100-3(b)(1) provides a list of cases under which the taxpayer will be deemed to have acted reasonably and in good faith. Note that the language of the regulation is such that this list isn't exhaustive—if a taxpayer doesn't fall onto this list (and doesn't fall onto the "deemed to have not acted in good faith" list found at Regulation §301.9100-3(b)(3), the taxpayer can still argue that he/she acted reasonably or in good faith based on facts and circumstances, though the chances of success may have

5 Regulation §301.9100-3(a)
6 Regulation §301.9100-3(a)

reduced substantially.

The following situations are deemed to show the taxpayer acted reasonably and in good faith:

- Requests relief under this section before the failure to make the regulatory election is discovered by the Internal Revenue Service (IRS);
- Failed to make the election because of intervening events beyond the taxpayer's control;
- Failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election;
- Reasonably relied on the written advice of the Internal Revenue Service (IRS); *or*
- 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.[7]

The "or" highlighted above is very important—a taxpayer doesn't have to meet *all* of the above conditions, but rather can meet any *one* of those conditions and be deemed to have acted reasonably.[8]

The last case is important—that is, the reliance on a qualified tax professional. Regulation §301.9100-3(b)(2) contains a clarification of the hurdles that must be cleared for a taxpayer to avail him/herself of that provision:

> (2) Reasonable reliance on a qualified tax professional. --For purposes of this paragraph (b), a taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not --
>
> (i) Competent to render advice on the regulatory election; or
>
> (ii) Aware of all relevant facts.

The courts have analyzed the question of "reasonable reliance" when looking at penalty relief, and generally taxpayers need to clear some significant hurdles here even though they may believe they reasonably relied on advice. In the case of *Neonatology Associates, P.A., et al v. Commissioner*[9] Judge Laro provided the following analysis

7 Regulation §301.9100-3(b)(1)

8 However, remember that there are *two* hurdles to be cleared, and that meeting one of these tests doesn't mean the taxpayer will get relief—just that the analysis now moves on to whether the interests of the Government are prejudiced by the granting of the relief.

9 115 TC 43

denying relief based on reliance on a professional that is instructive, even though on a different provision of the law:

> In sum, for a taxpayer to rely reasonably upon advice so as possibly to negate a section 6662(a) accuracy-related penalty determined by the Commissioner, the taxpayer must prove by a preponderance of the evidence that the taxpayer meets each requirement of the following three-prong test: (1) The adviser was a competent professional who had sufficient expertise to justify reliance, (2) the taxpayer provided necessary and accurate information to the adviser, and (3) the taxpayer actually relied in good faith on the adviser's judgment. See *Ellwest Stereo Theatres, Inc. v. Commissioner*, T.C. Memo. 1995-610; see also Rule 142 (a); *Welch v. Helvering*, 290 U.S. at 115. We are unable to conclude that any of petitioners has met any of these requirements. First, none of petitioners has established that he, she, or it received advice from a competent professional who had sufficient expertise to justify reliance. The "professional" to whom petitioners refer is their insurance agent, Mr. Cohen. Mr. Cohen is not a tax professional, nor do we find that he ever represented himself as such. Petitioners' mere reliance on Mr. Cohen was unreasonable, given the primary fact that he was known by most of them to be involved intimately with and to stand to gain financially from the sale of both the subject VEBA's and the C-group product. Given the magnitude of petitioners' dollar investment in the C-group product and the favorable consequences which Mr. Cohen represented flowed therefrom, any prudent taxpayer, especially one who is as educated as the physicians at bar, would have asked a tax professional to opine on the tax consequences of the C-group product. The represented tax benefits of the C-group product were simply too good to be true. Such is especially so when we consider the fact that the physicians who testified admitted that they knew that term insurance was significantly less expensive than the premiums purportedly paid under the C-group product solely for term insurance.
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> Petitioners assert on brief that they also relied on tax opinion letters written by tax attorneys and accountants. We do not find that such was the case. The record contains neither a credible statement by one or more of the individual petitioners to the effect that he or she saw and relied on a tax opinion letter, nor a tax opinion letter written by a competent, independent tax professional. In fact, petitioners have not even proposed a finding of fact that would support a finding that such a tax opinion letter exists, let alone that any of them ever read or relied on one. See Rule 143(b) (statements on brief are not evidence).
>
> We also are unpersuaded by petitioners' assertion that they relied reasonably on the correctness of the contents of their returns simply because their returns were prepared by certified public accountants. The mere fact that a certified public accountant has prepared a tax return does not mean that he or she has opined on

> any or all of the items reported therein. In this regard, the record contains no evidence that, possibly with the exception of Dr. Hirshkowitz, any of petitioners asked a competent accountant to opine on the legitimacy of his, her, or its treatment for the contributions, or that an accountant in fact did opine on that topic. In the case of Dr. Hirshkowitz, the record does reveal that he showed his accountant something on the SC VEBA and that the accountant expressed some reservations as to the advertised tax treatment of the SC VEBA, but no reservations which Dr. Hirshkowitz considered "major", as he put it. The record does not reveal what exactly Dr. Hirshkowitz showed his accountant as to the SC VEBA or the particular reservations which the accountant expressed. Nor do we know whether a reasonable person would consider those reservations to be "major" from the point of view of accepting Mr. Cohen's representations of the tax consequences which flowed from the SC VEBA.

In the real world, the two major problems may arise from the reliance on the fact that a return was prepared by a tax professional—as noted above, the key problem becomes that the taxpayer must show that such professional actually had all access to all relevant data, something that may be difficult to prove without the cooperation of the professional—and that may be difficult to obtain, since a professional making such an admission may be admitting to having missed the issue when he/she should have caught it in preparing the original return.

It is very likely that the professional may be advised by his/her counsel not to admit that he/she had been engaged to perform the service in question (advise the client on such an election) and, even if that isn't the issue, may be terribly inclined to cooperate if a new professional is now involved in the case.

A second problem arises if the taxpayer claims to have relied on an employee. There the question will quickly turn on whether that person was truly qualified in the area in question—a question that may, frankly, be open to doubt based on the fact that the person missed the need for the election in the first place.

As well, a taxpayer will not be deemed to have acted reasonably and in good faith if the following conditions are present:

- Seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief (taking into account any qualified amended return filed within the meaning of §1.6664-2(c)(3) of this chapter) and the new position requires or permits a regulatory election for which relief is requested;
- Was informed in all material respects of the required election and related tax consequences, but chose not to file the election[10]; or

10 If a professional is not being cooperative in agreeing that he/she "dropped the ball" the professional may

- Uses hindsight in requesting relief. If specific facts have changed since the due date for making the election that make the election advantageous to a taxpayer, the IRS will not ordinarily grant relief. In such a case, the IRS will grant relief only when the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight.

Prejudice to the Interests of the Government

Normally the biggest obstacle to the granting of relief is this provision. In a real world situation, a client is normally concerned about wanting to make an election only when it is clear that unless the election is made the client will have negative tax consequences. However, given the nature of the process, a negative result for the client is, most often, a positive result for the U.S. Treasury in terms of receipts. Thus, this hurdle is difficult to overcome, and a major reason why the automatic extensions (which do not have to clear the "interests of the Government" hurdle) are so useful.

The general provisions for the interests of the Government are provided in Regulation §301.9100-3(c)(1):

> (1) In general. --The Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief. This paragraph (c) provides the standards the Commissioner will use to determine when the interests of the Government are prejudiced.
>
> (i) Lower tax liability. --The interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Similarly, if the tax consequences of more than one taxpayer are affected by the election, the Government's interests are prejudiced if extending the time for making the election may result in the affected taxpayers, in the aggregate, having a lower tax liability than if the election had been timely made.
>
> (ii) Closed years. --The interests of the Government are ordinarily prejudiced if

very well assert that he/she told the client about the election in question and the taxpayer decided not to go forward. Switching viewpoints for a second, that should also cause you to realize that having documentation of having informed the client about the need for this election could be very useful should a client later have second thoughts and decide to attempt to "strong arm" the CPA into denying he/she ever told the client about this election by threating a malpractice action or simply later forgets what he/she was told when having hindsight remorse after now seeing the very result the CPA had attempted to warn them about and is looking for someone to "share the pain" or, better yet, carry it all by paying for the damage.

> the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501 (a) before the taxpayer's receipt of a ruling granting relief under this section. The IRS may condition a grant of relief on the taxpayer providing the IRS with a statement from an independent auditor (other than an auditor providing an affidavit pursuant to paragraph (e)(3) of this section) certifying that the interests of the Government are not prejudiced under the standards set forth in paragraph (c)(1)(i) of this section.

Note that the "lower tax liability" test is phrased that the interests of the government *are* prejudiced if that test is met, apparently foreclosing the option to argue facts and circumstances. The major "wiggle room" there is the fact that any effect of the election in the future have to be projected—but note that the time value of money *is* considered, so the argument that the matter is one of "timing only" won't work (since usually in these cases the taxpayer pays less in the early years and then "catches up" in later years).

As well, Example (4) of Regulation §301.9100-3 seems to indicate that taxes paid to date are not changed (and there's no time value issue), that would also clear the "interests of the government" hurdle.[11]

Accounting method and period changes are subject to a higher hurdle. The nature of the types of elections captured by this even tougher standard is found at Regulation §301.9100-3(c)(2) which provides:

> (2) Special rules for accounting method regulatory elections. --The interests of the Government are deemed to be prejudiced except in unusual and compelling circumstances if the accounting method regulatory election for which relief is requested --
>
> (i) Is subject to the procedure described in §1.4461(e)(3)(i) of this chapter (requiring the advance written consent of the Commissioner);
>
> (ii) Requires an adjustment under section 481(a) (or would require an adjustment under section 481(a) if the taxpayer changed to the method of accounting for which relief is requested in a taxable year subsequent to the taxable year the election should have been made);
>
> (iii) Would permit a change from an impermissible method of accounting that is an issue under consideration by examination, an appeals office, or a federal court and the change would provide a more favorable method or more favorable terms and conditions than if the change were made as part of an examination; or

11 Regulation §301.9100-3(f) Example (4). Note that the actual example is likely unrealistic in the real world unless the taxpayer was a start-up C corporation with only a net operating loss carryforward where the impact would be down the line when the taxpayer did finally begin to pay tax.

> (iv) Provides a more favorable method of accounting or more favorable terms and conditions if the election is made by a certain date or taxable year.
>
> (3) Special rules for accounting period regulatory elections. --The interests of the Government are deemed to be prejudiced except in unusual and compelling circumstances if an election is an accounting period regulatory election (other than the election to use other than the required taxable year under section 444) and the request for relief is filed more than 90 days after the due date for filing the Form 1128, Application to Adopt, Change, or Retain a Tax Year (or other required statement).

Effect on Amended Returns

While the regulation contains the above title, it is really dealing with statute and examination issues and either requires or potentially requires that the taxpayer waive certain rights as a condition to this request. Regulation §301.9100-3(d) provides:

> (d) Effect of amended returns --
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> (1) Second examination under section 7605(b).
>
> Taxpayers requesting and receiving an extension of time under this section waive any objections to a second examination under section 7605(b) for the issue(s) that is the subject of the relief request and any correlative adjustments.
>
> (2) Suspension of the period of limitations under section 6501(a).
>
> A request for relief under this section does not suspend the period of limitations on assessment under section 6501(a). Thus, for relief to be granted, the IRS may require the taxpayer to consent under section 6501(c)(4) to an extension of the period of limitations on assessment for the taxable year in which the regulatory election should have been made and any taxable years that would have been affected by the election had it been timely made.

Procedural Requirements

Regulation §301.9100-3(e) provides the specific procedural requirements that must be me to request relief under this regulation. These regulations must be consulted and complied with if the client has decided, after all of the above, to proceed with a request for relief. The provision provides:

> (e) Procedural requirements
>
> (1) In general. --Requests for relief under this section must provide evidence that satisfies the requirements in paragraphs (b) and (c) of this section, and must

provide additional information as required by this paragraph (e).

(2) Affidavit and declaration from taxpayer. --The taxpayer, or the individual who acts on behalf of the taxpayer with respect to tax matters, must submit a detailed affidavit describing the events that led to the failure to make a valid regulatory election and to the discovery of the failure. When the taxpayer relied on a qualified tax professional for advice, the taxpayer's affidavit must describe the engagement and responsibilities of the professional as well as the extent to which the taxpayer relied on the professional. The affidavit must be accompanied by a dated declaration, signed by the taxpayer, which states: "Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the request contains all the relevant facts relating to the request, and such facts are true, correct, and complete." The individual who signs for an entity must have personal knowledge of the facts and circumstances at issue.

(3) Affidavits and declarations from other parties. --The taxpayer must submit detailed affidavits from the individuals having knowledge or information about the events that led to the failure to make a valid regulatory election and to the discovery of the failure. These individuals must include the taxpayer's return preparer, any individual (including an employee of the taxpayer) who made a substantial contribution to the preparation of the return, and any accountant or attorney, knowledgeable in tax matters, who advised the taxpayer with regard to the election. An affidavit must describe the engagement and responsibilities of the individual as well as the advice that the individual provided to the taxpayer. Each affidavit must include the name, current address, and taxpayer identification number of the individual, and be accompanied by a dated declaration, signed by the individual, which states: "Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the request contains all the relevant facts relating to the request, and such facts are true, correct, and complete."

(4) Other information. --The request for relief filed under this section must also contain the following information --

(i) The taxpayer must state whether the taxpayer's return(s) for the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made is being examined by a district director, or is being considered by an appeals office or a federal court. The taxpayer must notify the IRS office considering the request for relief if the IRS starts an examination of any such return while the taxpayer's request for relief is pending;

(ii) The taxpayer must state when the applicable return, form, or statement used

to make the election was required to be filed and when it was actually filed;

(iii) The taxpayer must submit a copy of any documents that refer to the election;

(iv) When requested, the taxpayer must submit a copy of the taxpayer's return for any taxable year for which the taxpayer requests an extension of time to make the election and any return affected by the election; and

(v) When applicable, the taxpayer must submit a copy of the returns of other taxpayers affected by the election.

(5) Filing instructions. --A request for relief under this section is a request for a letter ruling. Requests for relief should be submitted in accordance with the applicable procedures for requests for a letter ruling and must be accompanied by the applicable user fee.