

# Notice of Proposed Rulemaking by Cross Reference to Temporary Regulations

## Deemed Election To Be an Association Taxable as a Corporation for a Qualified Electing S Corporation

### REG-131786-03

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross reference to temporary regulations.

SUMMARY: In this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9139) that deem certain eligible entities that file timely S corporation elections to have elected to be classified as associations taxable as corporations. The text of those temporary regulations also serves as the text of these proposed regulations. These regulations affect certain eligible entities filing timely elections to be S corporations on or after July 20, 2004.

DATES: A request for a public hearing and written or electronic comments must be received by October 18, 2004.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-131786-03), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC, 20044. Submissions may be hand delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-131786-03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically, via the IRS Internet site at: [www.irs.gov/regs](http://www.irs.gov/regs) or via the Federal E-Rulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS and REG-131786-03).

FOR FURTHER INFORMATION CONTACT: Rebekah A. Myers at (202) 622-3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

#### Background

Temporary regulations published elsewhere in this issue of the Bulletin amend §301.7701-3T(c)(1)(v)(C) to provide that certain eligible entities that file timely S corporation elections are deemed to have elected to be classified as associations taxable as corporations. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

#### Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore a regulatory assessment is not required. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the purpose of the regulation is to decrease the number of entities required to file an entity classification election, Form 8832. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed regulation will be submitted to the Chief Counsel for Advocacy

of the Small Business Administration for comment on its impact on small business.

#### Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the public hearing will be published in the **Federal Register**.

#### Drafting Information

The principal author of this regulation is Rebekah A. Myers, Office of Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

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#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

#### PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read, in part, as follows:

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

Para. 2. Section 301.7701-3 is amended by adding paragraphs (c)(1)(v)(C) and (h)(3) to read as follows:

*§301.7701-3 Classification of certain business entities.*

[The text of the proposed amendment is the same as the text of §301.7701-3T published elsewhere in this issue of the Bulletin].

Mark E. Matthews,  
*Deputy Commissioner for  
Services and Enforcement.*

(Filed by the Office of the Federal Register on July 19, 2004, 8:45 a.m., and published in the issue of the Federal Register for July 20, 2004, 69 F.R. 43369)