

The “Daily Plan-It™”

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Client Forgot Sub S Election? Don't Panic!

If you're working with small business owners, you probably have had a panic phone call that went something like this: "My CPA/lawyer/financial planner said that I needed to file my Sub S election with the IRS! However, I missed the deadline. What should I do now?"

The curse of online services

If this hasn't happened to you yet, it most likely will. With some clients bypassing their professionals and going straight to the Internet to create their corporations and limited liability companies, you'll be getting this question more than you realize. Many small business owners will avoid their professional team (*us*) in order to save money (*translation: not having to pay us*), and do the work themselves (*translation: we have to clean up the mess*). This has led to a strange irony: If the client had only hired the professional to do it right in the first place, he wouldn't have to pay us double *now* to rectify his mistakes.

New IRS Notice 2007-166 saves the day

In the past, the problem was a simple one that necessitated only occasional fixing. Now, it's happening with a lot more frequency. Here's the problem. If the owner of a new corporation failed to file Form 2553, then the new corporation would end up taxed as a C-Corp. This could be a disaster for a small business. It would mean that they could be taxed *twice*, once on the corporate level, and again on the personal. I have known a few advisors who had to go through all kinds of interesting yoga-like moves to undo this problem. In some cases, the owner simply needed to start a brand new corporation. But thanks to the IRS, this new Notice 2007-166 has simplified this process greatly and provided a solution just in time for the end of the year when this particular problem is

bound to raise its ugly head.

The Process

The process is simple. If the business forgot to file Form 2553 (Election by a Small Business Corporation), they may file it before filing their first Form 1120S (U.S. Income Tax Return for an S Corporation), or they can file both forms simultaneously. The change is effective for taxable years that end on, or after, Dec. 31, 2007. The business owner will have to offer a "reasonable cause" for making a late election.

The IRS cautioned that the requirement for filing the Sub-S election in advance of filing the initial tax return is still the law. However, the new process will save time, money, and stress for those who can meet the reasonable cause deadline.

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