

FINAL REGULATIONS FACILITATE S CORPORATION ELECTIONS

Under newly issued final regulations, an eligible entity which timely files an Election by a Small Business Corporation, Form 2553, electing to be an S corporation is deemed to have filed Form 8832 (election to be classified as an association).

■ **Background**

Under the check-the-box regulations, a taxpayer whose default classification is a partnership or a disregarded entity (such as a single-member LLC) may seek to be classified as an S corporation. In these cases, the taxpayer must first elect to be classified as an association by filing Entity Classification Election, Form 8832, and then must elect to be an S corporation by filing Form 2553.

Observation: Form 2553 must be filed before the 16th day of the tax year for which the election is to be effective or at any time during the preceding tax year. An election on Form 8832 generally is effective on the date entered on line four of the form but can't take effect more than 75 days before the date the election is filed.

■ **Deemed filing of Form 8832**

Often, an eligible entity timely files Form 2553 but fails to file Form 8832. Under the new regulations, an eligible entity which timely files Form 2553 is deemed also to have filed Form 8832.

■ **Effective date**

The regulation applies to timely S corporation elections filed after July 19, 2004. The provision can also be relied on for timely elections filed before July 20, 2004.

This Hot Topic is an informative publication for our clients and friends of the Firm. It is designed to provide accurate information on the subject matter covered. We recommend you consult with your legal and other advisors to determine if the information is applicable in your specific circumstances. If these advisors are not available to you, please feel free to contact Barry N. Finkelstein, CPA at 972/934-1577 or e-mail at info@facpa.com.