



# Current Federal Tax Developments

June 3, 2024

Kaplan Financial Education



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## This Week We Look At:

IRS announces that Direct File will continue into 2025 and be expanded while maintaining other programs

A taxpayer finds its not so simple as just file a Form 2553 if you want to have an LLC taxed as an S corporation, but did realize the error fast enough to get a PLR to restore S status

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## IRS Announces Continuation and Expansion of Direct File Program



Photo by [Cookie the Pom](#) on [Unsplash](#)

- IR-2024-151, May 30, 2024
  - Direct File is the program that ran as a pilot in for the past filing season where taxpayers could file directly with IRS (not using a third party partner as was true of previous free file programs)
  - The pilot program was limited in various ways
    - As with prior free file programs, more complex situations blocked the use of the program
    - The program was only available to taxpayers in a few states
    - Even fewer states allowed taxpayers to also file a state tax return

### News Release:

<https://www.irs.gov/newsroom/irs-makes-direct-file-a-permanent-option-to-file-federal-tax-returns-expanded-access-for-more-taxpayers-planned-for-the-2025-filing-season>



## IRS Announces Continuation and Expansion of Direct File Program



Photo by [Cookie the Pom](#) on [Unsplash](#)

- IR-2024-151, May 30, 2024
  - IRS will not limit the number of states that can participate in the program this year
  - Looking to expand the types of returns that can be filed via the program from the limited set that qualified in 2024
  - Will be announcing details of the 2025 program in the coming months
  - Direct File will not replace Free File, Inc. - recently signed a five year extension with that group

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## IRS Announces Continuation and Expansion of Direct File Program



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- IR-2024-151, May 30, 2024
  - In addition, the IRS plans to strengthen the Volunteer Income Tax Assistance program (VITA) and the Tax Counseling for the Elderly program (TCE).

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## Private Letter Ruling Outlines Issues You Have to Work Around When Electing S for an LLC

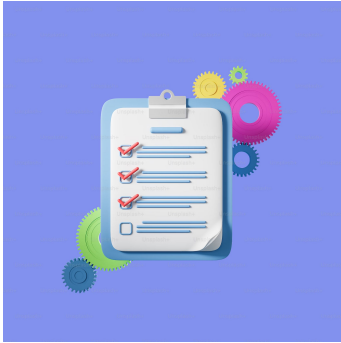


Image from UnSplash+

- PLR 202422006, May 31, 2024
  - Many taxpayers and their advisers get confused about various aspects of the “check the box” regulations
  - The “check the box” regulations are found at Reg. §301.7701-3
    - In particular, we are looking at the options for a limited liability company in this case
      - One owner - can elect to be disregarded or treated as a corporation
      - More than one owner - can elect to be treated as a partnership or a corporation

PLR 202422006 <https://www.irs.gov/pub/irs-wd/202422006.pdf>

Check the box regulations

<https://www.taxnotes.com/research/federal/cfr26/301.7701-3>

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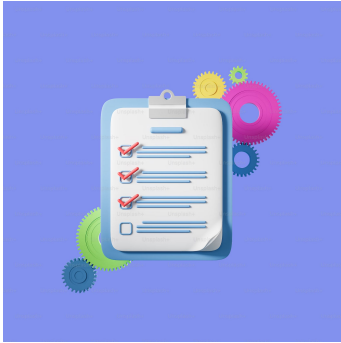


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- PLR 202422006, May 31, 2024
  - Per Reg. §301.7701-3(c)(1)(v)(C) an LLC being treated as a corporation who is eligible to be an S corporation
    - Can make both elections by filing Form 2553
    - Deemed conversion to a corporation takes place on the effective date of the S election on the Form 2553
  - Note that the LLC must still meet the requirements for eligibility to make the S election

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PLR 202422006 <https://www.irs.gov/pub/irs-wd/202422006.pdf>

S election for an LLC check the box regulation provision:

<https://www.taxnotes.com/research/federal/cfr26/301.7701-3#cv9m-000025>

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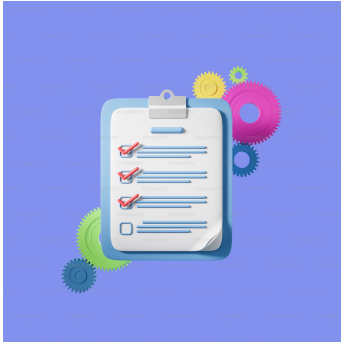


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- PLR 202422006, May 31, 2024
  - The check the box regime is an “Alice in Wonderland” pretend world - we act “as if” the LLC is a corporation
    - This means we must pretend certain things are what they are not
    - As LLCs don’t issue stock, we have to treat the equity interests as if they are stock
  - We have to find the “stock” in an LLC due to the “one class of stock” requirement to be an S corporation found at IRC §1361(b)(1)(D)

PLR 202422006 <https://www.irs.gov/pub/irs-wd/202422006.pdf>

IRC §1361(b)(1)(D)

<https://www.taxnotes.com/research/federal/usc26/1361#cqcs-0000010>



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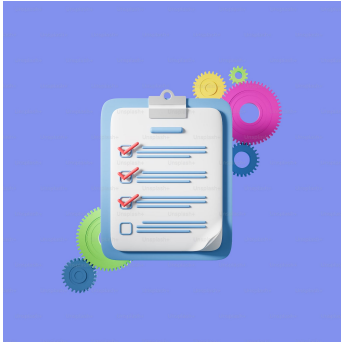


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- PLR 202422006, May 31, 2024
  - Reg. §1.1361-1(l)(1) defines what meets the one class of stock
    - All outstanding shares (in this case what we treat as shares of the LLC in the check the box Alice in Wonderland world) must have identical *rights* to
      - Distribution proceeds and
      - Liquidation proceeds
    - Do not need an actual disproportionate distribution to run afoul of this - just the right to one in some future situation

PLR 202422006 <https://www.irs.gov/pub/irs-wd/202422006.pdf>

One class of stock Reg. §1.1361-1(l)(1)

<https://www.taxnotes.com/research/federal/cfr26/1.1361-1#cx2d-0000142>

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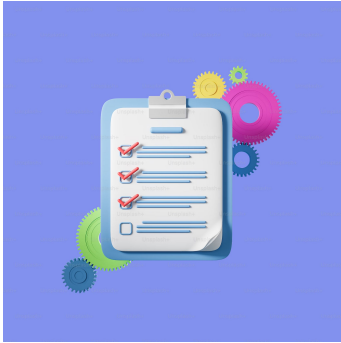


Image from UnSplash+

- PLR 202422006, May 31, 2024
  - Facts in this case
    - LLC initially filed a Form 8832 to elect corporate status
      - Operating agreement included provisions applicable to partnerships
      - This appears to have included special allocations of income
    - Later filed a Form 2553 to elect S corporation status

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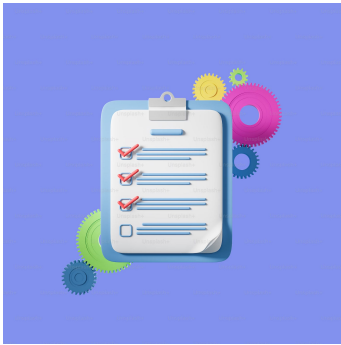


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- PLR 202422006, May 31, 2024
  - Facts in this case
    - While (they thought) the S election was in effect
      - Corporation issued K-1s showing special allocations of income to the shareholders and
      - Made disproportionate distributions to the shareholders (apparently in line with the agreement's special income allocations)
    - Now admit that this created a second class of stock and asked for relief under IRC §1362(f)

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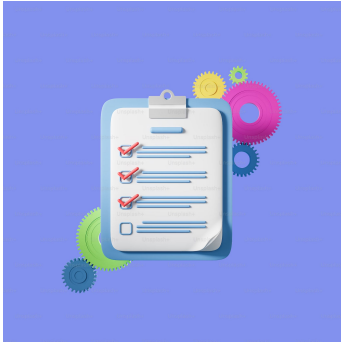


Image from UnSplash+

- PLR 202422006, May 31, 2024
  - IRC §1362(f) allows the IRS, upon request, to grant retroactive relief when an S corporation inadvertently makes an invalid S election
    - Note that getting this relief generally requires the filing of a private letter ruling request, including paying the relevant user fees
    - There are some automatic relief exceptions, but none apply in this fact pattern

PLR 202422006 <https://www.irs.gov/pub/irs-wd/202422006.pdf>

IRC §1361(f)

<https://www.taxnotes.com/research/federal/usc26/1362#cp63-000072>

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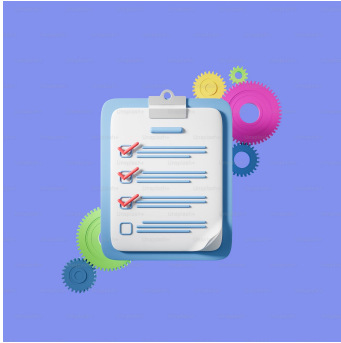


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- PLR 202422006, May 31, 2024
  - IRS granted retroactive relief on the following conditions
    - Operating agreement was revised to eliminate the problems leading to more than one class of stock
    - Prior year returns (including the shareholders) were revised to reflect the per-share, per-day allocation of income
    - A corrective distribution was paid

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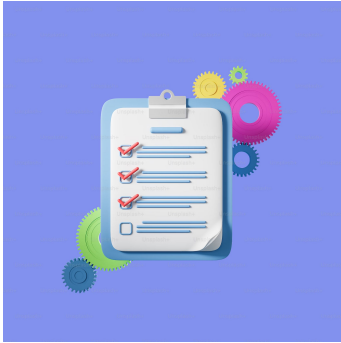


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- PLR 202422006, May 31, 2024
  - Key takeaways from this ruling
    - LLCs must be drafted to be specifically tailored to the entity type the entity wishes to choose
    - Most boilerplate LLC documents will presume that the entity will be a partnership - which will create problems if the entity is not a partnership
    - An existing LLC operating agreement must be carefully reviewed and likely revised if the entity now wishes to make an S election

PLR 202422006 <https://www.irs.gov/pub/irs-wd/202422006.pdf>

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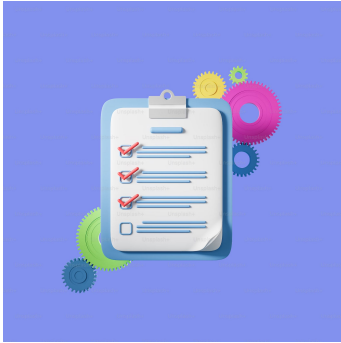


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- PLR 202422006, May 31, 2024
  - Key takeaways from this ruling
    - As well, remember that moving from one pretend tax entity type to another requires going through the appropriate pretend transactions to get there
    - Those pretend transactions may have very real and very expensive tax consequences

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