

Instructions for Form 2553

(Rev. December 2002)

Election by a Small Business Corporation

Section references are to the Internal Revenue Code unless otherwise noted.



Department of the Treasury
Internal Revenue Service

General Instructions

Purpose

To elect to be an S corporation, a corporation must file Form 2553. The election permits the income of the S corporation to be taxed to the shareholders of the corporation rather than to the corporation itself, except as noted below under **Taxes an S Corporation May Owe**.

Who May Elect

A corporation may elect to be an S corporation only if it meets all of the following tests:

1. It is a domestic corporation.

Note: A limited liability company (LLC) **must file Form 8832, Entity Classification Election, to elect to be treated as an association taxable as a corporation in order to elect to be an S corporation.**

2. It has no more than 75 shareholders. A husband and wife (and their estates) are treated as one shareholder for this requirement. All other persons are treated as separate shareholders.

3. Its only shareholders are individuals, estates, exempt organizations described in section 401(a) or 501(c)(3), or certain trusts described in section 1361(c)(2)(A). See the instructions for Part III regarding qualified subchapter S trusts (QSSTs).

A trustee of a trust wanting to make an election under section 1361(e)(3) to be an electing small business trust (ESBT) should see Notice 97-12, 1997-1 C.B. 385. However, in general, for tax years beginning after May 13, 2002, Notice 97-12 is superseded by Regulations section 1.1361-1(c)(1). Also see Rev. Proc. 98-23, 1998-1 C.B. 662, for guidance on how to convert a QSST to an ESBT. However, in general, for tax years beginning after May 13, 2002, Rev. Proc. 98-23 is superseded by Regulations section 1.1361-1(j)(12). If there was an inadvertent failure to timely file an ESBT election, see the relief provisions under Rev. Proc. 98-55, 1998-2 C.B. 643.

4. It has no nonresident alien shareholders.

5. It has only one class of stock (disregarding differences in voting rights). Generally, a corporation is treated as having only one class of stock if all outstanding shares of the corporation's stock confer identical rights to distribution and liquidation proceeds. See Regulations section 1.1361-1(l) for details.

6. It is not one of the following ineligible corporations:

- a. A bank or thrift institution that uses the reserve method of accounting for bad debts under section 585,

- b. An insurance company subject to tax under the rules of subchapter L of the Code,

- c. A corporation that has elected to be treated as a possessions corporation under section 936, or

- d. A domestic international sales corporation (DISC) or former DISC.

7. It has a permitted tax year as required by section 1378 or makes a section 444 election to have a tax year other than a permitted tax year. Section 1378 defines a permitted tax year as a tax year ending December 31, or any other tax year for which the corporation establishes a business purpose to the satisfaction of the IRS. See Part II for details on requesting a fiscal tax year based on a business purpose or on making a section 444 election.

8. Each shareholder consents as explained in the instructions for column K.

See sections 1361, 1362, and 1378 for additional information on the above tests.

A parent S corporation can elect to treat an eligible wholly-owned subsidiary as a qualified subchapter S subsidiary (QSub). If the election is made, the assets, liabilities, and items of income, deduction, and credit of the QSub are treated as those of the parent. To make the election, get **Form 8869, Qualified Subchapter S Subsidiary Election**. If the QSub election was not timely filed, the corporation may be entitled to relief under Rev. Proc. 98-55.

Taxes an S Corporation May Owe

An S corporation may owe income tax in the following instances:

1. If, at the end of any tax year, the corporation had accumulated earnings and profits, and its passive investment income under section 1362(d)(3) is more than 25% of its gross receipts, the corporation may owe tax on its excess net passive income.

2. A corporation with net recognized built-in gain (as defined in section 1374(d)(2)) may owe tax on its built-in gains.

3. A corporation that claimed investment credit before its first year as an S corporation will be liable for any investment credit recapture tax.

4. A corporation that used the LIFO inventory method for the year immediately preceding its first year as an S corporation may owe an additional tax due to LIFO recapture. The tax is paid in four equal installments, the first of which must be paid by the due date (not including extensions) of the corporation's income tax return for its last tax year as a C corporation.

For more details on these taxes, see the Instructions for Form 1120S.

Where To File

Send the original election (no photocopies) or fax it to the Internal Revenue Service Center listed below. If the corporation files this election by fax, keep the original Form 2553 with the corporation's permanent records.

If the corporation's principal business, office, or agency is located in

Use the following Internal Revenue Service Center address or fax number

Connecticut, Delaware, District of Columbia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia, Wisconsin

Cincinnati, OH 45999
(859) 669-5748

Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Idaho, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, Washington, Wyoming

Ogden, UT 84201
(801) 620-7116

When To Make the Election

Complete and file Form 2553 **(a)** at any time before the 16th day of the 3rd month of the tax year, if filed during the tax year the election is to take effect, or **(b)** at any time during the preceding tax year. An election made no later than 2 months and 15 days after the beginning of a tax year that is less than 2½ months long is treated as timely made for that tax year. **An election made after the 15th day of the 3rd month but before the end of the tax year is effective for the next year.** For example, if a calendar tax year corporation makes the election in April 2002, it is effective for the corporation's 2003 calendar tax year.

However, an election made after the due date will be accepted as timely filed if the corporation can show that the failure to file on time was due to reasonable cause. To request relief for a late election, the corporation generally must request a private letter ruling and pay a user fee in accordance with Rev. Proc. 2002-1, 2002-1 I.R.B. 1 (or its successor). But if the election is filed within 12 months of its due date and the original due date for filing the corporation's initial Form 1120S has not passed, the ruling and user fee requirements do not apply. To

request relief in this case, write "FILED PURSUANT TO REV. PROC. 98-55" at the top of page 1 of Form 2553, attach a statement explaining the reason for failing to file the election on time, and file Form 2553 as otherwise instructed. See Rev. Proc. 98-55 for more details.

See Regulations section 1.1362-6(b)(3)(iii) for how to obtain relief for an inadvertent invalid election if the corporation filed a timely election, but one or more shareholders did not file a timely consent.

Acceptance or Nonacceptance of Election

The service center will notify the corporation if its election is accepted and when it will take effect. The corporation will also be notified if its election is not accepted. The corporation should generally receive a determination on its election within 60 days after it has filed Form 2553. If box Q1 in Part II is checked on page 2, the corporation will receive a ruling letter from the IRS in Washington, DC, that either approves or denies the selected tax year. When box Q1 is checked, it will generally take an additional 90 days for the Form 2553 to be accepted.

Care should be exercised to ensure that the IRS receives the election. If the corporation is not notified of acceptance or nonacceptance of its election within 3 months of the date of filing (date mailed), or within 6 months if box Q1 is checked, take follow-up action by corresponding with the service center where the corporation filed the election.

If the IRS questions whether Form 2553 was filed, an acceptable proof of filing is **(a)** certified or registered mail receipt (timely postmarked) from the U.S. Postal Service, or its equivalent from a designated private delivery service (see Notice 2002-62, 2002-39 I.R.B. 574 (or its successor)); **(b)** Form 2553 with accepted stamp; **(c)** Form 2553 with stamped IRS received date; or **(d)** IRS letter stating that Form 2553 has been accepted.



*Do not file Form 1120S for any tax year before the year the election takes effect. If the corporation is now required to file **Form 1120**, U.S. Corporation Income Tax Return, or any other applicable tax return, continue filing it until the election takes effect.*

End of Election

Once the election is made, it stays in effect until it is terminated. If the election is terminated in a tax year beginning after 1996, IRS consent is generally required for another election by the corporation (or a successor corporation) on Form 2553 for any tax year before the 5th tax year after the first tax year in which the termination took effect. See Regulations section 1.1362-5 for details.

Specific Instructions

Part I (All corporations must complete.)

Name and Address of Corporation

Enter the true corporate name as stated in the corporate charter or other legal document creating it. If the corporation's mailing address is the same as someone else's, such as a shareholder's, enter "c/o" and this person's name following the name of the corporation. Include the suite, room, or other unit number after the street address. If the Post Office does not deliver to the street address and the corporation has a P.O. box, show the box number instead of the street address. If the corporation changed its name or address after applying for its employer identification number, be sure to check the box in item D of Part I.

Item A. Employer Identification Number (EIN)

If the corporation has applied for an EIN but has not received it, enter "applied for." If the corporation does not have an EIN, it should apply for one on **Form SS-4**, Application for Employer Identification Number. You can order Form SS-4 by calling 1-800-TAX-FORM (1-800-829-3676) or by accessing the IRS Web Site www.irs.gov.

Item E. Effective Date of Election

Enter the beginning effective date (month, day, year) of the tax year requested for the S corporation. Generally, this will be the beginning date of the tax year for which the ending effective date is required to be shown in item I, Part I. For a new corporation (first year the corporation exists) it will generally be the date required to be shown in item H, Part I. The tax year of a new corporation starts on the date that it has shareholders, acquires assets, or begins doing business, whichever happens first. If the effective date for item E for a newly formed corporation is later than the date in item H, the corporation should file Form 1120 or Form 1120-A for the tax period between these dates.

Column K. Shareholders' Consent Statement

Each shareholder who owns (or is deemed to own) stock at the time the election is made must consent to the election. If the election is made during the corporation's tax year for which it first takes effect, any person who held stock at any time during the part of that year that occurs before the election is made, must consent to the election, even though the person may have sold or transferred his or her stock before the election is made.

An election made during the first 2½ months of the tax year is effective for the following tax year if any person who held stock in the corporation during the part of the tax year before the election was made, and who did not hold stock at the time the election was made, did not consent to the election.

Note: Once the election is made, a new shareholder is not required to consent to the election; a new Form 2553 will not be required.

Each shareholder consents by signing and dating in column K or signing and dating a separate consent statement described below. The following special rules apply in determining who must sign the consent statement.

- If a husband and wife have a community interest in the stock or in the income from it, both must consent.
- Each tenant in common, joint tenant, and tenant by the entirety must consent.
- A minor's consent is made by the minor, legal representative of the minor, or a natural or adoptive parent of the minor if no legal representative has been appointed.
- The consent of an estate is made by the executor or administrator.
- The consent of an electing small business trust is made by the trustee.
- If the stock is owned by a trust (other than an electing small business trust), the deemed owner of the trust must consent. See section 1361(c)(2) for details regarding trusts that are permitted to be shareholders and rules for determining who is the deemed owner.

Continuation sheet or separate consent statement.

If you need a continuation sheet or use a separate consent statement, attach it to Form 2553. The separate consent statement must contain the name, address, and EIN of the corporation and the shareholder information requested in columns J through N of Part I. If you want, you may combine all the shareholders' consents in one statement.

Column L

Enter the number of shares of stock each shareholder owns and the dates the stock was acquired. If the election is made during the corporation's tax year for which it first takes effect, do not list the shares of stock for those shareholders who sold or transferred all of their stock before the election was made. However, these shareholders must still consent to the election for it to be effective for the tax year.

Column M

Enter the social security number of each shareholder who is an individual. Enter the EIN of each shareholder that is an estate, a qualified trust, or an exempt organization.

Column N

Enter the month and day that each shareholder's tax year ends. If a shareholder is changing his or her tax year, enter the tax year the shareholder is changing to, and attach an explanation indicating the present tax year and the basis for the change (e.g., automatic revenue procedure or letter ruling request).

Signature

Form 2553 must be signed by the president, treasurer, assistant treasurer, chief accounting officer, or other corporate officer (such as tax officer) authorized to sign.

Part II

Complete Part II if you selected a tax year ending on any date other than December 31 (other than a 52-53-week tax year ending with reference to the month of December).

Note: *In certain circumstances the corporation may not obtain automatic approval of a fiscal year under the natural business year (Box P1) or ownership tax year (Box P2) provisions if it is under examination, before an area office, or before a federal court with respect to any income tax issue and the annual accounting period is under consideration. For details, see section 4.02 of Rev. Proc. 2002-38, 2002-22 I.R.B. 1037.*

Box P1

Attach a statement showing separately for each month the amount of gross receipts for the most recent 47 months. A corporation that does not have a 47-month period of gross receipts cannot automatically establish a natural business year.

Box Q1

For examples of an acceptable business purpose for requesting a fiscal tax year, see section 5.02 of Rev. Proc. 2002-39, 2002-22 I.R.B. 1046, and Rev. Rul. 87-57, 1987-2 C.B. 117.

Attach a statement showing the relevant facts and circumstances to establish a business purpose for the requested fiscal year. For details on what is sufficient to establish a business purpose, see section 5.02 of Rev. Proc. 2002-39.

If your business purpose is based on one of the natural business year tests provided in section 5.03 of Rev. Proc. 2002-39, identify if you are using the 25% gross receipts, annual business cycle, or seasonal business test. For the 25% gross receipts test, provide a schedule showing the amount of gross receipts for each month for the most recent 47 months. For either the annual business cycle or seasonal business test, provide the gross receipts from sales and services (and inventory costs, if applicable) for each month of the short period, if any, and the three immediately preceding tax years. If the corporation has been in existence for less than three tax years, submit figures for the period of existence.

If you check box Q1, you will be charged a user fee of up to \$600 (subject to change—see Rev. Proc. 2002-1 or its successor). Do not pay the fee when filing Form 2553. The service center will send Form 2553 to the IRS in Washington, DC, who, in turn, will notify the corporation that the fee is due.

Box Q2

If the corporation makes a back-up section 444 election for which it is qualified, then the election will take effect in the event the business purpose request is not approved. In some cases, the tax year requested under the back-up section 444 election may be different than the tax year requested under business purpose. See **Form 8716**, Election To Have a Tax Year Other Than a Required Tax Year, for details on making a back-up section 444 election.

Boxes Q2 and R2

If the corporation is not qualified to make the section 444 election after making the item Q2 back-up section 444 election or indicating its intention to make the election in item R1, and therefore it later files a calendar year return, it should write "Section 444 Election Not Made" in the top left corner of the first calendar year Form 1120S it files.

Part III

Certain qualified subchapter S trusts (QSSTs) may make the QSST election required by section 1361(d)(2) in Part III. Part III may be used to make the QSST election only if corporate stock has been transferred to the trust on or before the date on which the corporation makes its election to be an S corporation. However, a statement can be used instead of Part III to make the election. If there was an inadvertent failure to timely file a QSST election, see the relief provisions under Rev. Proc. 98-55.

Note: *Use Part III only if you make the election in Part I (i.e., Form 2553 cannot be filed with only Part III completed).*

The deemed owner of the QSST must also consent to the S corporation election in column K, page 1, of Form 2553. See section 1361(c)(2).

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will depend on individual circumstances. The estimated average time is:

Recordkeeping	9 hr., 34 min.
Learning about the law or the form	3 hr., 28 min.
Preparing, copying, assembling, and sending the form to the IRS	3 hr., 47 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **Do not** send the form to this address. Instead, see **Where To File** on page 2.
