

Instructions for Form 2553

(Revised September 1997)

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.
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, certain trusts described in section 1361(c)(2)(A), or, for tax years beginning after 1997, exempt organizations described in section 401(a) or 501(c)(3). Trustees of trusts that want to make the election under section 1361(e)(3) to be an electing small business trust should see Notice 97-12, 1997-3 I.R.B. 11.

Note: See the instructions for Part III regarding qualified subchapter S trusts.

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(1) for more 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.

An election can be made by a parent S corporation to treat the assets, liabilities, and items of income, deduction, and credit of an eligible wholly-owned subsidiary as those of the parent. For details, see Notice 97-4, 1997-2 I.R.B. 24.

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.

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

Where To File.— File this election with the Internal Revenue Service Center listed below.

If the corporation's principal business, office, or agency is located in	Use the following Internal Revenue Service Center address
New Jersey, New York (New York City and counties of Nassau, Rockland, Suffolk, and Westchester)	Holtsville, NY 00501
New York (all other counties), Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont	Andover, MA 05501
Florida, Georgia, South Carolina	Atlanta, GA 39901
Indiana, Kentucky, Michigan, Ohio, West Virginia	Cincinnati, OH 45999
Kansas, New Mexico, Oklahoma, Texas	Austin, TX 73301
Alaska, Arizona, California (counties of Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba), Colorado, Idaho, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming	Ogden, UT 84201
California (all other counties), Hawaii	Fresno, CA 93888
Illinois, Iowa, Minnesota, Missouri, Wisconsin	Kansas City, MO 64999
Alabama, Arkansas, Louisiana, Mississippi, North Carolina, Tennessee	Memphis, TN 37501
Delaware, District of Columbia, Maryland, Pennsylvania, Virginia	Philadelphia, PA 19255

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 1998, it is effective for the corporation's 1999 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. 97-1, 1997-1 I.R.B. 11 (or its successor). But if the election is filed within 6 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. 97-40" 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. 97-40, 1997-33 I.R.B. 50, 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.

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.

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 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 filed) from the U.S. Postal Service or its equivalent from a designated private delivery service (see Notice 97-26, 1997-17 I.R.B. 6); (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.

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, the corporation (or a successor corporation) can make another election on Form 2553 only with IRS consent 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 more details.

Specific Instructions

Part I

Note: All corporations must complete Part I.

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 G 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).

Item D. 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 D 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.

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).

Box P1.— Attach a statement showing separately for each month the amount of gross receipts for the most recent 47 months as required by section 4.03(3) of Rev. Proc. 87-32, 1987-2 C.B. 396. A corporation that does not have a 47-month period of gross receipts cannot establish a natural business year under section 4.01(1).

Box Q1.— For examples of an acceptable business purpose for requesting a fiscal tax year, see Rev. Rul. 87-57, 1987-2 C.B. 117.

In addition to a statement showing the business purpose for the requested fiscal year, you must attach the other information necessary to meet the ruling request requirements of Rev. Proc. 97-1 (or its successor). Also attach a statement that shows separately the amount of gross receipts from sales or services (and inventory costs, if applicable) for each of the 36 months preceding the effective date of the election to be an S corporation. If the corporation has been in existence for fewer than 36 months, submit figures for the period of existence.

If you check box Q1, you will be charged a \$250 user fee (subject to change). 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.

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.....	6 hr., 28 min.
Learning about the law or the form.....	3 hr., 41 min.
Preparing, copying, assembling, and sending the form to the IRS.....	3 hr., 56 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 1.