

# Election To Be Treated as a FSC or as a Small FSC

Under section 927(f)(1) of the Internal Revenue Code

▶ **Election under section 927(f)(1).** Check the applicable box to show that the corporation elects to be treated as a

Foreign sales corporation (FSC), or a  Small foreign sales corporation (small FSC).

Name of corporation	<b>A</b> Employer identification number (see instructions) .....
Address <b>in</b> the United States (number, street, and room or suite no.) (See instructions.)	<b>B</b> Principal business classifications (see instructions)  (1) Business activity code no. . . . . (2) Business activity . . . . . (3) Product or service . . . . .
City or town, state, and ZIP code	
Address <b>outside</b> the United States (number, street, and room or suite no.) (See instructions.)	<b>C</b> Country in which the FSC or small FSC was created or organized
City or town, and country	<b>D</b> Number of common stock shares issued and outstanding

**E** Name and address of a member of the Board of Directors who is not a resident of the United States

<b>F</b> Tax year of FSC (see instructions for <b>Who may elect</b> ). Enter ending month and day of the tax year ▶	<b>G</b> Election to take effect for the tax year beginning (month, day, and year)	<b>H</b> Date corporation began doing business
---	--	--

<b>I</b> Name and address (including ZIP code) of each shareholder (or expected shareholder) (1) at the beginning of the tax year the election takes effect, and (2) when the election is filed.	<b>J</b> Shareholders' Consent Statement— We, the undersigned shareholders, consent to the corporation's election to be treated as a FSC (or small FSC) under section 927(f)(1). Our consent is irrevocable and is binding upon all transferees of our shares in this corporation.* (See instructions.)	<b>K</b> Number of common stock shares held on—(Complete both columns for each shareholder.)		<b>L</b> Shareholder's identification number (see instructions)
		First day of year of election	Date election is filed	
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

\*For this election to be valid, the consent of each shareholder must be given in item J above or on a separate consent statement attached to this form. (See **Separate consent statement** in the instructions for required content if the statement is needed.)

**Signature.** Under penalties of perjury, I declare that the corporation named above has authorized me to make this election under section 927(f)(1) for the corporation to be treated as a FSC or small FSC and that the statements made are to the best of my knowledge and belief true, correct, and complete. I also certify that the corporation meets all required tests under **Who may elect** (in the instructions).

Signature of officer ▶ Title ▶ Date ▶

**General Instructions**

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

**Purpose of form.** Form 8279 is used by a corporation to make the election to be treated as a foreign sales corporation (FSC) or as a small FSC.

Once the election is made, it remains in effect until terminated or revoked. The election applies to each shareholder who owns stock in the corporation while the election is in effect.

**Who may elect.** A corporation may make the election if it meets all of the following tests:

1. It is a corporation created or organized under the laws of any qualifying foreign country or a U.S. possession (other than Puerto Rico). The foreign country must meet the requirements of section 927(e)(3).
2. It does not have more than 25 shareholders.
3. It does not have preferred stock.
4. It maintains an office in a qualifying foreign country or U.S. possession (other than Puerto Rico) and maintains a set of permanent books of account (including invoices) for the corporation at that office. It must also maintain books and records that sufficiently establish the amount of gross income, deductions, credits, or other matters required to be shown on the FSC's (or small FSC's) income tax return, at a location in the United States as required by section 6001.
5. It has at least one director who is not a resident of the United States.
6. It is not a member of a controlled group of corporations that has a domestic international sales corporation (DISC) as a member.
7. Its tax year is the tax year of the principal shareholder (or group of shareholders with the same tax year) with the highest percentage of voting power or, if two or more shareholders (or groups) hold the same highest percentage of voting power, it is the tax year of any such shareholder (or group). See section 441(h).

IRS consent is not necessary if the electing corporation has to change its tax year to conform to the tax year of the principal shareholder. However, IRS consent may be required for a tax year change by the principal shareholder or a subsequent change by the corporation to meet the tax year requirement of section 441(h). See section 442 and the regulations under sections 441, 442, and 921.

8. Each person who is a shareholder on the first day of the first tax year for which the election is effective consents to the corporation's FSC (or small FSC) election.

After a valid election is made, the corporation must meet tests 2 through 7 above for its entire tax year to qualify as a FSC (or small FSC) for the tax year. See sections 922 through 927 for additional information.

**Where to file.** File Form 8279 with the Internal Revenue Service Center, Philadelphia, PA 19255.

**When to file.** A corporation generally files Form 8279 during the 90-day period immediately preceding the beginning of the corporation's tax year. However, for the corporation's first tax year, the election is made at any time during the 90-day period after the beginning of the tax year. An election may be terminated by revocation after the first tax year for which the election is effective. A revocation made during the first 90-day period of the tax year is effective for the tax year in which it is made and all subsequent tax years. If the revocation is made after the 90-day period, it is effective for all tax years following the one in which the revocation was made. For details, see Regulations section 1.927(f)-1(b).

**Specific Instructions**

**Address in the United States.** Enter the address where the books and records required under section 6001 are maintained. Include the suite, room, or other unit number after the street address. If the Post Office does not deliver mail to the street address and the corporation has a P.O. box, show the box number instead of the street address.

**Address outside the United States.** Enter the address where the permanent books of account are maintained.

**Item A. Employer identification number (EIN).** Show the corporation's correct EIN. If the corporation does not have an EIN, it should apply for one on **Form SS-4**, Application for Employer Identification Number. Form SS-4 can be obtained at most IRS or Social Security Administration (SSA) offices. If the corporation has not received its EIN by the time the election is due, write "Applied for" in the space for the EIN.

**Item B. Principal business classifications.** See the Form 1120-FSC Codes for Principal Business Activity in the Instructions for Form 1120-FSC for what to enter in item B, lines (1), (2), and (3).

**Item J. Shareholders' consent statement.** An election to be a FSC (or a small FSC) is valid only if all persons who are shareholders on the first day the election goes into effect sign the consent statement in item J and provide the other information requested in items I, K, and L of Form 8279 or sign a separate consent statement as described below. When stock of the corporation is owned by a husband and wife as community property (or the income from that stock is community property), both husband and wife must sign the consent. Each tenant in common, joint tenant, and tenant by the entirety must sign the consent for each person who has a community interest in the stock or in the income from the stock. A legal guardian must sign for a minor. However, if a legal guardian has not been appointed, the natural guardian must sign.

The executor or administrator must sign for an estate, and the trustee must sign for a trust. If the estate or trust has more than one executor, administrator, or trustee, any such person who is authorized to file the return of the estate or trust may sign the consent. An officer of a corporation who is authorized to sign the corporation's tax return must sign the consent.

**Separate consent statement.** Any shareholder who does not sign the consent statement in item J of Form 8279 must sign a separate consent statement for the election to be valid. The statement must read: "I, (shareholder's name), a shareholder of (corporation's name), consent to the election of (corporation's name) to be treated as a FSC (or small FSC) under section 927(f)(1) of the Internal Revenue Code. The consent made by me is irrevocable and is binding upon all transferees of my stock in (corporation's name)."

In addition, the statement must show the name, address, and identifying number of the corporation and for every shareholder the information requested for items I, K, and L of Form 8279. For transferred stock, also show the name and address of the person who held the shares at the beginning of the tax year and the number of shares to which this consent applies.

**Extension of time to file or shareholders' consent statements.** The corporation may request an extension of time to file Form 8279 or the shareholders' consent statements. Under Regulations section 301.9100-1, the corporation may submit a ruling request to file Form 8279 after the 90-day period (see **When to file** above). The ruling request is subject to payment of a user fee; see Rev. Proc. 98-1 (or its successor), 1998-1 I.R.B. 7. In general, the filing will be considered as timely filed under Regulations section 301.9100-3 provided the corporation establishes that in failing to file Form 8279 timely it acted reasonably and in good faith, and that granting the extension will not prejudice the interests of the Government. The corporation may also request an extension to file shareholder consent statements if the corporation previously filed a Form 8279 that would have been valid if (a) all of the shareholder consent statements had been filed with the form, or (b) a shareholder who received transferred shares failed to file a consent statement within the required 90-day period.

**Transfers of stock after Form 8279 is filed.** If shares of the corporation's stock are transferred before or during the first tax year the election is to take effect but the transferor has not filed a consent

statement, the recipient of the transferred shares may consent to the election by filing a separate consent statement (see instructions above for the required format) in 90 days after the beginning of the tax year the election is to take effect. If the recipient does not file the consent within the 90-day period, an extension of time to file the consent may be granted by the IRS. See **Extension of time to file or shareholders' consent statements** above. If the transfer occurs more than 90 days after the beginning of the tax year the election is to take effect, an extension of time to file the consent may be granted by the IRS if it is determined that an extension of time to file would have been granted to the transferor if the transfer had not occurred.

If shares of the corporation's stock are transferred before the beginning of the tax year the election is to take effect, and the transferor filed a consent statement, the recipient of the transferred shares must consent to the election for the election to be valid. The consent must be filed within 90 days after the beginning of the tax year the election is to take effect. If the recipient does not file the consent in the 90-day period, an extension of time to file the consent may be granted by the IRS. See **Extension of time to file or shareholders' consent statements** above.

**Item L. Shareholder's identification number.** The identification number for an individual is the social security number. For all others, it is their employer identification number.

**Supplemental Form 8279.** If the corporation issues more stock or the ownership of its stock changes after the election is filed but before the beginning of the tax year for which the election is made, the corporation must file a supplemental Form 8279, and write "SUPPLEMENTAL" across the top of the form. The supplemental form must be filed in the first 90 days of the tax year the election takes effect.

Complete items I through L of the supplemental form only for shareholders acquiring additional stock and new shareholders. Each additional or new shareholder must consent to this election for the supplemental Form 8279 to be valid. Attach a copy of the Form 8279 filed.

**Signature.** Form 8279 must be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or other officer (such as tax officer) who is authorized to sign for the corporation.

**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 Code section 6103.

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

- Recordkeeping** . . . . . 4 hr., 32 min.
- Learning about the law or the form** . . . . . 1 hr., 47 min.
- Preparing and sending the form to the IRS** . . . . . 1 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 Form 8279 to this address. Instead, see **Where to file** above.

