

Memo of Major Changes for Form 2553, Election by a Small Business Corporation

Beginning with tax years ending on or after December 31, 2007, a taxpayer may be eligible to request relief for a late S corporation election by filing Form 2553 with Form 1120S, U.S. Income Tax Return for an S Corporation. This option is explained in Rev. Proc. 2007-62, which starts on page 786 of Internal Revenue Bulletin 2007-41. To support this new Revenue Procedure and to facilitate the reporting and collection of information contained on Form 2553, we have made several changes to the form. Additionally, the length of the form has increased from two pages to three pages.

Changes to Part I (page 1 of Form 2553)

In the “Note” (formerly “Notes”) that appear at the top of the page, we deleted item 1. This was done at the request of counsel, as this item was no longer necessary because of Rev. Proc. 2007-62. In item 2, we changed the phrase “an officer has signed this form” to “an officer must sign below” to call attention to the fact that an officer must sign in the appropriate space at the bottom of page 1. In addition, we added the words “Sign Here” and modified the appearance of the signature area so it now resembles the signature area on Form 1120S. The changes pertaining to the signature area were done to draw attention to the fact that an officer’s signature must appear on page 1 of Form 2553.

In Item D, we have moved the checkboxes associated with the word “name” and the word “address” so they now appear before the specific word.

Former Items E and H, which captured the same information, have been combined into Item E. Item E now asks for the specific date that the election is to be effective. Also, Item E now contains a caution reminding taxpayers that a corporation making the election for the first tax year of its existence is likely to enter the beginning date of their short tax year, and that date is unlikely to be January 1. These changes were made to ensure that correct information would be entered on Item E.

The information contained in former Item I has been reformatted and moved to Item F. New Item F has 4 checkboxes, and the taxpayer is to check the box for the tax year the taxpayer is selecting. The choices are:

1. Calendar year,
2. Fiscal year ending on a specific month and day (followed by a space to write in the month and day),
3. 52-53-week year ending with reference to the month of December,
4. 52-53-week year ending with reference to a specific month (followed by a space to write in the month)

In addition, if box 2 or 4 in new Item F is checked, the taxpayer is instructed to complete Part II of the form. These changes were made to ensure that correct information would be entered on Item F.

New Item G addresses the situation when more than 100 shareholders are listed on item J, but treating the members of a family as one shareholder would result in the existence of no more than 100 shareholders. If this situation applies, and the members of a family wish to be treated as one shareholder, then the box must be checked. This text and checkbox was previously part of Item J. We made this text and checkbox a separate item because of the importance of the material.

New Items H and I are former Items F and G respectively.

We have redesigned the section of the form that comes after Item I. We have written new text explaining that if the S election form (Form 2553) is being filed with Form 1120S, then the taxpayer should write in the blank space the reasonable cause they have for not filing Form 2553 timely. Additionally, when applicable, if the S election is made by an entity eligible to elect to be treated as a corporation, but the entity did not file an entity classification election timely, then the entity may use the blank space to also explain why they did not make the entity classification election timely. These changes were made in order to conform to Rev. Proc. 2007-62.

Changes to Part I (page 2 of Form 2553)

In the version of the form used prior to Rev. Proc. 2007-62, the space directly after Item I contained Items J, K, L, M, and N. These items have been moved onto page 2, and constitute all of page 2 (Parts II and III, formerly found on page 2, have been moved to page 3). As previously noted, the checkbox and the text related to treating members of a family as one shareholder has been moved to Part I, Item G.

Changes to Part II and III (page 3 of Form 2553)

In Part II, we have changed former references to “Item I” to “Item F” to correspond with the change in Part I, in which Item F is now used to notate the tax year selected by the S corporation.