

Instructions for Form 2553

(Rev. December 2007)

Election by a Small Business Corporation



Department of the Treasury
Internal Revenue Service

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

What's New

For tax years ending on or after December 31, 2007, certain corporations (entities) with reasonable cause for not timely filing Form 2553 can request to have the form treated as timely filed by filing Form 2553 as an attachment to Form 1120S, U.S. Income Tax Return for an S Corporation. An entry space for an explanation of reasonable cause was added to page 1 of the form. See *Relief for Late Elections*.

General Instructions

Purpose of Form

A corporation or other entity eligible to elect to be treated as a corporation must use Form 2553 to make an election under section 1362(a) to be an S corporation. An entity eligible to elect to be treated as a corporation that meets certain tests discussed below will be treated as a corporation as of the effective date of the S corporation election and does not need to file Form 8832, Entity Classification Election.

The income of an S corporation generally is taxed to the shareholders of the corporation rather than to the corporation itself. However, an S corporation may still owe tax on certain income. For details, see *Tax and Payments* in the Instructions for Form 1120S.

Who May Elect

A corporation or other entity eligible to elect to be treated as a corporation may elect to be an S corporation only if it meets all the following tests.

1. It is (a) a domestic corporation, or (b) a domestic entity eligible to elect to be treated as a corporation, that timely files Form 2553 and meets all the other tests listed below. If Form 2553 is not timely filed, see *Relief for Late Elections* on page 2.
2. It has no more than 100 shareholders. You can treat a husband and wife (and their estates) as one shareholder for this test. You can also treat all members of a family (as defined in section 1361(c)(1)(B)) and their estates as one shareholder for this test. For additional situations in which certain entities will be treated as members of a family, see Notice 2005-91, 2005-51 I.R.B. 1164. All others are treated as separate shareholders. For details, see section 1361(c)(1).
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).

For information about the section 1361(d)(2) election to be a qualified subchapter S trust (QSST), see the instructions for Part III. For information about the section 1361(e)(3) election to be an electing small business trust (ESBT), see Regulations section 1.1361-1(m). For guidance on how to convert a QSST to an ESBT, see Regulations section 1.1361-1(j)(12). If these elections were not timely made, see Rev. Proc. 2003-43, 2003-23 I.R.B. 998.

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 subchapter L of the Code.
 - c. A corporation that has elected to be treated as a possessions corporation under section 936.
 - d. A domestic international sales corporation (DISC) or former DISC.
7. It has or will adopt or change to one of the following tax years.
 - a. A tax year ending December 31.
 - b. A natural business year.
 - c. An ownership tax year.
 - d. A tax year elected under section 444.
 - e. A 52-53-week tax year ending with reference to a year listed above.
 - f. Any other tax year (including a 52-53-week tax year) for which the corporation establishes a business purpose.For details on making a section 444 election or requesting a natural business, ownership, or other business purpose tax year, see the instructions for Part II.
8. Each shareholder consents as explained in the instructions for column K.

See sections 1361, 1362, and 1378, and their related regulations 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. If the election is made, the subsidiary's assets, liabilities, and items of income, deduction, and credit generally are treated as those of the parent. For details, see Form 8869, Qualified Subchapter S Subsidiary Election.

When To Make the Election

Complete and file Form 2553:

- No more than two months and 15 days after the beginning of the tax year the election is to take effect, or
- At any time during the tax year preceding the tax year it is to take effect.

For this purpose, the 2 month period begins on the day of the month the tax year begins and ends with the close of the day before the numerically corresponding day of the second calendar month following that month. If there is no corresponding day, use the close of the last day of the calendar month.

Example 1. No prior tax year. A calendar year small business corporation begins its first tax year on January 7. The two month period ends March 6 and 15 days after that is March 21. To be an S corporation beginning with its first tax year, the corporation must file Form 2553 during the period that begins January 7 and ends March 21. Because

the corporation had no prior tax year, an election made before January 7 will not be valid.

Example 2. Prior tax year. A calendar year small business corporation has been filing Form 1120 as a C corporation but wishes to make an S election for its next tax year beginning January 1. The two month period ends February 28 (29 in leap years) and 15 days after that is March 15. To be an S corporation beginning with its next tax year, the corporation must file Form 2553 during the period that begins the first day (January 1) of its last year as a C corporation and ends March 15th of the year it wishes to be an S corporation. Because the corporation had a prior tax year, it can make the election at any time during that prior tax year.

Example 3. Tax year less than 2 1/2 months. A calendar year small business corporation begins its first tax year on November 8. The two month period ends January 7 and 15 days after that is January 22. To be an S corporation beginning with its short tax year, the corporation must file Form 2553 during the period that begins November 8 and ends January 22. Because the corporation had no prior tax year, an election made before November 8 will not be valid.

Relief for Late Elections

A late election to be an S corporation generally is effective for the tax year following the tax year beginning on the date entered on line E of Form 2553. However, relief for a late election may be available if the corporation can show that the failure to file on time was due to reasonable cause.

To request relief for a late election when the tax year beginning on the date entered on line E ends on or after December 31, 2007, a corporation that meets the following requirements can explain the reasonable cause in the designated space on page 1 of Form 2553.

- The corporation fails to qualify to elect to be an S corporation (see *Who May Elect* on page 1) solely because of the failure to timely file Form 2553.
- The corporation has reasonable cause for its failure to timely file Form 2553.
- The corporation has not filed a tax return for the tax year beginning on the date entered on line E of Form 2553.
- The corporation files Form 2553 as an attachment to Form 1120S no later than 6 months after the due date of Form 1120S (excluding extensions) for the tax year beginning on the date entered on line E of Form 2553.
- No taxpayer whose tax liability or tax return would be affected by the S corporation election (including all shareholders of the S corporation) has reported inconsistently with the S corporation election on any affected return for the tax year beginning on the date entered on line E of Form 2553.

Similar relief is available for an entity eligible to elect to be treated as a corporation (see the instructions for Form 8832) electing to be treated as a corporation as of the date entered on line E of Form 2553. For more details, see Rev. Proc. 2007-62, 2007-41 I.R.B. 786.

To request relief for a late election when the above requirements are not met, the corporation generally must request a private letter ruling and pay a user fee in accordance with Rev. Proc. 2008-1, 2008-1 I.R.B. 1 (or its successor). However, the ruling and user fee requirements may not apply if relief is available under the following revenue procedures.

- If an entity eligible to elect to be treated as a corporation (a) failed to timely file Form 2553, and (b) has not elected to be treated as a corporation, see Rev. Proc. 2004-48, 2004-32 I.R.B. 172.
- If a corporation failed to timely file Form 2553, see Rev. Proc. 2003-43, 2003-23 I.R.B. 998.

- If Form 1120S was filed without an S corporation election and neither the corporation nor any shareholder was notified by the IRS of any problem with the S corporation status within 6 months after the return was timely filed, see Rev. Proc. 97-48, 1997-43 I.R.B. 19.

Where To File

Generally, 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. However, certain late elections can be filed attached to Form 1120S. See *Relief for Late Elections* above.

If the corporation's principal business, office, or agency is located in:	Use the following 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	Department of the Treasury Internal Revenue Service Center Cincinnati, OH 45999 Fax: (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	Department of the Treasury Internal Revenue Service Center Ogden, UT 84201 Fax: (801) 620-7116

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, the corporation will receive a ruling letter from the IRS 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 2 months of the date of filing (date faxed or mailed), or within 5 months if box Q1 is checked, take follow-up action by calling 1-800-829-4933.

If the IRS questions whether Form 2553 was filed, an acceptable proof of filing is (a) 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 2004-83, 2004-52 I.R.B. 1030 (or its successor)); (b) Form 2553 with an accepted stamp; (c) Form 2553 with a stamped IRS received date; or (d) an 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 or revoked. IRS consent generally is 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 or revocation took effect. See Regulations section 1.1362-5 for details.

Specific Instructions

Part I

Name and Address

Enter the corporation's true 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)

Enter the corporation's EIN. If the corporation does not have an EIN, it must apply for one. An EIN can be applied for:

- Online—Click on the EIN link at www.irs.gov/businesses/small. The EIN is issued immediately once the application information is validated.
- By telephone at 1-800-829-4933.
- By mailing or faxing Form SS-4, Application for Employer Identification Number.

If the corporation has not received its EIN by the time the return is due, enter "Applied For" and the date you applied in the space for the EIN. For more details, see the Instructions for Form SS-4.

Item E. Effective Date of Election



Form 2553 generally must be filed no later than 2 months and 15 days after the date entered for item E. For details and exceptions, see When To Make the Election on page 1.

A corporation (or entity eligible to elect to be treated as a corporation) making the election effective for its first tax year in existence should enter the earliest of the following dates: (a) the date the corporation (entity) first had shareholders (owners), (b) the date the corporation (entity) first had assets, or (c) the date the corporation (entity) began doing business.



When the corporation (entity) is making the election for its first tax year in existence, it will usually enter the beginning date of a tax year that begins on a date other than January 1.

A corporation (entity) not making the election for its first tax year in existence that is keeping its current tax year

should enter the beginning date of the first tax year for which it wants the election to be effective.

A corporation (entity) not making the election for its first tax year in existence that is changing its tax year and wants to be an S corporation for the short tax year needed to switch tax years should enter the beginning date of the short tax year. If the corporation (entity) does not want to be an S corporation for this short tax year, it should enter the beginning date of the tax year following this short tax year and file Form 1128, Application To Adopt, Change, or Retain a Tax Year. If this change qualifies as an automatic approval request (Form 1128, Part II), file Form 1128 as an attachment to Form 2553. If this change qualifies as a ruling request (Form 1128, Part III), file Form 1128 separately. If filing Form 1128, enter "Form 1128" on the dotted line to the left of the entry space for item E.

Item F

Check the box that corresponds with the S corporation's selected tax year. If box (2) or (4) is checked, provide the additional information about the tax year, and complete Part II of the form.

Signature

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

If Form 2553 is not signed, it will not be considered timely filed.

Column K. Shareholders' Consent Statement

For an election filed before the effective date entered for item E, only shareholders who own stock on the day the election is made need to consent to the election.

For an election filed on or after the effective date entered for item E, all shareholders or former shareholders who owned stock at any time during the period beginning on the effective date entered for item E and ending on the day the election is made must consent to the election.

If the corporation timely filed an election, but one or more shareholders did not timely file a consent, see Regulations section 1.1362-6(b)(3)(iii). If the shareholder was a community property spouse who was a shareholder solely because of a state community property law, see Rev. Proc. 2004-35, 2004-23 I.R.B. 1029.

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

- 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 (ESBT) is made by the trustee and, if a grantor trust, the deemed owner. See Regulations section 1.1362-6(b)(2)(iv) for details.
- If the stock is owned by a qualified subchapter S trust (QSST), the deemed owner of the trust must consent.
- If the stock is owned by a trust (other than an ESBT or QSST), the person treated as the shareholder by section 1361(c)(2)(B) must consent.

Continuation sheet or separate consent statement. If you need a continuation sheet or use a separate consent statement, attach it to Form 2553. It must contain the name, address, and EIN of the corporation and the information requested in columns J through N of Part I.

Column L

Enter the number of shares of stock each shareholder owns on the date the election is filed and the date(s) the stock was acquired. Enter -0- for any former shareholders listed in column J. An entity without stock, such as a limited liability company (LLC), should enter the percentage of ownership and date(s) acquired.

Column M

Enter the social security number of each individual listed in column J. Enter the EIN of each estate, qualified trust, or 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 (for example, an automatic revenue procedure or a letter ruling request).

Part II

Complete Part II if you checked box (2) or (4) in Part I, Item F.

Note. Corporations cannot obtain automatic approval of a fiscal year under the natural business year (box P1) or ownership tax year (box P2) provisions if they are under examination, before an appeals (area) office, or before a federal court without meeting certain conditions and attaching a statement to the application. For details, see section 7.03 of Rev. Proc. 2006-46, 2006-45 I.R.B. 859.

Box P1

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 which test 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 \$3,200 (\$1,500 if your request is received before February 2, 2008) (subject to change by Rev. Proc. 2009-1 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 section 444 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 Q3 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

In Part III, the income beneficiary (or legal representative) of certain qualified subchapter S trusts (QSSTs) may make the QSST election required by section 1361(d)(2). 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. 2003-43.

Note. Use Part III only if you make the election in Part I. 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 of Form 2553.

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., 48 min.
Learning about the law or the form	2 hr., 33 min.
Preparing, copying, assembling, and sending the form to the IRS	4 hr., 1 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 Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the form to this address. Instead, see *Where To File* on page 2.
