

# Election by a Small Business Corporation

(As to taxable status under subchapter S of the Internal Revenue Code)

**Note:** This election under section 1372(a) (with the consent of all your shareholders) to be treated as an "electing small business corporation" for income tax purposes may be made only if the corporation meets all six of the requirements stated in instruction A. See section 1372 which describes certain conditions whereby the status of an electing small business corporation may be revoked or terminated.

Name of corporation	Employer identification number (see Instruction K)	Principal business activity (see Instruction E)
Number and street		Election is to be effective for 1 taxable year beginning (Month, day, year)
City or town, State and ZIP Code		Number of shares issued and outstanding
Is the corporation the outgrowth or continuation of any form of predecessor? predecessor, type of organization, and period during which it was in existence ▶ <input type="checkbox"/> Yes <input type="checkbox"/> No. If "Yes" state name of .....		Date and place of incorporation

If this election is effective for the first taxable year the corporation is in existence, submit the following information:

Date corporation first had shareholders	Date corporation first had assets	Date corporation began doing business	Annual return will be filed taxable year ending (Month)
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Name and address (including ZIP code) of each shareholder	Stock		Social Security Number	Internal Revenue Service Center where individual return is filed
	Number of shares	Date(s) acquired (see instruction D)		
1.....				
2.....				
3.....				
4.....				
5.....				
6.....				
7.....				
8.....				
9.....				
10.....				

**Note:** For this election to be valid, the consent of each shareholder must accompany this form or be shown below. See instruction D.

Under penalties of perjury, I declare that I have examined this election, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct and complete.

Signature and Title of Officer \_\_\_\_\_ Date \_\_\_\_\_ 19\_\_

**Shareholders' statement of consent (May be used in lieu of attachments—instruction D)**

We the undersigned shareholders consent to the election of the above corporation to be treated as an "electing small business corporation" under section 1372(a).

Signatures of shareholders and date

1	6
2	7
3	8
4	9
5	10

## Purpose

### (References are to the Internal Revenue Code.)

The purpose of this election is to permit the undistributed taxable income of an "electing small business corporation" to be taxed to the shareholders rather than the corporation. The term "undistributed taxable income" means taxable income (as computed under section 1373(d)) minus the sum of (1) the tax imposed by sections 56 and 1378(a) and (2) the amount of money distributed as dividends out of earnings and profits of the taxable year.

## Instructions

**A. Corporations eligible to elect.**—The corporation may make the election only if it meets all six of the following requirements:

- It is a domestic corporation.
- It has no more than 10 shareholders.

**Note:** A small business corporation which has been an electing small business corporation for a period of 5 consecutive taxable years or more may have more than 10 shareholders (but not more than 15). If during this 5-year period, the number of shareholders increases to an amount in excess of 10 (but not more than 15) solely by reason of additional shareholders who acquired their stock through inheritance, the corporation may have a number of additional shareholders equal to the number by which the inheriting shareholders cause the total number of shareholders of such corporation to exceed 10. See section 1371(e). This provision is effective for taxable years beginning after December 31, 1976.

See section 1371(c) for details as to when stock is treated as being owned by one shareholder when held by husband and wife, estate of the deceased spouse and the surviving spouse, or estates of both spouses.

- It has only individuals or estates as shareholders. (Effective for taxable years beginning after December 31, 1976, see section 1371(f) wherein certain trusts may be permitted as shareholders.)
- It has no nonresident alien shareholders.
- It has only one class of stock.
- It is not a member of an affiliated group of corporations (as defined in section 1504).

**Note:** A corporation is not considered a member of an affiliated group if it owns stock in a corporation that has not begun business before the close of the taxable year to which the election applies and does not have taxable income during that year.

**B. When to make the election.**—Complete this form and file it for any taxable year during either (1) the first month of that year, or (2) the month before the first month. For example, a calendar year corporation must make the election either in January of the tax year it applies to or in the preceding December.

For this purpose, the first month of a new corporation's taxable year begins when it has shareholders, acquires assets, or begins doing business, whichever happens first.

If a new corporation's taxable year begins after the first day of a month, the term "month" is the period beginning with the first day of the taxable year and ending with the close of the day preceding the same date of the following calendar month. If there is no such corresponding date, the month ends with the last day of that following calendar month. For example, if the new corporation's tax year began on March 17, the election must be filed by April 16. But if it began on March 31, the election must be filed by April 30.

The election will be effective for the taxable year for which it is made and for all later years unless it is terminated or revoked under section 1372(e).

**C. Valid election.**—The election will be valid only if consented to by all persons who are shareholders on the first day of the corporation's taxable year or on the day of election, whichever is later.

**D. Shareholder's statement of consent.**—On the date of election, each shareholder may consent to the election either by signing at the bottom of Form 2553 or by signing a separate statement which must be attached to Form 2553 and must include:

- the name and address of the corporation and of the shareholder
- the number of shares of stock owned by the shareholder
- the dates the shares were acquired
- a statement that the shareholder consents to the corporation's election to be treated as a small business corporation under section 1372(a).

If you wish, you may incorporate the consents of all shareholders in one statement.

The consent must be signed by both husband and wife if they have a community interest in the stock or the income from it, and by each tenant in common, each joint tenant, and each tenant by the entirety.

The consent of a minor shall be made by the minor or the minor's legal guardian, or the minor's natural guardian if no legal guardian has been appointed (even in the case of stock held by a custodian for a minor under a statute patterned after the Uniform Gifts to Minors Act).

Space on Form 2553 relating to dates the shareholders' stock was acquired need be filled in only for those shareholders using the consent shown on the face.

**New Shareholder.**—Effective for taxable years beginning after December 31, 1976, a subchapter S election will not be terminated unless a new shareholder (any person who was not a shareholder on the first day of the first taxable year for which the election is effective, or on the day on which the election is made, whichever is later) affirmatively refuses to consent to the election on or before the 60th day after which the new shareholder acquired the stock.

The new shareholder's affirmative refusal to consent to the election must be filed with the Internal Revenue Service Center having jurisdiction for the area in which the principal business, office or agency of the corporation is located.

If the new shareholder is the estate of a decedent, the 60 day period for affirmatively refusing to consent to the election shall expire on the 60th day after (1) the day on which the executor or administrator of the estate qualifies, or (2) the last day of the taxable year of the corporation in which the decedent died, whichever is the earlier.

Any termination of an election by reason of the affirmative refusal of any person to consent to such election shall be effective for the taxable year of the corporation in which such person becomes a shareholder in the corporation and for all succeeding taxable years of the corporation. (See section 1372(e)(1).)

For taxable years beginning prior to January 1, 1977, a new shareholder must file a statement of consent to the election made on Form 2553, or else the election is terminated. See section 1.1372-3(b) and (c) of the regulations for requirements concerning the time and manner of filing this statement of consent.

**E. Principal business activity.**—In reporting the principal business activity give the one business activity that accounts for the largest percentage of "total receipts." "Total receipts" means gross sales and/or gross receipts, plus all other income. State the broad field of business activity as well as the specific product or service. For example, "Mining copper," "Manufacturing cotton broad woven fabric," "Wholesale food," or "Retail apparel."

**F. Where to file.**—File this election in duplicate with the Internal Revenue Service Center where the corporation will file Form 1120S U.S. Small Business Corporation Income Tax Return. A copy should also be retained for permanent files of the corporation.

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

Use this address

New Jersey, New York City and counties of Nassau, Rockland, Suffolk, and Westchester	1040 Waverly Avenue Holtsville, New York 11799
New York (all other counties), Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont	310 Lowell Street Andover, Mass. 01812
Alabama, Florida, Georgia, Mississippi, South Carolina	4800 Buford Highway Chamblee, Georgia 30006
Michigan, Ohio	Cincinnati, Ohio 45298
Arkansas, Kansas, Louisiana, New Mexico, Oklahoma, Texas	3651 S. Interregional Highway Austin, Texas 78740
Alaska, Arizona, Colorado, Idaho, Minnesota, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming	1160 West 1200 South Street Ogden, Utah 84201
Illinois, Iowa, Missouri, Wisconsin	2306 E. Bannister Road Kansas City, Missouri 64170
California, Hawaii	5045 East Butler Avenue Fresno, California 93888
Indiana, Kentucky, North Carolina, Tennessee, Virginia, West Virginia	3131 Democrat Road Memphis, Tennessee 38110
Delaware, District of Columbia, Maryland, Pennsylvania	11601 Roosevelt Boulevard Philadelphia, Pa. 19155

**G. Signature.**—This form must be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or any other corporate officer (such as tax officer) who is authorized to sign.

**H. Election after termination or revocation.**—If a corporation election has been terminated or revoked under Section 1372(e), see section 1372(f) and section 1.1372-5 of the regulations for the restrictions on eligibility to make a new election.

**I. Investment credit property.**—Section 47 and the regulations thereunder provide that investment credit property ceases to be investment credit property when a corporation makes a valid election under section 1372 to be an "electing small business corporation" and the tax recomputation provisions of section 47 will apply.

The corporation and its shareholders may, however, execute the agreement specified by section 1.47-4(b)(2) of the regulations that the recapture provisions of section 1.47-1(a) of the regulations will not apply to the section 38 property.

**J. Work incentive (WIN) program credit.**—Section 1.50A-5(b)(1) of the regulations provides that certain WIN wages for which the WIN credit was claimed will cease to qualify as WIN wages when a corporation makes valid a election under section 1372 to be an "electing small business corporation." Therefore, the recapture provisions of section 1.50A-3 of the regulations will apply.

The corporation and its shareholders may, however, execute the agreement specified by section 1.50A-5(b)(2) of the regulations so that the recapture provisions of section 1.50A-3 of the regulations will not apply to the WIN expenses because of the corporation's election under section 1372.

**K. Employer identification number.**—Corporations that have not applied for an employer identification number should enter "not applied for". If a number has been applied for but not received, enter "applied for."

Corporations who do not have an ID should apply for one on Form SS-4, available from any IRS or Social Security Administration office. Send Form SS-4 to the same Internal Revenue Service Center to which Form 1120 is sent.