

Instructions for Form 2553

(Revised February 1986)

Election by a Small Business Corporation

(Section references are to the Internal Revenue Code, unless otherwise specified.)

Paperwork Reduction Act Notice.—We ask for this information to carry out the Internal Revenue laws of the United States. We need it to insure that you are complying with these laws and to allow us to figure and collect the right amount of tax. You are required to give us this information.

A. Purpose.—To elect to be treated as 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 except as provided in Subchapter S and section 58(d). (See section 1363.)

B. Who May Elect.—Your corporation may make the election only if it meets the following tests:

1. It is a domestic corporation.
2. It has no more than 35 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. It has only individuals, estates, or certain trusts as shareholders.
4. It has no nonresident alien shareholders.
5. It has only one class of stock. See sections 1361(c)(4) and (5) for additional details.
6. It is not an ineligible corporation as defined in section 1361(b)(2). See section 6(c) of Public Law 97-354 for additional details.
7. It has a calendar tax year or other permitted tax year as explained in instruction G.
8. Each shareholder consents as explained in the instructions for Column D.

See sections 1361, 1362 and 1378 for additional information on the above tests.

C. Where to File.—File this election with the Internal Revenue Service Center where the corporation will file Form 1120S, U.S. Income Tax Return for an S Corporation. See the Instructions for Form 1120S for Service Center addresses.

You should keep a copy of Form 2553 for the corporation's files.

D. When to Make the Election.—Complete Form 2553 and file it either: (1) at any time during that portion of the first tax year the election is to take effect which occurs before the 16th day of the third month of that tax year (or at any time during that year, if that year does not extend

beyond the period described above) or (2) in the tax year before the first tax year it is to take effect. An election made by a small business corporation after the 15th day of the third month but before the end of the tax year is treated as made for the next year. For example, if a calendar tax year corporation makes the election in April 1985, it is effective for the corporation's 1986 calendar tax year.

For purposes of this election, a newly formed corporation's tax year starts when it has shareholders, acquires assets, or begins doing business, whichever happens first.

E. Acceptance or Non-acceptance of Election.—IRS will notify you if your election is accepted and when it will take effect. You should generally receive determination on your election within 60 days after you have filed Form 2553. Do not file Form 1120S until you are notified that your election is accepted. If you are now required to file Form 1120, U.S. Corporation Income Tax Return, or any other applicable tax return, continue filing it until your election takes effect.

You will also be notified if your election is not accepted.

Care should be exercised to ensure the election is received by Internal Revenue Service. If you are not notified of acceptance or non-acceptance of your election within 3 months of date of filing (date mailed), you should take follow-up action by corresponding with the service center where the election was filed. If filing of Form 2553 is questioned, an acceptable proof of filing is: (1) Certified receipt (timely filed); (2) Form 2553 with accepted stamp; (3) Form 2553 with stamped IRS received date; or (4) IRS letter stating that Form 2553 had been accepted.

F. End of Election.—Once the election is made, it stays in effect for all years until it is terminated. During the 5 years after the election has been terminated, the corporation can make another election on Form 2553 only if the Commissioner consents. See section 1362(g). However, the 5-year waiting period does not apply to terminations made under Subchapter S rules in effect for tax years beginning before January 1, 1983. See sections 1362(d), (e), and (f) for rules regarding termination of election.

G. Permitted Tax Year.—Section 1378 provides that no corporation may make an election to be an S corporation for any tax year unless the tax year is a permitted tax

year. A permitted tax year is a tax year ending December 31 or any other tax year for which the corporation establishes a business purpose to the satisfaction of IRS. See section 1378(c) if a 50 percent shift in ownership occurs in an existing S corporation after its election is made.

H. Investment Credit Property.—Although the corporation has elected to be an S corporation under section 1362, the tax imposed by section 47 in the case of early disposition of investment credit property will be imposed on the corporation for credits allowed for tax years for which the corporation was not an S corporation. The election will not be treated as a disposition of the property by the corporation. See section 1371(d).

Specific Instructions

Part I.—Part I must be completed by all corporations.

Name and Address of Corporation.—If the corporation's mailing address is the same as someone else's such as a shareholder's, please enter this person's name below the corporation's name.

Employer Identification Number.—If you have applied for an employer identification number (EIN) but have not received it, enter “applied for.” If the corporation does not have an EIN, you should apply for one on Form SS-4, Application for Employer Identification Number, available from most IRS or Social Security Administration offices. Send Form SS-4 to the IRS Service Center where Form 1120S will be filed.

Principal Business Activity and Principal Product or Service.—Use the Codes for Principal Business Activity contained in the Instructions for Form 1120S. Your principal business activity is the one that accounts for the largest percentage of total receipts. Total receipts are gross receipts plus all other income.

Also state the principal product or service. For example, if the principal business activity is “grain mill products,” the principal product or service may be “cereal preparation.”

Number of Shares Issued and Outstanding.—Enter only one figure. This figure will be the number of shares of stock that have been issued to shareholders and have not been reacquired by the corporation. This is the number of shares all shareholders own, as reported in column E, Part I.

Item B.—The selected tax year must be a permitted tax year as defined in instruction G.

A newly formed corporation may automatically adopt a tax year ending December 31.

Generally, an existing corporation may automatically change to a tax year ending December 31, if all of its principal shareholders have tax years ending December 31, or if all of its principal shareholders are concurrently changing to such tax year. If a corporation is automatically changing to a tax year ending December 31, it is not necessary for the corporation to file **Form 1128**, Application for Change in Accounting Period. A shareholder may not change his or her tax year without securing prior approval from IRS. For purposes of the automatic change, a principal shareholder is a shareholder who owns 5% or more of the issued and outstanding stock of the corporation. See temporary regulations section 18.1378-1 for additional details.

If a corporation wants to change to a tax year ending December 31, but does not qualify for an automatic change as explained above, it may want to complete Part IV and indicate in an attached statement that it wants to change to a tax year ending December 31.

If a corporation selects a tax year ending other than December 31, it must complete Part II or IV in addition to Part I.

Column D.—Shareholders' Consent Statement.—Each person who is a shareholder at the time the election is made must consent to the election. If the election is made during the corporation's first tax year for which it is effective, any person who held stock at any time during that portion of that year which occurs before the time the election is made must consent to the election although the person may have sold or transferred his or her stock before the election is made. Each shareholder consents by signing in column D or signing a separate consent statement, described below.

The election by a small business corporation is considered made for the following tax year if one or more of the persons who held stock at any time during that portion of that year which occurs before the time the election is made did not consent to the election. See section 1362(b)(2).

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 also must consent.

A minor's consent is made by the minor or the legal guardian. If no legal guardian has been appointed, the natural guardian makes the consent (even if a custodian holds the minor's stock under a law patterned after the Uniform Gifts to Minors Act).

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 employer identification number of the corporation and the shareholder information requested in columns C through G of Part I.

If you wish, you may combine all the shareholders' consents in one statement.

Column E.—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 first tax year for which it is effective, do not list the shares of stock for those shareholders who sold or transferred all of their stock before the election was made but who still must consent to the election for it to be effective for the tax year.

Column G.—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. If the election is made during the corporation's first tax year for which it is effective, you do not have to enter the tax year of shareholders who sold or transferred all of their stock before the election was made but who still must consent to the election for it to be effective for the tax year.

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.—Items H and I of Part II are to be completed by a corporation that selects a tax year ending other than December 31, and that qualifies under section 4.02, 4.03, or 4.04 of Revenue Procedure 83-25, 1983-1 C.B. 689. Items H and I are completed in place of the additional statement asked for in section 7.01 of the procedure. Sections 4.02, 4.03, and 4.04 provide for expeditious approval of certain corporations' requests to adopt, retain, or change to a tax year ending other than December 31. The representation statements in Part II of Form 2553 highlight the three types of requests provided for in the revenue procedure. A corporation adopting, retaining, or changing its accounting period under the procedure must comply with or satisfy all conditions of the procedure.

The revenue procedure applies only to the tax years of corporations which are electing S corporation status by filing Form 2553. A corporation is permitted to adopt, retain, or change its tax year only once under the procedure. It is not necessary for the corporation to file Form 1128 when adopting or changing its tax year under the procedure.

Items H and J of Part II are to be completed by a corporation that is making a request as specified in section 8 of the procedure. Section 8 provides that if a corporation wants to adopt, retain, or change to a tax year not specified under section 4.02, 4.03, or 4.04 of the procedure or certain paragraphs of temporary regulations section 18.1378-1, it should attach a statement to Form 2553 pursuant to the ruling request requirements of Revenue Procedure 85-1, 1985-1 C.B. 404. (Changes to this revenue procedure are usually incorporated annually into a new revenue procedure as the first revenue procedure of the year.) The statement must show the business purpose for the desired tax year.

Approval of tax year selections made under section 4.02, 4.03, or 4.04 of Revenue Procedure 83-25 are generally automatic; however, a request under section 8 is not automatic. If a request is made under section 8, the corporation may want to make the back-up request under Part III. See section 8 of the procedure for details.

Part III.—Check the box in Part III to make the back-up request provided by temporary regulations section 18.1378-1(b)(2)(ii)(A). This section provides that corporations requesting to retain (or adopt) a tax year ending other than December 31, may make a back-up request to adopt or change to a tax year ending December 31, in case the initial request for a fiscal year is denied. In order to make the back-up request, a corporation requesting to retain its tax year ending other than December 31, must qualify for an automatic change of its tax year under temporary regulations section 18.1378-1(b)(1).

Part IV.—Check the box in Part IV to request the IRS to determine your permitted tax year under the provisions of temporary regulations section 18.1378-1(d). If you check the box in Part IV, enter "See Part IV" in the space in item B, Part I, for month and year.

You may attach a schedule to Form 2553 showing any additional information you want the IRS to consider in making the determination. IRS will notify you of the permitted tax year determination. The tax year determination by IRS is final.