

Instructions for Form 2553

(Revised April 1988)

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.

Changes You Should Note

● **User Fee.**—Certain electing corporations must pay a user fee. See General Instruction G for details.

● **Revised Part II.**—Item Q of Part II was revised and new item R was added to provide for new section 444 provisions. Section 444 allows certain S corporations to elect to have a tax year other than a required tax year ending December 31. The section 444 election is made by filing **Form 8716**, Election To Have a Tax Year Other Than a Required Tax Year. See the instructions for Part II.

● **New Part III.**—Part III was added to allow beneficiaries of certain Qualified Subchapter S Trusts (QSSTs) to make a section 1361(d)(2) QSST election when filing Form 2553. See the instructions for Part III.

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 of the code. Part III of Form 1120S may be used by beneficiaries of certain Qualified Subchapter S Trusts (QSSTs) to make the QSST election required by section 1361(d)(2).

B. Who May Elect.—Your corporation may make the election to be treated as an S corporation 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. See instruction for Part III regarding qualified subchapter S trusts.
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).
7. It has a permitted tax year as required by section 1378 or makes a section 444 election to have a tax year other than a permitted tax year. Section 1378 defines a permitted tax year as a tax year ending December 31, or any other tax year for which the corporation

establishes a business purpose to the satisfaction of the I.R.S. See the instructions for Part II for details on making a section 444 election.

8. Each shareholder consents as explained in the instructions for Column K.

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.

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 1987, it is effective for the corporation's 1988 calendar tax year.

E. Acceptance or Non-Acceptance of Election.

—The Service Center will notify you if your election is accepted and when it will take effect. You should generally receive a determination on your election within 60 days after you have filed Form 2553. If the 1st box in Part II, Item Q, is checked on page 2, the corporation will receive a ruling letter from IRS in Washington, D.C., which approves or denies the selected tax year. When Item Q is checked, it will generally take an additional 90 days for the Form 2553 to be accepted.

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 the Internal Revenue Service. If you are not notified of acceptance or nonacceptance of your election within 3 months of date of filing (date mailed), or within 6 months if Part II, Item Q, is checked, 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 under section 1362(d), the corporation can make another election on Form 2553 only if the Commissioner consents. See section 1362(g) and Revenue Ruling 86-141, 1986-2 C.B. 151, for more information. See sections 1362(d), (e), and (f) for rules regarding termination of election.

G. User Fee.—Corporations filing Form 2553 and requesting a fiscal year under section 6.03 of Revenue Procedure 87-32, 1987-2 C.B. 396, must pay a new \$150 user fee. Payment of the fee (check or money order) should not be made with or attached to Form 2553 when it is filed at the Service Center. The Service Center sends Form 2553 to the I.R.S. in Washington, D.C. and it notifies the taxpayer that the fee is due. See Revenue Procedure 88-13, 1988-7 I.R.B. 7, for additional information.

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.

A. 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.

B. 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.”

C. Name and Telephone Number.—Enter the name and telephone number (area code and seven digit number) of a corporate officer or legal representative of the corporation that I.R.S. may contact to resolve questions (or obtain additional information) that may arise when the corporation's Form 2553 is reviewed.

D. Effective Date of Election.—Enter the beginning effective date (month, day, year) of the tax year that you have requested for the S corporation. Generally, this will be the beginning date of the tax year for which the ending effective date is shown in item I, Part I. For a new corporation (1st year the corporation exists) it will generally be the date shown in item H, Part I. The tax year of

a new corporation starts when it has shareholders, acquires assets, or begins doing business, whichever happens first. If the effective date for item D for a newly formed corporation is later than the date in item H, the corporation should file Form 1120, or Form 1120A, for the tax period between these dates.

I. Selected Tax Year.—If a corporation selects a tax year ending other than December 31 (but excluding a 52-53-week tax year with reference to the month of December), the corporation must complete Part II in addition to Part I.

Temporary Regulations section 1.441-2T(e)(3) grants automatic approval to the S corporation to use a 52-53-week tax year with reference to the month of December.

Column K—Shareholders' Consent Statement.—Each shareholder who owns (or is deemed to own) stock 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 the 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 and dating in column K or signing and dating a separate consent statement described below. If stock is owned by a trust that is a qualified shareholder, the deemed owner of the trust must consent. See section 1361(c)(2) for details regarding qualified trusts that may be shareholders and rules on determining who is the deemed owner of the trust.

An election made during the first 2½ months of the tax year is considered made for the following tax year if one or more of the persons who held stock in the corporation during such tax year and before the election was 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.

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 J through N of Part I.

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

Column L.—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 M.—Enter the social security number for shareholders that are individuals. Enter the employer

identification number for estates. Enter the social security number or employer identification number for shareholders that are qualified trusts. The deemed owners of qualified trusts make the consent in column K. Enter the social security number or employer identification number of the deemed owner of the trust in column M.

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. 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

Item O.—Item O is completed by all corporations completing Part II.

Item P.—Item P is completed by a corporation that selects a fiscal year, and that qualifies under section 4.01(1) or 4.01(2) of Revenue Procedure 87-32, 1987-2 C.B. 396. In addition, if the corporation selects a fiscal year that qualifies under section 4.01(1), then it must attach a statement to Form 2553, showing the amount of gross receipts for the most recent 47 months (show each month separately) as required by section 4.03(3)(b) of the revenue procedure. Sections 4.01(1) and 4.01(2) provide for expeditious approval of certain corporations' requests to adopt, retain, or change to a fiscal year. The representation statements in Part II of Form 2553 highlight the requests provided for in section 4 of the revenue procedure. A corporation adopting, retaining, or changing its accounting period under the procedure must comply with all applicable conditions of the procedure.

Form 1128, Application for Change in Accounting Period, should not be used to request a tax year for or during the 1st year the corporation elects to be an S corporation.

Item Q.—Item Q is completed as follows:

(1) The corporation checks the 1st box to make a request as specified in section 6.03 of Revenue Procedure 87-32. Section 6.03 provides that if a corporation wants to adopt, retain, or change to a fiscal year described in section 4 or 5 of the procedure, it should attach a statement to Form 2553 pursuant to the ruling request requirements of Revenue Procedure 88-1, I.R.B. 1988-1, page 7. (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. See Revenue Ruling 87-57, 1987-2 C.B. 117, for examples of business purpose.

(2) The corporation checks the 2nd box in item Q to show its intention to make a back-up section 444 election. The back-up section 444 election is made in addition to the request for a fiscal year based on business purpose. The back-up election applies in the event the IRS does not approve the corporation's request for a tax year based on business purpose. **Note:** *Under certain circumstances, the tax year requested under the section 444 back-up election may be different than the tax year requested under business purpose. See the instructions for Form 8716 for details on making a back-up section 444 election.*

(3) The corporation checks the 3rd box in item Q to make a calendar year back-up election. The calendar year back-up election applies if: (a) the corporation's business purpose request is denied or (b) the business purpose request was denied and the section 444 back-up election was made but later the corporation was not eligible to make the election. In certain cases, the corporation will not be eligible to make the section 444 election when it becomes a member of a tiered structure. **Caution: If the back-up calendar year election is not made and a fiscal tax year is not allowed under the other provisions of item Q, the corporation's election to be an S corporation is invalidated.**

Item R.—Item R is completed as follows:

(1) The corporation checks the 1st box in item R to show that it is making or intends to make the section 444 election. The corporation makes the election when filing Form 2553 by completing Form 8716 and attaching it to Form 2553. Form 8716 can also be completed and filed after Form 2553 is filed. See the instructions for Form 8716 for details on filing Form 8716.

(2) The corporation checks the 2nd box in item R to make a back-up calendar year election. **Caution: If the back-up calendar year election is not made and the corporation is not allowed to make a section 444 election or is allowed to make the section 444 election but does not make it, the corporation's election to be an S corporation is invalidated.**

If the corporation is not qualified to make the section 444 election after making the item Q section 444 back-up election or indicating its intention to make the election in item R, and therefore it later files a calendar year return, it should write "Section 444 Election Not Made" in the top left corner of the 1st calendar year Form 1120S it files.

Part III.—Certain Qualified Subchapter S Trusts (QSSTs) may make the QSST election required by section 1361(d)(2) in Part III of Form 2553. Part III may be used to make the QSST election only if: (a) 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, and (b) the QSST election and the Form 2553 election have the same effective date.

The deemed owner of the QSST must also consent to the S corporation election, column K, page 1, of Form 2553. See section 1361(c)(2).