

Instructions for Form 2553

(Revised December 1990)

Election by a Small Business Corporation

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

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.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping.	6 hrs., 28 min.
Learning about the law or the form.	3 hrs., 16 min.
Preparing, copying, assembling, and sending the form to IRS.	3 hrs., 31 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form more simple, we would be happy to hear from you. You can write to both the **Internal Revenue Service**, Washington, DC 20224, Attention: IRS Reports Clearance Officer, T:FP, and the **Office of Management and Budget**, Paperwork Reduction Project (1545-0146), Washington, DC 20503. **DO NOT** send the tax form to either of these offices. Instead, see the instructions below for information on where to file.

General Instructions

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 rather than to the corporation itself, except as provided in Subchapter S of the Code. For more information, see **Publication 589**, Tax Information on S Corporations.

B. Who May Elect.—Your corporation may make the election to be treated as an S corporation only if it meets **all** of 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 the instructions 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 one of the following ineligible corporations:

(a) a corporation that owns 80% or more of the stock of another corporation, unless

the other corporation has not begun business and has no gross income;

(b) a bank or thrift institution;

(c) an insurance company subject to tax under the special rules of Subchapter L of the Code;

(d) a corporation that has elected to be treated as a possessions corporation under section 936; or

(e) a domestic international sales corporation (DISC) or former DISC.

See section 1361(b)(2) for details.

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 IRS. See Part II for details on requesting a fiscal tax year based on a business purpose or 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 listed below.

If the corporation's principal business, office, or agency is located in	Use the following Internal Revenue Service Center address
New Jersey, New York (New York City and counties of Nassau, Rockland, Suffolk, and Westchester)	Holtsville, NY 00501
New York (all other counties), Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont	Andover, MA 05501
Florida, Georgia, South Carolina	Atlanta, GA 39901
Indiana, Kentucky, Michigan, Ohio, West Virginia	Cincinnati, OH 45999
Kansas, New Mexico, Oklahoma, Texas	Austin, TX 73301
Alaska, Arizona, California (counties of Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba), Colorado, Idaho, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming	Ogden, UT 84201
California (all other counties), Hawaii	Fresno, CA 93888

Illinois, Iowa, Minnesota, Missouri, Wisconsin Kansas City, MO 64999

Alabama, Arkansas, Louisiana, Mississippi, North Carolina, Tennessee Memphis, TN 37501

Delaware, District of Columbia, Maryland, Pennsylvania, Virginia Philadelphia, PA 19255

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 (if the tax year has 2½ months or less, and the election is made not later than 2 months and 15 days after the first day of the tax year, it shall be treated as timely made during such year), 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 1991, it is effective for the corporation's 1992 calendar tax year. See section 1362(b) for more information.

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 will also be notified if your election is not accepted. You should generally receive a determination on your election within 60 days after you have filed Form 2553. If the Q1 box in Part II is checked on page 2, the corporation will receive a ruling letter from IRS in Washington, DC, which approves or denies the selected tax year. When Item Q1 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.

Care should be exercised to ensure that 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 Q1, 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 by IRS, 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 is terminated under section 1362(d), the corporation can make another election on Form 2553 only with IRS consent.

Specific Instructions

Part I

Part I must be completed by all corporations.

Name and Address of Corporation.

Enter the true corporate name as set forth 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, please enter this person's name below 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 P.O. box number instead of the street address. If the corporation has changed its name or address since applying for its EIN (filing Form SS-4), be sure to check the box in item F of Part I.

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 and Social Security Administration offices.

C. 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 required to be shown in item I, Part I. For a new corporation (first year the corporation exists) it will generally be the date required to be shown in item H, Part I. The tax year of a new corporation starts on the date that it has shareholders, acquires assets, or begins doing business, whichever happens first. If the effective date for item C for a newly formed corporation is later than the date in item H, the corporation should file Form 1120 or Form 1120-A, for the tax period between these dates.

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 representative of the minor or by a natural or adoptive parent of the minor if no legal representative has been appointed. The consent of an estate is made by an executor or administrator.

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 want, 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. However, these shareholders must still consent to the election for it to be effective for the tax year.

Column M.—Enter the social security number of each shareholder who is an individual. Enter the employer identification number of each shareholder that is an estate or a qualified trust.

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 (e.g. automatic revenue procedure or letter ruling request).

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 any shareholder who sold or transferred all of his or her stock before the election was made.

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

Complete Part II if you selected a tax year ending on any date other than December 31 (other than a 52-53-week tax year ending with reference to the month of December).

Box P1.—Attach a statement showing separately for each month the amount of gross receipts for the most recent 47 months as required by section 4.03(3) of

Revenue Procedure 87-32, 1987-2 C.B. 396. A corporation that does not have a 47-month period of gross receipts cannot establish a natural business year under section 4.01(1).

Box Q1.—For examples of an acceptable business purpose for requesting a fiscal tax year, see Revenue Ruling 87-57 1987-2 C.B. 117

In addition to a statement showing the business purpose for the requested fiscal year, you must attach the other information necessary to meet the ruling request requirements of Revenue Procedure 90-1, 1990-1 C.B. 356 (updated annually). Also attach a statement that shows separately the amount of gross receipts from sales or services (and inventory costs, if applicable) for each of the 36 months preceding the effective date of the election to be an S corporation. If the corporation has been in existence for fewer than 36 months, submit figures for the period of existence.

If you check box Q1, you must also pay a user fee of \$200 (subject to change). 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. See Revenue Procedure 90-17, 1990-1 C.B. 479.

Box Q2.—If the corporation makes a back-up section 444 election for which it is qualified, then the election must be exercised in the event the business purpose request is not approved. Under certain circumstances, 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 Q2 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 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. 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 in lieu of Part III to make the election.

Note: Part III may be used only in conjunction with making the Part I election (i.e., 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, page 1, of Form 2553. See section 1361(c)(2).