

S CORPORATION ELECTIONS GUIDE

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An S corporation is a popular business entity choice. Only certain corporations, however, are eligible for S status. To qualify, a corporation must be a domestic corporation, have 75 or fewer shareholders, have only individuals (but not nonresident aliens), estates, certain trusts and tax-exempt organizations as shareholders and have only one class of stock. Certain corpora-

tions (e.g., financial institutions that account for bad debts using the reserve method) do not qualify for S status.

An eligible corporation elects S status by filing Form 2553, Election by a Small Business Corporation (Under section 1362 of the Internal Revenue Code). The form must be signed by a corporate officer; all shareholders at the time of the election must consent.

Once a corporation has successfully achieved S status, additional elections may be made; for example, the corporation may elect to revoke its S status. The guide identifies the major elections, who makes them and who must consent, how to make the elections, the dates for making them and the legal authority.

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Election	How to make election	Date for making election	Authority
1. Election of S status.	Form 2553, signed by a corporate officer and consented to by each shareholder.	Any time during preceding tax year or by the 15th day of the third month of the tax year.	Sec. 1362(a) and (b); Regs. Sec. 1.1362-6(a). If an S election is not timely filed, see Sec. 1362(b)(5) and Rev. Proc. 2003-43.
2. Election to treat a wholly owned subsidiary as a qualified subchapter S subsidiary (QSub).	Form 8869, Qualified Subchapter S Subsidiary Election (Under section 1361(b)(3) of the Internal Revenue Code), signed by officer of parent S corporation.	Any time within the 12-month period before desired effective date or within two months and 15 days after desired effective date.	Sec. 1361(b)(3); Regs. Sec. 1.1361-3(a)(4). If a QSub election is not timely filed, see Regs. Sec. 1.1361-3(a)(6) and Rev. Proc. 2003-43.
3. Election to specify the order of deemed liquidations when QSub elections are made for a tiered group of subsidiaries.	Separate election statement. Election is made by the parent S corporation by attaching election statement to Form 8869.	Due date of QSub election (see above).	Regs. Sec. 1.1361-4(b)(2).
4. Election to treat a trust as a qualified subchapter S trust (QSST).	Form 2553 or separate statement. Election is made by beneficiary.	Within two months and 15 days after the first day on which the trust must qualify as a QSST.	Sec. 1361(d)(2)(D) and Regs. Sec. 1.1361-1(j)(6); see Regs. Sec. 1.1361-1(j)(6)(iv) for a protective QSST election available for certain grantor trusts. If a QSST election is not timely made, see Sec. 1362(f) and Rev. Proc. 2003-43.
5. Election to treat a trust as an electing small business trust (ESBT).	Separate election statement. Election is made by trustee(s).	Within two months and 15 days after the first day on which the trust must qualify as an ESBT.	Sec. 1361(e)(3); Regs. Sec. 1.1361-1(m)(2). If an ESBT election is not timely made, see Sec. 1362(f) and Rev. Proc. 2003-43.
6. Election to convert a QSST to an ESBT.	Separate election statement. Consent of current income beneficiary and trustee required.	Any time within the 12-month period before desired effective date or within two months and 15 days after desired effective date.	Regs. Sec. 1.1361-1(j)(12).
7. Election to convert an ESBT to a QSST.	Separate election statement. Consent of current income beneficiary and trustee required.	Any time within the 12-month period before desired effective date or within two months and 15 days after desired effective date.	Regs. Sec. 1.1361-1(m)(7).
8. Successive income beneficiary affirmative refusal to consent to QSST election.	Separate election statement. Affirmative refusal to consent of successive income beneficiary required.	Within two months and 16 days, beginning on the date on which the successive income beneficiary becomes the income beneficiary.	Sec. 1361(d)(2); Regs. Sec. 1.1361-1(j)(10).
9. Revocation of QSST election.	Letter ruling request filed with IRS National Office.	No prescribed due date; National Office will specify effective date of revocation (presumably, revocation would not be effective earlier than the date the ruling request is filed).	Regs. Sec. 1.1361-1(j)(11).
10. Revocation of ESBT election.	Letter ruling request filed with IRS National Office.	No prescribed due date; National Office will specify effective date of revocation (presumably, revocation would not be effective earlier than the date the ruling request is filed).	Regs. Sec. 1.1361-1(m)(6).

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Election	How to make election	Date for making election	Authority
11. Revocation of S election.	Separate election statement signed by a corporate officer. Consent of shareholders owning more than 50% of the corporation's outstanding stock required.	Any time on or before desired effective date, or by the 15th day of the third month of the tax year to be retroactive to beginning of tax year.	Sec. 1362(d)(1); Regs. Sec. 1.1362-2(a) and -6(a)(3).
12. Rescission of revocation of S election.	Separate election statement. The consent of each person who consented to revocation is required. In addition, each person who became a shareholder after the revocation was made must consent.	Any time before the revocation becomes effective.	Regs. Sec. 1.1362-2(a)(4) and -6(a)(4).
13. Election to allocate income during S termination year using other than pro-rata allocation.	Separate election statement signed by a corporate officer. Each shareholder during S short year and each shareholder as of the first day of the C short year must consent.	Attach to tax return for the C short year.	Sec. 1362(e)(3); Regs. Sec. 1.1362-3(b) and -6(a)(5).
14. Revocation of QSub election.	Separate election statement. Election is made by parent S corporation.	Any time within the 12-month period before desired effective date or within two months and 15 days after desired effective date. A revocation cannot be made after the occurrence of an event that renders the subsidiary ineligible for QSub status.	Regs. Sec. 1.1361-3(b).
15. Elective ordering rule for adjustments to basis.	Separate election statement by the electing shareholder.	Attach to shareholder return. Once election is made, IRS permission is required to change.	Regs. Sec. 1.1367-1(g).
16. Election to distribute earnings and profits (E&P) first.	Separate election statement signed by a corporate officer. All affected shareholders must consent; see Sec. 1368(e)(3)(B) for the definition of "affected shareholder" for purposes of this election.	Attach to timely filed original or amended S return.	Sec. 1368(e)(3); Regs. Sec. 1.1368-1(f)(2) and (5).
17. Election to make a deemed dividend.	Separate election statement signed by a corporate officer. All affected shareholders must consent; see Sec. 1368(e)(3)(B) for the definition of "affected shareholder" for purposes of this election.	Attach to timely filed original or amended S return.	Regs. Sec. 1.1368-1(f)(3) and (5).
18. Election to forgo previously taxed income.	Separate election statement signed by a corporate officer. All affected shareholders must consent; see Sec. 1368(e)(3)(B) for the definition of "affected shareholder" for purposes of this election.	Attach to timely filed original or amended S return.	Regs. Sec. 1.1368-1(f)(4) and (5).
19. Election to terminate year for purposes of allocating S income in the event of a qualifying disposition.	Separate election statement signed by a corporate officer and consented to by all shareholders who held stock at any time during the full tax year.	Attach to timely filed original or amended S return for the year in which the qualifying disposition occurred.	Regs. Sec. 1.1368-1(g).
20. Election to distribute E&P first during post-termination transition period (PTTP).	Separate election statement signed by a corporate officer and consented to by all shareholders receiving distributions during the PTTP.	Attach to C return for the tax year in which the PTTP ends.	Sec. 1371(e)(2); Temp. Regs. Sec. 18.1371-1.
21. Election to terminate year for purposes of allocating S income on the complete termination of a shareholder's interest.	Separate election statement signed by a corporate officer and consented to by all affected shareholders; see Sec. 1377(a)(2)(B) for the definition of "affected shareholder" for purposes of this election.	Attach to timely filed original or amended S return for the year in which the shareholder's interest terminated.	Sec. 1377(a)(2); Regs. Sec. 1.1377-1(b).
22. Election under Sec. 444 to use other than a required tax year.	Form 8716, Election To Have a Tax Year Other Than a Required Tax Year.	File by the earlier of the 15th day of the fifth month following the month that includes the first day of the tax year the election will first be effective, or the unextended due date of the return for the tax year resulting from the election.	Sec. 444; Temp. Regs. Sec. 1.444-3T(b).
23. Termination of Sec. 444 election to use other than a required tax year.	Statement with return for the short period resulting from termination of the election.	Due date of timely filed return for the short period.	Temp. Regs. Sec. 1.444-1T(a)(5).