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How To Handle Late-Filed S Corp Elections

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In a recent posting on its website, IRS explains the steps to be taken and forms to be filed by taxpayers requesting to change their filing status **from a C Corporation to an S Corporation**. In particular, IRS explains **what to do if a taxpayer has not timely filed election Form 2553**, and either has or hasn't filed Form 1120S for the first year of the intended S corporation election.

Background. S corporations are incorporated entities with many of the same attributes as traditional C corporations, including limited liability, transferable ownership, and unlimited life. But unlike C corporations, S corporations are generally **not subject to income tax**. Instead, the business's profit or loss is passed through to the shareholders, who report it on their individual returns. To qualify, a corporation must elect S corporation status and meet a number of requirements. It can have no more than 100 shareholders, and only certain types of taxpayers can be shareholders. It can have only one class of stock. About 14% to 16% of total new S corporation applications are **not approved**.

C corporation requesting change to S corporation. Use Form 2553. Elect on or before the 15th day of the third month of the tax year for which the election is to be in effect.

Failure to timely file Form 2553. If a taxpayer hasn't timely filed its election request to be treated as an S Corporation, it generally must request relief for the late election by requesting a private letter ruling and paying a user fee. However, certain relief provisions are available. The procedure depends on whether the corporation has filed corporate income tax 1120S for the first year, as explained below.

How to get approval where Form 1120S has been filed. If a taxpayer **hasn't timely filed Form 2553, but has timely filed Form 1120S for the first year** of the intended S corporation election, its Form 1120S can't be accepted and processed by the Service Center. When the Service Center notifies the taxpayer of the invalid S election, it should **file a paper copy of Form 2553** with the Service Center, writing at the top of the form **"Filed pursuant to Rev. Proc. 2003-43,"** and attaching a **statement establishing reasonable cause** for the failure to timely file Form 2553. The Form 2553 and attached statement should be mailed to the Service Center separate from any other returns or information being submitted. (Taxpayers not eligible to use Rev Proc 2003-43, 2003-23 IRB, must generally request a private letter ruling and pay a user fee.) The taxpayer should file the last C Corporation return (Form 1120) by the due or extended due date.

How to get approval where Form 1120S has not been filed. If a taxpayer hasn't timely filed Form 2553 and also hasn't filed Form 1120S, it can choose one of **two options**.

1. **File a copy of Form 2553 with the initial Form 1120S within 6 months of the due date of the Form 1120S (excluding extensions).** On Form 2553, it provides a statement establishing reasonable cause for the failure to timely file Form 2553.
2. **Mail or fax a paper copy of Form 2553** with the appropriate Service Center, writing at the top of the form **"Filed pursuant to Rev. Proc. 2003-43,"** and attaching to Form 2553 a statement establishing reasonable cause for the failure to timely file Form 2553. The Form 2553 and attached statement should be mailed to the Service Center separate from any other returns or information being submitted. Form 2553 should be filed **before** filing of the Form 1120S, and the Form 1120S should **not be filed until the taxpayer is notified that the S election has been accepted**.