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Electing S Corporation Status: Timing, Traps, and Late-Election Relief

Form 2553, the §1362 Deadline, and the Rev. Proc. 2013-30 Safety Net

Scenario: An LLC or corporation owner has decided the S election makes sense and needs to know how and when to make it — and what recourse exists if the deadline has already passed.

Executive Summary

S status is elected on Form 2553 under §1362(a). The election is due by the 15th day of the third month of the tax year it is to take effect, or any time in the preceding year (§1362(b)). Miss that window and the election ordinarily takes effect the *following* year — but Rev. Proc. 2013-30 provides a well-worn late-election relief path that, in most inadvertent cases, restores the intended effective date. Eligibility under §1361 and the single-class-of-stock rule are the traps that void an otherwise-timely election, so they deserve as much attention as the deadline.

> **Key point**
>
> For a calendar-year entity wanting S status for the current year, Form 2553 is generally due by March 15. Missing it rarely means waiting a full year: Rev. Proc. 2013-30 allows relief up to 3 years and 75 days after the intended effective date when the failure was solely a late filing and the parties reported consistently.

Eligibility Under §1361 — Check This First

- **Eligible entity.** A domestic corporation, or an entity (including an LLC) eligible to elect corporate treatment.
- **Shareholder limits.** No more than 100 shareholders, counting family members as one; only eligible shareholders — U.S. individuals, estates, and certain trusts. A partnership, most corporations, and nonresident aliens as shareholders are disqualifying.
- **One class of stock.** Identical distribution and liquidation rights across all shares. Differences in voting rights are permitted; differences in economic rights are not.
- **Unanimous consent.** Every shareholder must consent on Form 2553.

The Single-Class-of-Stock Trap for LLCs

This is the quiet killer. An LLC operating agreement often contains provisions — targeted capital-account allocations, preferred returns, disproportionate distribution waterfalls — that create a second economic class of interest and silently violate §1361(b)(1)(D). An LLC electing S status generally needs its operating agreement conformed to a single economic class *before* the election, or the S election can be invalid from inception. Debt that is not straight debt under the §1361(c)(5) safe harbor can raise the same problem.

The Deadlines

S status to be effective…	File Form 2553 by…
The current tax year	The 15th day of the 3rd month of that year
The next tax year	Any time during the preceding year
A newly formed entity's first year	Within 2 months and 15 days of the entity's formation / start of its first tax year

LLCs: One Form, Not Two

An LLC defaults to disregarded or partnership status, so it must be treated as a corporation to be an S corporation. Under Reg. §301.7701-3(c)(1)(v)(C), an eligible LLC may make the S election directly on Form 2553, and that filing is treated as a deemed entity classification election — a separate Form 8832 is generally unnecessary. The interaction depends on the facts, so confirm which forms your situation requires.

Missed the Deadline? Rev. Proc. 2013-30 Relief

Relief is available when the entity intended to be an S corporation as of the desired date, failed to qualify *solely* because Form 2553 was not filed timely, and has reported consistently as an S corporation (or has not yet filed). The request is made by filing Form 2553 marked as a late election, with a reasonable-cause statement and the required representations, generally within 3 years and 75 days of the intended effective date. When granted, the election is treated as effective on the originally intended date, as if timely filed.

What supports the relief request

- A clearly stated intended effective date and evidence of intent from that date.
- A reasonable-cause explanation for the late filing.
- Consistent reporting — or no returns yet filed inconsistent with S status.
- All shareholder consents and the required officer statement.

California and Post-Election Obligations

California conforms to the federal S election automatically — there is no separate state election — but the entity then owes the 1.5% franchise tax (§23802), the $800 minimum (§23153), and files Form 100S. Coordinate the payroll start date with the effective date so wages are reported for the correct period, and calendar the second return deadline. A built-in gains tax under §1374 can also apply for a period after a C-to-S conversion — relevant if the entity was previously a C corporation.

Next Step: Confirm Eligibility, Then File

Whether electing on time or seeking Rev. Proc. 2013-30 relief, the effective date drives payroll, reasonable compensation, and franchise-tax obligations. Confirm §1361 eligibility, conform the operating agreement to a single economic class, choose the effective date deliberately, and file Form 2553 correctly — with a reasonable-cause statement if the deadline has passed.

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