Natalie C. Papagni, CPA

TAX, PLANNING & ADVISORY SERVICES • LA JOLLA, CALIFORNIA

Entity Tax Elections and the Check-the-Box Rules

How One Legal Entity Can Be Taxed Four Different Ways

Scenario: A business owner has formed an LLC and is confused about how it will be taxed — and whether, when, and how to change that treatment.

Executive Summary

Federal tax law does not tax your business by its state-law label. Under the "check-the-box" regulations (Treas. Reg. §301.7701-1 through -3), an eligible entity is assigned a *default* tax classification and may *elect* a different one. This is why a single LLC can be taxed as a disregarded entity, a partnership, an S corporation, or a C corporation. Understanding the default and the election mechanics — and their timing — is what lets you place your business in the most advantageous tax regime without changing its legal form.

Key point

Every eligible entity already has a default classification the day it is formed. Doing nothing is a choice. An election under Form 8832 (corporate treatment) or Form 2553 (S status) overrides the default — but only prospectively within tight timing windows.

The Default Classifications

Entity	Default federal tax treatment
Single-member LLC	Disregarded — reported on the owner’s return
Multi-member LLC	Partnership — Form 1065
Corporation (state-law)	C corporation — Form 1120

An LLC is an "eligible entity" that may elect out of its default; a state-law corporation is generally not eligible to elect out of corporate treatment, though it can elect S status.

The Two Elections

- **Form 8832 — Entity Classification Election.** Elects to treat an eligible entity as a corporation (or, in some cases, back to its default). This is the "check-the-box" election proper.

- **Form 2553 — S Corporation Election.** Elects S status. For an eligible LLC, this single form is treated as a deemed election to be a corporation *and* an S corporation — a separate 8832 is generally unnecessary (Reg. §301.7701-3(c)(1)(v)(C)).

The Timing Rules That Trip People Up

Election	Effective-date window
Form 8832	Up to 75 days before, or 12 months after, the filing date
Form 2553	By the 15th day of the 3rd month of the target year, or any time in the prior year

Both forms have late-election relief paths for inadvertent misses, but relief is discretionary and fact-dependent — it is far better to file within the window.

The 60-Month Limitation

Once an eligible entity makes a classification election, it generally cannot elect again to change its classification for 60 months. This "five-year lock" means you should not treat entity elections as casually reversible — a decision to move an LLC into C corporation status, for example, is not easily undone the following year. There are limited exceptions, but plan as though the choice is durable.

Why an Owner Would Elect Away From the Default

- **Disregarded or partnership → S corporation:** to reduce self-employment tax on profit above a reasonable salary.
- **Pass-through → C corporation:** to retain earnings at the corporate rate, access §1202 QSBS, or accommodate certain investors.
- **Back to default:** occasionally, to simplify or to restore pass-through treatment — subject to the 60-month rule and potential tax on the deemed transaction.

The Hidden Cost of Changing Classification

Electing corporate treatment or later revoking it is not a mere paperwork change — it is treated as a *deemed transaction* for tax purposes. Electing C corporation status for a partnership or disregarded entity is treated as a contribution of assets to a corporation; converting back can be treated as a liquidation, potentially triggering gain. Before changing an entity's classification, the deemed-transaction consequences — built-in gain, basis, and any §1374 built-in gains tax on a later S election — must be modeled. The election form is simple; the tax consequences of the change are not.

Practical Considerations

File the correct form with a deliberate effective date and retain the IRS acceptance letter. If layering an S election onto an LLC, confirm the operating agreement satisfies the single-class-of-stock requirement first. Coordinate any change with your fiscal year, payroll setup, and California filings, since the state generally follows the federal classification.

Next Step: Confirm Your Default, Then Decide

Start by identifying your entity's default classification, then decide whether an election improves the outcome enough to justify the change and the 60-month commitment. A short analysis of the deemed-transaction consequences will confirm whether an election is worth filing this year or is better deferred.

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Natalie C. Papagni, CPA • Tax, Planning & Advisory Services • 4275 Executive Square, Suite 200, La Jolla, CA 92037 • (858) 754-8277 • service@lajollataxcpa.com • lajollataxcpa.com