

# Information

## S-Corporation Status - Kit

*Provided under agreement with copyright holder,  
© Nova Publishing Company 2004*

This kit provides tools and guidelines for qualifying your corporation for S-corporation status.

An S-corporation is a type of corporation that is recognized by the U.S. Internal Revenue Service and is treated differently than other corporations in terms of federal taxation. Some states recognize S-corporation status for state income taxation purposes; some states do not (please see your Secretary of State's website to determine how S-Corporations are treated for tax purposes in your state.) The only reason for becoming an S-corporation is to obtain a different method of taxation than other corporations.

Included in this kit is the following:

- Notes and Requirements for S-corporation Status
- S-corporation Checklist
- Sample Notice of Special Shareholders Meeting Regarding S-corporation Status
- Sample Affidavit of Mailing of Notice of Special Shareholders Meeting Regarding S-corporation Status
- Waiver of Notice of Special Shareholders Meeting Regarding S-corporation Status
- Minutes of Special Shareholders Meeting Regarding S-corporation Status
- Resolution of Shareholders Regarding S-corporation Status

### **Disclaimer**

*No Attorney-Client relationship is created by use of these materials. FindLegalForms, Inc. does not provide legal advice. The purchase and use of these materials is subject to the "Disclaimers and Terms of Use" found at [findlegalforms.com](http://findlegalforms.com).*

*These materials are provided "AS-IS." We do not give any express or implied warranties of merchantability, suitability or completeness for any of the materials for your particular needs. The materials are used at your own risk. In no event will: i) FindLegalForms, Inc, its agents, partners, or affiliates, or ii) the providers, authors or publishers of the forms, be responsible or liable for any direct, indirect, incidental, special, exemplary, or consequential damages (including, but not limited to, procurement of substitute goods or services; loss of use, data, or profits; or business interruption) however caused and on any theory of liability, whether in contract, strict liability, or tort (including negligence or otherwise) arising in any way out of the use of these materials.*

*An attorney should be consulted for all serious legal matters.*

# Notes and Requirements for S-Corporation Status

## Taxation

For standard corporations, the corporation pays a federal and, perhaps, state corporate tax on the business profits. If the after-tax profit is then distributed to the shareholders as dividends, the shareholders then pay an additional personal income tax on the dividends. The amount distributed to the shareholders as dividends is not a deduction for the corporation. S-corporations, on the other hand, are taxed similarly to partnerships. They act merely as a conduit for passing the income and deductions of the corporation directly through to the individual shareholders in much the same manner as partnerships, or even sole proprietorships. The S-corporation does not pay a corporate tax and files a different type of tax form than does a standard corporation. Taxation of the profits of the S-corporation falls to the individuals who own shares in the corporation. This also allows for each individual shareholder to personally deduct their share of any corporate losses.

## Requirements

There are certain basic requirements for qualifying a corporation for S-corporation status. Every requirement must be met before the IRS will recognize S-corporation status and allow for the different tax treatment:

1. The corporation must have no more than 75 shareholders. (Wives and husbands, even if they own stock separately, are considered as only one shareholder.)
2. Each of the corporation's shareholders must be a *natural person* (a human being) or the estate of a natural person. Corporations and partnerships may not hold shares in the corporation. Each shareholder must also be a citizen or resident of the United States.
3. The corporation must only have one class of stock that is issued and outstanding. The corporation may have other classes of stock that are authorized, providing no shares are issued. Different voting rights within a class of stock (*ie.*, voting and non-voting) do not disqualify the corporation.
4. The corporation must already be incorporated in the United States or in one of its possessions. Financial institutions, foreign corporations, and certain other very specialized corporations are not eligible.
5. The corporation must not have been qualified as an S-corporation within the previous five years. This restriction prevents abrupt shifting from one type of corporation to another in order to obtain the maximum tax benefits.
6. The corporation must file IRS Form 2553: *Election by a Small Business Corporation* with the IRS.

If your corporation meets all of these requirements, S-corporation status may be elected. It may be prudent to obtain the advice of a competent accountant prior to making the election, however. The actual steps in electing S-corporation status are detailed in the S-corporation Checklist below. Following the checklist are the forms required to complete the election of S-corporation status. Please note that the IRS Form 2553: *Election by a Small Business Corporation* is not included in this kit. This form and all other IRS forms can easily be downloaded from the IRS website:

<http://www.irs.gov/formspubs/index.html>

## S-Corporation Checklist

Determine that the corporation has fewer than 75 shareholders

Determine that all shareholders are natural persons or estates

Determine that the corporation has only one class of stock issued and outstanding

Determine that the corporation is already incorporated in the U.S or in one of its possessions

Determine that the corporation hasn't had "S" status within the past five years

All shareholders must consent to the election to be treated as an S-corporation

Notice of a special shareholders meeting for the purpose of consenting to the election as an S-corporation should be provided to all shareholders of record

A shareholders resolution consenting to the election to be treated as an S-corporation should be signed by all shareholders of record

The secretary of the corporation should complete IRS Form 2553: *Election by a Small Business Corporation*

All shareholders of record must sign IRS Form 2553: *Election by a Small Business Corporation*

A special shareholders meeting should be held at which all shareholders of the corporation consent to the election by the corporation to be treated as an S-corporation

The secretary of the corporation should file IRS Form 2553: *Election by a Small Business Corporation*

Notice of Special Shareholders Meeting  
of \_\_\_\_\_ Regarding S-Corporation Status

TO:

In accordance with the bylaws of this corporation, an official special meeting of the shareholders will be held at \_\_\_\_\_ o'clock \_\_\_\_ m., on \_\_\_\_\_, 20 \_\_\_\_, at the offices of the corporation located at \_\_\_\_\_.

The purpose of this meeting is to discuss the election of S-corporation status for the corporation, under Internal Revenue Code Section 1362.

The Stock Transfer Book of this corporation will remain closed from \_\_\_\_\_, 20 \_\_\_\_, until \_\_\_\_\_, 20 \_\_\_\_.

Dated: \_\_\_\_\_, 20 \_\_\_\_

Corporate Seal

\_\_\_\_\_  
Signature of Secretary of Corporation

\_\_\_\_\_  
Printed Name of Secretary of Corporation

**Affidavit of Mailing of Notice of Special Shareholders  
Meeting of \_\_\_\_\_ Regarding S-Corporation Status**

State of \_\_\_\_\_  
County of \_\_\_\_\_

Being duly sworn, \_\_\_\_\_ states:

I am the secretary of \_\_\_\_\_, a corporation organized under the laws of the State of \_\_\_\_\_.

On \_\_\_\_\_, 20 \_\_\_\_, I personally deposited stamped and sealed copies of the Notice of Special Shareholders Meeting of this corporation in a post-office box in the City of \_\_\_\_\_, in the State of \_\_\_\_\_.

The copies were correctly addressed to all shareholders of this corporation as of \_\_\_\_\_, 20 \_\_\_\_, as shown in the Stock Transfer Book of this corporation. The list of names and addresses of the shareholders is attached to this affidavit.

Dated: \_\_\_\_\_, 20 \_\_\_\_

Corporate Seal

\_\_\_\_\_  
Signature of Secretary of Corporation

\_\_\_\_\_  
Printed Name of Secretary of Corporation

Subscribed and sworn to before me on \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Signature of Notary Public

Notary Public, In and for the County of \_\_\_\_\_  
State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

Notary Seal



# Minutes of Special Shareholders Meeting of \_\_\_\_\_ Regarding S-Corporation Status

A special meeting of the shareholders of this corporation was held on \_\_\_\_\_,  
20 \_\_\_\_, at \_\_\_\_ o'clock \_\_\_\_. m., at the offices of the corporation located at \_\_\_\_\_.

Present were:

\_\_\_\_\_, President  
\_\_\_\_\_, Vice-President  
\_\_\_\_\_, Treasurer  
\_\_\_\_\_, Secretary

Other than shareholders of this corporation, the following persons were also present:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

1. The president of this corporation called the meeting to order. The president determined that a quorum was present, either in person or by proxy, and that the meeting could conduct business.

The following shareholders were present in person:

<i>Name of Shareholder</i>	<i>Number of Shares</i>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

The following shareholders were represented by proxy:



*Name of Shareholder*

*Number of Shares*

<i>Name of Shareholder</i>	<i>Number of Shares</i>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

2. The secretary reported that notice of the meeting had been properly given or waived by each shareholder in accordance with the bylaws.

Upon motion made and carried, the secretary was ordered to attach the appropriate Affidavit of Mailing of Notice or Waiver of Notice to the minutes of this meeting.

3. \_\_\_\_\_ was then elected chairperson of this meeting.

4. The following business was then discussed:

The benefits and advantages of the shareholders electing to obtain S-corporation status under Internal Revenue Code Section 1362.

5. Upon motion made and carried, the following resolution was approved unanimously by the holders of all outstanding shares of this corporation:

RESOLVED that:

This corporation elects to be treated and taxed as an S-corporation under Internal Revenue Section 1362.

6. The president declared that this shareholders resolution was duly adopted.

There being no further business, upon motion made and carried the meeting was adjourned.

Dated: \_\_\_\_\_, 20 \_\_\_\_

Corporate Seal

\_\_\_\_\_  
Signature of Secretary of Corporation

\_\_\_\_\_  
Printed Name of Secretary of Corporation

## Resolution of Shareholders of \_\_\_\_\_ Regarding S-Corporation Status

A special meeting of the shareholders of this corporation was duly called and held on \_\_\_\_\_, 20 \_\_\_\_, at \_\_\_\_ o'clock \_\_. m., at the offices of the corporation located at \_\_\_\_\_. All of the shareholders of this corporation were present, in person or by proxy.

At the meeting it was decided, by unanimous vote, that it is in the best interests of the corporation that the corporation elect to be treated as an S-corporation under the provisions of Internal Revenue Code Section 1362.

Therefore, it is unanimously  
RESOLVED, that this corporation elects to be treated as an S-corporation under the provisions of Internal Revenue Code Section 1362. The officers of this corporation are hereby authorized to perform all necessary acts to carry out this resolution.

The undersigned, \_\_\_\_\_, certifies that he or she is the duly elected secretary of this corporation and that the above is a true and correct copy of the resolution that was duly adopted at a meeting of the shareholders that was held in accordance with state law and the bylaws of the corporation on \_\_\_\_\_, 20 \_\_\_\_. I further certify that such resolution is now in full force and effect.

Dated: \_\_\_\_\_, 20 \_\_\_\_

Corporate Seal

\_\_\_\_\_  
Signature of Secretary of Corporation

\_\_\_\_\_  
Printed Name of Secretary of Corporation

*Signature of Shareholder*

*Printed Name of Shareholder*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Signature of Shareholder*

*Printed Name of Shareholder*

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Being all of the shareholders of this corporation.