



Instructions for Form CT-6

Election by a Federal S Corporation to be Treated as a New York S Corporation

General information

A federal S corporation may elect to be taxed as a New York S corporation (Tax Law, Article 22, section 660(a)) by filing Form CT-6.

Once the New York State (NYS) Tax Department has approved the filing of Form CT-6:

- The corporation will be treated as a New York S corporation under Tax Law, Article 9-A, section 208.1-A and file its New York S corporation franchise tax return on Form CT-3-S, *New York S Corporation Franchise Tax Return*.
- Each individual shareholder of the New York S corporation will include his or her share of the New York S corporation's items of income, loss, and deductions under Tax Law, Article 22, section 660 and file an individual income tax return on Form IT-201, *Resident Income Tax Return*, or Form IT-203, *Nonresident and Part-Year Resident Income Tax Return*.
- A shareholder that is a 501(c)(3) organization will include its share of the New York S corporation's items of income, loss, and deductions under Tax Law, Article 13, section 292(a)(5) and file its tax return on Form CT-13, *Unrelated Business Income Tax Return*.

For additional information, see New York State Tax Law sections 660 and 292(a)(5).

Corporate franchise tax

A federal S corporation that elects to be a New York S corporation must file Form CT-3-S within 2½ months after the end of each tax year.

Penalty for late filing

If the New York S corporation fails to file Form CT-3-S or fails to include the required shareholder information, it must pay a penalty of \$50 per shareholder per month or fraction of a month that the failure continues, for up to five months. Any individual or Article 13 taxpayer who was a shareholder during any part of the year shall be included in the shareholder information.

Who may elect

To elect to treat a corporation as a New York S corporation, you must meet the following requirements:

- The corporation must be a federal S corporation. If your federal election is pending, file your New York election and indicate that your federal election is pending. When you receive federal approval, forward a copy to the Tax Department at the address listed under *How to file*.
- The corporation must be taxable under New York State Tax Law Article 9-A. If a corporation is taxable under Tax Law Article 9 or 33, it cannot elect to be a New York S corporation. It is considered an *excluded corporation*.
- All of the corporation's shareholders must consent to the New York S election.
- A qualified subchapter S subsidiary (QSSS) may not make the New York S election. Only the parent corporation of the QSSS can make the New York S election.

A federal S corporation that is not taxable in New York may make a New York S election if it is the parent of a QSSS which is taxable in New York, if neither the parent nor the QSSS is an excluded corporation. If the parent does not make a New York S election, the QSSS will be taxed as a New York C corporation. See TSB-M-97(6)C, *Important Notice: Attention Shareholders of S Corps*, for details regarding the treatment of QSSS's in New York State.

When to make the election

To be effective for the tax year, file Form CT-6 at any time during the preceding tax year, or on or before the fifteenth day of the third month of the tax year to which the election will apply. An election made no later than the fifteenth day of the third month after the beginning of a tax year that is less than two and a half months long will be considered timely filed for that tax year. However, an election made on or before the fifteenth day of the third month of the tax year to which the election will apply, will not be effective until the following tax year if:

- a) The corporation did not qualify as a federal S corporation, under section 1361(b) of the Internal Revenue Code (IRC) on one or more days of the tax year prior to the date the election was made; or
- b) One or more of the shareholders who held stock before the date of election did not consent to the corporation being a New York S corporation.

If the corporation is organized within New York State and anticipates being a New York State S corporation for its first tax year, it must file Form CT-6 on or before the fifteenth day of the third month following the **effective date of its certificate of incorporation**.

If the corporation is organized outside New York State, begins to do business in New York State, and anticipates being a New York S corporation for its first tax year, it must file CT-6 on or before the fifteenth day of the third month following the date it **began doing business in New York State**.

Examples:

A corporation was a New York C corporation for a tax year 1/1 - 12/31. The corporation anticipates being a New York S corporation for the next tax year. The corporation must file Form CT-6 on or before March 15 of that next tax year to be a New York S corporation for that next tax year.

A corporation's effective date of incorporation in New York State is 6/15. The corporation anticipates being a New York S corporation for its first tax year 6/15 - 12/31. The corporation must file Form CT-6 on or before August 30 of the first tax year to be a New York S corporation for that first tax year.

*A corporation's date of incorporation outside New York State is 2/6. The corporation anticipates being a New York S corporation for its first tax year 2/6 - 12/31. The corporation began **doing business in New York State** on 3/25 of the year it was incorporated. The corporation must file Form CT-6 on or before June 9 of the year it was incorporated to be a New York S corporation for that first New York tax year of 3/25 - 12/31.*

It is your responsibility to mail the election on time. The date of the U.S. postmark will be considered the date of delivery. The date recorded or marked by certain private delivery services, as designated by the U.S. Secretary of the Treasury, shall be treated as a postmark (Tax Law, Article 27, section 1091). See *Private delivery services*. **If sent by registered or certified mail, the date of registration or certification will be considered the date of delivery.**

Retroactive elections

When an S election is retroactively validated for federal purposes, pursuant to IRC section 1362(f), the Tax Department may retroactively validate the New York State election. The validation will apply for any tax year occurring within the period validated by the Internal Revenue Service. Any retroactive validations require both the shareholders and the corporation to recognize the tax consequences of the election for the retroactive period.

Corporations requesting a retroactively validated S corporation election should file Form CT-6 with an attachment explaining the circumstances. Form CT-6 must include the effective date of the election and the signatures of all the shareholders on the specified date. All shareholders must have reported their income on all affected returns consistent with the S corporation election for the year the election should have been made and all subsequent years.

You **must** attach a copy of your federal approval letter to Form CT-6.

Approval of election

You will be notified whether your election is approved, and if approved, the date the election will take effect. Until then, do not file Form CT-3-S. If you are now required to file Form CT-3, *General Business Corporation Franchise Tax Return*, continue filing it until your election takes effect.

If you do not receive confirmation of your election before your return is due, you should write to: NYS Tax Department, Corporation Tax Account Resolution Unit, W A Harriman Campus, Albany NY 12227-0852.

Note: All information in this election form is subject to review by the Audit Division in determining whether the corporation meets the legal requirements for filing as a New York S corporation.

Years for which election is effective

The election will be effective for the entire corporate tax year for which it is made and for all succeeding tax years until terminated.

Termination or revocation of election

Shareholders of a New York S corporation should refer to Form CT-6.1, *Termination of Election to be Treated as a New York S Corporation*, for information and instructions regarding the termination or revocation of a New York S election.

Specific instructions

Enter the legal name of the corporation exactly as it appears in the records of the New York State Department of State.

Enter the DBA or trade name that appears on the *Certificate of Assumed Name* filed with the New York State Department of State, if different from the legal name.

Enter the number of shares of stock issued and outstanding – The number of shares of stock entered in this box should be the number of shares of stock that have been issued to shareholders and have not been reacquired by the corporation. It should equal the total shares of stock owned by all shareholders, as reported in column C, if applicable.

Continuation sheet or separate consent statement – If you need a continuation sheet or use a separate consent statement, attach it to Form CT-6. The separate consent statement must contain the name, address, and employer identification number of the corporation and the shareholder information requested in columns A through D.

Column A – Enter the name and address of each shareholder.

Column B – Enter the Social Security number of each shareholder who is an individual. Enter the employer identification number (EIN) of each shareholder that is an estate, a qualified trust, or an exempt organization.

Column C – Enter the number of shares of stock each shareholder owns and the dates the stock was acquired. An entity without stock, such as a limited liability company (LLC), should enter the percentage of ownership for each member and dates acquired. Do not list the shares of stock (percentage of ownership) for those shareholders (members) who sold or transferred all of their stock (ownership interest) before the election was made but who still

must consent to the election for it to be effective for the tax year. For more information, see the instructions for column D.

Column D – Each shareholder at the time the election is made must consent to the election by signing in column D or by signing a separate consent statement, described in *Continuation sheet or separate consent statement*.

If the election is made during the corporation's first tax year for which it is to be effective, any former shareholder who held stock at any time on or before the fifteenth day of the third month of the electing year must also consent to the election. If the former shareholder does not consent, the election will not be effective until the following tax year.

If a married couple has a community interest in the stock or the income from it, both spouses must consent. Likewise, each tenant in common, joint tenant, or tenant by the entirety must also consent.

A minor's consent is made by the minor or the legal guardian. If no legal guardian has been appointed, the natural guardian makes the consent (even if a custodian holds the minor's stock under a law patterned after the Uniform Gifts to Minors Act).

An Article 13 taxpayer's consent is made by an elected officer or other authorized person.

Signature

The election must be certified by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or other officer authorized by the taxpayer corporation.

The election of an association, publicly traded partnership, or business conducted by a trustee or trustees must be signed by a person authorized to act for the association, publicly traded partnership, or business.

If an outside individual or firm prepared the election, all applicable entries in the paid preparer section must be completed, including identification numbers (see *Paid preparer identification numbers* in Form CT-1). Failure to sign the election will delay the processing of any refunds and may result in penalties.

How to file

Fax Form CT-6 to 518-435-8605.

If you are unable to send a fax, mail Form CT-6 to:

**NYS TAX DEPARTMENT
CT-6 PROCESSING
W A HARRIMAN CAMPUS
ALBANY NY 12227-0852**

Private delivery services

See Publication 55, *Designated Private Delivery Services*.

Need help? and Privacy notification

See Form CT-1, *Supplement to Corporation Tax Instructions*.
