



Corporation Business Tax and Gross Income Tax Guidance regarding S Corporations and Qualified Subchapter S Subsidiaries

TB-105 - Issued March 31, 2023 Tax: Corporation Business Tax and Gross Income Tax

P.L. 2022, c. 133, which was signed into law on December 22, 2022, made a series of technical corrections, clarifications, and changes to the Corporation Business Tax and Gross Income Tax Acts, as well as other miscellaneous requirements. This Technical Bulletin discusses the changes to the Corporation Business Tax procedures for S corporations and Qualified Subchapter S Subsidiaries resulting from this law.

For privilege periods beginning on or after December 22, 2022, the law eliminates the requirement for a separate New Jersey S corporation election for a federal S corporation. The business must be registered as a corporation with the Division of Revenue and Enterprise Services and provide proof that they have a federal S status. In addition, the shareholders must consent to the New Jersey tax treatment of the entity.

Shareholder Consent

The law requires three different types of consents. Of these three types of consents, only the Shareholder Jurisdictional Consent is required to be submitted.

1. *Shareholder Jurisdictional Consent.* This consent is required to be submitted pursuant to N.J.S.A. 54:10A-5.22.b by all newly formed S corporations (or QSSSs). If a shareholder fails to consent to be taxed as a New Jersey S corporation (or QSSS), the S corporation (or QSSS) is obligated to fulfill the New Jersey tax requirements on behalf of the nonconsenting shareholder. The Shareholder Jurisdictional Consent will need to be filed. The Division of Revenue and Enterprise Services (DORES) and the Division of Taxation are working in tandem to create procedures through which this process will occur. This Technical Bulletin will be updated as soon as information is available. Please continue to check back for updates on submitting this consent
2. *C Corporation Tax Status Election Consent.* This is a shareholder consent to the election to be taxed as a C corporation for New Jersey purposes. It is not submitted to DORES or the Division of Taxation. It is a record of the votes taken by the shareholders in which they all consent to C Corporation tax status for New Jersey purposes. Taxpayers must retain proof of this consent and provide it to the Division of Taxation or DORES if requested.
3. *Revocation of C Corporation Tax Status Election Consent.* This is a shareholder consent to undo the C Corporation Tax Status Election in order to be treated as a New Jersey S corporation (or QSSS) (i.e., revoking a previous C Corporation Tax Status Election). This consent is not submitted to DORES or the Division of Taxation. It is a record of the votes taken by the shareholders holding more than 50% of the shares of stock of the federal S corporation in which they consent to New Jersey S corporation (or QSSS) status after the C Corporation Tax Status Election was made. Taxpayers must retain proof of this consent and provide it to the Division of Taxation or DORES if requested.

S Corporations and Qualified Subchapter S Subsidiaries with Federal Acceptance Letters Dated ON AND AFTER DECEMBER 22, 2022

The law eliminates the requirement for a separate New Jersey election if the entity has been approved as either a federal S corporation or Qualified Subchapter S Subsidiary (QSSS). The taxpayer must be registered as a corporation with the Division of Revenue and Enterprise Services and must provide proof that they received federal S corporation status. Any S corporation (or QSSS) doing business in New Jersey, or having or exercising its franchise in New Jersey, or deriving receipts, engaging in contracts, or employing or owning capital or property in New Jersey, or registered to do business in New Jersey, that does not elect to be taxed as a C corporation for New Jersey purposes will be taxed as a New Jersey S corporation (or QSSS). The S corporation is required to file a Shareholder Jurisdictional Consent (see Shareholder Consent [above](#) for more information).

New Jersey S corporations (and QSSSs) file Form CBT-100S. If a federal S corporation (or QSSS) wants to be treated as a C corporation for New Jersey purposes (i.e., hybrid corporation), the shareholders must provide consent (see “The Process for C Corporation Tax Status Election” [below](#) for more information).

S Corporations and Qualified Subchapter S Subsidiaries with Federal Acceptance Letters Dated BEFORE DECEMBER 22, 2022

The change in the New Jersey S corporation (and QSSS) procedures is effective for privilege periods beginning on or after December 22, 2022. For privilege periods after that, a federal S corporation (or QSSS) can file as a New Jersey S corporation (or QSSS) even if they did not previously make the New Jersey election. They must submit the Shareholder Jurisdictional Consent and proof of their federal S corporation status. However, to be treated as a New Jersey S corporation (or QSSS) for privilege periods beginning before December 22, 2022, the corporation must make a retroactive election.

Any federal S corporation (or QSSS) that never elected that status for New Jersey purposes for periods beginning before December 22, 2022, will need to make an affirmative New Jersey S corporation (or QSSS) election for those periods. The retroactive election is filed online through the Division of Revenue and Enterprise Services’ [website](#). Note: the S corporation (or QSSS) does not need to include any full-year privilege period that begins on or after December 22, 2022, in the retroactive S corporation election process.

The Process for the C Corporation Tax Status Election

A federal S corporation (or QSSS) can elect to be a hybrid corporation (a hybrid corporation is a federal S corporation/QSSS but New Jersey C corporation) under N.J.S.A. 54:10A-5.22.d. If 100% of the shareholders consent to this decision, the entity may make the C Corporation Tax Status Election. The corporation makes estimated payments as though it was a C corporation and files the applicable Corporation Business Tax return (meaning a return other than Form CBT-100S) indicating that the entity is a hybrid corporation (federal S corporation/New Jersey C corporation) in the appropriate section of the return (page 1 of Form CBT-100 or on the Members and Affiliates Schedule portion of Form CBT-100U). Pursuant to N.J.S.A. 54:10A-5.22.d, the federal S corporation (or QSSS) has until the later of the original due date (or the extended due date, if applicable) of the tax return to decide to be taxed as a hybrid corporation.

As the S corporation (or QSSS) has until the later of the original due date or extended due date, if applicable, of the return to elect hybrid corporation status, this is also the last day for shareholders to consent to the C Corporation Tax Status Election.

Note: While the entity has until the due date to decide which form to file, the forms must be filed by the deadline to avoid late filing penalties. New Jersey Corporation Business Tax returns are

due 30 days after the original due date of the federal corporate income tax return. In general this is the 15th day of the fourth month following the close of the privilege period for S corporations (or QSSSs) and the 15th day of the fifth month following the close of the privilege period for C corporations.

S Corporations (and QSSSs) that were Hybrid Corporations for New Jersey Purposes prior to December 22, 2022. A federal S corporation (or QSSS) that decided to be taxed as a C corporation for New Jersey purposes (i.e., hybrid corporation) may continue to be taxed as such by filing the applicable Corporation Business Tax return (other than Form CBT-100S) indicating that the entity is a hybrid corporation in the appropriate section of the return (page 1 of Form CBT-100 or on the Members and Affiliates Schedule portion of Form CBT-100U).

If these hybrid corporations decide in a subsequent period to be a New Jersey S corporation or New Jersey QSSS, they will need to submit their Shareholder Jurisdictional Consent and proof of their federal S corporation status.

The Process for Revoking the C Corporation Tax Status Election

The C Corporation Tax Status Election (a federal S corporation or (QSSS) that elected to be taxed as a C corporation (hybrid corporation status) for New Jersey purposes) can be revoked if the shareholders holding more than 50% of the shares of stock of the federal S corporation consent to New Jersey S corporation (or QSSS) status. To be effective on the first day of the privilege period, the Revocation of C Corporation tax status must be finalized on or before the 15th day of the third month of the privilege period. If the Revocation of C Corporation tax status is made after that, the revocation will be effective for the following privilege period, unless the shareholders revoke the revocation before December 31 of the current year.

An S corporation or QSSS that is a member of a combined return revokes its C corporation tax status by noting on the combined return the date the member left the combined group and files a short period CBT-100S for the months after the revocation in addition to retaining a record of the shareholder vote to revoke the C Corporation Tax Status Election.

New Jersey Conformity to Federal Rules and Revenue Procedures Regarding Mergers and Reorganizations

For privilege periods beginning prior to December 22, 2022, entities that became federal S corporations (and QSSSs) as a result of a merger or reorganization were required to proactively elect New Jersey S corporation (and QSSS) status. New Jersey S corporation (and QSSS) status was not automatic.

For mergers or reorganizations on or after December 22, 2022, New Jersey generally conforms to the federal rules and revenue procedures regarding mergers and reorganizations. There is no longer a requirement to make an affirmative New Jersey S corporation (or QSSS) status election provided the entity has federal S corporation (or QSSS) status. As a reminder, the business must update their registration information with the Division of Revenue and Enterprise Services. See www.nj.gov/treasury/revenue/

Combined Groups and S Corporations and Qualified Subchapter S Subsidiaries

An S corporation (or QSSS) that chooses C corporation tax status pursuant to N.J.S.A. 54:10A-5.22.b, is subject to the statutes and rules governing combined reporting. For information on whether the corporation would need to be included as a member of a combined group, see N.J.S.A. 54:10A-4(z); N.J.S.A. 54:10A-4(dd); N.J.S.A. 54:10A-4.11; and N.J.A.C. 18:7-21.1 through 21.29.

Alternatively, an S corporation (or QSSS) can make an election under [N.J.S.A. 54:10A-4\(ff\)](#) instead of [N.J.S.A. 54:10A-5.22.d](#), and an election under [N.J.S.A. 54:10A-4\(ff\)](#) results in an S corporation (or QSSS) being included as a member of a combined group and taxed as a C corporation (have hybrid corporation status). For more information on combined groups and combined reporting, see the Corporation Business [Tax Reform](#) webpage.

Tax Treatment for Gross Income Tax Purposes of S Corporations and Qualified Subchapter S Subsidiaries that are Hybrid Corporations for New Jersey Purposes

The Gross Income Tax treatment of a corporation that is a federal S corporation that is taxed as a C corporation for New Jersey purposes (i.e., a hybrid corporation) is discussed in Publication [GIT-9S](#).

Additional Information

The Division of Revenue and Enterprise Services and the Division of Taxation are working in tandem to create procedures through which taxpayers will provide proof that they received federal S corporation (or QSSS) status and a process to submit the Shareholder Jurisdictional Consent. This publication will be updated as information becomes available.

Answers to [Frequently Asked Questions](#) regarding P.L. 2022, c. 133, New Jersey S Corporation Procedural Changes, can be found online.

Note: A Technical Bulletin is an informational document that provides guidance on a topic of interest to taxpayers and may describe recent changes to the relevant laws, regulations, and/or Division policies. It is accurate as of the date issued. However, taxpayers should be aware that subsequent changes to the applicable laws, regulations, and/or the Division's interpretation thereof may affect the accuracy of a Technical Bulletin. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.