

New Jersey Eliminates S Election as of December 22, 2022

New Jersey will automatically treat federal S corporations as New Jersey S corporations, effective for periods beginning on or after December 22, 2022.

Historically, the New Jersey Division of Revenue and Enterprise Services (Division) required entities that qualified as S corporations or Qualified Subchapter S Subsidiaries (QSSS) for federal income tax purposes to make a separate election to be treated as an S corporation for New Jersey Corporation Business Tax. For periods beginning on or after December 22, 2022, a separate New Jersey S corporation election will not be required. P.L. 2022, C. 133 (Dec. 22, 2022). However, elections for hybrid entity status and C corporation status are still required. The new rules are summarized below.

Qualifying as a New Jersey S Corporation or QSSS

Entities that were granted S corporation or QSSS Federal Acceptance Letters dated **on or after** December 22, 2022, do not need to make a separate New Jersey S election, as long as the entity has been approved as a federal S corporation or QSSS, is registered as a corporation with the Division, provides proof that it received federal S corporation status to Division, and files a Shareholder Jurisdictional Consent to confirm the entity's owners' consent to New Jersey tax treatment of the entity. All of the S corporation or QSSS shareholders must consent. See N.J. Rev. Stat. § 54:10A-5.22. If a shareholder who is not an initial shareholder subsequently does not consent to New Jersey's jurisdiction to tax the S corporation's income to its shareholders, New Jersey will require a payment of tax by the entity on such shareholder's New Jersey source income at the highest Gross Income Tax bracket.

Entities that were granted S corporation or QSSS Federal Acceptance Letters dated **before** December 22, 2022, or did not elect S corporation status for New Jersey purposes for periods beginning before December 22, 2022, must make a retroactive election. The retroactive election is filed online through the Division website. Full-year privilege periods that begin on or after December 22, 2022, do not need to be included.

Electing and Revoking C Corporation Tax Status

A federal S corporation or QSSS can elect to be a hybrid entity, meaning that it is treated as an S corporation for federal income tax purposes and a C corporation for New Jersey tax purposes. To make this election, all of the entity's shareholders must consent to the decision to make the election and the entity must complete the C Corporation Tax Status Election Consent. Proof of the consent is not filed with the Division but must be maintained by the entity in its records. Once made, the entity will be subject to New Jersey Corporation Business Tax filing requirements and must make estimated payments. The election and shareholder consent must be made by the later of the original due date or extended due date of the return.

The C corporation election can be revoked if the shareholders holding more than 50% of the shares of the stock of the federal S corporation consent to New Jersey S corporation status. An S corporation or QSSS that is part of a combined return can revoke its C corporation status by stating on the combined return that the member left the combined group and by filing a short period CBT-100S for the months after revocation.

Mergers and Reorganizations

Entities that became federal S corporations or QSSSs for privilege periods beginning before December 22, 2022, as a result of a merger or reorganization had to elect New Jersey S corporation status. For mergers or reorganizations taking place on or after December 22, 2022, no



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S election will be required as long as the surviving or existing entity has federal S corporation or QSSS status. Businesses must update their registrations with the Division on the New Jersey Treasury website.

Combined Groups

S corporations and QSSSs that elect to be treated as C corporations for New Jersey tax purposes are subject to the state's combined reporting requirements. This election is made pursuant to N.J.S.A. 54:10A-5.22.b.

S corporations and QSSSs that elect hybrid status for New Jersey tax purposes will be included as a member of a combined group and taxed as a C corporation. This election is made pursuant to N.J.S.A. 54:10A-4(ff).

See New Jersey Division of Taxation Technical Bulletin No. TB-105 (March 31, 2023) for more information.
