

A blue-tinted background image showing two business professionals shaking hands over a laptop. The scene is set in an office environment with a window and blinds visible in the background.

S Corporation Election Considerations for Corporations and LLCs





Nellie Akalp, CorpNet CEO:

Nellie Akalp is an entrepreneur, business expert, professional speaker, published author, and mother to four amazing kids. Nellie has dedicated her entrepreneurial career to helping other entrepreneurs and business professionals succeed at business ownership.

As CEO and Co-Founder of CorpNet.com, she has helped more than half a million small businesses and licensed professionals get their businesses and clients off the ground. She has developed a strong following within the small business community and has been honored as a Small Business Influencer Champion and was named women entrepreneur of the year by NAWBO.

Today's Agenda

Goal: Understand how the S Corporation election differs for Corporations, LLCs, and within various states.

- What is the S Corporation
- S Corporation treatment for Corporations
- S Corporation treatment for LLCs
- S Corporation Election at the State Level
- How to Become an S Corporation
- 2020 S Corporation Election Deadlines
- Operating as an S Corporation



The S Corporation

What is the S Corporation?

- Not a type of business entity
- Special tax election for eligible Limited Liability Companies (LLCs) or Corporations
- Business owners must decide whether a company will be registered as LLC or Corporation before electing S Corporation treatment
- IRS has issued eligibility requirements for S Corporation status

Understanding the Difference

The potential advantages of electing S Corporation tax treatment are a bit different for LLCs and Corporations

- Crucial to consider the differences when deciding whether to form an LLC or Corporation to obtain S Corporation status
- Critical to understand the differences between the LLC and Corporation business entity types
- Aside from tax implications, there are legal and administrative factors to consider



S Corporation Treatment for Corporations

Corporations and the S Corporation Election

Overview of a Corporation

- Separate legal and tax-paying entity
- Highest level of protection
- Can sell company stock and offer stock options
- Unlimited number of shareholders

Corporations and the S Corporation Election

Overview of a Corporation

- Separate legal and tax-paying entity
- Highest level of protection
- Can sell company stock and offer stock options
- Unlimited number of shareholders

Starting and Running a Corporation

- More involved and costly than forming an LLC
- Several legal steps to get started
- Comply with ongoing compliance and tax requirements

Corporations and the S Corporation Election

Overview of a Corporation

- Separate legal and tax-paying entity
- Highest level of protection
- Can sell company stock and offer stock options
- Unlimited number of shareholders

Starting and Running a Corporation

- More involved and costly than forming an LLC
- Several legal steps to get started
- Comply with ongoing compliance and tax requirements

Default Tax Treatment of a Corporation

- Profits & losses flow through to corporate tax return
- Taxable income taxed at corporate rate
- Some businesses undergo double-taxation
- Dividends to shareholders not tax-deductible

Corporations and the S Corporation Election

Overview of a Corporation

- Separate legal and tax-paying entity
- Highest level of protection
- Can sell company stock and offer stock options
- Unlimited number of shareholders

Starting and Running a Corporation

- More involved and costly than forming an LLC
- Several legal steps to get started
- Comply with ongoing compliance and tax requirements

Default Tax Treatment of a Corporation

- Profits & losses flow through to corporate tax return
- Taxable income taxed at corporate rate
- Some business owners undergo double-taxation
- Dividends to shareholders not tax-deductible

S Corporation Tax Treatment for Corporations

- Avoid double-taxation
- Profits & losses flow through to shareholders' personal tax return
- Corporation itself does not pay income tax

Does an S Corporation Election Make Sense for Your Clients' Corporation?

- It can depend on client's business goals. If the plan is to sell the business, forming a Corporation and electing S Corporation status could be a benefit
- If your client has a business in a dangerous industry, a corporate formation is a better idea due to higher legal protection
- A Corporation with S Corporation election benefits small businesses where the shareholders want greater liability protection, want to be on payroll and take out a reasonable salary, and do not want to be taxed twice





S Corporation Treatment for Limited Liability Companies (LLCs)

LLCs and the S Corporation Election

Overview of an LLC

- Separate legal entity
- Liability protection
- Less rigid compliance requirements

LLCs and the S Corporation Election

Overview of an LLC

- Separate legal entity
- Liability protection
- Less rigid compliance requirements

Starting and Running an LLC

- Affordable and 'simple' to file
- Handful of legal steps to get started
- Comply with ongoing compliance and tax requirements

LLCs and the S Corporation Election

Overview of an LLC

- Separate legal entity
- Liability protection
- Less rigid compliance requirements

Starting and Running an LLC

- Affordable and 'simple' to file
- Handful of legal steps to get started
- Comply with ongoing compliance and tax requirements

Default Tax Treatment of LLCs

- IRS does not consider separate tax-paying entity
- Pass-through entity
- Subject to self-employment tax

LLCs and the S Corporation Election

Overview of an LLC

- Separate legal entity
- Liability protection
- Less rigid compliance requirements

Starting and Running an LLC

- Affordable and 'simple' to file
- Handful of legal steps to get started
- Comply with ongoing compliance and tax requirements

Default Tax Treatment of LLCs

- IRS does not consider separate tax-paying entity
- Pass-through entity
- Subject to self-employment tax

S Corporation Tax Treatment for LLCs

- Reduce self-employment tax
- Salary must be fair compensation or red flag for IRS
- More flexible than C Corporation option

Does an S Corporation Election Make Sense for Your Clients' LLC?

- If your client is looking to avoid many formalities of a C Corporation - Minutes, Board of Directors, Annual Meetings, etc - an LLC with S Corporation election would be a good fit
- If a client is looking to stay in business long-term, an LLC with S Corporation election could be a wise choice
- An LLC owner that elects to file as an S Corporation would take payroll instead of guaranteed payments, limiting self-employment tax. This could be appealing to many clients
- Forming an LLC with S Corporation election is a wise choice if your client intends to file as a partnership or sole-proprietor in the future



Weighing Options



- Clients in the Real Estate industry should typically operate as an LLC due to distributing property to the individuals tax free, but it is a taxable event if distributed through an S Corporation
- Talk with your client about how they want to present their company publicly. Having an 'LLC' vs an 'Inc' at the end of a business name can make an impact, however, this does not change based on how taxes are filed
- If you and your client are unsure about the best option, consider forming an LLC. You can always incorporate later. However if you incorporate first and later decide an LLC is best, a lot more work is involved.



S Corporation Election at the State Level

Many States Have Different Rules

- S Corporation election benefits can change at the state vs federal level
- Most states are given S Corporation pass-through tax treatment, but there are exceptions
- Critical that clients understand how this affects their business

State-Level S Corporation Election Requirements



New Jersey

State-level S Corporation tax treatment requires filing Form CBT-2553. The state will only consider the election valid if all of a corporation's shareholders consent to the election and other state requirements.

State-Level S Corporation Election Requirements



New York

New York state does not automatically treat a company as a New York S Corporation unless mandated to file as an S Corporation under Tax Law section 660(i).

New York requires a corporation to file form CT-6 to apply for S Corporation tax treatment at the state level.

State-Level S Corporation Election Requirements



Arkansas

It was not until 2018 that Arkansas recognized S Corporation tax treatment at the state level without additional paperwork.

Make sure clients are aware of this new change!

State-Level S Corporation Election Requirements

Utah

Utah requires a copy of a company's Notice of Acceptance as an S Corporation from the IRS. The notice must be attached to Form TC-20S the first time the company files its tax return.



Where S Corporation Flow-Through Tax Treatment Does Not Exist

Some jurisdictions do not recognize S Corporation election. Tax agencies in the following areas do not grant pass-through taxation for corporations that have been approved for federal S Corporation tax treatment.

<i>District of Columbia</i>
<i>Louisiana</i>
<i>New Hampshire</i>
<i>New York City</i>
<i>Tennessee</i>
<i>Texas</i>
<i>California</i>

States Without Personal or Corporate Income Taxes

S-Corporation election is essentially a non-issue in some areas as there are no state income taxes at the personal or corporate level. Note: some of these states, however, may enforce other types of fees to an S Corporation or its shareholders.

<i>Alaska</i>
<i>Florida</i>
<i>Nevada</i>
<i>South Dakota</i>
<i>Washington</i>
<i>Wyoming</i>

Not comprehensive list. Info subject to change at the state level

A woman with long dark hair, wearing a black top with white polka dots, is smiling and leaning on a desk. She is holding a stack of three white binders. In the background, there is a computer monitor, a keyboard, and some papers on the desk. The entire image has a blue tint.

How to Become an S Corporation

Eligibility

To qualify for S Corporation status, a Corporation or LLC must meet the following requirements:

- Be a domestic corporation
- Have only allowable shareholders
 - May be individuals, certain trusts, and estates and
 - May not be partnerships, corporations or non-resident alien shareholders
- Have no more than 100 shareholders
- Have only one class of stock
- Not be an ineligible Corporation - certain financial institutions, insurance companies, and domestic international sales corporations
- Form 2553 signed by all shareholders and submitted

Filing as a Corporation vs LLC

Both a Corporation and an LLC file for S Corporation treatment the **same**.

File IRS **Form 2553** with the IRS.

The election must be made no more than two months and 15 days after the beginning of the tax year when the election goes into effect.

2020 S Corporation Election Deadline

For S Corporation tax treatment to be in effect for 2020, existing businesses must meet the IRS deadline of **March 16, 2020** to file Form 2553. Missing the deadline means the business will continue to be taxed as a C Corporation or LLC for the remainder of the 2020 tax year, with S Corporation treatment starting January 1, 2021.

Newly formed LLCs and Corporations have **two months and 15 days (75 days)** from their date of formation to file for S Corporation election for the tax year 2020.

Business owners can request a six-month **extension** to file for S Corporation status by filing IRS Form 7004.

What if the S Corporation Deadline is Missed?

If a **Corporation or LLC** fails to timely file its IRS form 2553 with the IRS, the S Corporation election will **NOT** be effective for that year.

A corporation will be taxed as a C Corporation.

A single-member LLC will be taxed as a sole proprietorship and a multi-member LLC will be taxed as a partnership.

A late S Corporation election is generally effective for the next tax year. **Relief for late election** may be available if the Corporation or LLC can show that the failure to file on time was due to **reasonable** cause.

A woman with long dark hair and glasses is shown from the chest up, shrugging her shoulders with her hands held out. She has a neutral, questioning expression. The background is a solid teal color with numerous white question marks scattered throughout. The text 'Operating as an S Corporation' is centered over her face in a white, bold, sans-serif font.

Operating as an S Corporation

How Clients Pay Themselves

To avoid red flags for the IRS:

- An S Corporation shareholder who does substantial work for the S Corp is considered an employee of the corporation and must take a reasonable salary from the corporation on payroll
- The business must put the shareholder on payroll and compensate the shareholder through a reasonable salary - from which taxes are withheld
- An S Corporations remaining profits are paid out in the form of distributions to the company's shareholders, who report those distributions on their personal tax returns
- S Corporation owners can run into trouble if they pay themselves a suspiciously small salary and then take most of their compensation in the form of distributions to minimize the amount of taxes they have to pay
- The IRS can revoke an S Corporation status if they determine shareholders are substantially underpaid for the services they provide

Ongoing Compliance Requirements

	Initial Filing Requirements	Annual Compliance Requirements	Registered Agent Required
C Corporation	<i>Initial Filing (some states)</i> <i>Initial Report (some states)</i> <i>Publication Fees (some states)</i>	<i>Annual Reports</i> <i>Annual Meetings</i> <i>Meeting Minutes</i>	Yes
S Corporation	<i>Initial Filing (some states)</i> <i>Initial Report (some states)</i> <i>Publication Fees (some states)</i>	<i>Annual Reports</i> <i>Annual Meetings</i> <i>Meeting Minutes</i>	Yes
Limited Liability Company	<i>Initial Filing (some states)</i> <i>Initial Report (some states)</i> <i>Publication Fees (some states)</i>	<i>Annual Reports</i>	Yes



Helpful Resources

Our Tools Are Your Resources

Welcome to B.I.Z.!

Your Business Information Zone

The secure, cloud based Corporate Compliance Tool available to EVERYONE... for FREE!

Corporate / LLC Kit

The dashboard features a navigation bar with 'CorpNet Business Information Zone', 'Dashboard', 'Companies', and 'Orders'. Below this are five main action buttons: 'Place an Order for New Business', 'Place an Order for Existing Business', 'Monitor Company / Add New Company', 'Check Order Status', and 'Update Your Profile'. A summary section displays four key metrics: 536 Total Companies (Add New Company), 160 Total Orders (Start New Business), 3 Total Documents (Manage Documents), and 46 Total Alerts (View Alerts). A 'Recent Alerts' table is also present, listing alerts for 'Azzi 3 LLC', 'Amanda Test Inc.', and 'Fake Burgers, Inc.' with options to 'Order Now', 'Renewal in process', or 'Dismiss'.

Company Name	Event	Due Date	
Azzi 3 LLC	Initial Report Filing Due for California, USA	Past Due	Order Now Dismiss
Amanda Test Inc.	DBA / Tradenames Due for California, USA	Past Due	Renewal in process Dismiss
Fake Burgers, Inc.	Annual Report Filing Due for Connecticut, USA	Past Due	Dismiss



Meeting Minutes Templates

LLC Operating Agreement

CorpNet.com Partner Program

Private Label: Resell CorpNet Services

- Offer business formation and compliance.
- CorpNet is a silent, white labeled partner.
- CorpNet never contacts your client.
- All documents, alerts, and information are sent directly to you without labels.
- You will have a Dedicated Account Manager who knows your specific requirements and is available to you for whatever you need.

Referral Program: Refer Your Clients

- Refer your clients to CorpNet and they will receive white glove treatment.
- A dedicated account manager will work with your clients to ensure a personalized experience and a “hand-off” back to you when the process is complete.
- Earn commissions up to 25% or pass the savings to your client.

Participating in both our Reseller and Referral partner programs is ok!

[CorpNet.com/partners/](https://corpnet.com/partners/)



**Nellie Akalp, Presenter
Founder & CEO, CorpNet.com**

www.corpnet.com

info@CorpNet.com

(888)449-2638

Twitter.com/corpnet Facebook.com/corpnet/

Partner with us! Learn more here:

<https://www.corpnet.com/partners/>