

# The Incredible LLC

The  
Limited Liability Company  
has Issues

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## This image shows a full page of a worksheet designed for handwriting practice. It features approximately 20 horizontal dashed lines spaced evenly across the page, providing a guide for letter height and placement. The background is plain white, and there are no other markings or text present.

## Introduction

A **limited liability company (LLC)** is the United States-specific form of a private limited company. It is a business structure that can combine the pass-through taxation of a partnership or sole proprietorship with the limited liability of a corporation.<sup>1</sup>

An LLC is not a corporation under the laws of every state; it is a legal form of a company that provides limited liability to its owners in many jurisdictions.

LLCs are well known for the flexibility that they provide to business owners; depending on the situation, an LLC may elect to use corporate tax rules instead of being treated as a partnership, and, under certain circumstances, LLCs may be organized as not-for-profit. In certain U.S. states (for example, Texas), businesses that provide professional services requiring a state professional license, such as legal or medical services, may not be allowed to form an LLC but may be required to form a similar entity called a **professional limited liability company (PLLC)**.

An LLC is a hybrid legal entity having certain characteristics of both a corporation and a partnership or sole proprietorship (depending on how many owners there are). An LLC is a type of unincorporated association, distinct from a corporation. The primary characteristic an LLC shares with a corporation is limited liability, and the primary characteristic it shares with a partnership is the availability of pass-through income taxation. As a business entity, an LLC is often more flexible than a corporation and may be well-suited for companies with a single owner.

Although LLCs and corporations both possess some similar features, the basic terminology commonly associated with each type of legal entity, at least within the United States, is sometimes different. When an LLC is formed, it is said to be "organized", not "incorporated" or "chartered", and its founding document is likewise known as its "articles of organization", instead of its "articles of incorporation" or its "corporate charter". Internal operations of an LLC are further governed by its "operating agreement". An owner of an LLC is called a "member", rather than a "shareholder." Additionally, ownership in an LLC is represented by a "membership interest" or an "LLC interest" (sometimes measured in "membership units" or just "units" and at other times simply stated only as percentages), rather than represented by "shares of stock" or just "shares" (with ownership measured by the number of shares held by each shareholder). Similarly, when issued in physical rather than electronic form, a document evidencing ownership rights in an LLC is called a "membership certificate" rather than a "stock certificate".

In the absence of express statutory guidance, most American courts have held that LLC members are subject to the same common law alter ego piercing theories as corporate shareholders. However, it is more difficult to pierce the LLC veil because LLCs do not have many formalities to maintain. As long as the LLC and the members do not commingle funds, it is difficult to pierce the LLC veil. Membership interests in LLCs and partnership interests are also afforded a significant level of protection through

Costa Rica	1942
Honduras	1950

C. The LLC laws in these countries have had the following five basic characteristics:

1. Limited liability;
2. Required use of the word “limited” in the entity’s name;
3. Full juristic personality (the LLC can sue or be sued).
4. The partnership concept of “delectus personae” (permitting a member of an association to control admission of new members to the entity.); and
5. Dissolution of the LLC on the death of a member, unless specifically stated otherwise in the LLCs organizational documents (Articles of Organization) and/or Operating Agreement (the contract between the various owners or Members of the LLC).

D. In 1977, Wyoming became the first state to enact LLC legislation.

E. Five years later, in 1982, Florida enacted legislation to limit loss on investments.

F. The LLC Legislative History in America

<u>Date</u>	<u>Occurrence</u>
March 4, 1977	First U.S. LLC Act – Wyoming
September 2, 1988	Rev. Rul. 88076 1988-2 C.B. 360. Four factor test – Kintner Rules
January, 1990	Swift action by states to create LLC Acts
June 7, 1996	51 <sup>st</sup> LLC Act – State of Hawaii
January 1, 1997	Check-the-Box – Regulations Form 8832
January 13, 1997	Prop. Reg. Section 1.1402(a) – 2 Determination of Self-employment tax liability of individuals who are

were not so clear when they actually had to be relied on by the LLC's principals or legal advisers. The need to clarify ambiguous provisions resulted in amendments being made to the LLC statutes.

#### **4. Legislative anticipation vs. realities**

In enacting the original version of the LLC statutes, the legislatures tried to anticipate how LLCs would be used and what the needs would be of the LLCs, their members, and managers. Where the statutes proved inadequate to meet those actual needs, amendments were made.

#### **5. Reactions to court decisions**

Sometimes the courts will interpret an LLC statute in a manner not intended by the legislature. Or a court case can reveal an ambiguity that the legislature did not realize existed. The legislatures may react to these cases by amending the LLC law.

### **b. The current state of LLC law**

Below is a brief discussion of what the current version of the LLC statutes typically provides in certain key areas. It also discusses how and why the provisions governing these issues have changed over the years.

#### **1. Formation document**

The current LLC statutes provide that the formation of an LLC requires the delivery of a document with the state business entity filing office. This document is generally called the Articles of Organization.

The main function of this document is to provide the public with notice that a limited liability entity has been formed. It is not intended to provide information on the entity's financial structure or the rights and

responsibilities of its managers or owners. As such, the statutes generally require the formation document to set forth little more than the LLC's name, principal office address, and the name and address of its agent for service of process.

Several states also require a statement as to whether the LLC will be managed by members or managers.

***Tax Professional's Alert:*** *The earlier statutes required more information to be set forth. For example, they required a statement regarding the latest date the LLC could dissolve. This was to assist the LLC in avoiding the corporate characteristic of continuity of life.*

***However, after the check-the-box rule, it was no longer necessary to do so.***

## **2. Purposes**

The LLC statutes today contain few restrictions on an LLC's purposes. An LLC may be a for-profit entity or a not-for-profit entity. It may also practice a profession. Earlier statutes did not specifically provide for non-profit LLCs. Some did not allow an LLC to practice a profession. In addition, many of the original LLC statutes did not permit LLCs to engage in the businesses of insurance or banking. (Some still have this restriction.)

## **3. Operating agreements**

The statutes today, like the statutes in the past, provide for member operating agreements. Early statutes required these agreements to be in writing. Most statutes today say they can be in writing (or a "record"),

oral, or implied. (Implied meaning the default provisions of the statute will apply.)

In recognition that the LLC is a contractual entity, the statutes impose few restrictions on what the members may set forth in their operating agreement in regard to how the LLC will be run and to the members' rights, duties, liabilities, and responsibilities. And in fact, amendments made to the original provisions dealing with operating agreements have tended to expand what the members may provide therein, rather than to impose restrictions. For example, several states amended their laws to provide that fiduciary duties may be eliminated in the operating agreement.

**Tax Professional's Alert:**

*A fiduciary duty is a responsibility to act on behalf of another person and, where necessary, to put the other person's interest ahead of one's own. The term "fiduciary duties" (plural) is a catch-all term that generally includes two components: a duty of care and a duty of loyalty.*

*As applied to LLC members and managers, a fiduciary duty creates a standard that a member and manager must meet when acting on behalf of the LLC. If the member or manager fails to meet that standard, he or she can be personally liable for breach of the fiduciary duty.*

*The duties of care and loyalty that apply to LLC members and managers vary by state. In states that impose fiduciary duties, the state LLC act will define the duty. The modern trend—embodied in the Revised Uniform Limited Liability Company Act (RULLCA)—is to provide a non-exclusive statutory definition for each duty, then leave it up to the parties and the court system to clarify, supplement, and interpret the scope of each duty.*

**4. Fiduciary Duties**

Many state LLC acts do not allow the operating agreement to eliminate or freely modify fiduciary duties. The inability to customize fiduciary duties can create limitations if members and managers will be involved in competing ventures.

Founders and LLC attorneys should consider fiduciary duties early in the LLC formation process. If state law does not allow customization or elimination of fiduciary duties, members and managers should consider forming the LLC in a state—like **Texas, Delaware, or Nevada**— that recognizes freedom of contract and allows the operating agreement to eliminate or define the scope of fiduciary duties.

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## **5. Number of members**

The current statutes provide that an LLC may have one or more members. Under the original laws at least two members were required. This was because the legislatures anticipated that an LLC with only one member would be taxed like a corporation.

The statutory amendments that permitted the formation of single-member LLCs were important events in LLC history. They greatly increased the usefulness of the LLC as an entity.

## **6. Membership interest**

A membership interest consists of financial rights and non-financial rights. The chief financial rights are the right to share in allocations of the



company's profits and losses and the right to share in distributions of the LLC's assets during its existence and when it dissolves. The non-financial rights (sometimes called management or governance rights) include the right to vote, to inspect books and records, and to bring a derivative suit.

The LLC statutes contain default rules for allocating the members' financial and voting rights. Some statutes give each member equal rights to vote and share in profits, losses, and distributions. Others apportion voting and financial rights based on the amount of the investment. In some states, these default rules have not changed from the earlier versions of the LLC statutes. In others, they have.

#### **7. Transferability of interests**

The current LLC acts provide that the members may sell, assign or transfer their membership interest in whole or in part.

However, unless the operating agreement provides otherwise, all the buyer, assignee, or transferee receives is the member's financial rights. The buyer, assignee, or transferee does not become a member or receive any management rights.

The LLC statutes as originally enacted also restricted the members' ability to sell, assign, or transfer their management rights. These provisions were included in the LLC laws so that an LLC would lack the corporate characteristic of free transferability of interests.

***Tax Professional's Alert: After the check-the-box rule, the legislatures could have removed the default rule restricting transferability. They did not do so, in recognition that, in general, members will want to control transfers of membership interests so they***

*can prevent unwanted outsiders from becoming participants in the management of their business.*

## **8. Withdrawal of members**

The early versions of the LLC statutes gave members the right to withdraw at any time and receive payment of the fair value of their membership interests. By giving members withdrawal rights that could lead to the dissolution of the LLC, the legislatures hoped to avoid the corporate characteristic of continuity of life.

***Tax Professional's Alert: After the check-the-box rule, many states amended their LLC statutes. Some now provide that a member may not withdraw from the LLC unless the operating agreement provides otherwise. Others provide that members may withdraw but treat the withdrawing members as assignees — which means they do not have a right to demand payment of the fair value of their membership interests. The reasons for this change were to provide the LLC with more liquidity and stability by locking in the members' capital investments and to give certain estate planning advantages to family-owned LLCs.***

## **9. Management**

The typical LLC act today has a default rule providing that the LLC will be managed by its members. The LLC acts in the early years had the same default rule. The original purpose of vesting management in members was to allow an LLC to avoid the corporate characteristic of centralized management. The check-the-box rule made that purpose irrelevant.

However, the legislatures chose not to change the default rule. They recognized that most LLCs will be managed by their members. In closely held entities, the owners will often want a management role to monitor their investment.

## **10. Management formalities**

In keeping with the legislative intent to provide a flexible entity, the LLC statutes impose few restrictions on the manner in which an LLC may be managed. Meetings of members or managers are not required. Nor, in general, are quorums, the setting of record dates, the keeping of minutes, and other management formalities found in corporation statutes. The members may decide what actions the LLC will take, and how these actions will be taken, in as formal or informal a manner as they wish.

## **11. Dissolution**

Today's LLC statutes typically provide that an LLC is dissolved upon the consent of the members or upon the happening of an event set forth in its operating agreement or at a time set forth in the formation document. They also provide that unless the operating agreement provides otherwise a member's death, bankruptcy, incompetency, retirement, resignation, expulsion, or withdrawal does not cause an LLC's dissolution.

The dissolution provisions of the original statutes required dissolution under more events. Some even restricted an LLC's duration to 30 years. This was so that an LLC would not have the corporate characteristic of continuity of life. After the check-the-box rule was enacted, the statutes were amended to give LLCs the advantage of continuity of life.

## **12. LLC case law today**

"LLC law" is not only made by state legislators. It is also made by judges. By LLC case law these are cases involving the internal governance of LLCs and cases adjudicating the rights, liabilities, and duties of members and managers.

**Tax Professional's Alert:** *There was not a substantial number of LLC cases decided in the 1990s. But, the number has been steadily increasing in the 21st century. Some cases require the courts to interpret an LLC statute. When interpreting a statute, a court's primary goal is to determine the true intent and purpose of the legislature. Other LLC cases have required the courts to interpret an operating agreement. In these cases, the courts apply the same principles of contractual interpretation that they apply to other kinds of contracts.*

Some LLC cases involve attempts to impose liability on a member. These attempts generally take one of the following forms: (1) an attempt by a third party to hold a member personally liable for the LLC's debts or obligations, (2) an attempt by a third party to hold a member liable based on the member's participation in the LLC's wrongful conduct, (3) an attempt by the LLC, a manager or member to hold a member liable for breaching a fiduciary duty, or (4) an attempt by a member to hold another member liable for breaching the operating agreement.

There are also cases where a manager is sued by a member or an LLC for a breach of fiduciary duties. In some of the cases, there was a provision in the operating agreement defining the managers' fiduciary duties that the court was called on to interpret. In others, the court had to apply the statutory standard or, if none, the common law.

Another source of litigation arises from the informal manner in which an LLC may be operated. In general, this is considered one of the LLC's more desirable features.

However, that informality, when combined with the few statutory provisions dealing with management found in some LLC statutes, can lead

to litigation over whether the person purporting to act on the LLC's behalf actually had the authority to do so.

## II. The Growth of the Limited Liability Company in the United States

A. LLCs were primarily used for real estate rental and development.

B. Types of Businesses operating as LLCs include:

1.	Engineering and Management Support Services	26%
2.	Real Estate Services	19%
3.	Construction and General Contracting	12%
4.	Investment Companies	9%
5.	Retailers	8%
6.	Leasing Companies	8%
7.	Health Services	7%
8.	Agriculture	7%
9.	Oil and Gas	2%
10.	Restaurants	2%

C. Reasons why Limited Liability Companies so very popular include:

1. Much less administrative paperwork and record keeping than a corporation;
2. Pass-through taxation, no double taxation, unless the LLC elects to be taxed as a C Corporation;
3. Limited liability, meaning that the owners of the LLC, called "members," are protected from some liability for acts and debts of the LLC, but are still responsible for any debts beyond the fiscal capacity of the entity;
4. Check-the-box taxation. The LLC can elect to be taxed as a sole proprietor, partnership, S Corporation or C Corporation, providing much flexibility;

5. LLCs can be set up with just one member:
6. Membership interests of LLCs can be assigned and the economic benefits of those interests can be separated and assigned providing the assignee with the economic benefits of distribution of profits/losses, like a partnership, without transferring the title to the membership interest – Virginia and Delaware LLC Acts;
7. LLCs in most states are treated as entities separate from their member's, whereas in other jurisdictions case law has developed deciding LLCs are not considered to have separate standing from their members;
8. Unless the LLC has chosen to be taxed as a corporation, income of the LLC generally retains its character, for instance as capital gains or as foreign sourced income, in the hands of the members;
9. Presents an alternative to S corporations;
10. Owners of multi-member LLCs may avoid Social Security taxes; and
11. For single member LLCs, it provides the opportunity to keep the most simple of business organizations in place while providing limited liability for the business owner.

### III. Characteristics of the Limited Liability Company

- A. Limited Liability Companies are established under state statutes as legal entities.
- B. LLCs can have single members or multiple members.
- C. The federal tax classification of an LLC is either a Sole Proprietor, a Partnership or a Corporation.
- D. LLCs provide full limited liability to their members.

***Practitioner's Alert: Limited Liability Companies do not have limited liability. LLCs can sue and be sued. The Members of the LLC have limited liability.***

1. Members of an LLC have limited liability similar to that of shareholders in a corporation. They are not liable for the tort liabilities, debts, and other obligations of the LLC. Agents and managers of an LLC are also not personally liable for LLC debts

and obligations. However, certain states provide that members may be liable for the following:

- a. Debts personally guaranteed by the member. All states permit members to guarantee or to agree to be personally liable for the LLC's debts.
- b. Wrongful acts committed by the member.
- c. Amounts that the member promised to contribute to the LLC. A member may be relieved of an obligation to contribute if all other members consent. However, the member may still be liable to creditors who relied on the promised contribution in extending credit to the LLC. In Nevada and Wyoming, members are liable to creditors who extend credit after the articles of organization are filed.
- d. Amounts treated as wrongful distributions under state law. These distributions include distributions while the LLC is insolvent. Members are liable for a specified number of years after the wrongful distribution.
- e. Sales taxes not remitted, the trust fund portion of employment taxes not paid or any other tax liabilities of the LLC.
- f. Transactions under which the member received an improper personal benefit.
- g. Violations of criminal laws.
- h. Malpractice claims in states that permit professional LLCs, including negligence and misconduct by another person under the professional's direct supervision and control.
- i. Any other liabilities to the extent provided in the articles of organization.

***Practitioner's Alert:*** *The New York State Tax Appeals Tribunal has affirmed the determination of an Administrative Law Judge that a member of a limited liability company ("LLC") holding a minority interest in the LLC is liable for a portion of a sales and use tax assessment against the LLC itself. Matter of Eugene Boissiere and Jason Krystal, DTA Nos. 824467, et al, (N.Y.S. Tax App. Trib., July 28, 2015).*

*Messrs. Boissiere and Krystal appealed the ALJ's decision to the Tribunal, arguing that the conflict between the Tax Law, which provides that LLC members are per se liable for an LLC's sales tax obligations, and the LLC law, which provides that LLC members may not be held liable for an LLC's obligations, was the result of a "mistake" by the drafters of the Tax Law. The Tribunal rejected the taxpayer's contentions that the Legislature made a mistake as "speculative", and affirmed the determination of the ALJ.*

*The Tribunal found that the laws evidenced an intent by the Legislature that the limitation of liability for LLC members under the LLC Law should not extend to sales tax liability under the Tax Law.*

**Practitioner's Alert 2:** *As LLC's are products of individual State law, careful review should be made of state statutes - [www.findlaw.com](http://www.findlaw.com).*

2. Several states provide that members of an LLC may be personally liable for the debts, judgments, and other liabilities of an LLC to the same extent the shareholders are liable to corporate creditors under the "piercing the corporate veil" doctrine. For example, the members of an LLC may be liable to creditors in those states if the LLC is undercapitalized or fails to obtain sufficient insurance to cover the risks of the business.

A number of states provide that the failure to hold meetings of members or to comply with other formalities does not result in personal liability of the member.

**Practitioner's Alert:** *Be careful about piercing of the LLC veil and statutory exceptions to the limited liability rule. Because a single-member LLC only has one owner, there may be an increased likelihood that a judge would allow a creditor of the SMLLC to pierce the LLC veil.*

- E. LLCs maintain substantial business asset protection against creditors who obtain judgments against LLC members.
- F. The "Charging Order".
  1. Business entities are created by state legislatures primarily to allow individuals to group together to invest capital for new ventures. The primary statutory goal of most entities is to shield the investors from the liabilities of the business, so that their risk is limited by the amount of the capital investment. Thus, if the business itself has a creditor, the creditor's relief is limited to the assets of the business, and, except in extreme cases, the creditor cannot pursue any assets other than those of the business itself.
  2. The liabilities of the business are known as "inside liabilities" and the claims of creditors against the business are known as "inside creditors". As long as the entity is distinct from its owners, is adequately capitalized, and is not used to perpetuate a fraud, then, the entity should protect its investor-owners from inside liabilities and inside creditors. The exception is the general partnership.

**Practitioner's Alert:** *The exception is the General Partnership. In a general partnership, general partners are liable for the debts and liabilities of the partnership. Similarly, general partners of Limited Partnerships and related entities are also liable for the liabilities of the partnership.*



3. From a statutory perspective, the creditors of an investor-owner are treated much differently than the creditors of the business itself. The hard truth is that most state legislatures have no desire to protect a debtor's interest in a business entity from creditors. To the contrary, if an investor-owner has debts, then he or she should pay those debts from whatever non-exempt property is available, including shares of stock and interests in partnerships and like entities.
4. In a corporation, a creditor may simply attach the shares of the debtor's stock to gain all the rights that the debtor had in the corporation, including rights to sell the shares, voting rights, the right to view books and records, and then the creditor's attachment of the stock may cause the 'S' election to be terminated, which would possibly result in unwanted tax consequences to the remaining shareholders.

***Practitioner's Alert:*** *If the corporation is an 'S' Corporation, and the creditor is not an individual, then the creditor's attachment of the stock may cause the 'S' election to be terminated, which would possibly result in unwanted tax consequences to the remaining shareholders.*

5. Legislatures are not concerned with interference of corporate business when a creditor has attached interest in stock because shareholders are two full steps removed from business operations. Shareholders elect the directors, directors elect the officers, and officers run the business. Allowing a creditor to attach the shares of a corporation only indirectly affects the corporation in the election of directors.
6. Partnerships and pseudo-partnership entities, such as the Limited Liability Company, are different from corporations. In a partnership or LLC, the investor is a partner and may directly affect the entity's business operations. A change in ownership may disrupt the operations of the partnership and force non-debtor partners into an involuntary partnership with the creditor.
7. State legislatures have not allowed creditors to attach partnership interests and become the partners themselves. Instead, legislatures have only allowed creditors a limited form of relief against the debtor's partnership interest through a "Charging Order".
8. A charging order is held against the partner's right to distributions from the entity. The comments to the Uniform Partnership Act and LLC Act describe the charging order as "in the nature of a garnishment." To define a charging order as a "business

garnishment” would closely describe the charging order. However, one could also characterize a charging order as being an “assignment of income” or as an assignment of the partner’s economic right to distribution from the partnership.

9. Charging Order Protected Entity, COPE, is the term used to describe entities for which external creditor’s are usually limited to the charging order remedy, meaning that the creditors cannot simply attach the partner’s interest as if they were shares in a corporation.
10. The best known COPE entities are the Limited Partnership and the Limited Liability Company. However, COPEs also include Limited Liability Partnerships and Limited Liability Limited Partnerships as well as the new Series LLC.

G. Charging Order Protection

1. A creditor must usually follow this path to relief when seeking to obtain assets from a COPE:
  - a. Obtain a judgment;
  - b. Charge the interest;
  - c. Foreclose the charging order;
  - d. Appoint a receiver; and
  - e. Partition the entity.

H. How are the LLC assets protected?

**Example:** Beanna owns 50 percent of a trucking company, Beanna’s LLC. In way of assets, the LLC has \$500,000 worth of trucks. The trucks are the LLCs basic assets and are Beanna’s only form of business. Beanna goes hunting for quail in South Texas where she accidentally shoots her hunting companion. It could happen!

The companion’s estate gets a judgment for \$5,000,000, far exceeding any insurance Beanna may have in place. The estate asks the court to order Beanna to dissolve her LLC and sell the trucks to satisfy the judgment. Based upon creditors’ remedy provisions of most Limited Liability Company acts, Courts will not. The estate may be able to get a “charging order.”

By comparison, under corporate law, the estate would probably get the stock of Beanna’s corporation and then could force the liquidation of the company and the transfer of the value of her trucks to the estate.

**Practitioner's Alert:** *Charging orders protect entities and are some of the strongest and most acceptable asset protection tools available. These entities afford a significant degree of protection for the partners or members against any creditor.*

*All states permit a creditor to obtain a charging order against the membership interest of the judgment debtor.*

*The debtor and other members of the LLC retain:*

- *Voting rights*
- *Power to decide if and when distributions will be made*
- *Right not be compelled to make distributions to satisfy the member's debt*

*The only right of the creditor is to receive distributions by the LLC to that particular member.*

I. What about Single Member LLCs?

There may be opportunities when a creditor may pierce the Limited Liability Company veil. If there are such legal grounds to pierce the entity veil, the creditor will reach the LLC assets.

**Practitioner's Alert:** *There is an exception to the rule in some states if the LLC is a single-member LLC, meaning the LLC is treated as a disregarded entity. The creditor may attach the assets of the single-member LLC in satisfaction of the judgment.*

**Practitioner's Alert 2:** *Sole proprietorships and corporations do not provide business asset protection.*

**Foreclosure on a membership interest.**

- A. A number of states provide for foreclosure, in addition to the charging order. On request of the judgment creditor, the court may order foreclosure of the membership interest subject to the charging order. The purchaser at the foreclosure sale has the rights of a transferee. The judgment debtor has no rights in the LLC after the foreclosure sale.
- B. To protect the rights of the judgment debtor and the other members of the LLC, the statutes normally provide that the foreclosed membership interest may be redeemed:
  - 1. By the judgment debtor

2. With property other than LLC property, by one or more of the other members of the LLC
3. With LLC property, by one or more of the other members with the consent of all the members whose interests are not so charged

## **Part II**

### **ARTICLES OF ORGANIZATION**

1. The name of the limited liability company is:
2. The limited liability company is organized to transact any and all lawful business for which a limited liability company may be organized under state law.
3. The registered office for the business follows:
5. The name and address of the agent for service of process is:
6. This is a multi- (or single) member limited liability company at the time of formation, and such member(s) and address(es) are listed below:
7. The existence of this entity is “perpetual”.
7. The name and address of the organizer is:
8. The date of organization shall be

\_\_\_\_\_  
Organizer

\_\_\_\_\_  
Date

Sample Operating Agreement – simple in content, follows:

## **OPERATING AGREEMENT**

### **J. B. SIMS SERVICES, LLC**

The following represents the operating agreement of J. B. SIMS SERVICES, LLC.

The Limited Liability Company will be operational and chartered in the State of Texas. Operating as a disregarded entity, the taxable activity of J. B. SIMS SERVICES, LLC will be reported as a sole proprietorship in the name of James B. Sims.

The purpose of the LLC is to secure downloadable software and to transmit that software to authorized purchasers of the software throughout the United States.

James B. Sims is to be the sole member of the LLC. Any debt or liability incurred by Mr. Sims on behalf of J. B. Sims Services, LLC to be solely and distinctly the debt of J. B. Sims Services, LLC.

The right of entity classification belongs solely to James B. Sims and will be made in accordance with the Internal Revenue Code for Limited Liability Companies.

Any transaction for the LLC requiring Mr. Sim's signature, the signature is deemed to be presented as a Member of the LLC and implies no personal liability.

May 1, 20XX

#### **Federal Tax Classification of LLCs**

- A. Limited Liability Companies are state legal entities that do not assign a federal tax classification to the LLC.
- B. The LLC may be taxed as any one of the following:
  - 1. A sole proprietorship;
  - 4. A partnership;
  - 5. A C corporation; or
  - 6. An S corporation.

***Practitioner's Alert:*** The instructions for Form 1065 for 2014, page 3, state "A limited liability company (LLC) is an entity formed under state law by filing articles of

**organization as an LLC. Unlike a partnership, none of the members of an LLC are personally liable for its debts.**

C. Entity Classification – Form 8832

Forming a Corporation gives two choices for federal taxation, the C corporation or by making the 'S' election on Form 2553 the Corporation elects to be taxed as an S Corporation, a pass-through entity.

D. The Limited Liability Company is not assigned a federal tax classification.

1. The LLC may either "default" or "elect" to be taxed as a:
  - a. Sole Proprietor
  - b. Partnership
  - c. Corporation
  - d. 'S' Corporation with the filing of Form 2553
2. The LLC is the most flexible vehicle for operating a business. Form 8832 is used to opt out of the default tax classification.

**Practitioner's Alert:** *Tax professionals should review the LLC operating agreement on an annual basis and more frequently if there are changes of note. If the operating agreement indicates that the federal tax classification for the LLC has changed since the last tax filing, a Form 8832 should be part of the filing.*

3. The following eight type of business entities are automatically classified by regulation as corporations for federal tax purposes.
  - a. A business entity organized under federal or state law if the statute describes or refers to the entity as incorporated, a corporation, body corporate, or a body politic;
  - b. An association;
  - c. A business entity organized under state law if the statute describes or refers to the entity as a joint-stock company or a joint-stock association;
  - d. An insurance company;
  - e. A federally insured state-chartered bank;

- f. A business entity wholly owned by a state or any political subdivision of a state;
  - g. A publicly traded business entity taxable as a corporation under IRC Section 7704; and
  - h. Certain foreign business entities.
- E. The Limited Liability Company – Illustration of flexibility.

Four Federal Tax Classifications are available to the LLC.

**Practitioner's Alert:** *Unless the Election is made at the time of LLC formation there is a 60-month waiting period before another "election" can be made.*

#### **Form 8832**

- 1. Form 8832 is the only IRS Form for Limited Liability Companies.
- 2. If the chosen classification is the "default" classification, no Form 8832 is used.
- 3. Form 8832 is used in one of three circumstances:
  - a. The LLC wishes to make an "election".
  - b. The LLC wants to change its previous classification.
  - c. The LLC has some doubt as to the proper classification.

# LLC

## IRC 721

1040	1120
1065	1120S



## **Late Elections - Revenue Procedure 2009-41, 2009-39 IRB**

- A. In a Revenue Procedure, IRS has provided relief to eligible entities seeking to file late classification elections if the request is filed within 3 years and 75 days of the requested effective date of the eligible entity's classification. Guidance is also provided to eligible entities that do not qualify for this relief.
- B. Under the "check-the-box regs," a business entity that is not mandatorily classified as a corporation under the regs may elect its classification for federal tax purposes. An eligible entity with at least two members is automatically classified as a partnership unless it elects to be taxed as a corporation. An eligible entity with a single owner is automatically classified as a disregarded entity, but may elect to be classified as a corporation. (Reg. § 301.7701-3(c))
- C. Entity-classification elections are made by filing Form 8832, Entity Classification Election, with the service center designated on the form. An election is effective on the date specified by the entity on Form 8832 or on the date filed if no due date is specified on the election form. (Reg. § 301.7701-3(c)(1)(iii)) The effective date specified on Form 8832 may not be more than 75 days before the date on which the election is filed and cannot be more than 12 months after the date on which the election is filed. If an election specifies an effective date more than 75 days before the date on which it is filed, it will be effective 75 days before the date it was filed. If an election specifies an effective date more than 12 months from the date on which the election is filed, it will be effective 12 months after the date it was filed.
- D. Rev Proc 2002-50, 2002-2 CB 615 has now been superseded by Rev Proc 2009-41, which liberalizes Rev Proc 2002-59.
- E. Rev Proc 2009-41, Section 3.01, extends the late entity classification relief in Rev Proc 2002-59 to both initial classification elections and changes in classification elections. It also extends the time for filing late entity classification elections to within 3 years and 75 days of the requested effective date of the eligible entity's classification. Thus, the extended filing period no longer is limited, as it was under Rev Proc 2002-59, to entities newly formed under local law requesting relief to file an initial classification election and to the due date for the first federal tax return (excluding extensions) of the entity's desired classification for the year of the entity's formation. If an entity satisfies the requirements set out Rev Proc 2009-41, Sec. 3.01, is the exclusive means for obtaining relief for a late entity classification election and is in lieu of the letter ruling procedure that is used to obtain relief for a late entity classification election under Reg. § 301.9100-1 and Reg. § 301.9100-3.

- F. An eligible entity may qualify for alternative relief under Reg. § 301.7701-3(c)(1)(v)(C), which treats an entity as having made a classification election to be treated as an association when it timely elects to be an S corporation under Code Sec. 1362(a)(1). Special rules are applicable to late S corporation elections and late entity classification elections under Rev Proc 2004-48, 2004-2 CB 172, and Rev Proc 2007-72, 2007-41 IRB 786
- G. An entity is eligible for relief under Rev Proc 2009-41 for a late classification election if:
- Solely because Form 8832 was not filed timely under Reg. § 301.7701-3(c)(1)(iii), it: (a) failed to obtain its desired classification either as of the date of its formation or on its classification becoming relevant under Reg. § 301.7701-3(d), which provides that a foreign eligible entity's classification is relevant when its classification affects the liability of any person for federal tax or information purposes, or (b) failed to obtain its requested change in classification;
  - Either the due date for the tax return of the entity's default classification, excluding extensions, for the tax year beginning with the date of the entity's formation has not passed or the entity seeing an extension of time to make an entity classification election timely filed all required federal tax and information returns consistent with its requested classification for all years it intended the requested election to be effective and no inconsistent tax or information returns were filed;
  - The entity has reasonable cause for its failure to timely make the initial entity classification election; and
  - 3 years and 75 days from the requested effective date of its classification election have not passed.
- H. To request relief, within 3 years and 75 days from the requested effective date of the eligible entity's classification election, an entity must file with the applicable IRS Service Center a completed, signed Form 8832. The Form 8832 must indicate that it is filed pursuant to Rev Proc 2009-41 and must include both a declaration that the requirements in Rev Proc 2009-41, Sec 4.01, have been satisfied and a statement explaining the reason for the failure to file a timely entity classification election, the reasonable cause statement. The declaration and reasonable cause statement must be accompanied by a dated declaration, signed under penalties of perjury by an authorized representative of the entity and the affected person(s), if any. After receiving the request, IRS will notify the entity whether it qualifies for relief.

***Alert:*** Form 8832 is modified to include the required declaration and space for a reasonable cause statement, IRS instructs the eligible entity in Rev Proc 2009-41 to write

***“Filed Pursuant to Rev. Proc. 2009-41” at the top of Form 8832 and attach both the declaration and the reasonable cause statement to its Form 8832.***

- I. An entity that does not satisfy the requirements for relief in Rev Proc 2009-41, Sec 4.01, may request relief by applying for a letter ruling. The request must include a specified representation or an explanation of why it cannot be made. The entities must represent that all required U.S. tax and information returns of the entity or, if the entity was not required to file any returns under the desired classification, then all required U.S. tax and information returns of each affected person, as defined in Rev Proc 2009-39 Sec. 40.01, were filed timely or within 6 months of the due date of the respective return, excluding extensions, as if the entity classification election had been in effect on the requested date. They must further represent that no U.S. tax or information returns were filed inconsistently with these returns.
- J. Rev Proc 2009-41 is effective September 28, 2009. It applies to requests pending with the IRS Service Center or National Office under Rev Proc 2009-59 on that date, and to requests received thereafter. If an entity has filed a request for a letter ruling seeking relief for a late entity classification election that is pending in the National Office on September 28, 2009, it may rely on Rev Proc 2009-41, withdraw that letter ruling request and receive a refund of its user fee. However, unless, before the earlier of November 12, 2009 or the issuance of the letter ruling, the entity notifies the National Office of such reliance and withdrawal, the National Office will process a letter ruling request pending on September 28, 2009.

**Federal Identification Numbers**

- A. Existing Sole Proprietors and Partnerships which form as Limited Liability Companies are NOT required to apply for a new EIN.
- B. LLCs electing to be taxed as a Corporation must apply for an EIN.
- C. Sole proprietors who previously did not have an EIN must apply.

***Practitioner’s Alert: Single-Member LLCs will be assigned two EIN’s. One for the LLC and one to identify the single-member as the responsible party for payroll tax purposes. A second notice of EIN will be sent stating “Do Not Use this Number.”***

# LLC

## IRC 721

1040	1120
1065	1120S

**Example: Beanna forms a Tax and Taxpayer Representation LLC as a Single Member. She:**

- 1. Forms the Limited Liability Company – Taxation with Representation, LLC.**
- 2. She does not apply for a new federal identification number as she can use the number she used as a sole proprietor.**
- 3. She has no tax implications from forming the LLC.**
- 4. She starts up her business.**

**Beanna, not being as knowledgeable in taxpayer representation matters, begins calling her new friend Ann, who has extensive former IRS experience. One afternoon after receiving four other calls from Beanna, Ann says, “Beanna, I am always consulting with you on your representation cases. If I were not so afraid you would go and do something really stupid I would go into business with you.” Beanna tells Ann that she need not worry about her doing anything stupid, she probably will, but Beanna has formed a Limited Liability Company which will protect Ann from Beanna’s stupid actions. Ann likes the name of the business and decides to contribute her business assets, computer, tax law library, etc., to the LLC.**

**Ann and Beanna have a problem. They want to keep the name of the LLC but the LLC can no longer be taxed as a sole proprietorship. All Ann and Beanna need do is file Form 8832 – Entity Classification Election, electing to have Taxation with Representation, LLC taxed as a partnership. Why did Beanna and Ann not have to wait 60 months to make this change?**

**Ann and Beanna have a great business. Taxation with Representation, LLC is doing financially very well, what with Beanna’s taxation knowledge and Ann’s excellent representation skills. But, alas, Ann and Beanna, like so many other partners, soon suffer from communication breakdown. Ann claims Beanna does not understand what it means to work 50 percent. Beanna insists that she does understand. Ann works 100 percent of the time and there are two partners, she and Ann, sure she understands 50 percent. They decide to go their separate ways.**

**Beanna and Ann also have a friend named Craig. Craig talks with the ladies explaining that the business is great and that they should try to make a go of it. Ann confesses that she really would like to keep the business but is afraid Beanna will never understand what 50 percent means. Craig makes the ladies a proposal. He tells them that the**

*problem is the 50 percent. Perhaps he could join the business and then all Beanna would have to understand is 33 1/3. They decide to give it a try.*

*Craig can contribute his business assets of his computer and extensive tax law library as well as furniture to the LLC. They could continue to be taxed as a partnership and no Form 8832 would be required. However, Craig has just been to a great seminar, where he learned that C Corporations are the friendliest to the shareholders. He knows that Corporations require a great deal of additional legal work such as having Shareholder Meetings, Board of Director's Meetings and keeping Minutes and making Motions. He wonders what would happen if the LLC made the Form 8832 election to be taxed as a Corporation. Would the LLC have to keep up with all the legalese a Corporation does or would they have to incorporate?*

*Explaining to the ladies, he learns that Beanna and Ann recently attended a convention of their professional organization. Beanna explains to Craig that no incorporation is necessary, just the Form 8832 and the best news is that because no incorporation has taken place all the legalese associated with a corporation is not applicable to the LLC. The LLC is not a corporation it is just taxed as a corporation.*

*Ann says wait just a minute. Beanna, doesn't your husband get you all the tax-free fringe benefits you need through his employer just like my husband does and Craig doesn't your wife have that great job that pays all those benefits? I suggest we look at making the 'S' election and have the LLC taxed as an S Corporation. I believe we would benefit by paying ourselves a wage equal to reasonable compensation and then take a distributable share of S Corporation income free of self-employment tax.*

*All the LLC must do to make the 'S' election is to file the Form 2553. The Form 8832 is no longer required by IRS.*

*If the 'S' election is terminated the LLC will revert to being taxed as a C Corporation. If the LLC wishes to change its federal tax classification to anything other than a Corporation, the federal tax classification will "liquidate" however the LLC will not liquidate. There may be a tax implication regarding the "liquidation".*

**Example 2:** *Taxation with Representation, LLC has made the election to be taxed as a Corporation. Ann and Craig have gone to visit a client in another town when Beanna is driving to the bank and sees a FOR SALE sign on the corner, a lot that both Ann and Craig have said would be a great location for a commercial building. Beanna stops and inquires. It seems the property is up for a distressed sale and she could buy it today for only \$10,000. She has the LLC check book with her and knows Craig and Ann will be thrilled when they find out she bought the lot that is clearly worth \$100,000, \$90,000 more than she paid for it.*

*Craig and Ann were not as excited about Beanna's good fortune when they discovered she had purchased the property in the name of the LLC taxed as a Corporation. Why?*

***The LLC has just made the Form 8832 election to be taxed as a Corporation. How long must they remain taxed as a Corporation before they can make a subsequent election? Will they have to "liquidate" the federal tax classification and in distributing the property create a taxable gain for both the Corporation and the shareholders receiving the property? What if the Form 8832 had been filed initially, within the first 75 days of the LLC? Would that have made a difference?***

***The property has a value of \$100,000 and the Corporation has a basis of \$10,000. What taxable gain will both the Corporation and the shareholders receive at liquidation?***

***Remember, the federal tax classification may liquidate but the LLC does not. What federal tax classification can the LLC elect and why?***

***Over the course of the next five years, the LLC, now taxed as a partnership, improves upon the property. It builds a commercial building on one end, an apartment complex on the other and a strip center mall in the center. It is now worth more than \$12 million.***

***Craig, Ann and Beanna now want to liquidate the LLC. After all, just how many tax returns can one prepare and how many taxpayers can you represent. Craig, Ann and Beanna each have just \$1 remaining in their partner's capital accounts. There is no cash left in the LLC.***

***Craig takes the Commercial Building, exchanging it for his \$1 capital account.***

***Ann takes the Apartment Complex, exchanging it for her \$1 capital account.***

***Beanna takes the strip center mall, exchanging it for her \$1 capital account.***

***How much in tax will each member of the LLC pay on their distribution?***

***Craig, Ann and Beanna have indeed planned well. They will each take early retirement and draw their Social Security at age 62 and the income they receive from the properties will be RENTAL INCOME which will not affect their benefits.***

***As long as there is \$1 in the partner's capital account and no cash is distributed, the value or basis of the property received in exchange for the partnership interest will have the basis of the partnership interest.***

***If Craig, Ann or Beanna sell the property in their lifetime there will be considerable gain as the properties have only a basis of \$1.***

***Knowing these excellent tax professionals, they are sure to consider their heirs and die before a sale letting the heirs take a step-up in basis tax free.***

### **Part III.**

- I. Disadvantages of the Limited Liability Company include:
  - A. Many states levy a franchise tax or capital values tax on LLCs. States include but are not limited to  
  
Alabama;  
  
California;  
  
Kentucky;  
  
New York;  
  
Pennsylvania;  
  
Tennessee; (based on net worth 2024 and after) and  
  
Texas.
  - B. It may be more difficult to raise financial capital for an LLC as investors may be more comfortable investing funds in the better-understood corporate form with a view toward an eventual IPO. One possible solution may be to form a new corporation and merge into it, dissolving the LLC and converting into a corporation.
  - C. The LLC form of organization is relatively new, and as such, some states do not fully treat LLCs in the same manner as corporations for liability purposes, instead treating them ore as a disregarded entity, meaning an individual operating a business as an LLC may in such a case be treated as operating it as a sole proprietorship, or a group operating as an LLC may be treated as a general partnership, which defeats the purpose of establishing an LLC in the first place, to have limited liability, a sole proprietor has unlimited liability for the business, in the case of a partnership, the partners have joint and several liability, meaning any and all of the partners can be held liable for the business' debts no matter how small their investment or percentage of ownership is.
  - D. Although there is no statutory requirement for an operating agreement in most states, members who operate without one may run into problems.
  - E. Some people, such as new business people, may not be familiar with the governance of LLCs. Unlike corporations, they are not required to have a board of directors or officers.



- F. The principals of LLCs use many different titles - - e.g., member, manager, managing member, managing director, chief executive officer, president, and partner. As such, it can be difficult to determine who actually has the authority to enter into a contract on the LLCs behalf.
- G. Taxing jurisdictions outside the US are likely to treat a US LLC as a corporation, regardless of its treatment for US tax purposes, for example, if a US LLC does business outside the US or a resident of a foreign jurisdiction is a member of a US LLC.
- H. Some creditors will require owners of up-and-starting LLCs to cosign for the LLCs loans, thus making the owners equally liable for the debt as the LLC is, and effectively removing the very purpose of forming an LLC; Limited Liability.
- I. State and Federal Filing Requirements
  - 1. There are three types of state filings:
    - a. The tax return for the LLC;
    - b. The tax returns for the resident or nonresident members; and
    - c. The annual report for the LLC.

## II. Too Many LLCs.

- A. LLCs provide protection to its owners for debts, unrelated to the business in that LLC property and LLC interest generally cannot be directly seized or attached by creditors of debtor members – the charging order.
- B. The theory was to separate assets with great liability from assets with little liability with different LLCs.
- C. This often created multi-LLCs in order to obtain the limited liability required.
- D. The Delaware series creates separate “series” within an LLC whose debts and other liabilities are enforceable against that series alone.
  - 1. Separate protected “cells” within one limited liability “container” eliminates the need to create separate entities.

2. Each series can designate members, managers or LLC interests that have separate rights and duties with respect to the specific LLC property or obligations.
3. Each series must be treated separately with separate records and assets assigned and accounted for separately by the series.
1. Public notice must be made by including the series limitations in the LLCs Certificate of Formation.
2. Delaware was the first state to permit series LLCs and is the most frequently used jurisdiction for the formation of series LLCs.

E. Key Reasons to Use

1. The use of a series LLC may save substantial organization costs.
2. The series LLC is typically used by a taxpayer who has numbers parcels of real estate.
3. Instead of incurring the cost of forming multiple LLCs, the taxpayer can form a single LLC and place each parcel of real estate in a separate series.

***Example: Beanna has 3 rental properties, a commercial property worth \$1 million, an apartment complex worth \$750,000 and a small residential rental property worth \$100,000.***

***The renter in the residential property allows her child (rug rat) to eat a piece of paint off the wall which is lead-based. He gets sick and she sues the LLC. She is successful in court and the judge awards her all the property in the LLC which includes the commercial property and the apartment complex.***

***Before the Delaware series Beanna would have had to create three different LLCs. Now she has one LLC with three series, each separate from each other.***

***Practitioner's Alert: Other states are now adopting similar legislation to the Delaware LLC. Delaware was simply the first of such. The following states allow the formation of a series LLC:***

<i>Alabama</i>	<i>Kansas</i>	<i>Puerto Rico</i>
<i>Delaware</i>	<i>Missouri</i>	<i>Tennessee</i>
<i>District of Columbia</i>	<i>Montana</i>	<i>Texas</i>
<i>Illinois</i>	<i>Nevada</i>	<i>Utah</i>
<i>Indiana</i>	<i>North Dakota</i>	
<i>Iowa</i>	<i>Oklahoma</i>	

***Your state does not have, form and register in your state as a foreign LLC.***

**Part IV.  
Examples**

**No. 1.**

**John and Susie buy a rental property – 1040 Easy Street and rent it in 2024. They tell you they formed a Limited Liability Company, Easy LLC. How do you report the income and expenses on their taxes.**

**If one spouse is the only member, the IRS sees it as a disregarded entity for federal tax purposes. This means business income is reported on Schedule C of your personal tax return. If both spouses are members, it's considered a multi-member LLC, which is like a partnership. Rev. Proc. 2002-69**

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Limited Liability Company §721

Sole Proprietorship Form 1040 Schedules C, E or F	C Corporation Form 1120
Partnership Form 1065	S Corporation Form 1120S  Form 2553

Defaults

Elections

**No. 2.**

**It is March 14, 2025 and your client, Max, informs you that his return should report that he retitled his rental to an LLC, two members, no election made, on June 30, 2024. The other member is his son. They are 50/50 partners.**

**Do you have to get the LLC an EIN and if so, can you file the Form 1065 by the Form 1065 deadline of March 15, 2025.**

**Are there other issues to consider?**

---

**Limited Liability Company §721**

<b>Sole Proprietorship Form 1040 Schedules C, E or F</b>	<b>C Corporation Form 1120</b>
<b>Partnership Form 1065</b>	<b>S Corporation Form 1120S  Form 2553</b>

**Defaults**

**Elections**

No. 3.

**Taxpayer is sole member of LLC electing to be taxed as a Corporation. You notice a "Notes Receivable" of \$100,000 on the balance sheet of the Corporation. You ask and it appears that employees of the Corporation worked on the personal residence of the members' son. The value of the work was \$100,000.**

**How do you handle this transaction.**

---

Limited Liability Company §721

Sole Proprietorship Form 1040 Schedules C, E or F	C Corporation Form 1120
Partnership Form 1065	S Corporation Form 1120S  Form 2553

Defaults

Elections

**No. 4.**

**Your taxpayer set up his own LLC in North Carolina. Single-member with no election. He is a long-haul truck driver and he wanted the limited liability and dropped his insurance coverage on the truck except for minimal liability.**

**What should you discuss with your taxpayer?**

**What should you recommend to your taxpayer?**

---

**Limited Liability Company §721**

Sole Proprietorship Form 1040 Schedules C, E or F	C Corporation Form 1120
Partnership Form 1065	S Corporation Form 1120S  Form 2553

**Defaults**

**Elections**

**No. 5.**

**Taxpayer forms a new LLC in 2024.**

**What must be done within 60 days of formation  
to meet the requirements of the Corporate Transparency Act?**

---

**Limited Liability Company §721**

Sole Proprietorship Form 1040 Schedules C, E or F	C Corporation Form 1120
Partnership Form 1065	S Corporation Form 1120S  Form 2553

**Defaults**

**Elections**

**No. 6.**

**Taxpayer formed a Corporation years ago. You have warned him year after year to have a shareholder meeting, with minutes and an election of officers as well as to document important decisions made by the Board of Directors. Clearly taxpayer is not acting as a Corporation.**

**How can an LLC help the taxpayer and what steps can be taken to eliminate any tax impact with the creation of an LLC for future operations?**

---

**Limited Liability Company §721**

Sole Proprietorship Form 1040 Schedules C, E or F	C Corporation Form 1120
Partnership Form 1065	S Corporation Form 1120S  Form 2553

**Defaults**

**Elections**



**No. 7.**

**LLC has quit operating. Has been taxed as an S Corporation. Can you just file a final 1120S return with the Internal Revenue Service to close the LLC?**

**Limited Liability Company §721**

<b>Sole Proprietorship Form 1040 Schedules C, E or F</b>	<b>C Corporation Form 1120</b>
<b>Partnership Form 1065</b>	<b>S Corporation Form 1120S  Form 2553</b>

**Defaults**

**Elections**

**No. 8.**

**Taxpayer and spouse have owned multi-member LLC for years.  
Taxpayer and spouse divorce on June 30. Taxpayer receives 100%  
ownership of LLC in the divorce.**

**What are the tax implications?**

**How do you assist the taxpayer to file?**

**Is there any tax implications for the spouse relinquishing the members  
interest?**

---

**Limited Liability Company §721**

<b>Sole Proprietorship Form 1040 Schedules C, E or F</b>	<b>C Corporation Form 1120</b>
<b>Partnership Form 1065</b>	<b>S Corporation Form 1120S  Form 2553</b>

**Defaults**

**Elections**

**No. 9.**

**LLC has 4 members, one a resident alien.**

**Can the LLC elect to be taxed as an S corporation?**

**What will happen to the taxability of the LLC if the resident alien leaves the United States and becomes a non-resident alien.**

**After the status of the member changes, property owned by the LLC sells for a substantial profit. How will it be taxed?**

**If an election to be taxed as a Partnership is made by the LLC, what would the tax implication be.**

**If the LLC was taxed as a Partnership or a Corporation is there an issue with the residency of the alien member?**

---

**Limited Liability Company §721**

Sole Proprietorship Form 1040 Schedules C, E or F	C Corporation Form 1120
Partnership Form 1065	S Corporation Form 1120S  Form 2553

**Defaults**

**Elections**

**No. 10.**

**LLC changes its federal tax classification using what form?**

**LLC uses what form to make an S election and file a form 1120S?**

**If the LLC gets a Federal Identification Number using Form SS-4, does it have to apply for a new number when it changes it's federal tax classification.**

---

**Limited Liability Company §721**

Sole Proprietorship Form 1040 Schedules C, E or F	C Corporation Form 1120
Partnership Form 1065	S Corporation Form 1120S  Form 2553

**Defaults**

**Elections**

## **Part V. Protecting and Maintaining Limited Liability**

Not only the Managing Member but all Members of the Limited Liability Company should take measures to maintain and protect the limited liability protections afforded the members of a Limited Liability Company.

These actions include but are not limited to:

- Proper LLLC formalities
- Document compliance with the LLC state record statute
- Adequate capitalization
- Hold LLC out to being in business
- Letterhead, business cards, telephone, fax - all in name of LLC
- Separate LLC bank account with "Member" or "Managing Member" on signature line
- File required tax returns reflecting LLC
- SMLLCs, show legal name of LLC - Schedule C, E, or F
- Get a federal identification number for the LLC
- Use LLC name on financial statements
- Bank loans should reflect LLC as borrower
- SMLLC - always use business name
- Have an operating agreement - review it at least annually

### **Conclusion**

**Limited Liability Companies have provided the tool that business owners have long desired:**

**Business simplicity with limited liability.**

**A knowledgeable, informed tax professional, knowing the needs, wishes and desires of their clients will determine if the LLC is the correct form of business and select the federal tax classification which most uniquely meets the needs of their clients.**



**The form you are looking for begins on the next page of this file.** Before viewing it, please see the important updated information below.

### **New Mailing Address**

The address for mailing Form 8832 has changed since the form was last published. The updated mailing addresses are shown below.

<b>Taxpayers in the States Below</b>	<b>SEND your form to...</b>
Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia, Wisconsin	Department of the Treasury Internal Revenue Service Kansas City, MO 64999
Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Hawaii, Idaho, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, Washington, Wyoming	Department of the Treasury Internal Revenue Service Ogden, UT 84201
A Foreign Country or U.S. Possession	Department of the Treasury Internal Revenue Service Ogden, UT 84201-0023

This update supplements this form's instructions. Filers should rely on this update for the changes described, which will be incorporated into the next revision of the form's instructions.

**Entity Classification Election**► Information about Form 8832 and its instructions is at [www.irs.gov/form8832](http://www.irs.gov/form8832).

<b>Type or Print</b>	Name of eligible entity making election	Employer identification number
	Number, street, and room or suite no. If a P.O. box, see instructions.	
	City or town, state, and ZIP code. If a foreign address, enter city, province or state, postal code and country. Follow the country's practice for entering the postal code.	

- Check if: ☐ Address change ☐ Late classification relief sought under Revenue Procedure 2009-41  
☐ Relief for a late change of entity classification election sought under Revenue Procedure 2010-32

**Part I Election Information****1 Type of election** (see instructions):

- a** ☐ Initial classification by a newly-formed entity. Skip lines 2a and 2b and go to line 3.  
**b** ☐ Change in current classification. Go to line 2a.

**2a** Has the eligible entity previously filed an entity election that had an effective date within the last 60 months?

- ☐ **Yes.** Go to line 2b.  
☐ **No.** Skip line 2b and go to line 3.

**2b** Was the eligible entity's prior election an initial classification election by a newly formed entity that was effective on the date of formation?

- ☐ **Yes.** Go to line 3.  
☐ **No.** Stop here. You generally are not currently eligible to make the election (see instructions).

**3** Does the eligible entity have more than one owner?

- ☐ **Yes.** You can elect to be classified as a partnership or an association taxable as a corporation. Skip line 4 and go to line 5.  
☐ **No.** You can elect to be classified as an association taxable as a corporation or to be disregarded as a separate entity. Go to line 4.

**4** If the eligible entity has only one owner, provide the following information:

- a** Name of owner ► \_\_\_\_\_  
**b** Identifying number of owner ► \_\_\_\_\_

**5** If the eligible entity is owned by one or more affiliated corporations that file a consolidated return, provide the name and employer identification number of the parent corporation:

- a** Name of parent corporation ► \_\_\_\_\_  
**b** Employer identification number ► \_\_\_\_\_

6 **Type of entity** (see instructions):

- a ☐ A domestic eligible entity electing to be classified as an association taxable as a corporation.
- b ☐ A domestic eligible entity electing to be classified as a partnership.
- c ☐ A domestic eligible entity with a single owner electing to be disregarded as a separate entity.
- d ☐ A foreign eligible entity electing to be classified as an association taxable as a corporation.
- e ☐ A foreign eligible entity electing to be classified as a partnership.
- f ☐ A foreign eligible entity with a single owner electing to be disregarded as a separate entity.

**7 If the eligible entity is created or organized in a foreign jurisdiction, provide the foreign country of organization ►**

**8 Election is to be effective beginning (month, day, year) (see instructions) . . . . . ► \_\_\_\_\_**

**9** Name and title of contact person whom the IRS may call for more information **10** Contact person's telephone number

Under penalties of perjury, I (we) declare that I (we) consent to the election of the above-named entity to be classified as indicated above, and that I (we) have examined this election and consent statement, and to the best of my (our) knowledge and belief, this election and consent statement are true, correct, and complete. If I am an officer, manager, or member signing for the entity, I further declare under penalties of perjury that I am authorized to make the election on its behalf.

[illegible]



**11** Provide the explanation as to why the entity classification election was not filed on time (see instructions).

[illegible]

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

### Future Developments

For the latest information about developments related to Form 8832 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/form8832](http://www.irs.gov/form8832).

### What's New

For entities formed on or after July 1, 2013, the Croatian Dionicko Drustvo will always be treated as a corporation. See Notice 2013-44, 2013-29, I.R.B. 62 for more information.

### Purpose of Form

An eligible entity uses Form 8832 to elect how it will be classified for federal tax purposes, as a corporation, a partnership, or an entity disregarded as separate from its owner. An eligible entity is classified for federal tax purposes under the default rules described below unless it files Form 8832 or Form 2553, Election by a Small Business Corporation. See *Who Must File* below.

The IRS will use the information entered on this form to establish the entity's filing and reporting requirements for federal tax purposes.

**Note.** An entity must file Form 2553 if making an election under section 1362(a) to be an S corporation.



*A new eligible entity should not file Form 8832 if it will be using its default classification (see Default Rules below).*

**Eligible entity.** An eligible entity is a business entity that is not included in items 1, or 3 through 9, under the definition of **corporation** provided under **Definitions**. Eligible entities include limited liability companies (LLCs) and partnerships.

Generally, corporations are not eligible entities. However, the following types of corporations are treated as eligible entities:

1. An eligible entity that previously elected to be an association taxable as a corporation by filing Form 8832. An entity that elects to be classified as a corporation by filing Form 8832 can make another election to change its classification (see the *60-month limitation rule* discussed below in the instructions for lines 2a and 2b).

2. A foreign eligible entity that became an association taxable as a corporation under the foreign default rule described below.

### Default Rules

**Existing entity default rule.** Certain domestic and foreign entities that were in existence before January 1, 1997, and have an established federal tax classification generally do not need to make an election to continue that classification. If an existing entity decides to change its classification, it may do so subject to the 60-month limitation rule. See the instructions for lines 2a and 2b. See Regulations sections 301.7701-3(b)(3) and 301.7701-3(h)(2) for more details.

**Domestic default rule.** Unless an election is made on Form 8832, a domestic eligible entity is:

1. A partnership if it has two or more members.

2. Disregarded as an entity separate from its owner if it has a single owner.

A change in the number of members of an eligible entity classified as an **association** (defined below) does not affect the entity's classification. However, an eligible entity classified as a partnership will become a disregarded entity when the entity's membership is reduced to one member and a disregarded entity will be classified as a partnership when the entity has more than one member.

**Foreign default rule.** Unless an election is made on Form 8832, a foreign eligible entity is:

1. A partnership if it has two or more members and at least one member does not have limited liability.

2. An association taxable as a corporation if all members have limited liability.

3. Disregarded as an entity separate from its owner if it has a single owner that does not have limited liability.

However, if a qualified foreign entity (as defined in section 3.02 of Rev. Proc. 2010-32) files a valid election to be classified as a partnership based on the reasonable assumption that it had two or more owners as of the effective date of the election, and the qualified entity is later determined to have a single owner, the IRS will deem the election to be an election to be classified as a disregarded entity provided:

1. The qualified entity's owner and purported owners file amended returns that are consistent with the treatment of the entity as a disregarded entity;

2. The amended returns are filed before the close of the period of limitations on assessments under section 6501(a) for the relevant tax year; and

3. The corrected Form 8832, with the box checked entitled: Relief for a late change of entity classification election sought under Revenue Procedure 2010-32, is filed and attached to the amended tax return.

Also, if the qualified foreign entity (as defined in section 3.02 of Rev. Proc. 2010-32) files a valid election to be classified as a disregarded entity based on the reasonable assumption that it had a single owner as of the effective date of the election, and the qualified entity is later determined to have two or more owners, the IRS will deem the election to be an election to be classified as a partnership provided:

1. The qualified entity files information returns and the actual owners file original or amended returns consistent with the treatment of the entity as a partnership;

2. The amended returns are filed before the close of the period of limitations on assessments under section 6501(a) for the relevant tax year; and

3. The corrected Form 8832, with the box checked entitled: Relief for a late change of

entity classification election sought under Revenue Procedure 2010-32, is filed and attached to the amended tax returns. See Rev. Proc. 2010-32, 2010-36 I.R.B. 320 for details.

### Definitions

**Association.** For purposes of this form, an association is an eligible entity taxable as a corporation by election or, for foreign eligible entities, under the default rules (see Regulations section 301.7701-3).

**Business entity.** A business entity is any entity recognized for federal tax purposes that is not properly classified as a trust under Regulations section 301.7701-4 or otherwise subject to special treatment under the Code regarding the entity's classification. See Regulations section 301.7701-2(a).

**Corporation.** For federal tax purposes, a corporation is any of the following:

1. A business entity organized under a federal or state statute, or under a statute of a federally recognized Indian tribe, if the statute describes or refers to the entity as incorporated or as a corporation, body corporate, or body politic.

2. An association (as determined under Regulations section 301.7701-3).

3. A business entity organized under a state statute, if the statute describes or refers to the entity as a joint-stock company or joint-stock association.

4. An insurance company.

5. A state-chartered business entity conducting banking activities, if any of its deposits are insured under the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1811 et seq., or a similar federal statute.

6. A business entity wholly owned by a state or any political subdivision thereof, or a business entity wholly owned by a foreign government or any other entity described in Regulations section 1.892-2T.

7. A business entity that is taxable as a corporation under a provision of the Code other than section 7701(a)(3).

8. A foreign business entity listed on page 7. See Regulations section 301.7701-2(b)(8) for any exceptions and inclusions to items on this list and for any revisions made to this list since these instructions were printed.

9. An entity created or organized under the laws of more than one jurisdiction (business entities with multiple charters) if the entity is treated as a corporation with respect to any one of the jurisdictions. See Regulations section 301.7701-2(b)(9) for examples.

**Disregarded entity.** A disregarded entity is an eligible entity that is treated as an entity not separate from its single owner for income tax purposes. A "disregarded entity" is treated as separate from its owner for:

- Employment tax purposes, effective for wages paid on or after January 1, 2009; and
- Excise taxes reported on Forms 720, 730, 2290, 11-C, or 8849, effective for excise taxes reported and paid after December 31, 2007.

See the employment tax and excise tax return instructions for more information.

**Limited liability.** A member of a foreign eligible entity has limited liability if the member has no personal liability for any debts of or claims against the entity by reason of being a member. This determination is based solely on the statute or law under which the entity is organized (and, if relevant, the entity's organizational documents). A member has personal liability if the creditors of the entity may seek satisfaction of all or any part of the debts or claims against the entity from the member as such. A member has personal liability even if the member makes an agreement under which another person (whether or not a member of the entity) assumes that liability or agrees to indemnify that member for that liability.

**Partnership.** A partnership is a business entity that has at least two members and is not a corporation as defined above under *Corporation*.

## Who Must File

File this form for an eligible entity that is one of the following:

- A domestic entity electing to be classified as an association taxable as a corporation.
- A domestic entity electing to change its current classification (even if it is currently classified under the default rule).
- A foreign entity that has more than one owner, all owners having limited liability, electing to be classified as a partnership.
- A foreign entity that has at least one owner that does not have limited liability, electing to be classified as an association taxable as a corporation.
- A foreign entity with a single owner having limited liability, electing to be an entity disregarded as an entity separate from its owner.
- A foreign entity electing to change its current classification (even if it is currently classified under the default rule).

Do not file this form for an eligible entity that is:

- Tax-exempt under section 501(a);
- A real estate investment trust (REIT), as defined in section 856; or
- Electing to be classified as an S corporation. An eligible entity that timely files Form 2553 to elect classification as an S corporation and meets all other requirements to qualify as an S corporation is deemed to have made an election under Regulations section 301.7701-3(c)(v) to be classified as an association taxable as a corporation.

All three of these entities are deemed to have made an election to be classified as an association.

## Effect of Election

The federal tax treatment of elective changes in classification as described in Regulations section 301.7701-3(g)(1) is summarized as follows:

- If an eligible entity classified as a partnership elects to be classified as an association, it is deemed that the partnership contributes all of its assets and liabilities to the association in exchange for stock in the association, and immediately thereafter, the partnership liquidates by distributing the stock of the association to its partners.
- If an eligible entity classified as an association elects to be classified as a partnership, it is deemed that the association distributes all of its assets and liabilities to its shareholders in liquidation of the association, and immediately thereafter, the shareholders contribute all of the distributed assets and liabilities to a newly formed partnership.
- If an eligible entity classified as an association elects to be disregarded as an entity separate from its owner, it is deemed that the association distributes all of its assets and liabilities to its single owner in liquidation of the association.
- If an eligible entity that is disregarded as an entity separate from its owner elects to be classified as an association, the owner of the eligible entity is deemed to have contributed all of the assets and liabilities of the entity to the association in exchange for the stock of the association.

**Note.** For information on the federal tax consequences of elective changes in classification, see Regulations section 301.7701-3(g).

## When To File

Generally, an election specifying an eligible entity's classification cannot take effect more than 75 days prior to the date the election is filed, nor can it take effect later than 12 months after the date the election is filed. An eligible entity may be eligible for late election relief in certain circumstances. For more information, see *Late Election Relief*, later.

## Where To File

File Form 8832 with the Internal Revenue Service Center for your state listed later.

In addition, attach a copy of Form 8832 to the entity's federal tax or information return for the tax year of the election. If the entity is not required to file a return for that year, a copy of its Form 8832 must be attached to the federal tax returns of all direct or indirect owners of the entity for the tax year of the owner that includes the date on which the election took effect. An indirect owner of the electing entity does not have to attach a copy of the Form 8832 to its tax return if an entity in which it has an interest is already filing a copy of the Form 8832 with its return. Failure to attach a copy of Form 8832 will not invalidate an otherwise valid election, but penalties may be assessed against persons who are required to, but do not, attach Form 8832.

Each member of the entity is required to file the member's return consistent with the entity election. Penalties apply to returns filed inconsistent with the entity's election.

**If the entity's principal business, office, or agency is located in:**

**Use the following Internal Revenue Service Center address:**

Connecticut, Delaware, District of Columbia, Florida, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, West Virginia, Wisconsin

Cincinnati, OH 45999

**If the entity's principal business, office, or agency is located in:**

**Use the following Internal Revenue Service Center address:**

Alabama, Alaska, Arizona, Arkansas, California, Colorado, Georgia, Hawaii, Idaho, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, Washington, Wyoming

Ogden, UT 84201

A foreign country or U.S. possession

Ogden, UT  
84201-0023

**Note.** Also attach a copy to the entity's federal income tax return for the tax year of the election.

## Acceptance or Nonacceptance of Election

The service center will notify the eligible entity at the address listed on Form 8832 if its election is accepted or not accepted. The entity should generally receive a determination on its election within 60 days after it has filed Form 8832.

Care should be exercised to ensure that the IRS receives the election. If the entity is not notified of acceptance or nonacceptance of its election within 60 days of the date of filing, take follow-up action by calling 1-800-829-0115, or by sending a letter to the service center to inquire about its status. Send any such letter by certified or registered mail via the U.S. Postal Service, or equivalent type of delivery by a designated private delivery service (see Notice 2004-83, 2004-52 I.R.B. 1030 (or its successor)).

If the IRS questions whether Form 8832 was filed, an acceptable proof of filing is:

- A certified or registered mail receipt (timely postmarked) from the U.S. Postal Service, or its equivalent from a designated private delivery service;
- Form 8832 with an accepted stamp;
- Form 8832 with a stamped IRS received date; or
- An IRS letter stating that Form 8832 has been accepted.

## Specific Instructions

**Name.** Enter the name of the eligible entity electing to be classified.

**Employer identification number (EIN).** Show the EIN of the eligible entity electing to be classified.



**Do not put "Applied For" on this line.**

**Note.** Any entity that has an EIN will retain that EIN even if its federal tax classification changes under Regulations section 301.7701-3.

If a disregarded entity's classification changes so that it becomes recognized as a partnership or association for federal tax purposes, and that entity had an EIN, then the entity must continue to use that EIN. If the entity did not already have its own EIN, then the entity must apply for an EIN and not use the identifying number of the single owner.

A foreign entity that makes an election under Regulations section 301.7701-3(c) and (d) must also use its own taxpayer identifying number. See sections 6721 through 6724 for penalties that may apply for failure to supply taxpayer identifying numbers.

If the entity electing to be classified using Form 8832 does not have an EIN, it must apply for one on Form SS-4, Application for Employer Identification Number. The entity must have received an EIN by the time Form 8832 is filed in order for the form to be processed. An election will not be accepted if the eligible entity does not provide an EIN.



**Do not apply for a new EIN for an existing entity that is changing its classification if the entity already has an EIN.**

**Address.** Enter the address of the entity electing a classification. All correspondence regarding the acceptance or nonacceptance of the election will be sent to this address. Include the suite, room, or other unit number after the street address. If the Post Office does not deliver mail to the street address and the entity has a P.O. box, show the box number instead of the street address. If the electing entity receives its mail in care of a third party (such as an accountant or an attorney), enter on the street address line "C/O" followed by the third party's name and street address or P.O. box.

**Address change.** If the eligible entity has changed its address since filing Form SS-4 or the entity's most recently-filed return (including a change to an "in care of" address), check the box for an address change.

**Late-classification relief sought under Revenue Procedure 2009-41.** Check the box if the entity is seeking relief under Rev. Proc. 2009-41, 2009-39 I.R.B. 439, for a late classification election. For more information, see *Late Election Relief*, later.

**Relief for a late change of entity classification election sought under Revenue Procedure 2010-32.** Check the box if the entity is seeking relief under Rev. Proc.

2010-32, 2010-36 I.R.B. 320. For more information, see *Foreign default rule*, earlier.

## Part I. Election Information

Complete Part I whether or not the entity is seeking relief under Rev. Proc. 2009-41 or Rev. Proc. 2010-32.

**Line 1.** Check box 1a if the entity is choosing a classification for the first time (i.e., the entity does not want to be classified under the applicable default classification). Do not file this form if the entity wants to be classified under the default rules.

Check box 1b if the entity is changing its current classification.

**Lines 2a and 2b. 60-month limitation rule.** Once an eligible entity makes an election to change its classification, the entity generally cannot change its classification by election again during the 60 months after the effective date of the election. However, the IRS may (by private letter ruling) permit the entity to change its classification by election within the 60-month period if more than 50% of the ownership interests in the entity, as of the effective date of the election, are owned by persons that did not own any interests in the entity on the effective date or the filing date of the entity's prior election.

**Note.** The 60-month limitation does not apply if the previous election was made by a newly formed eligible entity and was effective on the date of formation.

**Line 4.** If an eligible entity has only one owner, provide the name of its owner on line 4a and the owner's identifying number (social security number, or individual taxpayer identification number, or EIN) on line 4b. If the electing eligible entity is owned by an entity that is a disregarded entity or by an entity that is a member of a series of tiered disregarded entities, identify the first entity (the entity closest to the electing eligible entity) that is not a disregarded entity. For example, if the electing eligible entity is owned by disregarded entity A, which is owned by another disregarded entity B, and disregarded entity B is owned by partnership C, provide the name and EIN of partnership C as the owner of the electing eligible entity. If the owner is a foreign person or entity and does not have a U.S. identifying number, enter "none" on line 4b.

**Line 5.** If the eligible entity is owned by one or more members of an affiliated group of corporations that file a consolidated return, provide the name and EIN of the parent corporation.

**Line 6.** Check the appropriate box if you are changing a current classification (no matter how achieved), or are electing out of a default classification. Do not file this form if you fall within a default classification that is the desired classification for the new entity.

**Line 7.** If the entity making the election is created or organized in a foreign jurisdiction, enter the name of the foreign country in which it is organized. This information must be provided even if the entity is also organized under domestic law.

**Line 8.** Generally, the election will take effect on the date you enter on line 8 of this form,

or on the date filed if no date is entered on line 8. An election specifying an entity's classification for federal tax purposes can take effect no more than 75 days prior to the date the election is filed, nor can it take effect later than 12 months after the date on which the election is filed. If line 8 shows a date more than 75 days prior to the date on which the election is filed, the election will default to 75 days before the date it is filed. If line 8 shows an effective date more than 12 months from the filing date, the election will take effect 12 months after the date the election is filed.

**Consent statement and signature(s).** Form 8832 must be signed by:

1. Each member of the electing entity who is an owner at the time the election is filed; or

2. Any officer, manager, or member of the electing entity who is authorized (under local law or the organizational documents) to make the election. The elector represents to having such authorization under penalties of perjury.

If an election is to be effective for any period prior to the time it is filed, each person who was an owner between the date the election is to be effective and the date the election is filed, and who is not an owner at the time the election is filed, must sign.

If you need a continuation sheet or use a separate consent statement, attach it to Form 8832. The separate consent statement must contain the same information as shown on Form 8832.

**Note.** Do not sign the copy that is attached to your tax return.

## Part II. Late Election Relief

Complete Part II only if the entity is requesting late election relief under Rev. Proc. 2009-41.

An eligible entity may be eligible for late election relief under Rev. Proc. 2009-41, 2009-39 I.R.B. 439, if each of the following requirements is met.

1. The entity failed to obtain its requested classification as of the date of its formation (or upon the entity's classification becoming relevant) or failed to obtain its requested change in classification solely because Form 8832 was not filed timely.

2. Either:

a. The entity has not filed a federal tax or information return for the first year in which the election was intended because the due date has not passed for that year's federal tax or information return; or

b. The entity has timely filed all required federal tax returns and information returns (or if not timely, within 6 months after its due date, excluding extensions) consistent with its requested classification for all of the years the entity intended the requested election to be effective and no inconsistent tax or information returns have been filed by or with respect to the entity during any of the tax years. If the eligible entity is not required to file a federal tax return or information return, each affected person who is required to file a federal tax return or information return must have timely filed all such returns (or if not timely, within 6 months after its due date, excluding extensions) consistent with the

entity's requested classification for all of the years the entity intended the requested election to be effective and no inconsistent tax or information returns have been filed during any of the tax years.

3. The entity has reasonable cause for its failure to timely make the entity classification election.

4. Three years and 75 days from the requested effective date of the eligible entity's classification election have not passed.

**Affected person.** An affected person is either:

- with respect to the effective date of the eligible entity's classification election, a person who would have been required to attach a copy of the Form 8832 for the eligible entity to its federal tax or information return for the tax year of the person which includes that date; or

- with respect to any subsequent date after the entity's requested effective date of the classification election, a person who would have been required to attach a copy of the Form 8832 for the eligible entity to its federal tax or information return for the person's tax year that includes that subsequent date had the election first become effective on that subsequent date.

For details on the requirement to attach a copy of Form 8832, see Rev. Proc. 2009-41 and the instructions under *Where To File*.

To obtain relief, file Form 8832 with the applicable IRS service center listed in *Where To File*, earlier, within 3 years and 75 days from the requested effective date of the eligible entity's classification election.

If Rev. Proc. 2009-41 does not apply, an entity may seek relief for a late entity election by requesting a private letter ruling and paying a user fee in accordance with Rev. Proc. 2013-1, 2013-1 I.R.B. 1 (or its successor).

**Line 11.** Explain the reason for the failure to file a timely entity classification election.

**Signatures.** Part II of Form 8832 must be signed by an authorized representative of the eligible entity and each affected person. See *Affected Persons*, earlier. The individual or individuals who sign the declaration must have personal knowledge of the facts and circumstances related to the election.

**Foreign Entities Classified as Corporations for Federal Tax Purposes:**

**American Samoa**—Corporation  
**Argentina**—Sociedad Anonima  
**Australia**—Public Limited Company  
**Austria**—Aktiengesellschaft  
**Barbados**—Limited Company  
**Belgium**—Societe Anonyme  
**Belize**—Public Limited Company  
**Bolivia**—Sociedad Anonima  
**Brazil**—Sociedade Anonima  
**Bulgaria**—Aktisionerno Druzhestvo  
**Canada**—Corporation and Company  
**Chile**—Sociedad Anonima  
**People's Republic of China**—Gufen Youxian Gongsi

**Republic of China (Taiwan)**—Ku-fen Yu-hsien Kung-szu  
**Colombia**—Sociedad Anonima  
**Costa Rica**—Sociedad Anonima  
**Croatia**—Dionicko Društvo  
**Cyprus**—Public Limited Company  
**Czech Republic**—Akciova Spolecnost  
**Denmark**—Aktieselskab  
**Ecuador**—Sociedad Anonima or Compania Anonima  
**Egypt**—Sharikat Al-Mossamaham  
**El Salvador**—Sociedad Anonima  
**Estonia**—Aktiaselts  
**European Economic Area/European Union**—Societas Europaea  
**Finland**—Julkinen Osakeyhtio/Publikt Aktiebolag  
**France**—Societe Anonyme  
**Germany**—Aktiengesellschaft  
**Greece**—Anonymos Etairia  
**Guam**—Corporation  
**Guatemala**—Sociedad Anonima  
**Guyana**—Public Limited Company  
**Honduras**—Sociedad Anonima  
**Hong Kong**—Public Limited Company  
**Hungary**—Reszvenytarsasag  
**Iceland**—Hlutafelag  
**India**—Public Limited Company  
**Indonesia**—Perseroan Terbuka  
**Ireland**—Public Limited Company  
**Israel**—Public Limited Company  
**Italy**—Societa per Azioni  
**Jamaica**—Public Limited Company  
**Japan**—Kabushiki Kaisha  
**Kazakhstan**—Ashyk Aktisionerlik Kogham  
**Republic of Korea**—Chusik Hoesa  
**Latvia**—Akciju Sabiedriba  
**Liberia**—Corporation  
**Liechtenstein**—Aktiengesellschaft  
**Lithuania**—Akciine Bendroves  
**Luxembourg**—Societe Anonyme  
**Malaysia**—Berhad  
**Malta**—Public Limited Company  
**Mexico**—Sociedad Anonima  
**Morocco**—Societe Anonyme  
**Netherlands**—Naamloze Vennootschap  
**New Zealand**—Limited Company  
**Nicaragua**—Compania Anonima  
**Nigeria**—Public Limited Company  
**Northern Mariana Islands**—Corporation  
**Norway**—Allment Aksjeselskap  
**Pakistan**—Public Limited Company  
**Panama**—Sociedad Anonima  
**Paraguay**—Sociedad Anonima  
**Peru**—Sociedad Anonima  
**Philippines**—Stock Corporation  
**Poland**—Spolka Akcyjna  
**Portugal**—Sociedade Anonima

**Puerto Rico**—Corporation  
**Romania**—Societe pe Actiuni  
**Russia**—Otkrytoye Aktsionemoy Obshchestvo  
**Saudi Arabia**—Sharikat Al-Mossamaham  
**Singapore**—Public Limited Company  
**Slovak Republic**—Akciova Spolecnost  
**Slovenia**—Delniska Druzba  
**South Africa**—Public Limited Company  
**Spain**—Sociedad Anonima  
**Surinam**—Naamloze Vennootschap  
**Sweden**—Publika Aktiebolag  
**Switzerland**—Aktiengesellschaft  
**Thailand**—Borisat Chamkad (Mahachon)  
**Trinidad and Tobago**—Limited Company  
**Tunisia**—Societe Anonyme  
**Turkey**—Anonim Sirket  
**Ukraine**—Aktisionerne Tovaristvo Vidkritogo Tipu  
**United Kingdom**—Public Limited Company  
**United States Virgin Islands**—Corporation  
**Uruguay**—Sociedad Anonima  
**Venezuela**—Sociedad Anonima or Compania Anonima



See Regulations section 301.7701-2(b)(8) for any exceptions and inclusions to items on this list and for any revisions made to this list since these instructions were printed.

## Paperwork Reduction Act Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

**Recordkeeping** . . . . . 2 hr., 46 min.

**Learning about the law or the form** . . . . . 3 hr., 48 min.

**Preparing and sending the form to the IRS** . . . . . 36 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Forms and Publications, SE:W:CAR:MP:TFP, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the form to this address. Instead, see *Where To File* above.

**Note: *Form 2553 begins on the next page.***

**Where To File Form 2553 after 6/17/19**

<b>If the corporation's principal business, office, or agency is located in</b>	<b>Use the following address or fax number</b>
Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin	Department of the Treasury Internal Revenue Service Kansas City, MO 64999  Fax # <b>855-887-7734</b>
Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Hawaii, Idaho, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming	Department of the Treasury Internal Revenue Service Ogden, UT 84201  Fax # <b>855-214-7520</b>

Name	Employer identification number
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**Part I Election Information** (continued) **Note:** If you need more rows, use additional copies of page 2.

J Name and address of each shareholder or former shareholder required to consent to the election. (see instructions)	K <b>Shareholder's Consent Statement</b> Under penalties of perjury, I declare that I consent to the election of the above-named corporation (entity) to be an S corporation under section 1362(a) and that I have examined this consent statement, including accompanying documents, and, to the best of my knowledge and belief, the election contains all the relevant facts relating to the election, and such facts are true, correct, and complete. I understand my consent is binding and may not be withdrawn after the corporation (entity) has made a valid election. If seeking relief for a late filed election, I also declare under penalties of perjury that I have reported my income on all affected returns consistent with the S corporation election for the year for which the election should have been filed (see beginning date entered on line E) and for all subsequent years.		L Stock owned or percentage of ownership (see instructions)		M Social security number or employer identification number (see instructions)	N Shareholder's tax year ends (month and day)
	Signature	Date	Number of shares or percentage of ownership	Date(s) acquired		

Name	Employer identification number
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**Part II Selection of Fiscal Tax Year** (see instructions)

**Note:** All corporations using this part must complete item O and item P, Q, or R.

**O** Check the applicable box to indicate whether the corporation is:

1. ☐ A new corporation **adopting** the tax year entered in item F, Part I.
2. ☐ An existing corporation **retaining** the tax year entered in item F, Part I.
3. ☐ An existing corporation **changing** to the tax year entered in item F, Part I.

**P** Complete item P if the corporation is using the automatic approval provisions of Rev. Proc. 2006-46, 2006-45 I.R.B. 859, to request (1) a natural business year (as defined in section 5.07 of Rev. Proc. 2006-46) or (2) a year that satisfies the ownership tax year test (as defined in section 5.08 of Rev. Proc. 2006-46). Check the applicable box below to indicate the representation statement the corporation is making.

1. Natural Business Year ► ☐ I represent that the corporation is adopting, retaining, or changing to a tax year that qualifies as its natural business year (as defined in section 5.07 of Rev. Proc. 2006-46) and has attached a statement showing separately for each month the gross receipts for the most recent 47 months. See instructions. I also represent that the corporation is not precluded by section 4.02 of Rev. Proc. 2006-46 from obtaining automatic approval of such adoption, retention, or change in tax year.

2. Ownership Tax Year ► ☐ I represent that shareholders (as described in section 5.08 of Rev. Proc. 2006-46) holding more than half of the shares of the stock (as of the first day of the tax year to which the request relates) of the corporation have the same tax year or are concurrently changing to the tax year that the corporation adopts, retains, or changes to per item F, Part I, and that such tax year satisfies the requirement of section 4.01(3) of Rev. Proc. 2006-46. I also represent that the corporation is not precluded by section 4.02 of Rev. Proc. 2006-46 from obtaining automatic approval of such adoption, retention, or change in tax year.

**Note:** If you do not use item P and the corporation wants a fiscal tax year, complete either item Q or R below. Item Q is used to request a fiscal tax year based on a business purpose and to make a back-up section 444 election. Item R is used to make a regular section 444 election.

**Q** Business Purpose—To request a fiscal tax year based on a business purpose, check box Q1. See instructions for details including payment of a user fee. You may also check box Q2 and/or box Q3.

1. Check here ► ☐ if the fiscal year entered in item F, Part I, is requested under the prior approval provisions of Rev. Proc. 2002-39, 2002-22 I.R.B. 1046. Attach to Form 2553 a statement describing the relevant facts and circumstances and, if applicable, the gross receipts from sales and services necessary to establish a business purpose. See the instructions for details regarding the gross receipts from sales and services. If the IRS proposes to disapprove the requested fiscal year, do you want a conference with the IRS National Office?

☐ Yes ☐ No

2. Check here ► ☐ to show that the corporation intends to make a back-up section 444 election in the event the corporation's business purpose request is not approved by the IRS. See instructions for more information.

3. Check here ► ☐ to show that the corporation agrees to adopt or change to a tax year ending December 31 if necessary for the IRS to accept this election for S corporation status in the event (1) the corporation's business purpose request is not approved and the corporation makes a back-up section 444 election, but is ultimately not qualified to make a section 444 election, or (2) the corporation's business purpose request is not approved and the corporation did not make a back-up section 444 election.

**R** Section 444 Election—To make a section 444 election, check box R1. You may also check box R2.

1. Check here ► ☐ to show that the corporation will make, if qualified, a section 444 election to have the fiscal tax year shown in item F, Part I. To make the election, you must complete **Form 8716, Election To Have a Tax Year Other Than a Required Tax Year**, and either attach it to Form 2553 or file it separately.

2. Check here ► ☐ to show that the corporation agrees to adopt or change to a tax year ending December 31 if necessary for the IRS to accept this election for S corporation status in the event the corporation is ultimately not qualified to make a section 444 election.



Name	Employer identification number
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**Part III Qualified Subchapter S Trust (QSST) Election Under Section 1361(d)(2)\*** **Note:** If you are making more than one QSST election, use additional copies of page 4.

Income beneficiary's name and address	Social security number
Trust's name and address	Employer identification number

Date on which stock of the corporation was transferred to the trust (month, day, year) . . . . . ►

In order for the trust named above to be a QSST and thus a qualifying shareholder of the S corporation for which this Form 2553 is filed, I hereby make the election under section 1361(d)(2). Under penalties of perjury, I certify that the trust meets the definitional requirements of section 1361(d)(3) and that all other information provided in Part III is true, correct, and complete.

Signature of income beneficiary or signature and title of legal representative or other qualified person making the election	Date
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\*Use Part III to make the QSST election only if stock of the corporation has been transferred to the trust on or before the date on which the corporation makes its election to be an S corporation. The QSST election must be made and filed separately if stock of the corporation is transferred to the trust **after** the date on which the corporation makes the S election.

**Part IV Late Corporate Classification Election Representations (see instructions)**

If a late entity classification election was intended to be effective on the same date that the S corporation election was intended to be effective, relief for a late S corporation election must also include the following representations.

- 1 The requesting entity is an eligible entity as defined in Regulations section 301.7701-3(a);
- 2 The requesting entity intended to be classified as a corporation as of the effective date of the S corporation status;
- 3 The requesting entity fails to qualify as a corporation solely because Form 8832, Entity Classification Election, was not timely filed under Regulations section 301.7701-3(c)(1)(i), or Form 8832 was not deemed to have been filed under Regulations section 301.7701-3(c)(1)(v)(C);
- 4 The requesting entity fails to qualify as an S corporation on the effective date of the S corporation status solely because the S corporation election was not timely filed pursuant to section 1362(b); and
- 5a The requesting entity timely filed all required federal tax returns and information returns consistent with its requested classification as an S corporation for all of the years the entity intended to be an S corporation and no inconsistent tax or information returns have been filed by or with respect to the entity during any of the tax years, or
- b The requesting entity has not filed a federal tax or information return for the first year in which the election was intended to be effective because the due date has not passed for that year's federal tax or information return.

# Application for Employer Identification Number

(For use by employers, corporations, partnerships, trusts, estates, churches, government agencies, Indian tribal entities, certain individuals, and others.)

See separate instructions for each line. Keep a copy for your records.  
Go to [www.irs.gov/FormSS4](http://www.irs.gov/FormSS4) for instructions and the latest information.

OMB No. 1545-0003

EIN

Type or print clearly.

1	Legal name of entity (or individual) for whom the EIN is being requested		
2	Trade name of business (if different from name on line 1)	3	Executor, administrator, trustee, "care of" name
4a	Mailing address (room, apt., suite no. and street, or P.O. box)	5a	Street address (if different) (Don't enter a P.O. box.)
4b	City, state, and ZIP code (if foreign, see instructions)	5b	City, state, and ZIP code (if foreign, see instructions)
6	County and state where principal business is located		
7a	Name of responsible party		7b SSN, ITIN, or EIN
8a	Is this application for a limited liability company (LLC) (or a foreign equivalent)? <input type="checkbox"/> Yes <input type="checkbox"/> No		8b If 8a is "Yes," enter the number of LLC members
8c	If 8a is "Yes," was the LLC organized in the United States? <input type="checkbox"/> Yes <input type="checkbox"/> No		
9a	Type of entity (check only one box). <b>Caution:</b> If 8a is "Yes," see the instructions for the correct box to check.		
	<input type="checkbox"/> Sole proprietor (SSN) <input type="checkbox"/> Estate (SSN of decedent)		
	<input type="checkbox"/> Partnership <input type="checkbox"/> Plan administrator (TIN)		
	<input type="checkbox"/> Corporation (enter form number to be filed) <input type="checkbox"/> Trust (TIN of grantor)		
	<input type="checkbox"/> Personal service corporation <input type="checkbox"/> Military/National Guard <input type="checkbox"/> State/local government		
	<input type="checkbox"/> Church or church-controlled organization <input type="checkbox"/> Farmers' cooperative <input type="checkbox"/> Federal government		
	<input type="checkbox"/> Other nonprofit organization (specify) <input type="checkbox"/> REMIC <input type="checkbox"/> Indian tribal governments/enterprises		
	<input type="checkbox"/> Other (specify) <input type="checkbox"/> Group Exemption Number (GEN) if any		
9b	If a corporation, name the state or foreign country (if applicable) where incorporated	State	Foreign country
10	Reason for applying (check only one box)		
	<input type="checkbox"/> Started new business (specify type)		
	<input type="checkbox"/> Banking purpose (specify purpose)		
	<input type="checkbox"/> Changed type of organization (specify new type)		
	<input type="checkbox"/> Purchased going business		
	<input type="checkbox"/> Hired employees (Check the box and see line 13.)		
	<input type="checkbox"/> Created a trust (specify type)		
	<input type="checkbox"/> Compliance with IRS withholding regulations		
	<input type="checkbox"/> Created a pension plan (specify type)		
	<input type="checkbox"/> Other (specify)		
11	Date business started or acquired (month, day, year). See instructions.		
12	Closing month of accounting year		
13	Highest number of employees expected in the next 12 months (enter -0- if none). If no employees expected, skip line 14.		
	Agricultural	Household	Other
14	If you expect your employment tax liability to be \$1,000 or less in a full calendar year and want to file Form 944 annually instead of Forms 941 quarterly, check here. (Your employment tax liability will generally be \$1,000 or less if you expect to pay \$5,000 or less, \$6,536 or less if you're in a U.S. territory, in total wages.) If you don't check this box, you must file Form 941 for every quarter. <input type="checkbox"/>		
15	First date wages or annuities were paid (month, day, year). <b>Note:</b> If applicant is a withholding agent, enter date income will first be paid to nonresident alien (month, day, year)		
16	Check one box that best describes the principal activity of your business.		
	<input type="checkbox"/> Construction	<input type="checkbox"/> Rental & leasing	<input type="checkbox"/> Transportation & warehousing
	<input type="checkbox"/> Health care & social assistance	<input type="checkbox"/> Accommodation & food service	<input type="checkbox"/> Wholesale—agent/broker
	<input type="checkbox"/> Real estate	<input type="checkbox"/> Manufacturing	<input type="checkbox"/> Finance & insurance
	<input type="checkbox"/> Wholesale—other	<input type="checkbox"/> Retail	<input type="checkbox"/> Other (specify)
17	Indicate principal line of merchandise sold, specific construction work done, products produced, or services provided.		

18 Has the applicant entity shown on line 1 ever applied for and received an EIN? ☐ Yes ☐ No  
If "Yes," write previous EIN here

Third Party Designee	Complete this section only if you want to authorize the named individual to receive the entity's EIN and answer questions about the completion of this form.	
	Designee's name	Designee's telephone number (include area code)
	Address and ZIP code	Designee's fax number (include area code)
	Applicant's telephone number (include area code)	
Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, it is true, correct, and complete.		Applicant's fax number (include area code)
Name and title (type or print clearly)		

Signature

Date

# Instructions for Form SS-4



Department of the Treasury  
Internal Revenue Service

(Rev. December 2023)

## Application for Employer Identification Number (EIN)

Section references are to the Internal Revenue Code unless otherwise noted.

## General Instructions

Use these instructions to complete Form SS-4, Application for Employer Identification Number (EIN). Also, see *Do I Need an EIN?* on page 2 of Form SS-4.

## Future Developments

For the latest information related to Form SS-4 and its instructions, such as legislation enacted after they were published, go to [IRS.gov/FormSS4](https://www.irs.gov/FormSS4).

## What's New

**Line 14.** Form SS-4, line 14, now reflects the ceiling for wages paid by employers in U.S. territories electing to file Form 944. This information has been available in the instructions for [Line 14](#).

**Indian tribal governments/enterprises.** We added guidance to [Line 1](#) and [Line 9a](#), later, for Indian tribal governments, and for certain tribal enterprises that are not recognized as separate entities for federal tax purposes, under Regulations section 301.7701-1(a)(3).

**Forms SS-4 and SS-4(sp) absorb Form SS-4PR.** Form SS-4PR, Solicitud de Número de Identificación Patronal, will no longer be available after 2023. Instead, if you are an employer in Puerto Rico, you will file Form SS-4. If you prefer your form and instructions in Spanish, you can file new Form SS-4 (sp), Solicitud de Número de Identificación del Empleador (EIN).

**Pub. 51 and Pub. 80 rolled into Pub. 15, plus new Pub. 15(sp).** Pub. 51, Agricultural Employer's Tax Guide, and Pub. 80, Federal Tax Guide for Employers in the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, will no longer be available after 2023. Instead, information specific to agricultural employers and employers in the U.S. territories will be included in Pub. 15, Employer's Tax Guide, beginning with the Pub. 15 for use in 2024. Beginning in 2024, there will be a new Pub. 15 (sp) that is a Spanish-language version of Pub. 15.

## Purpose of Form

Use Form SS-4 to apply for an EIN. An EIN is a 9-digit number (for example, 12-3456789) assigned to sole proprietors, corporations, partnerships, estates, trusts, and other entities for tax filing and reporting purposes. The information you provide on this form will establish your business tax account.



See Form SS-4SP (Spanish) for the Spanish-language version of Form SS-4.



An EIN is for use in connection with your business activities only. Don't use your EIN in place of your social security number (SSN) or individual taxpayer identification number (ITIN).

## Reminders

**Apply for an EIN online.** For applicants in the U.S. or U.S. territories, you can apply for and receive an EIN free of charge on [IRS.gov](https://www.irs.gov). See [How To Apply for an EIN](#), later.

**Keep Form SS-4 information current.** Use Form 8822-B to report changes to your responsible party, address or location. Changes in responsible parties must be reported to the IRS within 60 days.

**File only one Form SS-4.** Generally, a sole proprietor should file only one Form SS-4 and needs only one EIN, regardless of the number of businesses operated as a sole proprietorship or trade names under which a business operates. However, if a sole proprietorship incorporates or enters into a partnership, a new EIN is required. Also, each corporation in an affiliated group must have its own EIN.

**EIN applied for, but not received.** If you don't have an EIN by the time a return is due, write "Applied For" and the date you applied in the space shown for the number. Don't show your SSN as an EIN on returns. If you don't have an EIN by the time a tax deposit is due, send your payment to the Internal Revenue Service Center for your filing area as shown in the instructions for the form that you are filing. Make your check or money order payable to the "United States Treasury" and show your name (as shown on Form SS-4), address, type of tax, period covered, and date you applied for an EIN.



For information about EINs and federal tax deposits, see Pub. 15.



To ensure fair and equitable treatment for all taxpayers, EIN issuances are limited to one per responsible party, per day. For trusts, the limitation is applied to the grantor, owner, or trustor. For estates, the limitation is applied to the decedent (decedent estate) or the debtor (bankruptcy estate). This limitation is applicable to all requests for EINs whether online, telephone, fax, or mail.

## How To Apply for an EIN

You can apply for an EIN online (only for applicants in the U.S. or U.S. territories), by telephone (only for applicants outside of the U.S. or U.S. territories), by fax, or by mail, depending on how soon you need to use the EIN. Use only one method for each entity so you don't receive more than one EIN for an entity.

**Apply for an EIN online.** If you have a legal residence, principal place of business, or principal office or agency in the U.S. or U.S. territories, you can receive an EIN online and use it immediately to file a return or make a payment. Go to the IRS website at [IRS.gov/EIN](https://www.irs.gov/EIN).

The principal officer, general partner, grantor, owner, trustor, etc., must have a valid taxpayer identification number (SSN, EIN, or ITIN) in order to use the online application. Taxpayers who apply online have an option to view, print, and save their EIN assignment notice at the end of the session. Authorized third-party designees, see [Line 18](#), later.



If you have NO legal residence, principal place of business, or principal office or agency in the U.S. or U.S. territories, you can't use the online application to obtain an EIN. Please use one of the other methods to apply.

**Apply by telephone—option available to international applicants only.** If you have NO legal residence, principal place of business, or principal office or agency in the U.S. or U.S. territories, you may call 267-941-1099 (not a toll-free number), 6:00 a.m. to 11:00 p.m. (Eastern time), Monday through Friday, to obtain an EIN.

The person making the call must be authorized to receive the EIN and answer questions concerning Form SS-4. Complete the Third Party Designee section only if you want to authorize the named

individual to receive the entity's EIN and answer questions about the completion of Form SS-4. The designee's authority terminates at the time the EIN is assigned and released to the designee. You must complete the signature area for the authorization to be valid.

**Note.** It will be helpful to complete Form SS-4 before contacting the IRS. An IRS representative will use the information from Form SS-4 to establish your account and assign you an EIN. Write the number you're given on the upper right corner of the form and sign and date it. Keep this copy for your records.

If requested by an IRS representative, mail or fax the signed Form SS-4 (including any third-party designee authorization) within 24 hours to the IRS address provided by the IRS representative.



**The IRS no longer issues EINs by telephone for domestic taxpayers. Only international applicants can receive an EIN by telephone.**

**Apply by fax.** Under the Fax-TIN program, you can receive your EIN by fax generally within 4 business days. Complete and fax Form SS-4 to the IRS using the appropriate fax number listed in Where To File or Fax, later. A long-distance charge to callers outside of the local calling area will apply. Fax-TIN numbers can only be used to apply for an EIN. The numbers may change without notice. Fax-TIN is available 24 hours a day, 7 days a week.

Be sure to provide your fax number so the IRS can fax the EIN back to you.

**Apply by mail.** Complete Form SS-4 at least 4 to 5 weeks before you will need an EIN. Sign and date the application and mail it to the appropriate address listed in Where To File or Fax, later. You will receive your EIN in the mail in approximately 4 weeks. Also, see Third-Party Designee, later.

Call 800-829-4933 to verify a number or to ask about the status of an application by mail.



**Form SS-4 downloaded from IRS.gov is a fillable form and, when completed, is suitable for faxing or mailing to the IRS.**

## Where To File or Fax

If you have a principal place of business, office or agency, or legal residence in the case of an individual, located in:	File or fax to:
One of the 50 states or the District of Columbia	Internal Revenue Service Attn: EIN Operation Cincinnati, OH 45999 Fax: 855-641-6935
If you have no legal residence, principal office, or principal agency in any state or the District of Columbia (international/U.S. territories)	Internal Revenue Service Attn: EIN International Operation Cincinnati, OH 45999 Fax: 855-215-1627 (within the U.S.) Fax: 304-707-9471 (outside the U.S.)

## How To Get Tax Help, Forms, and Publications



**Tax help for your business is available at [IRS.gov/Businesses](https://www.irs.gov/businesses).**

You can download or print all of the forms and publications you may need on [IRS.gov/FormsPubs](https://www.irs.gov/forms-pubs). Otherwise, you can go to [IRS.gov/OrderForms](https://www.irs.gov/orderforms) to place an order and have forms mailed to you. You should receive your order within 15 business days if the items are available.

## Related Forms and Publications

The following forms and instructions may be useful to filers of Form SS-4.

- Form 11-C, Occupational Tax and Registration Return for Wagering.
- Form 637, Application for Registration (For Certain Excise Tax Activities).
- Form 720, Quarterly Federal Excise Tax Return.
- Form 730, Monthly Tax Return for Wagers.
- Form 941, Employer's QUARTERLY Federal Tax Return.
- Form 944, Employer's ANNUAL Federal Tax Return.
- Form 990-T, Exempt Organization Business Income Tax Return (and Proxy Tax Under Section 6033(e)).
- Instructions for Form 990-T, Exempt Organization Business Income Tax Return.
- Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.
- Form 1024, Application for Recognition of Exemption Under Section 501(a).
- Schedule C (Form 1040), Profit or Loss From Business (Sole Proprietorship).
- Schedule F (Form 1040), Profit or Loss From Farming.
- Instructions for Form 1041 and Schedules A, B, G, J, and K-1, U.S. Income Tax Return for Estates and Trusts.
- Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.
- Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding.
- Instructions for Form 1065, U.S. Return of Partnership Income.
- Instructions for Form 1066, U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return.
- Instructions for Form 1120, U.S. Corporation Income Tax Return.
- Form 1120-S, U.S. Income Tax Return for an S Corporation.
- Form 2290, Heavy Highway Vehicle Use Tax Return.
- Form 2553, Election by a Small Business Corporation.
- Form 2848, Power of Attorney and Declaration of Representative.
- Form 8821, Tax Information Authorization.
- Form 8822-B, Change of Address or Responsible Party — Business.
- Form 8832, Entity Classification Election.
- Form 8849, Claim for Refund of Excise Taxes.

For more information about filing Form SS-4 and related issues, see:

- Pub. 15, Employer's Tax Guide.
- Pub. 538, Accounting Periods and Methods.
- Pub. 542, Corporations.
- Pub. 557, Tax-Exempt Status for Your Organization.
- Pub. 583, Starting a Business and Keeping Records.
- Pub. 966, Electronic Choices to Pay All Your Federal Taxes.
- Pub. 1635, Understanding Your EIN.

## Specific Instructions

Follow the instructions for each line to expedite processing and to avoid unnecessary IRS requests for additional information. Generally, enter "N/A" on the lines that don't apply.

**Line 1. Legal name of entity (or individual) for whom the EIN is being requested.** Enter the legal name of the entity (or individual) applying for the EIN exactly as it appears on the social security card, charter, or other applicable legal document. An entry is required.

**Individuals.** Enter your first name, middle initial, and last name. If you're a sole proprietor, enter your individual name, not your business name. Enter your business name on line 2. Don't use abbreviations or nicknames on line 1.

**Trusts.** Enter the name of the trust as it appears on the trust instrument.

**Estate of a decedent.** Enter the name of the estate. For an estate that has no legal name, enter the name of the decedent followed by "Estate."

**Partnerships.** Enter the legal name of the partnership as it appears in the partnership agreement.

**Corporations.** Enter the corporate name as it appears in the corporate charter or other legal document creating it.

**Plan administrators.** Enter the name of the plan administrator. A plan administrator who already has an EIN should use that number.

**Indian tribal governments/enterprises.** Enter the legal name of the Indian tribal government or tribal enterprise applying for the EIN.

**Line 2. Trade name of business.** Enter the trade name of the business if different from the legal name. The trade name is the "doing business as" (DBA) name.



**Use the full legal name shown on line 1 on all tax returns filed for the entity. (However, if you enter a trade name on line 2 and choose to use the trade name instead of the legal name, enter the trade name on all returns you file.) To prevent processing delays and errors, use only the legal name (or the trade name) on all tax returns.**

**Line 3. Executor, administrator, trustee, "care of" name.** For trusts, enter the name of the trustee. For estates, enter the name of the executor, administrator, personal representative, or other fiduciary. If the entity applying has a designated person to receive tax information, enter that person's name as the "care of" person. Enter the individual's first name, middle initial, and last name.

**Lines 4a–4b. Mailing address.** Enter the mailing address for the entity's correspondence. If the entity's address is outside the United States or its territories, you must enter the city, province or state, postal code, and the name of the country. Don't abbreviate the country name. If line 3 is completed, enter the address for the executor, trustee, or "care of" person. Generally, this address will be used on all tax returns.

If the entity is filing Form SS-4 only to obtain an EIN for Form 8832, use the same address where you would like to have the acceptance or nonacceptance letter sent.



**File Form 8822-B to report any subsequent changes to the entity's mailing address.**

**Lines 5a–5b. Street address.** Provide the entity's physical address only if different from its mailing address shown on lines 4a–4b. Don't enter a P.O. box number here. If the entity's address is outside the United States or its territories, you must enter the city, province or state, postal code, and the name of the country. Don't abbreviate the country name.

**Line 6. County and state where principal business is located.** Enter the entity's primary physical location.

**Lines 7a–7b. Name of responsible party.** Enter the full name (first name, middle initial, last name, if applicable) and SSN, ITIN, or EIN of the entity's responsible party.

**Responsible party defined.** The "responsible party" is the person who ultimately owns or controls the entity or who exercises ultimate effective control over the entity. The person identified as the responsible party should have a level of control over, or entitlement to, the funds or assets in the entity that, as a practical matter, enables the person, directly or indirectly, to control, manage, or direct the entity and the disposition of its funds and assets. **Unless the applicant is a government entity, the responsible party must be an individual (that is, a natural person), not an entity.**

- For entities with shares or interests traded on a public exchange, or which are registered with the Securities and Exchange Commission, "responsible party" is (a) the principal officer, if the entity is a corporation; or (b) a general partner, if a partnership. The general requirement that the responsible party be an individual applies to these entities. For example, if a corporation is the general partner of a publicly traded partnership for which Form SS-4 is filed, then the responsible party of the partnership is the principal officer of the corporation.

- For tax-exempt organizations, the responsible party is generally the same as the "principal officer" as defined in the Form 990 instructions.

- For government entities, the responsible party is generally the agency or agency representative in a position to legally bind the particular government entity.
- For trusts, the responsible party is a grantor, owner, or trustee.
- For decedent estates, the responsible party is the executor, administrator, personal representative, or other fiduciary.



**File Form 8822-B to report any subsequent changes to responsible party information.**

If you're applying for an EIN for a government entity, you may enter an EIN for the responsible party on line 7b. Otherwise, you must enter an SSN or ITIN on line 7b. But, leave line 7b blank or enter "N/A," "foreign," or similar language, if the responsible party doesn't have and is ineligible to obtain an SSN or ITIN.

**Lines 8a–8c. Limited liability company (LLC) information.** An LLC is an entity organized under the laws of a state or foreign country as a limited liability company. For federal tax purposes, an LLC may be treated as a partnership or corporation or be disregarded as an entity separate from its owner.

By default, a domestic LLC with only one member is disregarded as an entity separate from its owner and must include all of its income and expenses on the owner's tax return (for example, Schedule C (Form 1040)). For more information on single-member LLCs, see *Disregarded entities*, later.

Also, by default, a domestic LLC with two or more members is treated as a partnership. A domestic LLC may file Form 8832 to avoid either default classification and elect to be classified as an association taxable as a corporation. For more information on entity classifications (including the rules for foreign entities), see Form 8832 and its instructions.

If the answer to line 8a is "Yes," enter the number of LLC members. If the LLC is owned solely by an individual and his or her spouse in a community property state and they choose to treat the entity as a disregarded entity, enter "1" on line 8b.



**Don't file Form 8832 if the LLC accepts the default classifications above. If the LLC timely files Form 2553, it will be treated as a corporation as of the effective date of the S corporation election as long as it meets all other requirements to qualify as an S corporation. The LLC doesn't need to file Form 8832 in addition to Form 2553. See the Instructions for Form 2553.**

**Line 9a. Type of entity.** Check the box that best describes the type of entity applying for the EIN. If you're an alien individual with an ITIN previously assigned to you, enter the ITIN in place of a requested SSN.



**This isn't an election for a tax classification of an entity. See *Disregarded entities*, later.**

**Sole proprietor.** Check this box if you file Schedule C or Schedule F (Form 1040) and have a qualified plan, or are required to file excise, employment, alcohol, tobacco, or firearms returns, or are a payer of gambling winnings. Enter your SSN or ITIN in the space provided. If you're a nonresident alien with no effectively connected income from sources within the United States, enter "N/A." You don't need to enter an SSN or ITIN.

**Corporation.** This box is for any corporation other than a personal service corporation. If you check this box, enter the income tax form number to be filed by the entity in the space provided.



**Unless you are a church, or church-controlled organization, if you are a corporation that is a nonprofit entity, check the "other nonprofit organization" box, and specify the purpose. See *Other nonprofit organization*, later.**



**If you entered "1120-S" after the Corporation checkbox, the corporation must file Form 2553 no later than the 15th day of the 3rd month of the tax year the election is to take effect. Until Form 2553 has been received and approved, you will be considered a Form 1120 filer. See the Instructions for Form 2553.**

**Personal service corporation.** Check this box if the entity is a personal service corporation. An entity is a personal service corporation for a tax year only if:

- The principal activity of the entity during the testing period (generally the prior tax year) for the tax year is the performance of personal services substantially by employee-owners, and
- The employee-owners own at least 10% of the fair market value of the outstanding stock in the entity on the last day of the testing period.

Personal services include performance of services in such fields as accounting, actuarial science, architecture, consulting, engineering, health (including veterinary services), law, and the performing arts. For more information about personal service corporations, see the Instructions for Form 1120 and Pub. 542.



*If the corporation is recently formed, the testing period begins on the first day of its tax year and ends on the earlier of the last day of its tax year, or the last day of the calendar year in which its tax year begins.*

**Other nonprofit organization.** Check the *Other nonprofit organization* box if the nonprofit organization is other than a church or church-controlled organization and specify the type of nonprofit organization (for example, an educational organization).



*If the organization also seeks tax-exempt status, you must file either Form 1023 (or Form 1023-EZ) or Form 1024. See Pub. 557 for more information.*

If the organization is covered by a group exemption letter, enter the four-digit group exemption number (GEN) in the last entry. (Don't confuse the GEN with the 9-digit EIN.) If you don't know the GEN, contact the parent organization. See Pub. 557 for more information about group exemption letters.

If the organization is a section 527 political organization, check the *Other nonprofit organization* box and specify "Section 527 organization" in the space to the right. To be recognized as exempt from tax, a section 527 political organization must electronically file Form 8871, Political Organization Notice of Section 527 Status, within 24 hours of the date on which the organization was established. The organization may also have to file Form 8872, Political Organization Report of Contributions and Expenditures. Form 8872 must be filed electronically. Go to [IRS.gov/PolOrgs](https://www.irs.gov/PolOrgs) for more information.

**Estate.** An estate is a legal entity created as a result of a person's death. Enter the SSN or ITIN of the deceased person in the space provided.

**Plan administrator.** If the plan administrator is an individual, enter the plan administrator's taxpayer identification number (TIN) in the space provided.

**REMIC.** Check this box if the entity has elected to be treated as a real estate mortgage investment conduit (REMIC). See the Instructions for Form 1066 for more information.

**State/local government.** State and local governments generally have the characteristics of a government, such as powers of taxation, law enforcement, and civil authority. If you're unsure whether or not your organization is a government, search "What are government entities?" at [IRS.gov](https://www.irs.gov) for clarification.

**Federal government.** The federal government is made up of the Executive, Legislative, and Judicial branches, as well as independent federal agencies. Unions, Veterans of Foreign Wars (VFW) organizations, and political organizations aren't federal agencies.

**Indian tribal government/enterprise.** Check the box for Indian tribal governments/enterprises for a governing body of any tribe, band, community, village, or group of Indians, or (if applicable) Alaska Natives, but only if the Secretary of the Treasury (after consultation with the Secretary of the Interior) determines that the governing body exercises governmental functions.

Similarly, check this box if you are requesting an EIN for a tribal enterprise that is not recognized as a separate entity for federal income tax purposes, for example, a corporation under Section 17 of

the Indian Reorganization Act of 1934, or Section 3 of the Oklahoma Indian Welfare Act.

For more information, see Regulations section 301.7701-1(a)(3), Rev. Rul. 94-16, 1994-1 C.B. 19, available at [IRS.gov/pub/irs-tege/rr94\\_16.pdf](https://www.irs.gov/pub/irs-tege/rr94_16.pdf), and Rev. Rul. 94-65, 1994-2 C.B. 14, available at [IRS.gov/pub/irs-tege/rr94\\_65.pdf](https://www.irs.gov/pub/irs-tege/rr94_65.pdf).

**Other.** If not specifically listed, check the *Other* box and enter the type of entity and the type of return, if any, that will be filed (for example, "Common trust fund, Form 1065" or "Created a pension plan"). Don't enter "N/A." If you're an alien individual applying for an EIN, see [Lines 7a-7b](#), earlier.

- **Household employer.** If you're an individual that will employ someone to provide services in your household, check the *Other* box and enter "Household employer" and your SSN. If you're a trust that qualifies as a household employer, you don't need a separate EIN for reporting tax information relating to household employees; use the EIN of the trust.

- **Household employer agent.** If you're an agent of a household employer that is a disabled individual or other welfare recipient receiving home care services through a state or local program, check the *Other* box and enter "Household employer agent." For more information, see Rev. Proc. 84-33 and Rev. Proc. 2013-39. If you're a state or local government, also check the state/local government box.

- **QSub.** For a qualified subchapter S subsidiary (QSub) check the *Other* box and specify "QSub." See Rev. Rul. 2008-18, 2008-13 I.R.B. 674, if the QSub election is made pursuant to a reorganization under section 368(a)(1)(F), and [Disregarded entities](#) below.

- **Withholding agent.** If you're a withholding agent required to file Form 1042, check the *Other* box and enter "Withholding agent."

**Disregarded entities.** A disregarded entity is an eligible entity that is treated as an entity not separate from its single owner for income tax purposes. Disregarded entities include single-member limited liability companies (LLCs) and certain qualified foreign entities. See the instructions for Forms 8832 and 8869, and Regulations section 301.7701-3 for more information on domestic and foreign disregarded entities.

The disregarded entity is required to use its name and EIN for reporting and payment of employment taxes; to register for excise tax activities on Form 637; to pay and report excise taxes reported on Forms 720, 730, 2290, and 11-C; to claim any refunds, credits, and payments on Form 8849; and where a U.S. disregarded entity is wholly owned by a foreign person, to file information returns on Form 5472. See the instructions for the employment and excise tax returns and Form 5472 for more information.

Complete Form SS-4 for disregarded entities as follows.

- If a disregarded entity is filing Form SS-4 to obtain an EIN because it is required to report and pay employment and excise taxes, or for non-federal purposes such as a state requirement, check the *Other* box for line 9a and write "Disregarded entity" (or "Disregarded entity-sole proprietorship" if the owner of the disregarded entity is an individual).
- If the disregarded entity is requesting an EIN for purposes of filing Form 5472, as required under section 6038A for a U.S. disregarded entity that is wholly owned by a foreign person, check the *Other* box for line 9a and write "Foreign-owned U.S. disregarded entity-Form 5472."
- If the disregarded entity is requesting an EIN for purposes of filing Form 8832 to elect classification as an association taxable as a corporation, or Form 2553 to elect S corporation status, check the *Corporation* box for line 9a and write "Single-member" and the form number of the return that will be filed (Form 1120 or 1120-S).
- If the disregarded entity is requesting an EIN because it has acquired one or more additional owners and its classification has changed to partnership under the default rules of Regulations section 301.7701-3(f), check the *Partnership* box for line 9a.
- If a foreign eligible entity is requesting an EIN for purposes of filing Form 8832 to elect classification as a disregarded entity, check the *Other* box for line 9a and write "foreign disregarded entity."

**Line 10. Reason for applying.** Check only one box. Don't enter "N/A." A selection is required.

**Started new business.** Check this box if you're starting a new business that requires an EIN. If you check this box, enter the type of business being started. Don't apply if you already have an EIN and are only adding another place of business.

**Hired employees.** Check this box if the existing business is requesting an EIN because it has hired or is hiring employees and is therefore required to file employment tax returns. Don't apply if you already have an EIN and are only hiring employees. For information on employment taxes (for example, for family members), see Pub. 15.



**You must make electronic deposits of all depository taxes (such as employment tax, excise tax, and corporate income tax) using EFTPS. See Pub. 15 and Pub. 966.**

**Banking purpose.** Check this box if you're requesting an EIN for banking purposes only, and enter the banking purpose (for example, a bowling league for depositing dues or an investment club for dividend and interest reporting).

**Changed type of organization.** Check this box if the business is changing its type of organization. For example, the business was a sole proprietorship and has been incorporated or has become a partnership. If you check this box, specify in the space provided (including available space immediately below) the type of change made. For example, "From sole proprietorship to partnership."

**Purchased going business.** Check this box if you purchased an existing business. Don't use the former owner's EIN unless you became the "owner" of a corporation by acquiring its stock.

**Created a trust.** Check this box if you created a trust, and enter the type of trust created. For example, indicate if the trust is a nonexempt charitable trust or a split-interest trust.

**Exception.** Don't file this form for certain grantor-type trusts. The trustee doesn't need an EIN for the trust if the trustee furnishes the name and TIN of the grantor/owner and the address of the trust to all payers. However, grantor trusts that don't file using Optional Method 1 and IRA trusts that are required to file Form 990-T must have an EIN. For more information on grantor trusts, see the Instructions for Form 1041.



**Don't check this box if you're applying for a trust EIN when a new pension plan is established. Check the Created a pension plan box.**

**Created a pension plan.** Check this box if you have created a pension plan and need an EIN for reporting purposes. Also, enter the type of plan in the space provided. For more information about pension plans, visit IRS.gov and enter "Types of retirement plans" in the search box.



**Check this box if you're applying for a trust EIN when a new pension plan is established. In addition, check the Other box on line 9a and write "Created a pension plan" in the space provided.**

**Other.** Check this box if you're requesting an EIN for any other reason, and enter the reason. For example, a newly formed state government entity should enter "Newly formed state government entity" in the space provided. A foreign-owned U.S. disregarded entity required to file Form 5472 should enter "Foreign-owned U.S. disregarded entity filing Form 5472" in the space provided.

**Line 11. Date business started or acquired.** If you're starting a new business, enter the starting date of the business. If the business you acquired is already operating, enter the date you acquired the business. For foreign applicants, this is the date you began or acquired a business in the United States. If you're changing the form of ownership of your business, enter the date the new ownership entity began. Trusts should enter the date the trust was funded or the date that the trust was required to obtain an EIN under Regulations section 301.6109-1(a)(2). Estates should enter the date of death of the decedent whose name appears on line 1 or the date when the estate was legally funded.

**Line 12. Closing month of accounting year.** Enter the last month of your accounting year or tax year. An accounting or tax year is usually 12 consecutive months, either a calendar year or a fiscal

year (including a period of 52 or 53 weeks). A calendar year is 12 consecutive months ending on December 31. A fiscal year is either 12 consecutive months ending on the last day of any month other than December or a 52-53 week year. For more information on accounting periods, see Pub. 538.

**Individuals.** Your tax year will generally be a calendar year.

**Partnerships.** Partnerships must adopt one of the following tax years.

- The tax year of the majority of its partners.
- The tax year common to all of its principal partners.
- The tax year that results in the least aggregate deferral of income.
- In certain cases, some other tax year.

See the Instructions for Form 1065 for more information.

**REMICs.** REMICs must have a calendar year as their tax year.

**Personal service corporations.** A personal service corporation must generally adopt a calendar year unless it meets one of the following requirements.

- It can establish a business purpose for having a different tax year.
- It elects under section 444 to have a tax year other than a calendar year.

**Trusts.** Generally, a trust must adopt a calendar year except for the following trusts.

- Tax-exempt trusts.
- Charitable trusts.
- Grantor-owned trusts.

**Line 13. Highest number of employees expected in the next 12 months.** Complete each box by entering the number (including zero (-0-)) of *Agricultural, Household, or Other* employees expected by the applicant in the next 12 months.

If no employees are expected, skip line 14.

**Line 14. Do you want to file Form 944?** If you expect your employment tax liability to be \$1,000 or less in a full calendar year, you're eligible to file Form 944 annually (once each year) instead of filing Form 941 quarterly (every 3 months). Your employment tax liability will generally be \$1,000 or less if you expect to pay \$5,000 or less in total wages subject to social security and Medicare taxes and federal income tax withholding. For employers in the U.S. territories, generally, if you pay \$6,536 or less in wages subject to social security and Medicare taxes, you're likely to pay \$1,000 or less in employment taxes. If you qualify and want to file Form 944 instead of Forms 941, check the box on line 14. If you don't check the box, then you must file Form 941 for every quarter.



**Once you check the box, you must continue to file Form 944, regardless of the amount of tax shown on your return, until the IRS instructs you to file Form 941.**

For more information on employment taxes, see Pub. 15.

**Line 15. First date wages or annuities were paid.** If the business has employees, enter the date on which the business began to pay wages or annuities. For foreign applicants, this is the date you began to pay wages in the United States. If the business doesn't plan to have employees, enter "N/A."

**Withholding agent.** Enter the date you began or will begin to pay income (including annuities) to a nonresident alien. This also applies to individuals who are required to file Form 1042 to report alimony paid to a nonresident alien. For foreign applicants, this is the date you began or will begin to pay income (including annuities) to a nonresident alien in the United States.

**Line 16.** Check the one box on line 16 that best describes the principal activity of the applicant's business. Check the *Other* box (and specify the applicant's principal activity) if none of the listed boxes applies. You must check a box.

**Construction.** Check this box if the applicant is engaged in erecting buildings or engineering projects (for example, streets, highways, bridges, and tunnels). The term "construction" also includes special trade contractors (for example, plumbing, HVAC, electrical, carpentry, concrete, excavation, etc., contractors).

**Real estate.** Check this box if the applicant is engaged in renting or leasing real estate to others; managing, selling, buying, or renting



real estate for others; or providing related real estate services (for example, appraisal services). Also, check this box for mortgage real estate investment trusts (REITs). Mortgage REITs are engaged in issuing shares of funds consisting primarily of portfolios of real estate mortgage assets with gross income of the trust solely derived from interest earned.

**Rental & leasing.** Check this box if the applicant is engaged in providing tangible goods such as autos, computers, consumer goods, or industrial machinery and equipment to customers in return for a periodic rental or lease payment. Also, check this box for equity real estate investment trusts (REITs). Equity REITs are engaged in issuing shares of funds consisting primarily of portfolios of real estate assets with gross income of the trust derived from renting real property.

**Manufacturing.** Check this box if the applicant is engaged in the mechanical, physical, or chemical transformation of materials, substances, or components into new products. The assembling of component parts of manufactured products is also considered to be manufacturing.

**Transportation & warehousing.** Check this box if the applicant provides transportation of passengers or cargo; warehousing or storage of goods; scenic or sight seeing transportation; or support activities related to transportation.

**Finance & insurance.** Check this box if the applicant is engaged in transactions involving the creation, liquidation, or change of ownership of financial assets and/or facilitating such financial transactions; underwriting annuities/insurance policies; facilitating such underwriting by selling insurance policies or in providing other insurance or employee-benefit related services.

**Health care & social assistance.** Check this box if the applicant is engaged in providing physical, medical, or psychiatric care; or in providing social assistance activities, such as youth centers, adoption agencies, individual/family services, temporary shelters, daycare, etc.

**Accommodation & food services.** Check this box if the applicant is engaged in providing customers with lodging, meal preparation, snacks, or beverages for immediate consumption.

**Wholesale-agent/broker.** Check this box if the applicant is engaged in arranging for the purchase or sale of goods owned by others or purchasing goods on a commission basis for goods traded in the wholesale market, usually between businesses.

**Wholesale-other.** Check this box if the applicant is engaged in selling goods in the wholesale market generally to other businesses for resale on their own account, goods used in production, or capital or durable nonconsumer goods.

**Retail.** Check this box if the applicant is engaged in selling merchandise to the general public from a fixed store; by direct, mail-order, or electronic sales; or by using vending machines.

**Other.** Check this box if the applicant is engaged in an activity not described above. Describe the applicant's principal business activity in the space provided.

**Line 17.** Use line 17 to describe the applicant's principal line of business in more detail. For example, if you checked the **Construction** box on line 16, enter additional detail such as "General contractor for residential buildings" on line 17. An entry is required. For mortgage REITs, indicate mortgage REIT; and for equity REITs, indicate what type of real property is the principal type (residential REIT, nonresidential REIT, miniwarehouse REIT, etc.).

**Line 18.** Check the applicable box to indicate whether or not the applicant entity applying for an EIN was issued one previously.

**Third-Party Designee.** Complete this section only if you want to authorize the named individual to answer questions about the completion of Form SS-4 and receive the entity's newly assigned EIN. You must complete the signature area for the authorization to be valid. The designee's authority terminates at the time the EIN is assigned and released to the designee. EINs are released to authorized third-party designees by the method they used to obtain

the EIN (online, telephone, or fax); however, the EIN notice will be mailed to the taxpayer.



*If the third-party designee's address or telephone number matches the address or telephone number of the taxpayer, the application must be mailed or faxed.*

**Signature.** When required, the application must be signed by (a) the individual, if the applicant is an individual; (b) the president, vice president, or other principal officer, if the applicant is a corporation; (c) a responsible and duly authorized member or officer having knowledge of its affairs, if the applicant is a partnership, government entity, or other unincorporated organization; or (d) the fiduciary, if the applicant is a trust or an estate. Foreign applicants may have any duly authorized person (for example, division manager) sign Form SS-4.

**Privacy Act and Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. We need it to comply with section 6109 and the regulations thereunder, which generally require the inclusion of an employer identification number (EIN) on certain returns, statements, or other documents filed with the Internal Revenue Service. If your entity is required to obtain an EIN, you're required to provide all of the information requested on this form. Information on this form may be used to determine which federal tax returns you're required to file and to provide you with related forms and publications.

We disclose this form to the Social Security Administration (SSA) for their use in determining compliance with applicable laws. We may give this information to the Department of Justice for use in civil and/or criminal litigation, and to cities, states, the District of Columbia, and U.S. commonwealths and territories for use in administering their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, and to federal law enforcement and intelligence agencies to combat terrorism.

We will be unable to issue an EIN to you unless you provide all of the requested information that applies to your entity. Providing false information could subject you to penalties.

You're not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping . . . . .	8 hr., 36 min.
Learning about the law or the form . . . . .	42 min.
Preparing, copying, assembling, and sending the form to the IRS . . . . .	52 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can send us comments at [IRS.gov/FormComments](https://www.irs.gov/FormComments). Or you can write to the Internal Revenue Service, Tax Forms and Publications Division, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Don't send Form SS-4 to this address. Instead, see *Where To File or Fax*, earlier.