

**WISCONSIN DEPARTMENT OF REVENUE
DIVISION OF INCOME, SALES, AND EXCISE TAX**

NOTICE OF PROPOSED GUIDANCE DOCUMENTS

Pursuant to sec. 227.112, Wis. Stats., the Wisconsin Department of Revenue, Division of Income, Sales, and Excise Taxes hereby seeks comment on the proposed guidance document listed in the table below.

SUBMITTING PUBLIC COMMENTS

Public comments on proposed or adopted guidance documents may be submitted online at: <https://www.revenue.wi.gov/Pages/contactUs/proposed-Guidance.aspx>.

DEADLINE FOR SUBMISSION

The period for public comment for proposed guidance documents ends 21 days after publication in the Administrative Register, unless the Governor approves a shorter commenting period.

Document Number	Document Title
100186	Pass-Through Entity-Level Tax - Tax-Option (S) Corporation General Election - Common Questions

State of Wisconsin
Department of Revenue

Pass-Through Entity-Level Tax: Tax-Option (S) Corporation General Election Questions

This is a proposed guidance document. The document has been submitted to the Legislative Reference Bureau for publication in the Administrative Register for public comment as provided by sec. 227.112(1), Wis. Stats.

Effective for taxable years beginning on or after January 1, 2018

1. What is the purpose of the election?
2. How does a tax-option (S) corporation make the election?
3. When must the election be made?
4. How does an electing tax-option (S) corporation receive an extension of time for filing the Wisconsin Form 5S return if the tax-option (S) corporation is not requesting a federal extension?
5. Can a tax-option (S) corporation file an amended return to claim the election to pay tax at the entity level if the corporation already filed a Wisconsin Form 5S return without making the election?
6. Can the election be revoked?
7. How does an electing tax-option (S) corporation notify the shareholders that the election has been made?
8. When making the election, will there be any signatures required to show consent of the shareholders?
9. Can a tax-option (S) corporation with a short tax year make the election?

10. If a tax-option (S) corporation is the owner of a qualified subchapter S subsidiary (Qsub), can the parent tax-option (S) corporation make the election to pay tax at the entity level?

1. What is the purpose of the election?

To allow a tax-option (S) corporation or limited liability company treated as a tax-option (S) corporation to pay tax on items that would otherwise be reported by the shareholders. For any year in which an election is made, shareholders do not include in their Wisconsin adjusted gross income their proportionate share of all items of income, gain, loss, or deduction of the tax-option (S) corporation.

2. How does a tax-option (S) corporation make the election?

The tax-option (S) corporation must check box #7 in Part A of Form 5S, *Wisconsin Tax-Option (S) Corporation Franchise or Income Tax Return*. The tax-option (S) corporation must have consent from shareholders who hold an aggregate of more than 50 percent of the shares of a tax-option (S) corporation on the day of the election, pursuant to sec. 71.365(4m)(a), Wis. Stats.

3. When must the election be made?

The election must be made annually on or before the extended due date of the Wisconsin Form 5S. The election is made on the day the Form 5S is filed.

4. How does an electing tax-option (S) corporation receive an extension of time for filing the Wisconsin Form 5S return if the tax-option (S) corporation is not requesting a federal extension?

Wisconsin allows two different types of extensions: Wisconsin-only extensions and federal extensions.

Wisconsin-only extensions

Wisconsin law provides an automatic extension of 7 months. To claim this extension, simply check Item B on Form 5S and enter the extended due date.

Federal extensions

Any extension allowed by the Internal Revenue Service (IRS) automatically extends the Wisconsin due date to 30 days after the federal extended due date, regardless of when the federal return is actually filed. To claim a federal extension for your Wisconsin Form 5S return, complete steps A and B below:

- a. Check Item B on Form 5S and enter the extended due date.
- b. Submit a copy of the federal extension form or statement with the Form 5S when it is filed. Do not submit a copy prior to filing the Form 5S.

For more information about extensions of time to file, see Wisconsin Publication 401, *Extension of Time to File*, or the instructions for Wisconsin Form 5S.

5. **Can a tax-option (S) corporation file an amended return to claim the election to pay tax at the entity level if the corporation already filed a Wisconsin Form 5S return without making the election?**

Yes, a tax-option (S) corporation may file an amended return to claim the election on or before the extended due date of the Wisconsin Form 5S. The tax-option (S) corporation must have consent from shareholders who hold an aggregate of more than 50 percent of the shares of a tax-option (S) corporation on the day the amended return is filed to make the election.

6. **Can the election be revoked?**

Yes, the election may be revoked by filing an amended Form 5S on or before the extended due date. Shareholders who hold an aggregate of more than 50 percent of the shares of the tax-option (S) corporation must consent to the revocation.

7. **How does an electing tax-option (S) corporation notify the shareholders that the election has been made?**

The tax-option (S) corporation notifies the shareholders by checking box #3 in Part B of each shareholder's Schedule 5K-1, *Tax-Option (S) Corporation Shareholder's Share of Income, Deductions, Credits, etc.*

8. **When making the election, will there be any signatures required to show consent of the shareholders?**

No, the department does not require any additional signatures to show consent of the shareholders. Upon request from the department, the electing tax-option (S) corporation must prove it received consent from shareholders who hold an aggregate of more than 50 percent of the shares of the tax-option (S) corporation on the day of the election.

9. **Can a tax-option (S) corporation with a short tax year make the election?**

Yes, a tax-option (S) corporation may make the election for taxable years beginning on or after January 1, 2018. However, the election must be made before the extended due date of the tax-option (S) corporation's short period Wisconsin Form 5S. If a tax-option (S) corporation would like to make the election and has a short period, the Form 5S's extended due date has not passed, and the Schedule 5S-ET is not available to file Form 5S, contact the department's Customer Service Bureau at (608) 266-2772 or DORIncome@wisconsin.gov.

10. **If a tax-option (S) corporation is the owner of a qualified subchapter S subsidiary (Qsub), can the parent tax-option (S) corporation make the election to pay tax at the entity level?**

Yes, a tax-option (S) corporation that is the owner of a Qsub may make the election to pay tax at the entity level.

Note: A Qsub does not file an income or franchise tax return separate from its owner, regardless of whether the owner makes the entity-level tax election.

Applicable Laws and Rules

This document provides statements or interpretations of the following laws and regulations in effect as of February 10, 2020: Sections 71.03, 71.19, 71.20, 71.365 and 71.775, Wis. Stats., and sec. Tax 2.10, Wis. Adm. Code.

Laws enacted and in effect after February 10, 2020, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to February 10, 2020, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2)(a), Wis. Stats.

FOR QUESTIONS OR COMMENTS CONTACT:

MS 5-77

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Email additional questions to DORIncome@wisconsin.gov

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