

Taxation of S Corporations
and Their Shareholders
Procedures for Retroactive Election or Retroactive Revocation

This memorandum should be used with TSB-M-84-(8)C and (11)I and TSB-M-84-(8.1)C and (11.1)I, which deal with the taxation of S corporations and their shareholders.

Bill section 40 of Chapter 606 of the Laws of 1984, a non-code provision, provides for a retroactive election or retroactive revocation of New York S corporation status. The retroactive election or retroactive revocation is to be made in the manner prescribed by the Tax Commission, and it must be made by October 25, 1984.

Retroactive Election

To make a retroactive section 660 election for the years of an S corporation beginning after December 31, 1982, the corporation must:

- (1) File Form CT-6, Election by a Small Business Corporation, by October 25, 1984, and
- (2) File Form CT-3S, Small Business (Tax Option) Corporation Information Report, within:
(1) 30 days of the postmark date of Form CT-6 or (2) the due date of the return for the taxable year (determined with regard to extensions), whichever date is later, to validate the election. If Form CT-3S is not filed within this time period, the retroactive election is not valid.

If a corporation that originally filed Form CT-3 or CT-4 and paid tax with it retroactively elects to be treated as a New York S corporation, it can claim a refund of the tax paid by filing a claim for refund on Form CT-8. A claim for refund cannot be paid unless the CT-3S has been filed, since the retroactive election is not valid otherwise. Interest will accrue on the refund of the tax paid from the due date of the report to the date of payment. If the original return (the CT-3 or CT-4 in this case) was a late filed return, interest would begin to accrue on the date the late return was filed.

Retroactive Revocation

To make a retroactive revocation of a section 660 election for taxable years of an S corporation beginning after December 31, 1982, the corporation must:

- (1) File a written statement of revocation by October 25, 1984, containing the information listed in TSB-M-84-(8) Corporation Tax and (11) Income Tax, and

- (2) File Form CT-3 or CT-4, Corporation Franchise Tax Report, within: (1) 30 days of the postmark of the written notice or (2) the due date of the return for the taxable year (determined with regard to extensions) whichever date is later. If the Form CT-3 is not filed (with or without payment) within this period, the retroactive revocation is not valid.

If a corporate which originally filed a Interest and penalties will accrue on any underpayment of tax from the due date of the report to the date of payment.

Effect on the Shareholders of a Retroactive Election or a Retroactive Revocation of New York S Corporation Status

The retroactive election or retroactive revocation of New York S corporation status will affect the individual returns (Form IT-201, IT-203 or IT-205) filed by the shareholders. The shareholders must amend their tax returns in the event of a retroactive election or retroactive revocation. If a shareholder is entitled to a refund on the amended return, it must be filed within three years of the due date of the original return or two years from the date the tax was paid, whichever is later. Interest will accrue from the due date of the original return (or the date filed if the original return was a late filed return) to the date of payment. If a shareholder has a balance due on the amended return, interest will accrue from the due date of the original return to the date of payment. The shareholder should file the amended return and pay the balance due as soon as possible. Failure to do so will result in the imposition of penalties.