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S Corporation Election or Termination/Revocation

3560

Effective for taxable year beginning month ___ day ___ year 20___, and ending month ___ day ___ year ___.

Part I

California corporation number, Federal employer identification number, Corporation name, Address, City, State, ZIP Code, PMB no.

Part II

Check the applicable box. See instructions. 1. Report a new federal S corporation election. 2. Elect to remain or to become a California C corporation. 3. Elect California S corporation status by a federal S corporation. 4. Report a federal S corporation termination/revocation. 5. Terminate (revoke) California S corporation status only. 6. Correct an untimely, invalid, or an inadvertent termination of an S corporation election.

Part III

A. Federal tax year ending (month and day), B. California taxable year ending (month and day), C. Principal business activity code, D. Date of federal election or California revocation (mo., day, and year), E. Date of incorporation (mo., day, and year), F. State of incorporation, G. Date of qualification in California (mo., day, and year)

H. Is the corporation a continuation of any form of predecessor? ... Yes No If "Yes," state name of predecessor, type of organization, period of its existence, and California corporation number, if any

I. Selected taxable year: Annual return will be filed for taxable year ending (month and day) The selected taxable year must be a permitted taxable year. See Specific Line Instructions.

Table with 5 main columns: J. Name of each shareholder, K. Shareholders' Consent Statement, L. Stock owned (Number of shares, Dates acquired), M. Social security number or federal employer identification number, N. Shareholder's taxable year end (month and day)

Attach additional sheets if necessary.

* For the consent statement of a shareholder to be valid, the consent statement of each shareholder's spouse having a community property interest in the corporation's stock, and each tenant in common, joint tenant, and tenant by the entirety must either appear above or be attached to this form with each of the above party's signatures.

Part IV

Under penalties of perjury, I declare that I have examined this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature of Officer

Title, Date, Telephone

Instructions for Form FTB 3560

S Corporation Election or Termination/Revocation

References in these instructions are to the Internal Revenue Code (IRC) as of **January 1, 1998**, and to the California Revenue and Taxation Code (R&TC).

General Information

In general, California law conforms to the Internal Revenue Code (IRC) as of January 1, 1998. However, there are continuing differences between California and federal law. California has not conformed to most of the changes made to the IRC by the federal Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105-206) and the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106-170). California has not conformed to any of the changes made by the Tax and Trade Relief Extension Act of 1998 (Public Law 105-277), the Miscellaneous Trade and Technical Corrections Act of 1999 (Public Law 106-36), the FSC Repeal and Extraterritorial Income Exclusion Act of 2000 (Public Law 106-519), the Consolidated Appropriations Act of 2001 (Public Law 106-554), and the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107-16).

A corporation that elects federal S corporation status by filing federal Form 2553, Election by a Small Business Corporation, is deemed to have made a California S corporation election on the same date as the federal election. The corporation must report the federal S corporation election to the Franchise Tax Board (FTB) by filing form FTB 3560, S Corporation Election or Termination/Revocation.

The corporation should refer to federal Form 2553 for information on who may elect S corporation status, effective date of election, and shareholders' consent statements. Also, get the Form 100S, S Corporation Tax Booklet, for information on California filing requirements and S corporation tax.

Private Mailbox (PMB) Number

If the corporation leases a PMB from a private business rather than a PO box from the United States Postal Service, include the box number in the field labeled "PMB no." in the address area.

A Purpose

This form is used to:

- Report a new federal S corporation election (box 1);
- Elect to remain a California C corporation when a federal S corporation election is made, or to become a California C corporation when the corporation has been a California S corporation (box 2);
- Elect California S corporation status by a federal S corporation that previously elected to remain a California C corporation (box 3);
- Report a federal S corporation termination or revocation (box 4);

- Terminate a California S corporation election by revocation without terminating the federal S corporation election (box 5); or
- Correct an untimely, invalid, or an inadvertent termination of an S corporation election (box 6).

B Where to File

Mail form FTB 3560 to:

FRANCHISE TAX BOARD
PO BOX 942857
SACRAMENTO CA 94257-0540

C California S Corporations with Nonresident Shareholders

The following must be provided with the tax return filed for each taxable year:

- A statement of consent by each nonresident shareholder to be subject to tax on the shareholder's pro-rata share of income attributable to California sources; and
- A list of shareholders.

The FTB may have grounds for retroactive revocation of the S corporation status if the above information is not provided. See form FTB 3830, S Corporation's List of Shareholders and Consents, for more information.

Specific Line Instructions

Enter the beginning and ending dates of the first taxable year for which the election is to be effective.

Part I

Entity Information

Enter the true corporate name as stated in the corporate charter, articles of incorporation, or other legal document used in creating the corporation. If the corporation's mailing address is the same as someone else's, such as a shareholder's, enter "c/o" and this person's name following the name of the corporation. Include the suite, room, or other unit number after the street address. If the Post Office does not deliver to the street address and the corporation has a PO box, show the box number instead of the street address.

Include the California corporation number and the Federal Employer Identification Number to ensure proper handling.

Part II

Box 1 – Report a new federal S corporation election

An election to be treated as a federal S corporation is deemed to be a California S corporation election, unless the corporation

elects otherwise. See box 2 instructions for more information.

Since a corporation is deemed to be a California S corporation if the federal S election is timely filed, form FTB 3560 should be provided to the FTB for informational purposes only. Form FTB 3560 should be filed even if it is after the 15th day of the 3rd month of the taxable year. If an existing federal S corporation qualifies to do business in California during its taxable year, it should file form FTB 3560 within 2 1/2 months of registering with the California Secretary of State.

See IRC Sections 1361, 1362, and 1378 and federal Form 2553 for information on valid federal S corporation elections.

To report a new federal election, or report a California S election for a federal S corporation that qualifies to do business in California, complete Part I; Part II, box 1; and Part IV. Attach a copy of federal Form 2553 to form FTB 3560.

Box 2 – Elect to remain or to become a California C corporation (will be treated as a revocation of California S corporation status)

A corporation may elect to remain a California C corporation when a federal S election is made, or to become a California C corporation when the corporation has been a California S corporation.

Under California law, a federal S corporation is a California S corporation unless the corporation properly elects otherwise. If a federal S corporation incorporated or qualified to do business in California wants to avoid California S corporation status, it may elect California C corporation status.

The time to elect California C corporation status ends on the 15th day of the 3rd month of the taxable year for which the election is to be effective. If timely made, the election is effective at the beginning of the taxable year.

Note: An untimely election to be a C corporation for California purposes shall be null and void.

If an existing federal S corporation subsequently qualifies to do business in California, the corporation will be a California S corporation unless it elects to be a C corporation for California purposes. The California C corporation election must be filed on or before the 15th day of the 3rd month of the taxable year for which the election is to take effect. If the corporation qualifies to do business in California after the election deadline has passed, the corporation will be an S corporation for California purposes. However, the California S corporation status may be revoked by specifying a prospective date that is on or after the date the corpora-

tion qualifies to do business in California. See box 5 instructions for more information.

Note: An untimely, invalid, or inadvertent election to be a California C corporation cannot be corrected retroactively. See R&TC Section 23801(a)(4)(F)(ii) for more information.

If the S corporation status is terminated during a taxable year, short period returns are required for the S corporation short year and the C corporation short year.

To report a California C corporation election, complete Part I, and check Part II, box 2 (not box 5); complete Part III, columns J, K, and L; and Part IV. See instructions for Part III, column J and column K to determine shareholders that must consent to the C corporation election.

Box 3 – Elect California S corporation status by a federal S corporation

A federal S corporation that previously elected to become a California C corporation may elect to become a California S corporation as long as the California C corporation election (which is treated as a revocation) was not made within the past five taxable years or as long as a prior California S corporation status was not terminated or revoked within the past five years. See box 4 instructions for more information.

The election to become a California S corporation must be made on or before the 15th day of the 3rd month of the taxable year for which the election is to take effect or at any time during the prior taxable year.

A California C corporation that is a federal S corporation may make a California S corporation election by completing Part I; Part II, box 3; Part III; and Part IV.

Box 4 – Report a federal S corporation termination/revocation

A termination/revocation of a federal S election simultaneously terminates the S corporation election for California purposes. A corporation's federal S corporation status will be terminated if it ceases to be a small business corporation or violates the passive investment income restrictions for corporations with earnings and profits. If the corporation's federal S status is terminated, the California S corporation status terminates on the same date.

The federal S corporation election may also be terminated by revocation. An S corporation election may be revoked only if shareholders holding more than one-half of the shares of stock in the corporation on the day the revocation is made consent to the revocation. A revocation that is made on or before the 15th day of the 3rd month of the taxable year shall be effective on the 1st day of that taxable year. A revocation made after the 15th day of the 3rd month of the taxable year shall be effective on the 1st day of the following taxable year. However, a revocation may also specify a prospective date, on the form

FTB 3560, that is on or after the date the revocation is made.

If the S corporation status is terminated or revoked during a taxable year, short period returns are required for both the S corporation short year and the C corporation short year.

If S corporation status has been terminated or revoked, the corporation is not eligible to make another S corporation election for any taxable year before the 5th taxable year that begins after the 1st taxable year in which the termination/revocation is effective. See IRC Section 1362(g) for more information.

Exception: Terminations made in a taxable year beginning before January 1, 1997, shall not be taken into account and the corporation can re-elect S status without waiting five years.

To report a federal termination to the FTB, complete Part I and Part II, box 4. If the S corporation status has been terminated, the corporation should attach a copy of this form and the federal notification of termination to the California tax return for the year in which the termination occurs.

If the corporation is revoking its S corporation status for both federal and California purposes, the corporation should file form FTB 3560 with the FTB at the same time it files the federal statement of revocation with the IRS. The corporation should attach a copy of the federal revocation that includes the consent of shareholders holding more than 50% of the corporation's stock.

Box 5 – Terminate (revoke) a California S corporation status only

An S corporation may terminate its S corporation status for California by revocation, without terminating its federal S corporation status. Generally, the California S corporation status may be revoked for a taxable year if the election to revoke is made on or before the 15th day of the 3rd month of the taxable year for which the revocation is to be effective. An election to revoke California S corporation status made after the 15th day of the 3rd month of the taxable year will be effective as of the 1st day of the following taxable year.

If an existing federal S corporation qualifies to do business in California after the 15th day of the 3rd month of its taxable year, the corporation will be an S corporation for California purposes. If the corporation wishes California C corporation status to become effective during the taxable year in which it qualifies to do business in California, it must revoke its S corporation status for California purposes by specifying a prospective date on form FTB 3560. The corporation can specify a prospective date on form FTB 3560 that is on or after the date the revocation is made.

To terminate the S corporation status for California, complete Part I; Part II, box 5; Part III, columns J, K, and L; and Part IV. See instructions for Part III, column J and

column K, to determine shareholders that must consent to the termination or revocation of S corporation status. Specify the prospective date in Part III, box D.

Box 6 – Correct an untimely or invalid S corporation election or an inadvertent termination

For taxable years beginning on or after January 1, 1987, if a corporation failed to qualify as an S corporation for federal income tax purposes solely because the federal election was not timely filed, the corporation shall be treated as an S corporation for California tax purposes for the taxable year in which the federal election was originally made and for each subsequent taxable year if both of the following requirements are met:

- The corporation and all of its shareholders reported their income for California tax purposes on original returns consistent with S corporation status for the year the S corporation election should have been made and for each subsequent taxable year; and
- The corporation and its shareholders requested relief from the late federal S corporation election, and the relief was granted by the IRS. Notify the FTB of the IRS acceptance of the untimely filed election.

For taxable years beginning on or after January 1, 1997, if a federal S corporation election was not effective for the taxable year in which it was made because:

- All the required shareholder consents were not obtained;
- The corporation ceased to be a small business corporation; or
- Passive investment income exceeded 25% of gross receipts for three consecutive years.

Such inadvertent invalid election or termination may be eligible for retroactive correction.

The corporation shall be treated as an S corporation during the period for which relief is requested provided that:

- The circumstances resulting in the ineffectiveness or termination of the S corporation status were inadvertent;
- The corporation takes reasonable steps to remedy the circumstances causing such ineffectiveness or termination; and
- The corporation and its shareholders that held stock during the termination period agree to make any adjustments required that are consistent with the treatment of the corporation as an S corporation. See IRC Section 1362(f) for more information.

To correct an untimely or invalid S corporation election or an inadvertent termination, complete Part I, Part II; box 6, and Part IV. Attach a schedule with each shareholder's signature, a copy of the federal acceptance of an untimely filed election, and the following statement, "I (we) agree to make adjustments

as necessary that are consistent with the treatment of the corporation as an S corporation.”

Part III

Box C – Principal business activity (PBA), principal product and service

Use the PBA Code Chart in the instructions for the 2001 Form 100S, California S Corporation Tax Booklet.

Note: The new PBA codes are six digits, not four digits. Please, **DO NOT** leave box C blank. Also, describe the principal product or service provided by the corporation.

Line I – Selected taxable year

The taxable year of an S corporation must be a permitted taxable year. A permitted taxable year is a taxable year ending on December 31 or any other taxable year for which the corporation satisfactorily establishes a business purpose.

The California taxable year of an S corporation may not be different than the federal tax year, unless such difference is initiated or approved by the FTB.

Column J and Column K – Shareholder's consent statement

If the corporation checked Part II, box 3, each shareholder of the corporation on the day the election is made must consent to the election.

If the corporation checked Part II, box 2 or box 5, shareholders holding more than 50% of the shares of stock on the date the revocation is made must sign the consent. List all shareholders in column J and provide signatures evidencing consent from more than 50% of the total shares of stock listed in column K.

California is a community property state.

For the consent statement of a shareholder to be valid, the shareholder's signature must be accompanied by the consent of the shareholder's spouse having a community property interest in the S corporation stock.

Column L – Stock owned

If the election is made during the first 2 1/2 months of the corporation's first taxable year for which the election is to take effect as an S corporation, list only the shares of stock for those shareholders who own shares of stock on the date of the election. However, any person who owned stock at any time during the portion of that year which occurs before the time the election is made must consent to the election even though the stock has been sold or transferred.

Column N – Shareholder's taxable year end

If a shareholder's taxable year end has changed, enter the new taxable year. If the election is made during the first 2 1/2 months of the corporation's first taxable year for which the election is to take effect as an S corporation, the corporation does not have to enter the taxable year of shareholders who sold or transferred all of their stock before the election was made, even though the transferring shareholders still must consent to the election for it to be effective for the taxable year.

Where to Get Tax Forms and Publications

By Internet – You can download, view, and print California tax forms and publications. Go to our Website at: www.ftb.ca.gov

By phone – To order 2001 corporation tax forms and publications, call (800) 338-0505 and follow the recorded instructions. This service is available from 6 a.m. to 8 p.m., Monday through Friday except State holidays. Please allow two weeks to receive your order. If you live outside of California, please allow three weeks to receive your order.

By mail – Write to:

TAX FORMS REQUEST UNIT
FRANCHISE TAX BOARD
PO BOX 307
RANCHO CORDOVA CA 95741-0307

General Toll-Free Phone Service

Our general toll-free phone service is available:

- Monday – Friday, 7 a.m. until 8 p.m.
- Saturdays, 8 a.m. until 5 p.m.

Note: We may modify these hours without notice to meet operational needs.

From within the

United States (800) 852-5711

From outside the

United States (916) 845-6500
(not toll-free)

Assistance for persons with disabilities

The FTB complies with the Americans with Disabilities Act. Persons with hearing or speech impairments call:

From voice phone (800) 735-2922
(California Relay Service)

From TTY/TDD (800) 822-6268
(Direct line to FTB customer service)

For all other assistance or

special accommodations . . (800) 852-5711