

S Corporation Document Checklist

The business entity information on the Business Knowledge Center website is intended to provide you with background organizational information on the structure of various business entity types. To ensure legal and accounting compliance, you should review and verify your specific organizational documentation with your lawyer and your accountant.

One of the Entity Structure choices you may choose for your business is an S Corporation. Creating a Corporation requires the submittal of a series of documents to the Secretary of State's office in the State you choose to form your business.

The State will charge a filing fee for processing the incorporation application and reviewing the required organizational documents. Filing fees will vary by State and will typically fall in the \$150.00 - \$500.00 range.

When you set up a Corporation, you create a separate legal person in the eyes of the law. The Corporation will have a birth certificate in the form of a Certificate of Incorporation. It will have its own Federal Tax Identification Number. An S Corporation will file a Federal Tax Return IRS Form - 1120-S but will not pay income taxes. The tax payment requirements will be passed through the Corporation to the Stockholders individually. Profits will be allocated to individual Stockholders based on their percentage of ownership in the Corporation. They will pay an income tax on their share of the profits based on their personal income tax bracket rates.

The tax obligation must be paid by the individual Stockholders even in situations where the Corporation does not actually distribute the profits in the form of cash to the Stockholders. The Stockholders must vote to be treated for income tax purposes as an S Corporation. The Corporation must file IRS Form S-2553 to apply for and be granted pass through tax status. The deadline for filing the form is the first 75 days of the tax year you want the S Corp election to take effect or in the year preceding the year that you want the S Corp election to take effect.

Reasons why business owners choose an S Corporation Entity Structure:

Limited Business Liability – Owners do not have personal liability for business entity liabilities. Owners are personally liable to the extent they have invested in the business and any other business-related obligation(s) they have personally guaranteed.

Unlimited Business Life – S Corporations have unlimited business life. If a business owner(s) becomes sick, disabled, or dies, the Corporation does not cease to exist.

Limited Number of Business Owners – S Corporations can currently have up to 100 common Stockholders. This can change with updates to the tax law. Stockholders must be individual U.S. citizens or resident aliens and they cannot be other business entities.

Ease of Ownership Transfer – Ownership in a S Corporation can be easily transferred by the sale of Shares of Stock held by the owner which legally represents their ownership interest in the business.

Capital Formation – Additional equity capital can be raised by selling more Shares of Stock to an existing owner(s) or an incremental owner(s).

Tax Deductible Expenses – Reasonable business operating expenses including salaries taken by business owners are tax deductible to the Corporation.

Important Documents

(Check off after you have filed, recorded, copied, and stored each item)

Articles of Incorporation

Document filed with the Secretary of State to create a Corporation. The Articles list the name, address, and principal place of business. They define; the business purpose of the Corporation, the number of shares of stock authorized, the name and addresses of the initial Board of Directors elected by the Shareholders, the name of the Registered Agent who will accept official mail and legal papers on the Corporation's behalf.

Business Name Reservation Form

Reserves a unique name for the business while you complete the incorporation process.

By Laws

Document that supplements the Articles of Incorporation defining how the Directors and Officers will organize and manage the day-to-day business activities. The By Laws should address how conflicts between the Shareholders will be resolved. It should establish protocols for dealing with departing owners as well as incoming new owners and how profits and losses will be divided.

Certificate of Incorporation

A Certificate issued by the Secretary of State after all required organizational documentation have been submitted, reviewed, and approved and the related filing fees have been paid. It serves as the effective birth certificate for the Corporation.

Annual Report

A document required to be filed by the Corporation annually with the Secretary of State. This report is required to maintain approval to do business in the State. The report updates information on the business's address, the names and addresses of the Directors, and the contact information for the Registered Agent. A processing fee is required to be paid.

Certificate of Authority

A Certificate issued by the Secretary of State to a Corporation organized in another State authorizing it to do business in the State.

Certificate of Existence/Good Standing

A Certificate issued by the Secretary of State as proof the Corporation is currently in good standing and authorized to do business in the State.

Corporation Shareholder Records

Records need to be maintained listing the specific Shares of Stock in the Corporation authorized, issued, and outstanding. Stock Certificates should be numbered and specify the Corporation Name, the Shareholder's Name, the Date of the Sale, and the Signature of the Board Member who authorized the sale of the Stock. The Shareholder records should enable a reconciliation between the number of Shares of Stock authorized, issued, and presently outstanding.

Board of Directors and Shareholder Meetings Records

Minutes should be recorded for all meetings of the Board of Directors and the Shareholders. These meetings effectively document the Corporation's business management decisions. The minutes should record who was in attendance and indicate if there is a sufficient quorum present to vote on and make binding all significant governance decisions on behalf of the Corporation. State law typically requires at least an Annual Meeting of the Shareholders.

Board of Directors' Meetings – Resolutions

Board Resolutions document decisions and shows specifically how Directors voted on matters affecting the Corporation. It is a good idea to create Board Resolutions for key business management decisions like; approving the sale of additional Shares of Stock, taking out a business loan, electing new Directors or appointing new Officers, acquiring another business, signing a lease, or approving a major new contract with a supplier or a customer.

Federal Tax Return – IRS Form -1120-S

The Federal Corporation Tax Return for an S-Corporation is IRS Form – 1120-S. The Shareholders must vote to approve being treated for tax purposes as a pass-through tax status entity. Each Shareholder will receive an IRS Form K-1 which contains information on their allocation of the S Corporation's taxable income for inclusion in their personal tax returns.

Registered Agent

Person or business entity named in the Articles of Incorporation to receive notices or service of process.

Registered Office

The office address where the Registered Agent must be located during business hours.