



To: Department of the Treasury
Internal Revenue Service
ATTN: Martha R. Brinson
Room 6526, 1111 Constitution Avenue N.W.
Washington, D.C. 20224

From: Falcon Rappaport & Berkman, LLP
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Date: August 4, 2025

Re: Entity Classification Election.
OMB Number: 1545-1516.
Form Number: 8832

To Whom It May Concern:

First and foremost, we would like to express our thanks and gratitude to the Department of the Treasury and the Internal Revenue Service in this extremely worthy endeavor of improving Form 8832. While the request is focused on Form 8832, our comments are intended to discuss the general need to update, refine, and streamline the various forms that are used to make elections under the entity classification elections, commonly referred to as the Check-the-Box regime, as announced in IRS Notice 95-14 and promulgated in regulations under Treas. Reg. §§ 301.7701-1, -2, and -3. While the Check-the-Box regime was a positive step that simplified tax classification significantly, it created additional complexities that required the IRS to create a number of forms to facilitate the elections, including the following:

- Form 2553, Election by a Small Business Corporation
- Form 8869, Qualified Subchapter S Subsidiary Election
- Form 8832, Entity Classification Election

Furthermore, there are two kinds of trusts that can also make elections under the Check-the-Box regime, Qualified Subchapter S Trusts (“QSST”, and Electing Small Business Trusts (“ESBT”). While the QSST election is made using Form 2553, the ESBT requires the preparation of a written statement and not a form. These elections, when coupled with various taxable and tax-free reorganizations that are commonplace, create additional issues with Employer Identification Numbers (“EIN”), specifically when a new EIN is required and when one is not. These elections include reorganizations under I.R.C. § 368(a)(1)(F) (“F Reorganization”) after which the Qualified Subchapter S Subsidiary (“QSUB”) is either

converted to a limited liability company (“LLC”) or merged with a LLC to facilitate a part-sale and part-contribution of the historic business of an entity.¹ Finally, despite the IRS’s release of subregulatory guidance, such as Rev. Rul. 64-250 and Rev. Rul. 2008-18, and information on the IRS’s website, such as Publication 5845,² there is significant disagreement among practitioners as to whether it is necessary to file Forms 2553 and 8832 when undertaking this reorganization.³

As such, instead of limiting our responses to Form 8832, we will discuss the need for overarching guidance, whether (i) through formal promulgation of regulations or (ii) the consolidation and simplification of the various forms and subregulatory guidance.

Subjects on which comments were invited:

(a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

Yes. We believe the collection of this information is necessary and important for the function of the IRS. If this information were not collected, then it would be more difficult for the IRS to be able to anticipate which tax returns should be filed. If, for example, a single individual owner of a LLC elects to be taxed as a corporation, the IRS would expect the LLC to file Form 1120. However, without filing this election, the IRS will not know whether to expect to receive Form 1065 1120S, or Form 1120, or whether the LLC's activities will be reported on an individual return (*i.e.*, the LLC is a disregarded entity).

Furthermore, we believe there are additional so-called knock-on effects, most notably that the vast majority of the states require taxpayers to have the same tax classification for federal and state purposes. As such, if the IRS were to eliminate its election forms, the result would be that states would create their own forms and be inundated by additional filings. While we understand, and even more so appreciate, that the current system creates more work for the IRS, we believe that the additional burden that would be added onto taxpayers, their advisors, and state revenue agencies, must be considered as part of the possibility of a new process.

(b) the accuracy of the agency's estimate of the burden of the collection of information;

According to the various Forms, the following amounts of time are estimated:

• Form 2553, Election by a Small Business Corporation	
Recordkeeping	9 hr., 48 min.
Learning about the law or the form	2 hr., 33 min.
Preparing and sending the form to the IRS	4 hr., 1 min

- Form 8869, Qualified Subchapter S Subsidiary Election

¹ See, *e.g.*, <https://www.thetaxadviser.com/issues/2020/sep/private-equity-f-reorganizations-s-corporations/>.

² Available at <https://www.irs.gov/pub/irs-pdf/p5845.pdf>.

³ This has been discussed at numerous conferences among practitioners and is generally the subject of discussion and negotiation during a transaction that involves an acquisition.

No estimate is provided.

- Form 8832, Entity Classification Election

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.

- Electing Small Business Trust (no form)

No estimate is provided.

We believe that the time it takes to learn the law or about the forms is significantly more than is estimated in the form instructions. Specifically, we believe that learning the law and the panoply of considerations takes significantly more time than the IRS appears to believe. The ease of making tax elections under the Check-the-Box regime creates a veneer of simplicity that belies the complexity of determining the best tax classification for an investment or business.⁴ While we believe that the Check-the-Box regime is a positive step, if analyzed properly, it has the potential to significantly increase the amount of time it takes regarding learning about the law or the relevant forms.

Similarly, we believe that the time spent preparing the forms themselves vary significantly based on the sophistication and expertise of the preparer. Inexperienced taxpayers and advisors could easily spend hours preparing the form and sending it to the IRS. Conversely, for experienced taxpayers and advisors, such as our firm, preparing the forms generally takes less than half an hour.

Our most significant concern regarding the amount of time that is required to prepare the form is the requirement to either physically mail or fax the form to one of the IRS processing centers. We believe that taxpayers would be better served, and the IRS would experience overall efficiency improvements if an online form were created similar to what the IRS has done when it replaced Form 1023, Application for Recognition of Exemption Under I.R.C. § 501(c)(3) of the Internal Revenue Code, with an online application through Pay.gov. We believe that making these forms either a single form or a consolidated form, as suggested below, would be better for not only taxpayers, but the IRS as well.

(c) ways to enhance the quality, utility, and clarity of the information to be collected;

We believe that the forms and elections outlined above should be consolidated into a single form that is completed either on the IRS website or Pay.gov. Further, these types of elections should be filed by either the taxpayers themselves who create accounts or any licensed

⁴ See, e.g., the first episode of the How Tax Works podcast, available at <https://frblaw.com/podcast/entity-selection/>.

practitioners. These practitioners should include, but need not be limited to, Certified Public Accountants, Enrolled Agents, and Attorneys-at-Law; who should be required to obtain Practitioner Tax Identification Numbers (“PTIN”) as a gate-keeping function.

We believe that the ability to submit the form, review its status (such as whether it has been received, processed, or whether more information is required), and download relevant documentation, such as a CP-575 or 147C letters, without the need to speak with someone at the IRS and through a centralized system, would be helpful and decrease backlog.

(d) ways to minimize the burden of the collection of information on or other forms of information technology;

We believe that the updated form or portal should focus on three things:

- Streamlining the process for making elections, particularly in cases involving reorganizations where elections must be made for one or more entities (more on this below).
- Clarifying when new EINs are required, such as in a situation where a corporation taxed as a QSUB converts to a LLC and elects to be taxed as a disregarded entity. The IRS guidance on this is extremely unclear, and we believe that the IRS should permit entities to elect to retain EINs whenever possible. These issues are extremely relevant when dealing with state revenue and regulatory agencies (such as medical licensing boards), banks, and other financial institutions. Further, there is an overarching need to minimize disruption within the business’s operations.
- Enabling the taxpayer or the taxpayer’s advisors to provide a written narrative with a diagram to ensure that the IRS fully understands the steps in the reorganization(s) to minimize the amount of time that the IRS spends reviewing and evaluating the submissions.

By focusing on these three things, we believe that the burden on taxpayers and the IRS will be reduced significantly.

Regarding our first point, we believe the specific example of the F Reorganization being a reason for a complete overhaul of the Forms that are used to execute the Check-the-Box regime is instructive.⁵

In other words, when a single-member or multi-member LLC wants to change business structures into a Corporation,⁶ normally a Form 8832 would be filed. However, a LLC that wants to be taxed as an S Corporation normally needs to file Form 2553. The problem is that to File Form 2553 as an S corporation, the entity needs to be taxed as a Corporation. Therefore, under

⁵ A slide deck with a model F Reorganization transaction diagram is provided for illustrative purposes.

⁶ The Internal Revenue Code uses the word “Corporation” where practitioners commonly use the phrase “C Corporation”, which is generally synonymous, while Small Business Corporations that are taxed under subchapter S of the Internal Revenue Code are differentiated by referring to them as “S Corporations”.

IRC § 1362(a) and Treas. Reg. § 1.1362-6, it is understood that an entity only needs to file Form 2553 because the election to be taxed as a Corporation in Form 8832 is implied. The crux of this confusion comes from the fact that the instructions given for filing these forms are unclear. For example, Form 2553 does not explicitly inform any taxpayer that Form 8832 is not required. Therefore, any guidance, whether formal or subregulatory, should make this more explicit. As discussed in the paragraph below, we feel that having a single, consolidated form for the tax elections discussed herein would clarify the process significantly.

In theory, in order to undertake a F Reorganization as described above, three elections are required: (i) a S election using Form 2553, (ii) a QSUB election using Form 8869, and (iii) an election to be treated as a disregarded entity using Form 8832, the form at issue. Rev. Rul. 2008-18 states that no initial S election is required, though some practitioners believe one should be made due to the transient nature of the QSUB election. Further, there is disagreement regarding whether the final election is necessary, with some practitioners believing that it is not necessary after the conversion or merger, because the parent is the “tax continuation” and therefore the new LLC’s default tax classification is a disregarded entity. However, other practitioners take the position that it is necessary because the new LLC will retain the QSUB election. This lack of clarity leads to discomfort because many practitioners take the position that it is better to make fewer elections and assume that they will be able to work with the IRS to achieve their intentions in the event that there is confusion. As such, the ability to have a single form that states the current tax status, describes the transaction at issue from a tax and non-tax perspective, and details the final tax and non-tax structure, would be most helpful to taxpayers, their advisors, and the IRS.

The process through which a disregarded entity files a Check-the-Box election and obtains its own EIN is somewhat streamlined, but we feel that there is room for significant improvement. To obtain an EIN, the disregarded entity applies online, but the process requires the applying entity (and, by extension, the individual completing the form) to name a responsible party and the current business structure, which may not be determined at the time the entity is formed and an EIN is obtained.⁷ We feel that integrating the Check-the-Box election process with the EIN application would simplify the process significantly, and having an online process to make elections would simplify the election process by decreasing the number of IRS offices and/or groups that would need to be involved in the process. For example, certain of the Check-the-Box election forms can be filed via fax, while others have to be mailed to IRS Service Centers throughout the country. Having a single point of contact to obtain an EIN and make an initial Check-the-Box election would simplify the process for taxpayers and the IRS significantly.

⁷ After formation, businesses have two months plus 15 days to make their initial tax election, which strongly suggests that the IRS is aware that many businesses do not make a decision for some time.

(e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

We do not know how much time or cost this will provide. However, we believe that this is a worthy investment that will modernize the IRS and save time and expense for the IRS, taxpayers, and advisors.



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Model F Reorganization Diagram

Under I.R.C. § 368(a)(1)(F) and Rev. Rul.
2008-18

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DISCLAIMER

The following information and diagrams contained herein may not be construed as tax or legal advice. This Transaction Diagram is not an opinion of counsel pursuant to Section 10.37 of IRS Circular 230.

Any Tax projections, forecasts, or estimates prepared in this Transaction Diagram are presented without representation, warranty, or guarantee as to their accuracy, precision or reliability; they represent the Firm's best efforts towards arriving at a usable illustration of the potential tax liability associated with the tax matter addressed. Any client is very strongly encouraged to obtain an opinion of counsel addressing the subject of a projection before relying on the projection to make any decision that may affect any client's tax situation.

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CURRENT STRUCTURE

Key

Individual



C Corporation



S Corporation



Disregarded Entity



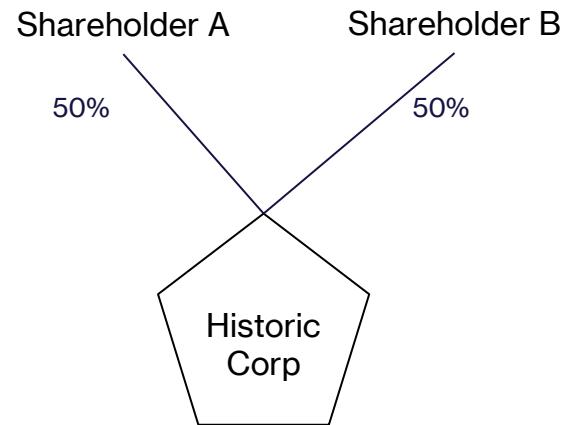
Trust



Partnership



Property Interest





Step 1: Form HoldCo

Key

Individual



C Corporation



S Corporation



Disregarded Entity



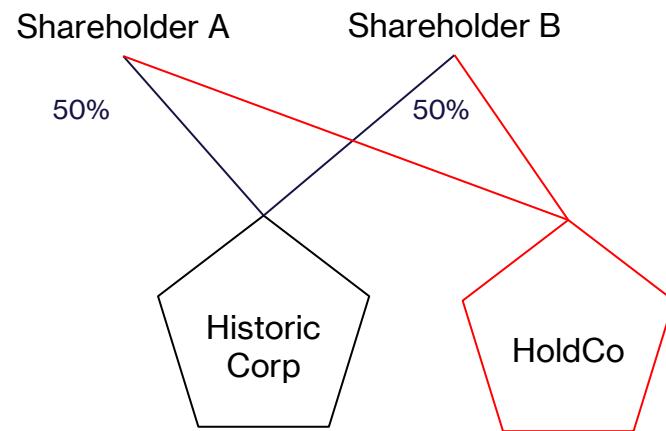
Trust



Partnership



Property Interest



- To begin a corporate reorganization pursuant to Section 368(a)(1)(F), the Shareholders will form a new corporation, “HoldCo”.
- HoldCo shall have the same owners and in the same percentages as Historic Corp.
- The Shareholders will file Form 2553 to elect S corporation status for HoldCo for federal income tax purposes.



Step 2: Contribute Historic S Corp to HoldCo

Key

Individual



C Corporation



S Corporation



Disregarded Entity



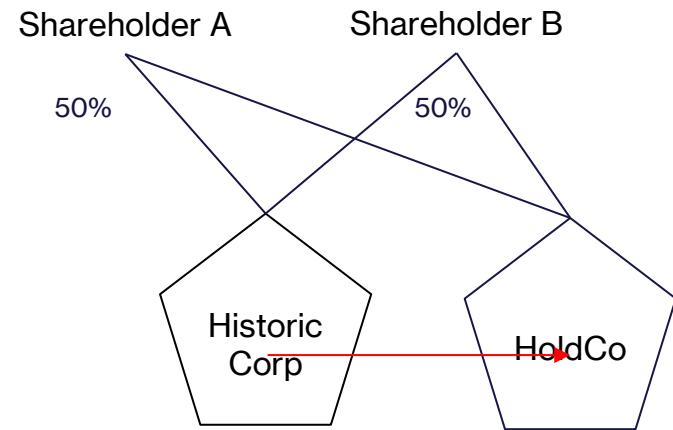
Trust



Partnership



Property Interest





Step 3: Make QSUB Election for Historic Corp

Key

Individual



C Corporation



S Corporation



Disregarded Entity



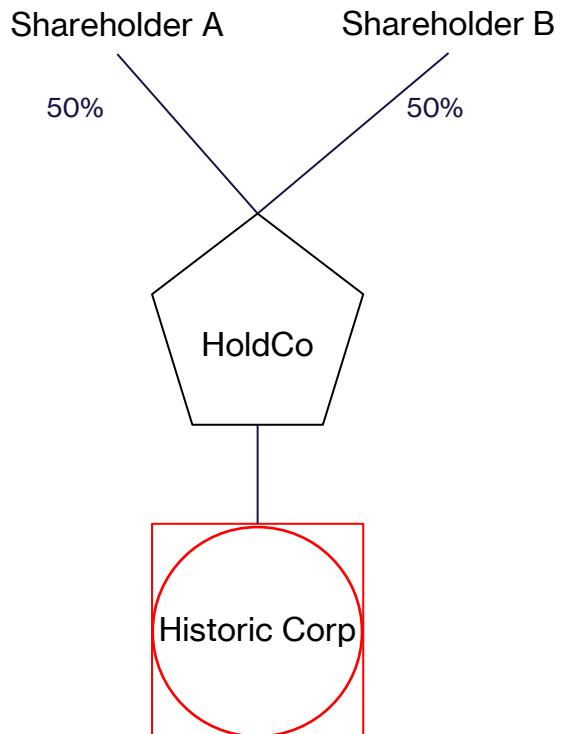
Trust



Partnership



Property Interest



- After the contribution of Historic Corp shares to HoldCo, Historic Corp will be a wholly owned subsidiary of HoldCo.
- HoldCo will file Form 8869 to elect Qualified Subchapter S Subsidiary (QSUB) status Historic Corp.
- Historic Corp will be treated as disregarded as to HoldCo for federal income tax purposes.



Step 4: Convert Historic Corp to LLC

Key

Individual



C Corporation



S Corporation



Disregarded Entity



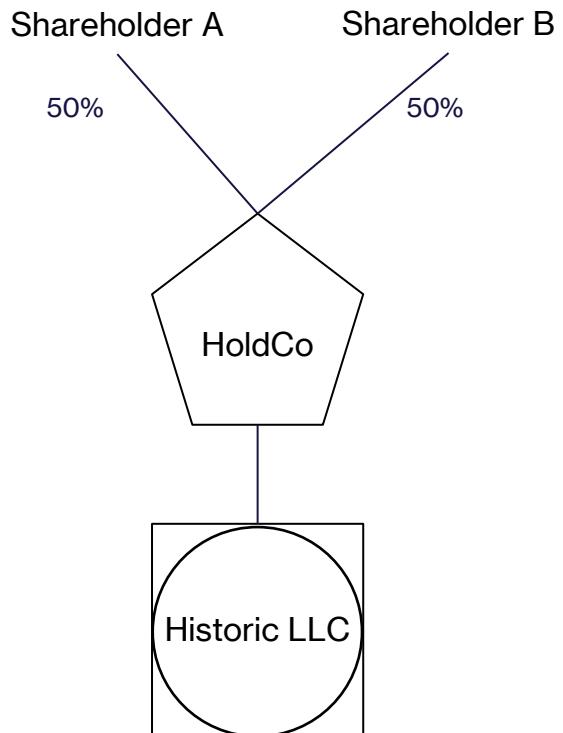
Trust



Partnership



Property Interest



- Historic Corp will undergo a statutory conversion for a state-law corporation to a state-law limited liability company, and Historic Corp will now be named “Historic LLC” and retain Historic Corp’s EIN.
- Some states, such as New York, do not permit statutory conversions. As such a new entity named Historic LLC will need to be formed and merged with Historic Corp, with Historic LLC surviving and retaining Historic Corp’s EIN.
- Historic LLC will file Form 8832 to be a disregarded entity (DRE). 6



Step 5: Grant Equity or Receive Investment in Historic LLC

Key

Individual



C Corporation



S Corporation



Disregarded Entity



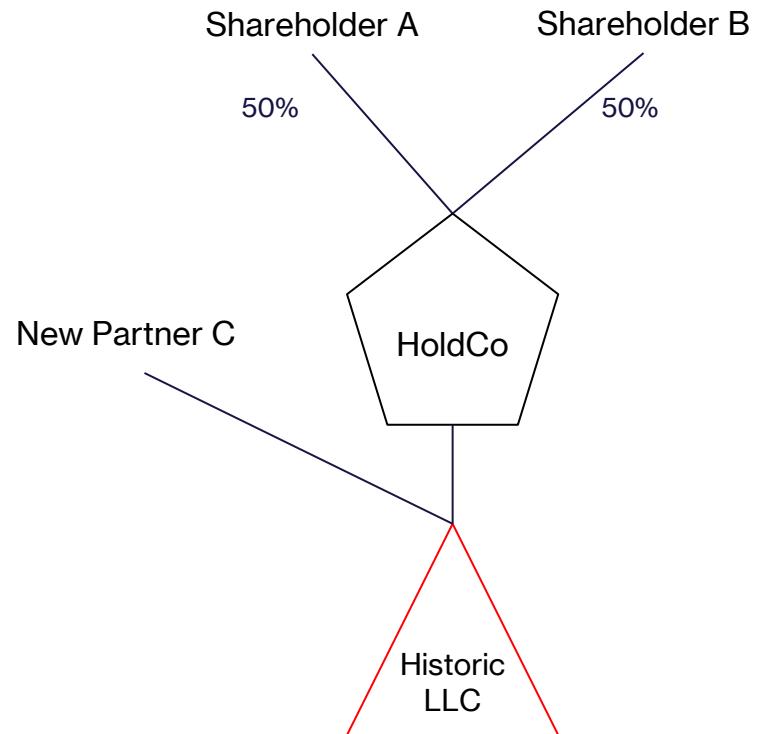
Trust



Partnership



Property Interest



- This will cause Historic LLC to become a regarded entity taxed as a partnership.



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Model F Reorganization Diagram

Under I.R.C. § 368(a)(1)(F) and Rev. Rul.
2008-18

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