



Office of Thrift Supervision  
Department of the Treasury

1700 G Street, N.W., Washington, D.C. 20552

John F. Downey  
Executive Director, Supervision

November 5, 1996

**MEMORANDUM FOR:** Chief Executive Officers  
**FROM:** John Downey *John F. Downey*  
Executive Director, Supervision  
**SUBJECT:** Subchapter S Election

Attached is a joint interagency statement developed by the Federal Financial Institutions Examination Council (FFIEC) that responds to questions on the ability of financial institutions to be treated as Subchapter S corporations under the Internal Revenue Code and receive pass-through tax treatment.

The statement indicates that financial institutions will not have to make any special filings or applications with the agencies merely as a result of making a Subchapter S election, and identifies other matters that institutions may need to address prior to making the election.

Questions concerning applications should be addressed to the Regional Office for Applications Management. Other questions may be addressed to Frances C. Augello, Senior Attorney, Business Transactions Division, (202) 906-6151, or Christine Smith, Analyst, Supervision Policy, (202) 906-5740.

Attachment



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FIL-91-96  
October 29, 1996

## INCOME TAXES

TO: CHIEF EXECUTIVE OFFICER

SUBJECT: Subchapter S Election for Federal Income Taxes

Under changes made to the Internal Revenue Code by the recently enacted Small Business Job Protection Act of 1996, financial institutions, including banks, thrifts, and their parent holding companies, will be able to elect Subchapter S corporation status under the Code and generally receive pass-through tax treatment for federal income tax purposes if certain criteria are met.

No formal application is required to be filed with the federal bank and thrift regulatory agencies merely as a result of the election by a bank, thrift, or parent holding company to become a Subchapter S corporation. However, certain steps taken by an institution or its shareholders to meet the criteria to qualify for Subchapter S status, particularly the limitations on the number and types of shareholders, may require applications or notices to the agencies. These submissions may include filings under the Change in Bank Control Act, the Bank Merger Act, the Bank Holding Company Act, the Savings and Loan Holding Company Act, or statutes governing reductions or retirements of capital stock by banks and thrifts. In some instances, filings with the agencies under the federal securities laws also may be necessary.

Financial institutions and their shareholders should understand that distributions by a Subchapter S corporation, including distributions intended to cover a shareholder's personal tax liability for the shareholder's proportionate share of the taxable income of the institution, are dividends for federal regulatory purposes, including the prompt corrective action statute and its implementing regulations. Therefore, such distributions to shareholders may be restricted in amount or prohibited in some instances.

Finally, the agencies understand that the Internal Revenue Service has yet to resolve certain tax issues relating to the application of the Subchapter S election by financial institutions.

Accordingly, institutions are encouraged to undertake a careful review of these issues prior to making a Subchapter S election, and should obtain appropriate legal, accounting, and tax advice.

For further information, please contact your primary federal regulator.

- o At the Federal Reserve Board: Molly S. Wassom, Assistant Director, Division of Banking Supervision and Regulation, (202) 452-2305, or Pat A. Robinson, Senior Attorney, Legal Division, (202) 452-3005.
- o At the Federal Deposit Insurance Corporation: For application issues, contact your Division of Supervision Regional Office. For other issues, contact Robert F. Storch, Chief, Accounting Section, Division of Supervision, (202) 898-8906, or Sandy Comenetz, Counsel, Legal Division, (202) 898-3582.
- o At the Office of the Comptroller of the Currency: For application issues, contact the Licensing Manager at your District Office. For other issues, contact the Chief National Bank Examiner's Office, (202) 874-5180.
- o At the Office of Thrift Supervision: For application issues, contact Applications Management at your Regional Office. For other issues, contact Frances C. Augello, Senior Attorney, Business Transactions Division, (202) 906-6151, or Christine A. Smith, Analyst, Supervision Policy, (202) 906-5740.



Joe M. Cleaver  
Executive Secretary

Distribution: Insured Banks, Insured Savings Associations, and Holding Companies