

## Election To Be Treated as a FSC or as a Small FSC

(Under section 927(f)(1) of the Internal Revenue Code)

Name of corporation	<b>A</b> Employer identification number (see instructions)
Address <i>within</i> the United States (see instructions): Number, street, and room or suite no. (If a P.O. box, see instructions.)	<b>B</b> Business classification (see instructions)
City or town, state, and ZIP code	<b>C</b> Country in which created or organized
Address <i>outside</i> the United States (see instructions): Number, street, and room or suite no.	<b>D</b> Number of shares issued and outstanding
City or town, and country	

Name and address of a member of the Board of Directors who is not a resident of the United States

<b>E</b> Tax year of FSC (see instructions for <b>Who May Elect</b> ). Enter ending month and day of the tax year ►	<b>F</b> Election is to take effect for the tax year beginning (enter month, day, and year)	<b>G</b> Date corporation began doing business
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<b>H</b> Name and address (including ZIP code) of each shareholder (or expected shareholder) (1) at the beginning of the tax year the election takes effect, and (2) when the election is filed.	<b>I</b> Shareholders' Consent Statement— We, the undersigned shareholders, consent to the corporation's election to be treated as a FSC (or small FSC) under section 927(f)(1). Our consent is irrevocable and is binding upon all transferees of our shares in this corporation.*	<b>J</b> Number of shares of stock held on—(Complete both columns for each shareholder.)		<b>K</b> Shareholder's identifying number (See instructions.)
		First day of year of election	Date election is filed	
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\*For this election to be valid, the consent of each shareholder must be given in column (I) above or on a separate consent statement attached to this form. (See instructions for **Separate consent statement** for required content if such statement is needed.)

**Signature.**—Under penalties of perjury, I declare that the corporation named above has authorized me to make this election under section 927(f)(1) for the corporation to be treated as a (check one) ►  FSC ►  small FSC and that the statements made are to the best of my knowledge and belief true, correct, and complete. I also certify that the corporation meets all required tests under **Who May Elect**.

Signature of officer ► \_\_\_\_\_ Title ► \_\_\_\_\_ Date ► \_\_\_\_\_

## General Instructions

Section references are to the Internal Revenue Code.

**Paperwork Reduction Act Notice.**—We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

<b>Recordkeeping</b> . . . . .	4 hr., 32 min.
<b>Learning about the law or the form</b> . . . . .	1 hr., 29 min.
<b>Preparing and sending the form to the IRS</b> . . . . .	1 hr., 38 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form more simple, we would be happy to hear from you. You can write to both the **Internal Revenue Service**, Washington, DC 20224, Attention: Reports Clearance Officer, T:FP; and the **Office of Management and Budget**, Paperwork Reduction Project (1545-0884), Washington, DC 20503. **DO NOT** send Form 8279 to either of these offices. Instead, see **Where To File** below.

**Purpose of Form.**—Form 8279 is used by a corporation to make the election to be treated as a foreign sales corporation (FSC) or a small FSC.

Once the election is made, it will remain in effect until terminated or revoked. The election applies to each shareholder who owns stock in the corporation while the election is in effect.

**Who May Elect.**—A corporation may make the FSC (or small FSC) election if it meets all of the following tests:

1. It is a corporation created or organized under the laws of a qualifying foreign country or a U.S. possession (other than Puerto Rico). The foreign country must meet the requirements of section 927(e)(3).
  2. It does not have more than 25 shareholders.
  3. It does not have preferred stock.
  4. It maintains an office in a qualifying foreign country or U.S. possession (other than Puerto Rico) and maintains a set of permanent books of account at that office. It must also maintain books and records that sufficiently establish the amount of gross income, deductions, credits, or other matters required to be shown on the FSC's (or small FSC's) income tax return, at a location within the United States as required by section 6001.
  5. It has at least one director who is not a resident of the United States.
  6. It is not a member of a controlled group that has a DISC as a member.
  7. Its tax year must be the tax year of the principal shareholder (or group of shareholders with the same tax year) with the highest percentage of voting power or, if two or more shareholders hold the highest percentage of voting power, it must be the tax year of any one of those shareholders. See section 441(h).
- IRS consent is not necessary if the electing corporation has to change its tax year to conform to the tax year of the principal shareholder. However, IRS consent may be required for a tax year change by the principal shareholder or a subsequent change by the corporation to meet the tax year requirement of section 441(h). See section 442 and the related regulations under sections 441, 442, and 921 for more information.
8. Each shareholder consents to the corporation's FSC (or small FSC) election.

After a valid election is made, the corporation must meet tests 2 through 7 above for its entire tax year to qualify as a FSC (or small FSC) for

the tax year. See sections 922 through 927 for additional information on all of the above tests.

**Where To File.**—File Form 8279 with the Internal Revenue Service Center, Philadelphia, PA 19255.

**When To File.**—A corporation files the FSC or small FSC election for its first tax year at any time during the 90-day period after the beginning of the tax year. Likewise, the election may be filed at any time in this 90-day period if the corporation revokes its small FSC or FSC election within this 90-day period. Elections for most other tax years must be filed during the 90-day period immediately preceding the beginning of the corporation's tax year.

**Revocation of Election.**—A corporation may revoke its FSC or small FSC election by meeting the requirements of Regulations section 1.927(f)-1(b), Q&A 14, that the corporation file a statement with its tax return revoking the election.

## Specific Instructions

**Address within the United States.**—Enter the address where the books and records required under section 6001 are maintained. Include the suite, room, or other unit number after the street address. If the Post Office does not deliver mail to the street address and the corporation has a P.O. box, show the box number instead of the street address.

**Address outside the United States.**—Enter the address where the permanent books of account are maintained.

**A. Employer identification number (EIN).**—Show the corporation's correct EIN. If the corporation does not have an EIN, it should apply for one on **Form SS-4**, Application for Employer Identification Number. Form SS-4 can be obtained at most IRS or Social Security Administration (SSA) offices. If the corporation has not received its EIN by the time the return is due, write "Applied for" in the space for the EIN.

**B. Business classification.**—See the last page of the instructions for Forms 1120 and 1120-A or Form 1120-FSC for the list of Codes for Principal Business Activity and enter the applicable business code number, principal business activity, and principal product or service of the corporation.

**I. Shareholders' consent statement.**—An election for FSC (or small FSC) treatment is valid only if all persons who are shareholders on the first day the election goes into effect sign the consent statement in column I and provide the other information requested in columns H, J, and K of Form 8279 or sign a separate consent statement as described below. When stock of the corporation is owned by a husband and wife as community property (or the income from that stock is community property) both husband and wife must sign the consent. Each tenant in common, joint tenant, and tenant by the entirety must sign the consent for each person who has a community interest in the stock or in the income from the stock. A legal guardian must sign for a minor. However, if a legal guardian has not been appointed, the natural guardian must sign.

The executor or administrator must sign for an estate, and the trustee must sign for a trust. If the estate or trust has more than one executor, administrator, or trustee, any such person who is authorized to file the return of the estate or trust may sign the consent. An officer of a corporation who is authorized to sign the corporation's tax return must sign the consent.

**Separate consent statement.**—Any shareholder who does not sign the consent statement in column I of Form 8279 must sign a separate consent statement for the election to be valid. The statement must say: "I, (shareholder's name), a shareholder of (corporation's name), consent to the election of (corporation's name) to be treated as a FSC (or small FSC) under section 927(f)(1) of the Internal Revenue Code. The consent so made by me is irrevocable and

is binding upon all transferees of my stock in (corporation's name)."

In addition, the statement must show the name, identifying number, and address of the corporation and for every shareholder the information requested for columns H, J, and K of Form 8279. For transferred stock, also show the name and address of the person who held the shares at the beginning of the tax year and the number of shares to which this consent applies.

**Extension of time to file consents.**—The corporation may request an extension of time to file if the corporation previously filed a Form 8279 that would have been valid if:

1. All of the shareholder consent statements had been filed with the form, or
2. A shareholder who received transferred shares failed to file a consent statement within the required 90-day period.

The corporation must establish to the satisfaction of the IRS that there was reasonable cause for not filing the consent statements described in 1 and 2 on a timely basis. If an extension is granted, file the consent statements and a copy of the previously filed Form 8279 within the extended time period granted by the IRS.

**Transfers of stock after Form 8279 is filed.**—If shares of the corporation's stock are transferred before or during the first tax year the election is to take effect but the transferor has not filed a consent statement, the recipient of the transferred shares may consent to the election by filing a separate consent statement (see instructions above for the required format) within 90 days after the beginning of the tax year the election is to take effect. If the recipient does not file the consent within the 90-day period, an extension of time to file the consent may be granted by the IRS. See **Extension of time to file consents** above. If the transfer occurs more than 90 days after the beginning of the tax year the election is to take effect, an extension of time to file the consent may be granted by the IRS if it is determined that an extension of time to file would have been granted to the transferor if the transfer had not occurred.

If shares of the corporation's stock are transferred before the beginning of the tax year the election is to take effect, and the transferor filed a consent statement, the recipient of the transferred shares must consent to the election in order for the election to be valid. The consent must be filed within 90 days after the beginning of the tax year the election is to take effect. If the recipient does not file the consent within the 90-day period, an extension of time to file the consent may be granted by the IRS. See **Extension of time to file consents** above.

**K. Shareholder's identifying number.**—The identifying number for an individual is the social security number. For all others, it is their employer identification number.

**Supplemental Form 8279.**—If the corporation issues more stock or the ownership of its stock changes after the election is filed but before the beginning of the tax year for which the election is made, the corporation must file a supplemental Form 8279, with "SUPPLEMENTAL" written across the top of the form. The supplemental form must be filed within the first 90 days of the tax year the election takes effect.

Complete columns H through K of the supplemental form only for shareholders acquiring additional stock and new shareholders. Each additional or new shareholder must consent to this election for the supplemental Form 8279 to be valid. Attach a copy of the Form 8279 filed.

**Signature.**—Form 8279 must be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or other officer (such as tax officer) who is authorized to sign for the corporation.