

Form AS 2640.1

Rev. Aug 14 08



Commonwealth of Puerto Rico
DEPARTMENT OF THE TREASURY
Internal Revenue Area

OFFICIAL USE

Subchapter N Corporation Election

(Under Section 1391 of the Puerto Rico Internal Revenue Code of 1994, as amended)

Note: The eligibility as a Subchapter N corporation depends upon the fulfillment of the requirements provided under Section 1390 of the Code and its regulations. All signatures required in this form shall be originals, not photocopies. Provide the exact name and address for the corporation or partnership.

Name of the Corporation or Partnership		A. Employer Identification Number
Postal Address		B. Date and Place of Incorporation or Organization
Municipality	Zip Code	C. Date Operations Began
Physical Address in Puerto Rico		

D. Documents evidencing the entity's constitution (Send copy) Public or Private Deed Certificate of Existence and Certificate of Incorporation

E. The election will be effective from taxable year beginning on (month, day, year) / /

F. Name and title of officer or legal representative authorized to provide more information to the Department of the Treasury (Include Form AS 2745-A - Power and Declaration of Representation)	G. Telephone number of officer or legal representative ()
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H. If the corporation or partnership changed its name after applying for the employer identification number indicated in Box A, check here

I. If the election will be effective from the first year of existence of the corporation or partnership, specify the date (month, day and year) of the earliest among the following: (1) the corporation has shareholders, the partnership has partners, (2) the corporation or partnership acquires assets, or (3) the corporation or partnership begins doing business ___/___/___

J. Taxable year: Annual return will be filed for taxable year ending on (month, day)..... /.....
If the taxable year ends on any day other than December 31, except for: (1) 52-53 week taxable years ending on December, or (2) taxable years ending on or after September 30, complete Box K, O and P. If it is a 52-53 week taxable year, write "52-53 week taxable year" at the right side of the date.

- K. Identify the corresponding phrase:
- A new corporation or partnership interested in adopting the taxable year indicated in Box J.
 - An existing corporation or partnership before the enforcement of the Code that will keep the taxable year indicated in Box J.
 - An existing corporation or partnership that will adopt a new taxable year, indicated in Box J. Indicate the closing date of the taxable year prior to the adoption (month, day, year) / /

L. The accumulated earnings and profits at the closing of the last taxable year as corporation or partnership are: \$

M. Check here if at the beginning of the first day of the first taxable year for which the corporation or partnership is a Subchapter N corporation, the corporation or partnership owns any asset which fair market value exceeds the asset's adjusted basis at that moment (Submit detailed schedule. See instructions)

N. Indicate the main activity and provide a detailed description of the business (Submit schedule if necessary)

Indicate if previously you operated as a special partnership: YES NO
If you answered "YES", indicate the date on which you commenced and ended such special partnership:

O. Complete this box if the corporation or partnership is interested in adopting: (1) a natural business year, as defined in Article 1399(b)(2)-2; or (2) a year that meets the taxable year ownership criteria of its shareholders or partners, according to Article 1399(b)(2)-3. Indicate your election:

- Natural Business Year I declare that the corporation or partnership has adopted or will adopt a natural year according to Article 1399(b)(2)-2. (See instructions about additional information required)
- Ownership Tax Year I declare that the shareholders or partners that own more than half of the stocks or shares (as of the first day of the effective taxable year for this election) of the corporation or partnership have the same taxable year of the corporation or partnership, or will adopt it.

NOTE: If Box O does not apply and the corporation or partnership is interested in adopting a fiscal taxable year, complete Box P. Box P applies if you wish to adopt a fiscal year that responds to a business purpose based on facts and circumstances.

P. Facts and circumstances: To request a fiscal taxable year for which a business purpose based on facts and circumstances is established, check the corresponding Box(es). (See instructions)

1. Check here if the fiscal year indicated in Box J, is requested under Article 1399(b)(2)-1(c). Include with this Form a statement explaining the tax and non tax factors on which the request is based. (See instructions)
2. Check here in case that the business purpose is not approved and the corporation or partnership accepts to adopt a natural taxable year, if required by the Department of the Treasury to approve your election as a Subchapter N corporation.

Q. Name and individual address (physical and postal) of each shareholder or partner and spouse if they own proprietary interest over the stocks or shares. When determining the number of shareholders or partners, husband and wife are considered as one shareholder or partner.	R. Shareholder's or partner's consent statement: Under the penalties of perjury, we declare our consent to the election for this corporation or partnership to be considered as a Subchapter N corporation under Section 1391 of the Code. We have examined this statement including its schedules, and according to our best knowledge and belief, it is considered true, correct and complete. (Shareholders or partners shall sign and specify the date)*		S. Stocks or shares acquired		T. Social security or employer identification number	U. Date in which the shareholder's or partner's taxable year ends (month, day)

* The validity of this election depends upon the consent of each shareholder or partner including spouse with proprietary interest in the stocks or partnership's shares. This consent shall be stated on this Form or on a separate schedule. See instructions for Box R regarding supplementary sheets or separate consent.

V. Eligible Trusts as Shareholders or Partners under Section 1390(e)(2)**

Beneficiary's name and address	Social Security Number
Trust's name and address	Employer Identification Number

Date on which the corporation's stocks or partnership's shares were transferred to the trust (month, day, year) ____ / ____ / ____

By this mean I make the election under Section 1399(e)(2) so that the trust can be a shareholder or partner of the Subchapter N corporation. I declare under penalty of perjury, that the trust meets all the eligibility requirements of Section 1390(e)(3) and the information provided in this Box is true, correct and complete.

_____ Signature of beneficiary, legal representative or person authorized to make the election (in these last two cases, specify position)	_____ Position	_____ Date
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** This Box applies only to stocks or shares transferred to the trust on or before the moment in which the corporation or partnership makes the election for Subchapter N corporation. Otherwise, the eligible trust election shall be presented separately.

I declare under penalty of perjury, that I have examined this Form, including its schedules, and according to the best of my knowledge and belief, it is true, correct and complete.

Official's signature _____	Position _____	Date ____ / ____ / ____
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Instructions for Subchapter N Corporation Election

GENERAL INSTRUCTIONS

Purpose – Every corporation or partnership that wishes to be treated as a Subchapter N corporation shall complete the “Subchapter N Corporation Election” Form. This election allows the income of the corporation or partnership to be taxed to the shareholders or partners, rather than to the entity itself, except as provided by the Puerto Rico Internal Revenue Code of 1994, as amended (Code).

Eligible Corporations and Partnerships – A corporation or partnership shall meet all the following requirements in order to be eligible as a Subchapter N corporation:

1. It is a domestic corporation or partnership. This term includes, in addition to a corporation or partnership organized or constituted under the Puerto Rico laws, a corporation or partnership organized or constituted under the laws of any state of the United States or the District of Columbia, engaged in a trade or business exclusively in Puerto Rico.

2. At the moment of filing the election, the corporation shall have issued and outstanding stocks. In the case of a partnership, it shall indicate the share of each partner in the same.

3. It has no more than 75 shareholders or partners. For this purpose, husband and wife (and their respective estates) are considered as one shareholder or partner. All other persons are treated as separate shareholders or partners.

4. It has only individuals, estates and/or certain qualified trusts as shareholders or partners. See instructions for Box V regarding trusts qualified to be shareholders or partners.

5. It has only one class of stocks or shares (irrespective of differences in voting rights). Generally, a corporation has only one class of stocks if every issued and outstanding stock confers identical distribution and liquidation rights.

6. It is not one of the following corporations or partnerships:

a. An insurance company subject to tax under the provisions of Subchapter G, Chapter 3, Subtitle A of the Code.

b. A registered investment company subject to tax under the provisions of Subchapter L, Chapter 3, Subtitle A of the Code.

c. An employees-owned special corporation subject to tax under the provisions of Subchapter M, Chapter 3, Subtitle A of the Code.

d. A corporation or partnership enjoying tax exemption under the provisions of Act No. 57 of June 13, 1963, Act No. 26 of June 2, 1978, Act No. 8 of January 8, 1987, or any other act of similar nature, except for a corporation enjoying exemption under the provisions of Act No. 78 of September 10, 1993.

e. An exempt organization under the provisions of Section 1101 of the Code.

f. A financial institution, as such term is defined in Section 1024(f)(4) of the Code.

g. An entity licensed by the Commissioner of Financial Institutions pursuant to Act No. 3 of October 6, 1987, known as the “Capital Investment Fund Act”, as amended.

h. A corporation or partnership that has in effect an election under Section 1342 of the Code.

7. It has a permitted taxable year, as defined in Section 1399 of the Code. A permitted year means the taxable year ending on or after September 30, including December 31, or any other accounting period for which the corporation or partnership establishes a business purpose to the satisfaction of the Secretary of the Treasury (Secretary). See Box P for details on requesting a fiscal year based on a business purpose.

8. Every shareholder or partner consent to the election. Each shareholder or partner consent to the Subchapter N corporation election. The consent shall be stated in Box R.

Where to file the election – The “Subchapter N Corporation Election” Form will be filed at the Assistant Secretary for Internal Revenue Office of the Department of the Treasury, Office 620, Intendente Ramírez Building, 10 Paseo Covadonga, San Juan, Puerto Rico.

When to make the election – A Subchapter N corporation can make an election for any taxable year: (1) at any time during the preceding taxable year, or (2) not later than the 15th day of the fourth month of the taxable year for which such election will be effective. An election made during the first three and a half months of a taxable year will be effective for the following taxable year if: (1) the corporation or partnership failed to comply with the eligibility requirements during one or more days of said taxable year before the day on which the election was made, or (2) one or more persons who owned stocks in the corporation or shares in the partnership during said taxable year, and before the election was made, they did not consent to the election. On the other hand, an election made after the first three and a half months will be considered effective for the following taxable year if: (1) the corporation or partnership makes an election for any taxable year and (2) such election is made after the 15th day of the fourth month of the taxable year and not later than the 15th day of the fourth month of the following taxable year. See Section 1391 of the Code.

Approval of the election – The Secretary will notify the corporation or partnership if the election has been approved and the effective date. The corporation or partnership will also be notified if the election is not accepted. If a fiscal year has been elected for a business purpose, the corporation or partnership will receive an administrative determination to approve or deny the selected year.

Filing the Return – Even if the election was filed, the corporation or partnership shall not file the Corporation of Individuals Informative Income Tax Return until it is notified that the election has been approved. Meanwhile, the corporation or partnership shall keep filing the usual returns.

The corporation or partnership must make sure that the Department of the Treasury received the election. In case that a notification is not received within a three month period, the corporation or partnership must make sure that the election was received by the Department. If controversy arises over if an election was effectively filed, it will be accepted as evidence: (a) certified mail receipt (timely filed) identifying the sender corporation or partnership; (b) copy of the Form with the Department’s receipt stamp showing the date of receipt; or (c) letter from the Department of the Treasury stating that the “Subchapter N Corporation Election” Form has been accepted.

Termination of the Election – Once the election is made, the same is effective until its termination. The corporation or partnership (and its successor) will not be eligible to make a new election for any taxable year before the fifth taxable year beginning after the first taxable year for which this termination is effective, unless the Secretary consent to such election.

Filing Fee – A certified check or money order for the amount of \$500.00 payable to the Secretary of the Treasury shall be included with the election. Any additional information required by the Department after filing the application will be subject to a \$150.00 charge.

SPECIFIC INSTRUCTIONS

Print or type all the information required.

Enter the exact name of the corporation or partnership, as it appears in the certificate of incorporation, any other legal document of incorporation or partnership agreement. Also enter the physical address in Puerto Rico of the corporation or partnership. If the corporation’s 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 or partnership. Include the office, apartment or unit number, in addition to the street name. If the corporation or partnership has a PO Box and the Postal Service does not deliver mail to the corporation or partnership offices, enter the box number instead of the street address. If the corporation or partnership changed its name or address after applying for its employer identification number, check Box H.

Box A – Employer Identification Number – The corporation or partnership must have an assigned employer identification number before making the election.

Box E – Effective date of the election – Enter the date (month, day and year) on which the taxable year for which the election will be effective begins. Generally, this will be the beginning date of the taxable year for which the ending date is required in Box J. In the case of a new corporation, this date is generally the same one required in Box I. The taxable year of a new corporation or partnership begins on the date that it has shareholders or partners, acquires assets, or begins doing business, whichever occurs first. If the effective date indicated in this Box E for a new corporation or partnership is later than the date indicated in Box I, the corporation or partnership shall file a short year return for the period comprehended between these dates.

Boxes L and M – Complete these Boxes if this election is filed for a new corporation or partnership, existing or created through a reorganization.

Box L – Include the amount of accumulated earnings and profits as of the last day of the last taxable year of the corporation and partnership before the taxable year for which the election will be effective. If the election will be effective for the following taxable year, declare the earnings and profits as of the end of the last taxable year of the corporation or partnership before the election is made.

Box M – Check this Box if after examining all the assets owned by the corporation or partnership as of the first day of the first taxable year for which the corporation or partnership is a Subchapter N corporation, the estimated fair market value of any asset exceeds the adjusted basis for tax

purposes at that moment. For these purposes, the recorded or unrecorded goodwill will not be considered an asset of the corporation or partnership. Submit with the election a detailed schedule including the estimated fair market value and adjusted basis. Include copy of the corporation's or partnership's financial statements at the end of the taxable year immediately before the effective date of the election. Such statements shall be audited by a certified public accountant licensed in Puerto Rico if the business volume for said year exceeded \$1,000,000.

Box O – Complete this Box if you adopted a taxable fiscal year, which is not a 52-53 week year ending on or after September 30, including December 31. If you checked Box K.2, you do not have to complete Boxes O and P.

Box O.1 – Include a statement showing separately the monthly gross income for the most recent 47 months, as required by Article 1399(b)(2)-2 of the Regulations. If the corporation or partnership does not have gross receipts for a 47 month period, it cannot establish a natural business year.

Box P – Include a statement explaining the business purpose, as well as the facts and circumstances justifying the approval of the business fiscal year, as provided by Article 1399(b)(2)-1(c) of the Regulations. The Secretary will consider, among others, the following tax factors: (a) the deferral of a substantial part of the corporation's or partnership's income or the deductions from one year to another to substantially reduce the tax liability attributable to the corporation or partnership income, (b) the previously indicated deferral, but regarding a corporation's shareholder or a partnership's partner, and (c) the creation of a short period, resulting in a substantial net operating loss. As a general rule, the following factors will not be sufficient to establish a business purpose: (a) the use of a specific taxable year for accounting or regulatory purposes, (b) contracting policies of a particular business, (c) use of a particular year for administrative purposes, such as the admission or retirement of partners or shareholders, promotion of personnel, and compensation and retirement agreements with personnel, partners or shareholders, or (d) the fact that a particular business involves the use of price lists, a model year, or other items that vary annually. If a requested business year causes the deferral or distortion of income, the non tax factors shall establish compelling reasons for the requested taxable year.

Box R – Shareholder's consent – Each shareholder or partner who owns (or is deemed to own) stocks or shares at the moment of making the election, shall consent to such election. If the election is made during the taxable year for which it will be effective, every person who was a shareholder or partner during that part of the year before the election is made, must consent to the election, even though such person may have sold or transferred his or her stocks before making the election. Each shareholder or partner consents by signing and dating This Box R or by signing and dating a separate consent statement, as explained below.

An election made during the first three and a half months of the taxable year is effective for the following taxable year, if a shareholder or partner who owns stocks or shares in the corporation or partnership during the part of such year before the election was made, and who did not own stocks or shares at the moment of the election, did not consent to the election.

In the case of married persons who own stocks or shares, both husband and wife must consent. Each tenant in common, joint tenant, and tenant by the entirety must also consent.

A minor's consent will be made by his or her tutor / legal representative, or by a natural or adoptive parent, if no legal representative has been appointed.

The consent of an estate will be made by the executor or administrator.

If stocks are owned by a trust that qualifies as a shareholder or partner, the beneficiary must consent.

Separate consent statement – If a continuation sheet or separate consent statement is needed, attach it to this Form. The separate consent statement shall specify the name, address and employer identification number of the corporation or partnership, as well as the shareholders or partners information required in Boxes Q through U.

If you want, you may combine all the shareholder's or partner's consents in one statement or sheet.

Box S – Indicate the number of stocks owned by each shareholder or the share / percentage of participation of each partner and the dates of acquisition. If the election will be effective in the same year it was made, do not include all the shareholder's stocks or the partner's shares that were transferred or sold before the election. However, these shareholders or partners must consent to the election in order to be effective for this year. Include every tenant in common, joint tenant, and tenant by the entirety.

Box T – Enter the social security number of each shareholder or partner who is an individual. Enter the employer identification number of each shareholder or partner that is an estate or trust.

Box U – Enter the month and day on which each shareholder's or partner's year ends. If a shareholder or partner is changing his or her taxable year, enter the new taxable year and attach an explanation indicating the previous year and the basis for the change (for example, through an administrative determination request).

Box V – Some trusts qualified to be shareholders or partners of a Subchapter N corporation, may make the election according to Section 1391(e)(2) of the Code. In general, the qualified trust election must be filed within the 3 months and 16 days period beginning on the date on which the corporation's stocks or partnership's shares are initially transferred to the trust or within a 3 months and 16 days period beginning with the first day of the taxable year for which the Subchapter N corporation election is effective, whichever occurs later. See Article 1390(d)-3. You may use a separate statement in order to qualify.

Note: Box V may be completed only if you filled out the rest of the form. The trust beneficiary must consent to the election in Box R.

Signature – The Form shall be signed by the president, treasurer, assistant treasurer, chief accounting officer, or any other corporation or partnership officer authorized to sign.