

# Instructions for Form 1128

(Rev. June 1991)

## Application To Adopt, Change, or Retain a Tax Year

*(Section references are to the Internal Revenue Code unless otherwise noted.)*

### 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 this 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:

|                 | Recordkeeping    | Learning about the law or the form | Preparing and sending the form to IRS |
|-----------------|------------------|------------------------------------|---------------------------------------|
| Parts I and II  | 8 hrs., 37 min.  | 2 hrs., 35 min.                    | 2 hrs., 50 min.                       |
| Parts I and III | 13 hrs., 10 min. | 3 hrs., 58 min.                    | 4 hrs., 22 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: IRS Reports Clearance Officer, T:FP; and the **Office of Management and Budget**, Paperwork Reduction Project (1545-0134), Washington, DC 20503. **DO NOT** send the tax form to either of these offices. Instead, see the instructions on page 3 for information on where to file.

## General Instructions

**A. Purpose of Form.**—File Form 1128 to request a change in your tax year. Partnerships, S corporations, or personal service corporations may also be required to file the form to adopt or retain certain tax years.

For more information see **Pub. 538**, Accounting Periods and Methods.

**B. Who Must File.**—Generally, individuals, partnerships, corporations, S corporations, personal service corporations, estates, cooperatives, tax-exempt organizations, controlled foreign corporations, passive foreign investment companies, foreign personal holding companies, and other foreign corporations must file Form 1128 to change their tax years.

In addition, partnerships and personal service corporations file Form 1128 to adopt a tax year other than a required tax year. Also, partnerships, corporations, S corporations, and personal service corporations file the form to retain a tax year other than a required tax year. For instance, a corporation that now qualifies as a personal service corporation must file Form 1128 if it wants to retain its current fiscal year.

The parent of an affiliated group that files a consolidated return must file Form 1128 on behalf of the consolidated group. One Form 1128 should be filed for the group. In addition, the parent corporation must clearly indicate that the

Form 1128 is for the parent corporation and all its subsidiaries, and the parent corporation must answer all relevant questions on the application for every member of the consolidated group.

If an affiliated group filing a consolidated return wants to change its tax year by using Revenue Procedure 84-34, 1984-1 C.B. 508, every member of the group must meet all its requirements and comply with all its conditions.

If you are requesting a change to a 52–53 week tax year and, in addition, want to change the month with reference to which the tax year ends, you must get prior approval of the Commissioner. Prior approval is not necessary for certain corporations if they qualify to make an automatic change permitted under Regulations section 1.442-1(c) or an expeditious approval change under Rev. Proc. 84-34.

For more information, see Temporary Regulations sections 1.441-2T(c)(4), 1.1502-76(a)(1), and Pub. 538.

**C. Who Does Not File Form 1128.**—Form 1128 is not required to be filed by:

(1) A corporation that meets the terms of Regulations section 1.442-1(c) and files the required statement with its tax return to change its tax year instead of Form 1128;

(2) A subsidiary corporation required to change its tax year to file a consolidated return with its parent (see

Regulations sections 1.442-1(d) and 1.1502-76(a));

(3) A corporation electing to be treated as an S corporation and filing **Form 2553**, Election by a Small Business Corporation;

(4) A partnership, S corporation, or personal service corporation terminating a section 444 election (see Temporary Regulations section 1.444-1T(a)(5));

(5) A partnership, S corporation, or personal service corporation that intends to adopt, retain, or change to a required tax year (usually a calendar year, see Rev. Proc. 87-32, 1987-2 C.B. 396);

(6) A partnership, S corporation, or personal service corporation that elects a tax year other than the required tax year by filing **Form 8716**, Election To Have a Tax Year Other Than a Required Tax Year;

(7) Newly married individuals changing to the tax year of the other spouse in order to file a joint return (Regulations section 1.442-1(e) must be followed);

(8) A trust (other than a tax-exempt trust or a grantor trust under Rev. Rul. 90-55, 1990-2 C.B. 161) that adopts the calendar year as required by section 645;

(9) An organization exempt under section 501(a) provided the organization has not changed its tax year at any time within the 10 calendar years, ending with the calendar year that includes the beginning of the short period resulting from the change of tax year, and provided the organization had an annual return filing requirement at any time during that 10-year period (see Rev. Proc. 85-58, 1985-2 C.B. 740). This exception does not apply to organizations exempt from Federal income tax under sections 521, 526, 527, or 528; organizations described in section 401(a); and organizations involved in a group change in tax year for all its subordinate organizations;

(10) An employee plan or employee trust filing **Form 5308**, Request for Change in Plan/Trust Year, to change its plan or trust year;

(11) A FSC or an IC-DISC changing to the tax year of the U.S. shareholder with the highest percentage of voting power in accordance with section 441(h);

(12) A controlled foreign corporation required for the first tax year beginning after July 10, 1989, to have the tax year of the majority U.S. shareholder or elects to use a tax year that begins one month earlier than the majority U.S. shareholder in accordance with section 898; and

(13) A foreign personal holding company required for the first tax year beginning after July 10, 1989, to have the tax year of the majority U.S. shareholder in accordance with section 898.

**D. When To File.**—Generally, to change a tax year, Form 1128 must be filed by the 15th day of the second calendar month after the short period ends. For example, if you are requesting a change to the calendar year, you must file Form 1128 by the 15th day of February of the next year.

A request for approval to change a tax year under Rev. Proc. 85-58 must be filed by the 15th day of the fifth calendar month after the short period ends.

For partnership adoptions, Form 1128 must be filed by the end of the month following the close of the tax year being requested.

If you are requesting approval to retain a tax year, you must file Form 1128 by the 75th day of the beginning of the tax year that you want to retain.

**E. Late Applications.**—If you file Form 1128 after the appropriate due date as stated in instruction D above, your Form 1128 is LATE. A late-filed Form 1128 will be considered for processing only upon a showing of good cause and if it can be shown to the satisfaction of the Commissioner that granting an extension will not jeopardize the Government's interest. If Form 1128 is filed after the date for filing the application, a \$500 user fee must accompany a ruling request for extension of time to file. See the instructions for Part III, "Ruling Provisions", for more information.

An extension of time will ordinarily be denied if the application is received more than 90 days after the time required for filing Form 1128, except in very unusual and compelling circumstances.

To facilitate consideration of extension requests, information fully responsive to each of the criteria set forth in section 4 of Rev. Proc. 79-63, 1979-2 C.B. 578 should be provided. An extension request filed under Regulations section 1.9100 and Rev. Proc. 79-63 is a ruling request under Rev. Proc. 91-1, 1991-1 I.R.B. 9 and is subject to public inspection under section 6110.

In accordance with Rev. Proc. 91-1, you must submit a statement of same issue in an earlier return (section 8.01(4)), a statement of prior similar issues ruled on or requested (section 8.01(5)), a statement of relevant authorities supporting taxpayer's views, a statement regarding contrary authorities, and a statement identifying pending legislation (section 8.01(6)), a statement identifying information to be deleted (section 8.01(7)), and a perjury statement (section 8.01(10)).

**F. Early Applications.**—Generally, an application to adopt or change a tax year will not be considered if it is submitted more than 60 days prior to the close of the short year.

## Specific Instructions

All applicants must complete **Part I** of Form 1128. **Part II** is completed by applicants requesting expeditious approval of a change in tax year under Rev. Proc. 66-50, Rev. Proc. 76-10, Rev. Proc. 85-58, and applicants requesting expeditious approval on a change or retention of a tax year under Rev. Proc. 87-32. See the instructions for Part II for more information.

**Part III** is completed by applicants requesting change, adoption, or retention of a tax year who cannot use the expeditious rules under the revenue procedures listed above.

In addition, corporations, S corporations, partnerships, controlled foreign corporations, tax-exempt organizations, estates, passive foreign investment companies, personal service corporations, cooperatives, foreign personal holding companies, and other foreign corporations must complete the specific section(s) in Part III that applies to the particular entity. See the instructions for Part III for more information.

All attachments to Form 1128 must show the applicant's name, identifying number, and address. Also indicate that the sheet is an attachment to Form 1128.

State whether the applicant wants a conference in the National Office if the IRS proposes to disapprove its request.

### Part I—All Applicants

DO NOT FILE A TAX RETURN USING THE REQUESTED TAX YEAR UNTIL YOUR APPLICATION IS APPROVED.

**Name.**—If the application concerns a husband and wife who file a joint return, enter your name and your spouse's name.

**Identifying Number.**—Individuals should enter their social security number in this block. If the application is made on behalf of a husband and wife who file their income tax return jointly, enter the social security numbers of both. However, if you or your spouse are engaged in a trade or business, enter the employer identification number instead of the social security numbers. Applicants, other than individuals, should enter their employer identification number in this block. If the employer identification number is unknown because one has been applied for but not yet received, enter "Applied For."

**Address.**—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 applicant has a P.O. box, show the P.O. box number instead of the street address.

**Person To Contact.**—The person to contact must be the person authorized

to sign the Form 1128, or the applicant's authorized representative. If the person to contact is an agent for the applicant, a power of attorney must be attached to the application. **Form 2848**, Power of Attorney and Declaration of Representative, may be used for this purpose.

**Items 1a and 1b.**—A 52–53 week tax year must end on the same week-day and with reference to either the last day such day occurs in the month or the day which occurs nearest the last day of the month. If the requested year is a 52–53 week tax year, describe the year (e.g., last Saturday in December or Saturday nearest to December 31).

Retention of the present tax year generally only applies to those entities who have already made a valid election under section 444.

**Item 1c.**—The short period return that is required must begin on the day following the close of the old tax year and end on the day before the first day of the new tax year. In its initial year, the tax year generally starts when business operations commence. A corporation's tax year begins at the earliest of the following: **(1)** the date it first has shareholders, **(2)** the date it first has assets, or **(3)** the date it first begins doing business. The initial year ends on the day before the first day of the new tax year.

### Part II—Expeditious Approval Rules

Complete Part II of the form if you can use the expeditious approval rules under one of the revenue procedures listed in (1), (2), (3), or (4) below and you are filing a timely application. If you do not qualify to use the expeditious approval rules, you may want to request a ruling. See Part III for information.

**(1)** The entity is a corporation that cannot meet the provisions of Regulations section 1.442-1(c) and is requesting a change under Rev. Proc. 84-34. Certain specific conditions, however, must be met by the corporation to use this procedure.

**(2)** The entity is a partnership, an S corporation, or a personal service corporation requesting a change or retention of a tax year under the expeditious approval rules of Rev. Proc. 87-32. A partnership, S corporation, or personal service corporation may be able to change or retain its tax year by following Rev. Proc. 87-32. Under section 4.01(1) of the procedure, the entity determines its natural business year. The entity must attach to Form 1128 a statement showing the amount of gross receipts for the most recent 47 months as required by section 4.03(3) of the revenue procedure. Sections 4.01(1) and 4.01(2) provide expeditious approval for an S corporation to adopt, retain, or

change to a tax year that coincides with the tax year used by the shareholders. The representation statements (Form 1128, Part II, Question 2) highlight the requests provided for in section 4 of the revenue procedure. **Note:** *Generally, to retain its tax year the entity must have a valid section 444 election in effect.*

(3) The entity is an individual changing from a fiscal year to a calendar year; you receive income only from wages, salaries, interest, dividends, capital gains, pensions, annuities, rents, or royalties; and you meet all the provisions of Rev. Proc. 66-50, 1966-2 C.B. 1260.

(4) The entity is a tax-exempt organization requesting a change under the simplified method of Rev. Proc. 85-58, 1985-2 C.B. 740, or Rev. Proc. 76-10, 1976-1 C.B. 548.

Rev. Proc. 85-58 states that an organization exempt under section 501(a) need not file Form 1128 unless that organization has changed its tax year at any time within the 10 calendar years ending with the calendar year that includes the beginning of the short period resulting from the change of an annual tax year, and it had an annual return filing requirement at any time during that 10-year period. An organization described in section 501(c) or (d) is exempt from tax under section 501(a) unless the exemption is denied under section 502 or 503. Rev. Proc. 85-58 does not apply to: farmers' cooperatives exempt from Federal income tax under section 521; organizations described in sections 526, 527, and 528; organizations described in section 401(a); and organizations requesting a change in tax year on a group basis.

A central organization should follow Rev. Proc. 76-10 to apply for a group change in tax year for all its subordinate organizations. Rev. Proc. 76-10 does not apply to: farmers' cooperatives exempt from Federal income tax under section 521; certain organizations that have unrelated business taxable income defined in section 512(a); and organizations that are private foundations defined in section 509(a).

If you can use the expeditious approval rules under one of the revenue procedures listed in (1), (2), (3), or (4) above, complete Part II of the form and the "Signature" area on page 4. Be sure to attach a power of attorney if applicable. If Form 1128 is not filed on time or is incomplete, you may receive a letter from the Service Center denying approval. You may then want to request a ruling by completing Part III, as discussed below, and submitting Form 1128 to the National Office for approval.

**Where To File.**—If you completed Part II, file Form 1128 with the IRS Service Center where you file your tax return. A user fee is not required if Form 1128 is filed timely under any of the revenue

procedures listed in Part II. When Form 1128 is approved, you will receive notification of its approval. If you do not receive any communication from IRS regarding your application for expeditious approval within 60 days, you should contact the Service Center.

### Part III—Ruling Provisions

Complete Part III if you cannot qualify to file under the expeditious approval rules listed under (1), (2), (3), or (4) in Part II above or if your application is late.

**User Fee.**—Applicants who cannot qualify to file under the expeditious approval rules must complete Part III of the form and pay a user fee of \$200 (\$150 for exempt organizations). Only one user fee is required for a request from an affiliated group that files a consolidated return. (See instruction E, "Late Applications" for the user fee on a ruling request for an extension of time.)

**Rev. Rul. 87-57.**—If a partnership, S corporation, or personal service corporation wants to adopt, retain, or change to a tax year by establishing a business purpose but cannot qualify for the expeditious approval rules, the entity should refer to Rev. Rul. 87-57, 1987-2 C.B. 117. The ruling discusses various facts and circumstances in which the taxpayer may or may not establish a business purpose for using a tax year.

**Section 444 Election.**—If approval is requested to use a particular tax year based on a business purpose, a partnership, S corporation, or personal service corporation, if otherwise qualified, may file a back-up section 444 election. If the business purpose request is later denied, the partnership, S corporation, or personal service corporation, if otherwise qualified, will be required to activate the back-up section 444 election. The election is made on Form 8716. See Temporary Regulations section 1.444-3T for additional information.

### Section A—General Information

All filers requesting a ruling on a change, adoption, or retention of a tax year must complete Section A.

**Line 1b.**—A subsidiary that is required to change its tax year in order to adopt the common parent's annual tax year for the first consolidated return year for which the subsidiary's income is includible in the consolidated return in accordance with Regulations section 1.1502-76(a) is not considered to have made a change in tax year in the last 6 years. In addition, it is also not considered to have made a change in the last 6 years if it is required to change to a tax year ending December 31 in the tax year in which the

corporation makes an election under section 1362(a).

### Section B—Corporations (other than S corporations and controlled foreign corporations)

Corporations (other than S corporations and controlled foreign corporations) must complete Section B and any other section that applies to that particular entity. For example, a passive foreign investment company would complete Section B and attach the statement required by Section H. A tax-exempt organization that is a corporation would complete Sections B and F.

### Section C—S Corporations

An S corporation must have a permitted tax year unless it has elected under section 444 to have a tax year other than the required tax year. A "permitted year" is:

- (1) a year that ends on December 31, or
- (2) any other tax year for which the corporation establishes a business purpose to the satisfaction of the Commissioner.

For purposes of (2), any deferral of income to shareholders shall not be treated as a business purpose. For guidance as to what constitutes a business purpose, refer to Rev. Proc. 87-32 and Rev. Rul. 87-57.

### Section D—Partnerships

A partnership must obtain the Commissioner's advance approval to change, adopt, or retain a tax year unless it is not required to file Form 1128 as discussed on page 1 of the instructions under "Who Does Not File Form 1128" or it meets one of the expeditious approval rules discussed in Part II of the Instructions.

Partners **MUST** also get advance approval to change their tax years.

A partnership should enter in Item 1 of Section D the first date a business transaction resulted in a tax consequence, such as receiving income or incurring an expense.

### Section E—Controlled Foreign Corporations

A controlled foreign corporation must obtain the Commissioner's advance approval to change a tax year unless it is not required to file Form 1128, as discussed on page 1 of the instructions under "Who Does Not File Form 1128."

### Where To File

If you completed Part III, file Form 1128 and the appropriate user fee with the

National Office. All filers other than exempt organizations should mail Form 1128 to the Internal Revenue Service, Associate Chief Counsel (Technical), Attention: CC:CORP:T, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

You should normally receive an acknowledgement of receipt of your application within 30 days. You may inquire about the status of your application by writing to: Control Clerk, CC:IT&A, Internal Revenue Service, Room 5517, 1111 Constitution Ave., N.W., Washington, DC 20224.

A request for a change in tax year for an exempt organization and the appropriate user fee should be filed with the Internal Revenue Service, Assistant Commissioner (Employee Plans and Exempt Organizations), Attention: E:EO, P.O. Box 120, Ben Franklin Station, Washington, DC 20044.

## Signature

Form 1128 MUST be signed by the applicant as discussed below.

**Individual.**—If this application pertains to a husband and wife, the names of both should appear in the heading and both must sign.

**Partnership.**—Show the partnership name, followed by the signature of one of the partners and the phrase “Member of partnership.”

**Estate.**—Show the name of the estate and the signature and title of the fiduciary or other person legally authorized to sign.

**Corporations, S Corporations, Personal Service Corporations, Cooperatives, Controlled Foreign Corporations, Passive Foreign Investment Companies, Foreign Personal Holding Companies, and Other Foreign Corporations.**—The application must show the name of the company and the signature of the president, vice president, treasurer,

assistant treasurer, or chief accounting officer (such as tax officer) authorized to sign, and their official title. Receivers, trustees, or assignees must sign any application they are required to file. For a subsidiary corporation filing a consolidated return with its parent, the form should be signed by an authorized officer of the parent corporation. For a controlled foreign corporation, the form must be signed by the controlling U.S. shareholder(s).

**Tax-Exempt Organization.**—Show the name of the organization and the signature of a principal officer or other person authorized to sign, followed by his or her title.

**Preparer Other Than Applicant.**—The individual or firm preparing the application must also sign it. Unless you are self-employed, show the name of the firm that employs you. If you file on an applicant’s behalf, include a power of attorney. Show any specific acts the power of attorney grants, such as representation before IRS.