



# Instructions for Form 1128

## (Rev. June 1993)

### 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 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 times are:

	Recordkeeping	Learning about the law or the form	Preparing and sending the form to the IRS
Parts I and II	9 hr., 20 min.	2 hr., 47 min.	3 hr., 4 min.
Parts I and III	14 hr., 7 min.	4 hr., 4 min.	4 hr., 29 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**, Attention: Reports Clearance Officer, T:FP, Washington, DC 20224; 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 **Where to file** on page 3.

## General Instructions

### Purpose of Form

File Form 1128 to request a change in tax year. Partnerships, S corporations, or personal service corporations may be required to file the form to adopt or retain certain tax years. In addition, Form 1128 may be filed to adopt a calendar year that corrects an improper tax year. See Revenue Procedure 85-15, 1985-1 C.B. 516 for information.

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

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

The common parent of a consolidated 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 common parent corporation must clearly indicate that the Form 1128 is for the common parent corporation and all its subsidiaries, and the common parent corporation must answer all relevant questions on the application for each member of the consolidated group.

If a consolidated group filing a consolidated return wants to change its tax year by using Rev. Proc. 92-13, 1992-1 C.B. 665, as modified and amplified by Rev. Proc. 92-13A, 1992-1 C.B. 668, every member of the group must meet all its requirements and comply with all its conditions.

If an applicant requests a change to a 52-53 week tax year and, in addition, requests to change the month with reference to which the tax year ends, the applicant must first get approval by filing Form 1128. Prior approval is also necessary for a change from a 52-53 week year to any other tax year, including another 52-53 week year.

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

### Who Does Not File

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 (see **Section B—Corporations** on page 4 of these instructions);

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) unless the 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 tax year, and the organization has 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 under section 441(h);

12. A specified foreign corporation defined in section 898 that is conforming its tax year to the required tax year, including a specified foreign corporation that is making the one-month election under section 898(c)(1)(B).

## When To File

Generally, to change a tax year, Form 1128 must be filed by the 15th day of the 2nd calendar month after the short period ends. For example, if a request is made to change to the calendar year, 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 5th 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 a request is made to retain a tax year, file Form 1128 by the 75th day of the beginning of the requested tax year.

## Late Applications

A Form 1128 that is filed after the appropriate due date stated above is considered to be a late application.

However, applications filed within 90 days after the time required for filing may be considered as timely filed under Regulations section 301.9100-1 when the applicant provides evidence to establish that:

1. The taxpayer acted reasonably and in good faith, and
2. Granting relief will not prejudice the interests of the government. See section 5 of Rev. Proc. 92-85, 1992-2 C.B. 490.

Applications filed beyond 90 days after the due date of Form 1128 will be presumed to jeopardize the interests of the government except in very unusual and compelling circumstances.

An extension request filed under Regulations section 301.9100-1 and Rev. Proc. 92-85 is a ruling request under Rev. Proc. 93-1, 1993-1 I.R.B. 10, and is subject to public inspection under section 6110. See section 8 of Rev. Proc. 93-1 for information on requesting a ruling, including specific information that must be submitted.

## 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. 92-13 (and 92-13A), Rev. Proc. 66-50, 1966-2 C.B. 1260, Rev. Proc. 76-10, 1976-1 C.B. 548, Rev. Proc. 85-58, and applicants requesting expeditious approval on a change or retention of a tax year under Rev. Proc. 87-32. See **Part II** for more information.

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

Also, 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 **Part III** of these instructions for more information.

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

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

## Part I—All Applicants

**Caution:** *Do not file a tax return using the requested tax year until the application is approved.*

**Name.**—If the application is for 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 for a husband and wife who file a joint income tax return, enter both social security numbers. However, if you or your spouse are engaged in a trade or business, enter the employer identification number (EIN) instead of the social security numbers. Applicants other than individuals should enter their EIN in this block. If the applicant has not received its EIN by the time the application is due, write "Applied For" in the space for the EIN. Get **Pub. 583**, Taxpayers Starting a Business.

**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 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.

**Item 2—User fee.**—Applicants filing Form 1128 to request certain expeditious (automatic) changes in tax year under

Rev. Proc. 92-13, Rev. Proc. 87-32, Rev. Proc. 66-50, Rev. Proc. 85-58 or Rev. Proc. 76-10 are not required to pay a user fee when Form 1128 is filed on time.

Applicants filing Form 1128 to request a ruling on a change in tax year under Rev. Proc. 93-1 must pay a \$200 user fee (\$150 for exempt organizations). A separate \$200 user fee is also required for applicants (including applicants requesting expeditious approval under Rev. Proc. 92-13, Rev. Proc. 87-32, and Rev. Proc. 66-50) that apply for an extension of time to file under Regulations section 301.9100-1. Payment of the user fee (check or money order made payable to the Internal Revenue Service) must be sent with Form 1128 at the time the form is filed. See Rev. Proc. 93-23, 1993-19 I.R.B. 6, for more information concerning user fees.

**Items 3a and 3b.**—A 52–53 week tax year must end on the date a specified day of the week last occurs in a particular month or the date that day of the week occurs nearest to the last day of a particular calendar 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).

Check the box to retain the present tax year only if you have already made a valid election under section 444.

**Item 3c.**—The required short period return 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 first year, the tax year generally starts when business operations commence. A corporation's tax year begins at the earliest of the following:

- The date it first has shareholders,
  - The date it first has assets, or
  - 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 the applicant can use the expeditious approval rules under one of the revenue procedures listed below and the application is filed on time. If the applicant does not qualify to use the expeditious approval rules or the application is late, a ruling may be requested. See **Part III** of these instructions for details.

**Rev. Proc. 92-13.**—This revenue procedure, as modified and amplified by Rev. Proc. 92-13A, applies to a corporation that:

1. Cannot meet the provisions of Regulations section 1.442-1(c) regarding

a tax year change without the IRS' prior approval.

2. Has not changed its annual tax year at any time within the last 6 calendar years (or within any of the calendar years of existence, if less than 6 years) ending with the calendar year that includes the beginning of the short period required to effect the tax year change, and

3. Is not any of the following:

- a. A member of a partnership,
- b. A beneficiary of a trust or an estate,
- c. A shareholder of an interest-charge DISC or a Foreign Sales Corporation (FSC), as of the end of the short period,
- d. An S corporation (and does not attempt to make an S corporation election for the tax year immediately following the short period; see Rev. Proc. 87-32, discussed on page 3),
- e. A personal service corporation,
- f. An interest-charge DISC or FSC,
- g. A controlled foreign corporation or a foreign personal holding company, or a minority shareholder in either of these,
- h. A tax-exempt organization other than those exempt from federal income tax under section 521, 526, 527, or 528,
- i. A direct or indirect shareholder of a passive foreign investment company (PFIC) that is a qualified electing fund,
- j. A PFIC, 10% or more of whose stock is owned, directly or indirectly, by U.S. persons who have elected to treat the PFIC as a qualified electing fund, and
- k. A cooperative association with a loss in the short period required to effect the tax year change.

Corporations or consolidated groups that qualify and want to change their tax year using Rev. Proc. 92-13 must also comply with the following conditions.

1. The short period required to effect the tax year change must begin with the day following the close of the previous tax year and must end with the day preceding the first day of the new tax year.

2. The corporation must file an income tax return for the short period by the due date of the return, including extensions.

3. The books of the corporation must be closed as of the last day of the new tax year. Returns for later tax years must be made on the basis of a full 12 months (or 52-53 week basis) ending on the last day of the new tax year. The corporation must figure its income and keep its books and records, including financial reports and statements for credit purposes, on the basis of the new tax year.

4. Taxable income of the corporation for the short period must be annualized (except for a real estate investment trust or a regulated investment company) and

the tax must be figured based on section 443(b) and Regulations section 1.443-1(b).

5. If the corporation has a net operating loss (NOL) in the short period required to effect the change, the NOL cannot be carried back. Instead, it must be deducted ratably over a 6-year period beginning with the first tax year after the short period. However, a short period NOL can be carried back or carried forward in accordance with section 172(b) if:

- the NOL is \$10,000 or less, or
- the NOL results from a short period of 9 or more months and is less than the NOL for a full 12-month period beginning with the first day of the short period.

**Note:** See section 5.02(b) of Rev. Proc. 92-13 for more information on consolidated NOLs.

6. If there is any unused credit for the short period, the corporation must carry the unused credit(s) forward. Unused credit(s) from the short period may not be carried back.

**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.

**Rev. Proc. 66-50.**—Use this procedure if the entity is an individual changing from a fiscal year to a calendar year; income is received only from wages, salaries, interest, dividends, capital gains, pensions, annuities, rents, or royalties; and all the provisions of Rev. Proc. 66-50 are met.

**Rev. Proc. 85-58 or 76-10.**—Use either procedure if the entity is a tax-exempt organization requesting a change under the simplified method of Rev. Proc. 85-58 or Rev. Proc. 76-10.

Under Rev. Proc. 85-58, an organization exempt under section 501(a) does not have to file Form 1128 unless:

- The organization was required to file an annual information return or Form 990-T at any time during the last 10 calendar years, and

- The organization has changed its tax year at any time within the last 10 calendar years ending with the calendar year that includes the beginning of the short period resulting from the change of tax year.

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 a 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 the applicant can use the expeditious approval rules under one of the revenue procedures listed above, complete Part II of the form and see the instructions for 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, a letter may be received from the service center denying approval. The applicant may then want to request a ruling by completing Part III, as discussed below, and sending Form 1128 to the National Office for approval.

**Where to file.**—If the applicant completes Part II, file Form 1128 with the Internal Revenue Service Center where the applicant's income tax return is filed. A user fee is not required if Form 1128 is filed under any of the revenue procedures listed in Part II. When Form 1128 is approved, the applicant will receive notification of its approval. If no communication is received from the IRS regarding the application for expeditious approval within 60 days, contact the service center.

## Part III—Ruling Provisions

Complete Part III if the applicant cannot qualify to file under the expeditious approval rules listed in Part II above or if the application is late.

**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 applicants 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.

### 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.

**Note:** *Generally, a corporation cannot elect to be treated as an S corporation for the tax year immediately following the required short period. However, an exception exists if the corporation is requesting to change to a 52–53 week tax year that involves a short period of (a) 359 days or more, or (b) 6 days or less.*

### 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 tax year” is:

1. A tax 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 IRS.

For purposes of 2, any deferral of income to shareholders will 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 IRS' advance approval to change, adopt, or retain a tax year unless it is not required to file Form 1128 or it meets one of the expeditious approval rules discussed in Part II of the instructions. See **Who Does Not File** on page 1.

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 IRS' advance approval to change a tax year unless it is not required to file Form 1128. See **Who Does Not File** on page 1.

### Where To File

If the applicant is filing for a ruling by completing Part III, file Form 1128 and the appropriate user fee with the National Office. Mail Form 1128 to the Associate Chief Counsel (Domestic), the Associate Chief Counsel (Employee Benefits and Exempt Organizations), or the Associate Chief Counsel (International) at the following address: Internal Revenue Service, Attention: CC:CORP:T, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

The IRS should acknowledge receipt of the application within 30 days. The applicant may inquire about the status of the application by writing to: Control Clerk, CC:IT&A, Internal Revenue

Service, Room 5517, 1111 Constitution Ave., NW, Washington, DC 20224.

### Signature

Form 1128 **must** be signed by the applicant as discussed below. A valid signature by the individual or an officer of the organization is required on Form 1128. If the form does not have a valid signature, it will not be considered.

● **Individual.**—If this application is for 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 common parent, the form should be signed by an authorized officer of the common 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. The preparer cannot sign on behalf of the applicant. 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 the IRS.