

## Election To Have a Tax Year Other Than a Required Tax Year

|                             |   |                                |
|-----------------------------|---|--------------------------------|
| <b>Please Type or Print</b> | Name  | Employer identification number |
|                             | Number, street, and room or suite no. (or P.O. box number if mail is not delivered to street address) |                                |
|                             | City or town, state, and ZIP code   |                                |

|   |   |
|---|---|
| <b>1</b> Check applicable box to show type of entity:<br><input type="checkbox"/> Partnership<br><input type="checkbox"/> S corporation (or C corporation electing to be an S corporation)<br><input type="checkbox"/> Personal service corporation (PSC) | <b>2</b> Name and telephone number (including area code) of person who may be called for information: |
|---|---|

|   |       |     |      |
|---|-------|-----|------|
| <b>3</b> Enter ending date of the tax year for the entity's last filed return. (A new entity should enter the ending date of the tax year it is adopting.)  | Month | Day | Year |
| <b>4</b> Enter ending date of required tax year determined under section 441(i), 706(b), or 1378  | Month | Day |      |
| <b>5</b> Section 444(a) Election.—Check the applicable box and enter the ending date of the first tax year for which the election will be effective that the entity is (see instructions):<br><input type="checkbox"/> Adopting <input type="checkbox"/> Retaining <input type="checkbox"/> Changing to | Month | Day | Year |

Under penalties of perjury, I declare that the entity named above has authorized me to make this election under section 444(a), and that the statements made are, to the best of my knowledge and belief, true, correct, and complete.

|  |      |
|--|------|
| Signature and title (see instructions) | Date |
|--|------|

### General Instructions

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 time is:

**Recordkeeping** . . . . 2 hr., 38 min.

**Learning about the law or the form** . . . . 1 hr., 5 min.

**Preparing and sending the form to the IRS** . . . 1 hr., 11 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the **Internal Revenue Service**, Attention: Tax Forms Committee, PC:FP, Washington, DC 20224. **DO NOT** send the form to this address. Instead, see **Where To File** below.

### Purpose of Form

Form 8716 is filed by partnerships, S corporations, and personal service corporations (as defined in section 441(i)(2)) to elect under section 444 to have a tax year other than a required tax year.

Attach a copy of the Form 8716 you file to Form 1065 or a Form 1120 series form (1120, 1120-A, 1120S, etc.), whichever is applicable, for the first tax year for which the election is made.

### When To File

Form 8716 must be filed by the earlier of:

**1.** The 15th day of the 5th month following the month that includes the 1st day of the tax year the election will be effective, or

**2.** The due date (not including extensions) of the income tax return for the tax year resulting from the section 444 election.

Items **1** and **2** relate to the tax year, or the return for the tax year, for which the ending date is entered on line 5 above.

Under Rev. Proc. 92-85, 1992-2 C.B. 490, the entity is automatically granted a 12-month extension to make an election on Form 8716. To obtain an extension, type or legibly print "FILED PURSUANT TO REV. PROC. 92-85" at the top of a properly prepared Form 8716, and file the form within 12 months of the original due date.

### Where To File

File the election with the Internal Revenue Service Center where the entity will file its return. See the instructions for Form 1065 or a Form 1120 series form for service center addresses. If the entity is a foreign entity, file Form 8716 with the Internal Revenue Service Center, Philadelphia, PA 19255.

### Effect of Section 444 Election

An electing partnership or S corporation must file **Form 8752**, Required Payment or Refund Under Section 7519, for each year the election is in effect. Form 8752 is used to figure and make the payment required under section 7519 or to obtain a refund of net prior year payments. Form 8752 must be filed by May 15 following the calendar year in which each applicable election year begins. Willful failure of the partnership or S corporation to make the required payments will terminate the section 444 election.

An electing personal service corporation (PSC) should not file Form 8752. Instead, it must comply with the minimum distribution requirements of section 280H for each year the election is in effect. If the PSC does not meet these requirements, the applicable amounts it may deduct for payments made to its employee-owners may be limited. Use **Schedule H (Form 1120)**,

Section 280H Limitations for a Personal Service Corporation (PSC), to figure the required minimum distribution and the maximum deductible amount. Attach Schedule H to the income tax return of the PSC for each tax year the PSC does not meet the minimum distribution requirements. Willful failure of the PSC to comply with the requirements of section 280H will terminate the section 444 election.

## Members of Certain Tiered Structures May Not Make Election

No election may be made under section 444(a) by an entity that is part of a tiered structure other than a tiered structure that consists entirely of partnerships and/or S corporations all of which have the same tax year. An election previously made will be terminated if an entity later becomes part of a tiered structure that is not allowed to make the election. See Temporary Regulations section 1.444-2T for other details.

## Acceptance of Election

After your election is received and accepted by the service center, the center will stamp it "ACCEPTED" and return a copy to you. Be sure to keep a copy of the form marked "ACCEPTED" for your records.

## End of Election

The election is made only once. It remains in effect until the entity terminates its election. If the election is terminated, the entity may not make another section 444 election.

## Signature

Form 8716 is not a valid election unless it is signed. For partnerships, a general partner or limited liability company member must sign and date the election.

For corporations, the election must be signed and dated by the president, vice president, treasurer, assistant treasurer,

chief accounting officer, or any other corporate officer (such as tax officer) authorized to sign its tax return.

If a receiver, trustee in bankruptcy, or assignee controls the entity's property or business, that person must sign the election.

## Specific Instructions

### Line 1

Check the applicable box to indicate whether the entity is classified for Federal income tax purposes as a partnership, an S corporation (or a C corporation electing to be an S corporation), or a personal service corporation.

A corporation electing to be an S corporation that wants to make a section 444 election is not required to attach a copy of Form 8716 to its **Form 2553**, Election by a Small Business Corporation. However, the corporation is required to state on Form 2553 its intention to make a section 444 election (or a backup section 444 election). If a corporation is making a backup section 444 election (provided for in item Q, Part II, of Form 2553), it must type or print the words "BACKUP ELECTION" at the top of the Form 8716 it files. See Temporary Regulations section 1.444-3T for more details.

### Line 2

Enter the name and telephone number (including the area code) of a person that the IRS may call for information needed to complete the processing of the election.

### Line 4

For a definition of a required tax year and other details, see the Instructions for Form 1065 or a Form 1120 series form, whichever is applicable, and section 441(i), 706(b), or 1378.

### Line 5

The following limitations and special rules apply in determining the tax year an entity may elect.

**New entity adopting a tax year.**—An entity adopting a tax year may elect a tax year under section 444 only if the deferral period of the tax year is not longer than 3 months. See below for the definition of deferral period.

**Existing entity retaining a tax year.**—In certain cases, an entity may elect to retain its tax year if the deferral period is no longer than 3 months. If the entity does not want to elect to retain its tax year, it may elect to change its tax year as explained below.

**Existing entity changing a tax year.**—An existing entity may elect to change its tax year if the deferral period of the elected tax year is no longer than the shorter of 3 months or the deferral period of the tax year being changed.

For example, ABC, a C corporation that historically used a tax year ending October 31, elects S status and wants to make a section 444 election for its tax year beginning 11-1-95. ABC's required tax year under section 1378 is a calendar tax year. In this case, the deferral period of the tax year being changed is 2 months. Thus, ABC may elect to retain its tax year beginning 11-1-95 and ending 10-31-96, or change it to a short tax year beginning 11-1-95 and ending 11-30-95. However, it may not elect a short tax year beginning 11-1-95 and ending 9-30-96 because the deferral period for that elected tax year is 3 months (9-30 to 12-31), which is longer than the 2-month deferral period of the tax year being changed. After filing the short year return (11-1-95 to 11-30-95), and as long as the section 444 election remains in effect, the corporation's tax year will begin 12-1 and end 11-30.

**Deferral period.**—The term "deferral period" means the number of months that occur between the last day of the elected tax year and the last day of the required tax year. For example, if you elected a tax year that ends on September 30 and your required tax year is the calendar year, the deferral period would be 3 months (the number of months between September 30 and December 31).

