



# Instructions for Form 1128

(Rev. February 1997) for use with  
Form 1128 (Rev. April 1996)

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

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

**Privacy Act and Paperwork Reduction Act Notice.**— We ask for the information on this form to carry out the Internal Revenue laws of the United States. Section 442 says that you must obtain IRS approval if you want to adopt, change, or retain a tax year. To obtain approval, you are required to file an application to adopt, change, or retain a tax year. Section 6109 requires that you disclose your taxpayer identification number (SSN or EIN). Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, and the District of Columbia for use in administering their tax laws. Failure to provide this information in a timely manner could result in approval of your application being delayed or withheld.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

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., 49 min.	3 hr., 16 min.	3 hr., 35 min.
Parts I and III	16 hr., 44 min.	4 hr., 34 min.	5 hr., 2 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, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **DO NOT** send the tax form to this office. Instead, see **Where To File** on page 4.

## An Item To Note

The user fee for filing Form 1128 to request a ruling on a change in tax year under Revenue Procedure 97-1, 1997-1 I.R.B. 11, has increased from \$200 to \$250. The separate user fee for filing a letter ruling request for an extension of time to file under Temporary Regulations section 301.9100-1T has decreased to from \$275 to \$250. See the instructions for **Line 8** on page 3 for more information.

These amounts reflect the user fees as published in Rev. Proc. 97-1. The fees are subject to change annually. See Rev. Proc. 97-1 (or its successor) for the latest listing of user fees.

## 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 a certain tax year.

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

### Who Must File

Generally, the following taxpayers file Form 1128 to change their tax years.

- Individuals, partnerships, estates, tax-exempt organizations, and
- Corporations, S corporations, personal service corporations, cooperatives, possession corporations that have a section 936 election in effect, controlled foreign corporations, foreign personal holding companies, specified foreign corporations, passive foreign investment companies, and other foreign corporations.

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.

Form 1128 must be filed to correct an improper tax year. See Rev. Proc. 85-15, 1985-1 C.B. 516, for information.

The common parent of a consolidated group that files a consolidated return must file Form 1128 for the consolidated group. One Form 1128 should be filed for the group. In addition, the common parent corporation must 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 by Rev. Proc. 94-12, 1994-1 C.B. 565, and as modified and amplified by Rev. Proc. 92-13A, 1992-1 C.B. 668, every member of the group must meet the revenue procedure requirements and comply with 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 section 1.441-2T(c)(4), Regulations 1.1502-76(a)(1), and Pub. 538.

### Who Does Not File

Do not file Form 1128 in the following circumstances.

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.
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, change, or retain a required tax year (usually a calendar year, see Rev. Proc. 87-32, 1987-2 C.B. 396, as modified by T.D. 8680, 1996-33 I.R.B. 5).

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 a 10-calendar-year period, and the organization has had an annual filing requirement during that 10-year period (see Rev. Proc. 85-58, 1985-2 C.B. 740). This exception does not apply to organizations exempt from 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 trust filing **Form 5308**, Request for Change in Plan/Trust Year, to change its plan or trust year.

11. A foreign sales corporation (FSC) or an interest charge-domestic international sales corporation (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 (SFC) defined in section 898(b)(1) conforming its tax year to the required tax year, including an SFC that is treated as a controlled foreign corporation making the one-month deferral election under section 898(c)(1)(B).

13. An SFC changing its tax year back to a previous tax year as described in Notice 95-13, 1995-1 C.B. 296.

### When To File

• To change a tax year, generally file by the 15th day of the 2nd calendar month after the short period ends. For example, to change to a calendar year, file by the 15th day of February of the next year.

• To change a tax year under Rev. Proc. 85-58, file by the 15th day of the 5th calendar month after the short period ends.

• For an individual filing to change to a calendar year under Rev. Proc. 66-50, 1966-2 C.B. 1260, as modified by Rev.

Proc. 81-40, 1981-2 C.B. 604, file by the last day of January.

• For partnership adoptions, file by the end of the month following the close of the requested tax year.

• To retain a tax year, file by the 75th day of the beginning of the tax year for which the retention is to apply.

### Late Applications

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

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

1. The taxpayer acted reasonably and in good faith, and
2. Granting relief will not prejudice the interests of the Government.

Applications filed beyond 90 days after the due date of Form 1128 will generally be presumed to jeopardize the interests of the Government.

An extension request filed under Temporary Regulations section 301.9100-1T is a ruling request under Rev. Proc. 97-1, and is subject to public inspection under section 6110. See section 8 of Rev. Proc. 97-1 for specific information on requesting a ruling.

### Early Applications

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

### Specific Instructions

• All applicants complete **Part I—General Information** of Form 1128. **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.

• **Part II—Expeditious Approval Requests** is completed by applicants requesting expeditious approval of a change in tax year under Rev. Proc. 92-13, Rev. Proc. 66-50, Rev. Proc. 76-10, 1976-1 C.B. 548, Rev. Proc. 85-58, and applicants requesting expeditious approval of a change or retention under Rev. Proc. 87-32.

• **Part III—Ruling Requests** is completed by applicants requesting to adopt, change, or retain a tax year that cannot use the expeditious procedures listed above.

Also, corporations, S corporations, partnerships, controlled foreign corporations, possession 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 that particular entity.

### Part I—General Information

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

**Name.**— If the application is filed for a husband and wife who file a joint income tax return, the names of both should appear in the heading.

**Identifying number.**— Individuals enter their social security number (SSN) in this block. If the application is for a husband and wife who file a joint return, enter both SSNs. However, if one or both are engaged in a trade or business, enter the employer identification number (EIN) instead of the SSNs.

All other applicants 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**, Starting a Business and Keeping Records.

**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, attach a power of attorney to the application. For this purpose, use **Form 2848**, Power of Attorney and Declaration of Representative.

**Lines 2a and 2b.**— A 52-53 week tax year must end on the date a specified day of the week last occurs in a particular month or on 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).

**Line 2c.**— 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 begin. 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.

**Line 7.**— Check the "Yes" box if the applicant wants a conference of right at the IRS National Office if the IRS proposes to disapprove the application.

**Line 8.**— Applicants filing Form 1128 to request an expeditious approval for a change in tax year under Rev. Procs. 92-13, 87-32, 66-50, 85-58 or 76-10 are

not required to pay a user fee when Form 1128 is filed on time.

Applicants filing Form 1128 to request a letter ruling on a change in tax year under Rev. Proc. 97-1 must pay a \$250 user fee, effective for ruling requests received on or after March 1, 1997. A request for an exempt organization letter ruling on a change in tax year under Rev. Proc. 97-8, 1997-1 I.R.B. 187, requires payment of a \$100 user fee.

A separate \$250 user fee is also required for applicants filing a letter ruling request received on or after January 6, 1997, for an extension of time to file under Temporary Regulations section 301.9100-1T (including requests under Rev. Procs. 92-13, 87-32, and 66-50).

**Note:** *The user fees referred to in the above paragraphs are published in Rev. Proc. 97-1 (exempt organizations see Rev. Proc. 97-8), or their successors. These amounts are subject to change annually. See Rev. Proc. 97-1 or 97-8 for the latest listings of user fees.*

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. 97-1 for more information.

## Part II—Expeditious Approval Requests

Complete Part II 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, a ruling may be requested. See Part III for details.

**Rev. Proc. 92-13.**— This revenue procedure applies to a corporation that:

1. Cannot meet the rules 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 in the last 6 calendar years (or in 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 IC-DISC or a 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 below),
  - e. A personal service corporation,
  - f. An IC-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 an organization exempt from 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,

k. A cooperative association with a loss in the short period required to effect the tax year change, and

l. A corporation that has an election in effect under section 936.

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 generally 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(6) 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, change, or retain a tax year that coincides with the tax year used by the shareholders. The representation statements (Form 1128, Part II, line 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 rules 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**, Exempt Organization Business Income Tax Return, 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. Attach a power of attorney, if applicable. If the service center denies approval because Form

1128 is not filed on time, 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 consideration.

### 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 Requests

Complete Part III if the applicant cannot file under the expeditious approval rules listed in Part II on page 3 or if the application is late.

**Rev. Rul. 87-57.**— If a partnership, S corporation, or personal service corporation wants to adopt, change, or retain a tax year by establishing a business purpose but cannot qualify for the expeditious approval rules, 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 backup 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 backup 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 must complete Section A to request a ruling on an adoption, change, or retention of a tax year.

**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 under Regulations section 1.1502-76(a) is not considered to have made a change in tax year in the last 6 years.

**Line 7.**— If the applicant is requesting a ruling based on its natural business year discussed in Rev. Proc. 87-32 (for partnerships, S corporations, or personal service corporations) or in Rev. Proc. 74-33, 1974-2 C.B. 489 (for all other applicants), attach to Form 1128 a

statement that sets forth the gross receipts referred to in section 4 of Rev. Proc. 87-32 or the gross receipts and inventory costs referred to in section 4 of Rev. Proc. 74-33.

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

Corporations must complete Section B and any other section that applies to that particular entity. For example, a passive foreign investment company completes Section B and attaches the statement required by Section H. Complete Sections B and F for a tax-exempt organization that is a corporation.

**Note:** *Generally, a corporation cannot elect to be treated as an S corporation for the tax year immediately following the required short period. However, there is an exception for corporations 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 if the corporation can establish 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 more information, see Rev. Proc. 87-32 and Rev. Rul. 87-57.

If any shareholder is applying for a corresponding change in tax year, that shareholder must file a separate Form 1128 to get advance approval to change its tax year.

### Section D—Partnerships

A partnership must obtain advance approval from the IRS to adopt, change, 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 on page 3. See **Who Does Not File** on page 1.

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

**Line 1.**— Enter 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 advance approval from the IRS 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), or the Associate Chief Counsel (Employee Benefits and Exempt Organizations), at the following address: Internal Revenue Service, Attention: CC:DOM:CORP:T, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

The IRS will acknowledge receipt of the application within 30 days. 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.

● **Individuals.**—If this application is for a husband and wife, enter both names on the line, "Applicant's name." Both husband and wife must sign the application on the line, "Applicant's signature."

● **Partnerships.**—Show the partnership name, followed by the signature of one of the partners and the phrase "Member of partnership."

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

● **Tax-Exempt Organizations.**—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.

● **All Other Applicants.**—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).

● **Preparer Other Than Applicant.**—**Note:** *The individual 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.