

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

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Dear \_\_\_\_\_ :

This is in response to your letter of March 25, 2009, in which you inquired about one of the "terms and conditions of change" of Revenue Procedure 2006-45, 2006-45 I.R.B. 851 (relating to procedures for obtaining automatic approval of changes in annual accounting periods (taxable years) for certain corporations).

Your inquiry concerns the situation in which a corporation desiring to change its taxable year owns a majority interest in a foreign partnership. A term and condition of such a corporation's change in taxable year under Rev. Proc. 2006-45 is that the foreign partnership concurrently change its taxable year to conform to the taxable year of its majority interest corporate partner. Specifically, you asked whether such a foreign partnership is within the scope of Rev. Proc. 2006-46's automatic consent procedure if the foreign partnership satisfies all of the terms and conditions required in that revenue procedure, but fails to satisfy some of those terms and conditions on a timely basis. We are pleased to address your concerns.

As you are aware, the Internal Revenue Service issues both general information letters as well as private letter rulings to assist taxpayers in the preparation of their returns. The procedures for requesting letter rulings are set forth in Rev. Proc. 2009-1, 2009-1 I.R.B. 1; this is a general information letter, as you requested.

Section 442 of the Internal Revenue Code provides that, if a taxpayer changes its annual accounting period, the new accounting period will become the taxpayer's taxable year only if the change is approved by the Secretary.

Rev. Proc. 2006-45, 2006-45 I.R.B. 851, as modified by Rev. Proc. 2007-64, 2007-42 I.R.B. 818, provides the exclusive procedures under which corporations within its scope may obtain automatic consent of the Commissioner to change their taxable year under section 442. Generally, corporations that hold partnership interests are outside the scope of Rev. Proc. 2006-45, but a corporation that owns a majority interest in a partnership is within the scope of Rev. Proc. 2006-45 if the partnership concurrently changes its tax year under Rev. Proc. 2006-46, 2006-45 I.R.B. 859, to the corporate majority partner's new tax year. See sections 4.02(2) and 6.09 of Rev. Proc. 2006-45. Rev. Proc. 2006-46 provides the exclusive procedures under which partnerships within its scope may obtain automatic consent to change their taxable years.

Section 6 of Rev. Proc. 2006-45 imposes certain “terms and conditions of change” in connection with a corporation’s taxable year change. Among those terms and conditions, section 6.09 provides that if a corporation’s majority interest in a partnership is disregarded under section 4.02(2) because the partnership is changing its taxable year to conform to the corporation’s new taxable year, the partnership must change its taxable year *concurrently* with the corporation’s taxable year change. In that event, section 6.09 provides that the partnership is deemed to be within the scope of Rev. Proc. 2006-46. Specifically, section 6.09 provides that, if the related entity that is required to change is a pass-through entity, such as a partnership, it is deemed to be within section 4.01(1) of Rev. Proc. 2002-46, notwithstanding any other limitation under sections 4.02 and 7.02(2) of that revenue procedure.

Under section 4.01(1) of Rev. Proc. 2006-46, a partnership that is changing to its “required taxable year” (that is, the taxable year required under section 706(b)) generally is within the scope of that revenue procedure. Further, section 4.01(5) of Rev. Proc. 2006-46 provides that “Notwithstanding any limitation in this revenue procedure to the contrary . . . this revenue procedure applies to a taxpayer that is required to concurrently change its annual accounting period as a term and condition for the approval of a related taxpayer’s change of annual accounting period.” Section 3.03 of Rev. Proc. 2006-46 explains that “Section 4.01(5) . . . clarifies that a taxpayer that is required to make a concurrent change as a term and condition of the approval of a related party’s change of accounting period is included in the scope notwithstanding any limitation in this revenue procedure to the contrary.”

You asked whether a foreign partnership seeking to change its taxable year under Rev. Proc. 2006-46 to conform to the new taxable year of its majority interest corporate partner as a term and condition of the corporate partner’s change under Rev. Proc. 2006-45, must do so in a timely manner. The answer is “No.” The requirement is that the change be made *concurrently* with the corporate partner’s change in tax year, i.e., for the same “first effective year,” not that the change be made timely. In fact, there is no timely filing due date for such a required concurrent change, as section 6.09 specifically provides that the change be made *notwithstanding* the due date otherwise applicable in section 7.02(2) of Rev. Proc. 2006-46.

Section 5.05 of Rev. Proc. 2006-45, which describes the “first effective year,” states that that year is also the first tax year for complying with all of the terms and conditions of Rev. Proc. 2006-45. Thus, for the corporation to satisfy these requirements, the partnership is required to make its tax year change effective for such same “first effective year,” i.e., concurrently. An otherwise “untimely” but *concurrent* change in taxable year by the foreign partnership will satisfy the majority interest corporation's “concurrent change” term and condition of Rev. Proc. 2006-45.

We thank you for your attention in this matter, and hope that the general information provided is helpful. If there are additional questions or if we may be of further assistance, please contact \_\_\_\_\_ of this office, at \_\_\_\_\_ (not a toll-free call).

Sincerely yours,

/s/ William A. Jackson

William A. Jackson  
Chief, Branch 5  
Associate Chief Counsel  
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Enclosure:

Copy of this letter