



# Instructions for Form 1128

(Rev. January 2006)

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

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

### What's New

Foreign personal holding companies (FPHCs) will no longer file Form 1128 after 2005 because the FPHC rules were repealed by the American Jobs Creation Act of 2004.

### General Instructions

#### Purpose of Form

File Form 1128 to request a change in tax year. Partnerships, S corporations, or personal service corporations (PSCs) may be required to file the form to adopt or retain a certain tax year. For more information, see Pub. 538, Accounting Periods and Methods.

#### Who Must File

Generally, all taxpayers must file Form 1128 to adopt, change, or retain a tax year. However, see *Exceptions* below.

The common parent of a consolidated group that files a consolidated return files one Form 1128 for the consolidated group. In addition, the common parent corporation must (a) indicate that the Form 1128 is for the common parent corporation and all its subsidiaries and (b) 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. 2002-37, 2002-1 C.B. 1030, every member of the group must meet the revenue procedure requirements.

If a controlled foreign corporation (CFC) does not have a U.S. trade or business, then the CFC's controlling U.S. shareholder(s) must file Form 1128 on behalf of such foreign corporation to change its tax year (except as provided above with respect to a controlling U.S. shareholder that is a member of a consolidated group). See Regulations section 1.964-1(c)(5) for the definition of controlling U.S. shareholders of a CFC.

### Exceptions

Do not file Form 1128 in the following circumstances.

#### Corporations

- A corporation adopting its first tax year.
- A corporation required to change its tax year to file a consolidated return with its new common parent (see Regulations sections 1.442-1(c) and 1.1502-76(a)).
- 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 (see section 441(h)). Also see Temporary Regulations section 1.921-1T(b)(4). However, a FSC or IC-DISC must file Form 1128 to change its tax year concurrently, if a tax year change has been made by the U.S. shareholder.

#### Partnerships, S Corporations, and Personal Service Corporations

- A newly formed partnership adopting a required tax year or a 52-53 week tax year with reference to such required tax year.
- A partnership, S corporation, or PSC terminating its section 444 election (see Temporary Regulations section 1.444-1T(a)(5)).
- A newly formed partnership, an electing S corporation, or a newly formed PSC that elects under section 444 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.
- A corporation electing to be treated as an S corporation and filing Form 2553, Election by a Small Business Corporation.

#### Individuals

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

#### Exempt Organizations

An organization exempt under section 501(a) does not file Form

1128 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 section 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.

#### Trusts

- 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 644.
- Certain revocable trusts electing to be treated as part of an estate.
- An employee plan or trust filing Form 5308, Request for Change in Plan/Trust Year, to change its plan or trust year.

### When To File

#### Tax Year Adoption, Change, or Retention

- To request a ruling to adopt, change, or retain a tax year, file Form 1128 by the due date (not including extensions) of the federal income tax return for the first effective year. Do not file earlier than the day following the end of the first effective year. In the case of a change in tax year, the first effective year is the short period required to effect the change.
- To request automatic approval to change a tax year under Rev. Proc. 2002-37 (Part II, Section A) or Rev. Proc. 2002-38 (Part II, Section B), file by the due date of the return (including extensions) for the short period required to effect the change.
- For an individual filing to change to a calendar year under Rev. Proc. 2003-62, 2003-32 I.R.B. 299 (Part II, Section C), Form 1128 must be filed on or before the due date (including extensions) for filing the federal income tax return for the short period required to effect the change.

- To change a tax year under Rev. Proc. 85-58 (Part II, Section D), file by the 15th day of the 5th calendar month after the end of the short period.

## Late Applications

Generally, an application filed after the appropriate due date stated above is considered late.

However, applications filed within 90 days after the due date may be considered as timely filed under Regulations section 301.9100-1 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 that are filed more than 90 days after the due date are presumed to jeopardize the interests of the Government, and will be approved only in unusual and compelling circumstances.

Under either circumstance, an extension request must be filed under Procedure and Administration Regulations section 301.9100-3 and is a ruling request under Rev. Proc. 2005-1, 2005-1 I.R.B. 1 (updated annually), and is subject to public inspection under section 6110. See section 7 of Rev. Proc. 2005-1 for information on requesting a ruling.

**Note.** An extension request under Rev. Proc. 2005-1 (or its successor), requires payment of a user fee.

## Early Applications

Generally, an application to adopt or change a tax year will not be considered if it is submitted before the end of the short period.

## Where To File

### Part II—Automatic Approval Request

If Part II (automatic approval request) applies to the applicant, file Form 1128 with the Internal Revenue Service Center, Attention: Entity Control, where the applicant's income tax return is filed. The applicant also must attach a copy of Form 1128 to the federal income tax return filed for the short period required to effect the change. A shareholder filing the form on behalf of an applicant that is a CFC should file the form with the service center where the shareholder's income tax return is filed.

### Applications prior to an election to become an S corporation.

If a corporation is requesting to change its tax year prior to making an election to become an S corporation and the requested tax year is a permitted tax year for S corporations (for example, a calendar tax year), file Form 1128 as an attachment to Form 2553 to ensure that the S corporation is permitted the tax year requested on Form 2553. See line 2 of Part II on Form 1128. Do not file Form 1128 with the above address for automatic approval requests. For information on where to file Form 2553, see the Instructions for Form 2553.



*Do not file a request for automatic approval with either address below. Doing so will result in a significant delay in the processing of your request.*

### Part III—Ruling Request

If Part III (ruling request) applies to the applicant, file Form 1128 and the appropriate user fee with the IRS National Office. Mail Form 1128 to:

Internal Revenue Service,  
Associate Chief Counsel (Income  
Tax and Accounting)  
Attention: CC:PA:LPD:DRU,  
P.O. Box 7604, Ben Franklin  
Station,  
Washington, DC 20044-7604.

The IRS will acknowledge receipt of the application within 45 days. You can inquire about the status of the application by writing to:

Control Clerk, CC:ITA,  
Internal Revenue Service, Room  
4516,  
1111 Constitution Ave., NW,  
Washington, DC 20224-0002.

The applicant will receive notification of its approval or denial. If no communication is received from the IRS regarding the application within 90 days, contact the Control Clerk.

Exempt organizations requesting a ruling should send Form 1128 and the application user fee to:

Internal Revenue Service  
Attention: EO Letter Rulings  
P.O. Box 27720  
McPherson Station  
Washington, DC 20038

You can inquire about the status of an application for exempt organizations by calling 1-877-829-5500.

### Who Must Sign

Except as discussed below (regarding certain foreign

corporations), 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 "Name of applicant." Both husband and wife must sign the application on the line "Applicant or officer's signature and date."

### Partnerships

Show the partnership name, followed by the signature of a general partner on behalf of a state law partnership, or a member-manager on behalf of a limited liability company.

### 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 consolidated group filing a consolidated return with its common parent, the form should be signed by an authorized officer of the common parent corporation.

An application that is filed on behalf of a CFC must be signed by an authorized officer of each of its controlling U.S. shareholder(s). If any such shareholder is a member of a consolidated group, then an authorized officer of the common parent must sign. If multiple signatures are required, the signatures must be provided on a "SIGNATURE ATTACHMENT" to the form under the "declaration under penalties of perjury" (this is the statement that appears on Form 1128 immediately above the relevant signature line). Write "see attached" in the signature area of Form 1128.

## Preparer Other Than Applicant

If you are the preparer, you 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.

**Note.** The individual preparing the application must also sign it.

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## Specific Instructions

### Part I—General Information

All applicants must complete Part I. 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.

#### 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). 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.

Except as discussed below (regarding foreign corporations), if the applicant does not have an EIN or SSN, it must apply for one. An EIN may be applied for:

- Online—Click on the EIN link at [www.irs.gov/businesses/small](http://www.irs.gov/businesses/small). The EIN is issued immediately once the application information is validated.
- By telephone at 1-800-829-4933 from 8:00 am to 8:00 pm in the corporation's local time zone.
- By mailing or faxing Form SS-4, Application for Employer Identification Number.

A limited liability company must determine which type of federal tax entity it will be (that is, partnership, corporation, or disregarded entity) before applying for an EIN (see Form

8832, Entity Classification Election, for details).

**Note.** The online application process is not yet available for the following types of entities: Entities with addresses in foreign countries or Puerto Rico, REMICs, state and local governments, Federal government/military entities, and Indian Tribal Government/Enterprise entities. Please call the toll-free Business and Specialty Tax Line at 1-800-829-4933 for assistance in applying for an EIN.

An SSN must be applied for on Form SS-5, Application for a Social Security Card. Form SS-5 can be obtained at SSA offices or by calling the SSA at 1-800-772-1213. It is also available from the SSA website at [www.socialsecurity.gov](http://www.socialsecurity.gov).

If the applicant has not received its EIN or SSN by the time the application is due, write "Applied for" in the space for the identifying number. See Pub. 583, Starting a Business and Keeping Records.

**Note.** If the applicant is a foreign corporation that is not otherwise required to have or obtain an EIN, enter "Not applicable" in the space provided for the identifying number.

#### 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.

If the applicant receives its mail in care of a third party (such as an accountant or attorney), enter on the street address line "C/O" followed by the third party's name and street address or P.O. box.

#### 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 not the applicant or the filer, attach Form 2848, Power of Attorney and Declaration of Representative.

**Line 1.** Check all applicable boxes to indicate the type of entity filing this application. For example, an entity that is a domestic corporation may also be a regulated investment company (RIC). That entity would check both the "Domestic

corporation" box and the "Other" box, and write, "RIC under sec. 851" on the dotted line.

**Lines 2a and 2b.** If the requested year is a 52-53-week tax year, describe the year (for example, last Saturday in December or Saturday nearest to December 31). 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.

A newly formed partnership or PSC that wants to adopt a tax year other than its required tax year must go to Part III after completing Part I.

**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. An applicant's first tax year generally starts when business operations begin.

A corporation's tax year begins at the earliest date it first:

- Has shareholders,
- Has assets, or
- Begins doing business. The initial year ends on the day before the first day of the new tax year.

## Part II—Automatic Approval Request

Part II is completed by applicants requesting automatic approval of a change in tax year under:

- Rev. Proc. 2002-37 (corporations),
- Rev. Proc. 2002-38 (pass-through entities),
- Rev. Proc. 2003-62 (individuals),
- Rev. Proc. 76-10, 1976-1 C.B. 548 and Rev. Proc. 85-58 (exempt organizations), and
- Rev. Proc. 85-15, 1985-1 C.B. 516 (all filers), to correct an improper tax year.

**Note.** Applicants requesting an automatic approval must complete Parts I and II only.



*A user fee is not required if requesting an automatic approval under any of the sections of Part II listed below.*

Complete Part II if the applicant can use the automatic approval rules under one of the sections listed below and the application is filed on time.

If the applicant is:	Complete only
A corporation (other than an S corporation or a PSC)	Section A
A partnership, S corporation, or a PSC	Section B
An individual	Section C
A tax-exempt organization.	Section D

If the applicant does not qualify for automatic approval, a ruling must be requested. See Part III for more information.

If the Service Center denies approval because Form 1128 was not filed on time, the applicant can request relief under Regulations section 301.9100-3, discussed earlier under *Late Applications* on page 2, by completing Part III, as discussed on page 6, and sending Form 1128 to the IRS National Office for consideration.

## Section A—Corporations (Other than S Corporations or Personal Service Corporations)

Rev. Proc. 2002-37 provides exclusive procedures for certain corporations to obtain automatic approval to change their annual accounting period under section 442 and Regulations section 1.442-1(b). A corporation complying with all the applicable provisions of this revenue procedure will be deemed to have established a business purpose and obtained the approval of the IRS to change its accounting period. See Rev. Proc. 2002-37 for more information.

**Line 1.** A corporation is precluded from using the automatic approval rules under section 4 of Rev. Proc. 2002-37 if it:

- Has changed its annual accounting period at any time within the most recent 48-month period ending with the last month of the requested tax year. For exceptions, see section 4.02(1) of Rev. Proc. 2002-37.
- Has an interest in a pass-through entity as of the end of the short period. For exceptions, see section 4.02(2) of Rev. Proc. 2002-37.
- Is a shareholder of a FSC or IC-DISC, as of the end of the short period. For exceptions, see section 4.02(3) of Rev. Proc. 2002-37.
- Is a FSC or an IC-DISC.
- Is an S corporation.

6. Attempts to make an S corporation election for the tax year immediately following the short period, unless the change is to a permitted tax year.

7. Is a PSC.

8. Is a CFC. For exceptions, see sections 4.01(4) and 4.02(8) of Rev. Proc. 2002-37.

9. Is a tax-exempt organization, other than an organization exempt from tax under section 521, 526, 527, or 528.

10. Has in effect a possessions corporation election under section 936.

11. Is a cooperative association (within the meaning of section 1381(a)) with a loss in the short period required to effect the change of annual accounting period, unless the patrons of the cooperative association are substantially the same in the year before the change of annual accounting period, in the short period required to effect the change, and in the year following the change.

12. Has a required tax year (for example, a real estate investment trust), unless the corporation is changing to its required tax year and is not described in items (1) through (11), above.

**Note.** If the corporation is precluded from using the automatic approval rules because of items (2) or (3), listed above, it can nevertheless automatically change to a natural business year that meets the 25-percent gross receipts test described in section 5.06 of Rev. Proc. 2002-37.

If the answer to question 1 is “Yes,” sign Form 1128 and see *Part II—Automatic Approval Request* earlier under *Where To File*. Do not complete Part III. If the corporation is requesting to change to a natural business year that satisfies the 25-percent gross receipts test, also include its gross receipts for the most recent 47 months (or for any predecessor).

If the answer to question 1 is “Yes” because the applicant is a CFC that wants to revoke its one-month deferral election under section 898(c)(2) and change its tax year to the majority U.S. shareholder year (as defined in section 898(c)(3), attach a statement providing the names, addresses, and identifying numbers for each U.S. shareholder of the foreign corporation.

If the answer to question 1 is “No,” go to Part III after completing Section A.

**Line 3.** If a corporation’s interest in a pass-through entity, CFC, FSC, or IC-DISC (related entity) is disregarded under section 4.02(2) or 4.02(3) of Rev. Proc. 2002-37 because the related entity is required to change its tax year to the corporation’s new tax year (or, in the case of a CFC, to a tax year beginning one month earlier than the corporation’s new tax year), the related entity must change its tax year concurrently with the corporation’s change in tax year, either under Rev. Proc. 2002-37, 2002-38, or 2002-39. This related party change is required notwithstanding the testing date provisions in section 706(b)(4)(A)(ii), section 898(c)(3)(B), Temporary Regulations section 1.921-1T(b)(6), and the special provision in section 706(b)(4)(B).

## Section B—Partnerships, S Corporations, and Personal Service Corporations

Rev. Proc. 2002-38 provides exclusive procedures for a partnership, S corporation, or PSC within its scope to adopt, change, or retain its annual accounting period under section 442 and Regulations section 1.442-1(b).

**Line 4.** A partnership, S corporation, or PSC is precluded from using the automatic approval rules under section 4 of Rev. Proc. 2002-38 if any of the following apply:

- The entity is under examination, unless it obtains consent of the appropriate director as provided in section 7.03(1) of Rev. Proc. 2002-38.
- The entity is before an appeals office with respect to any income tax issue and its annual accounting period is an issue under consideration by the appeals office.
- The entity is before a Federal court with respect to any income tax issue and its annual accounting period is an issue under consideration by the Federal court.
- On the date the partnership or S corporation would otherwise file its application, the partnership’s or S corporation’s annual accounting period is an issue under consideration in the examination of a partner’s or shareholders’s Federal income tax return or an issue under consideration by an area office or by

a Federal court with respect to a partner's or shareholder's Federal income tax return.

5. The entity is requesting a change to, or retention of, a natural business year as described in section 4.01(2) of Rev. Proc. 2002-38 if the entity has changed its annual accounting period at any time within the most recent 48-month period ending with the last month of the requested tax year. For this purpose, the following changes are not considered prior changes in annual accounting period: (a) a change to a required tax year or ownership tax year; (b) a change from a 52-53 week tax year to a non-52-53 week tax year that ends with reference to the same calendar month, and vice versa; or (c) a change in accounting period by an S corporation or PSC, in order to comply with the common tax year requirements of Regulations sections 1.1502-75(d)(3)(v) and 1.1502-76(a)(1).

If the answer to question 4 is "Yes," and any of the following situations apply, the applicable additional procedures described below must be followed.

- The applicant is under examination and has obtained the consent of the appropriate director to the change or retention of the applicant's annual accounting period. The applicant must attach to the application a statement from the director consenting to the change or retention. The applicant must also provide a copy of the application to the director at the same time it files the application with the Service Center. The application must contain the name(s) and telephone number(s) of the examination agent(s).
- The applicant is before an appeals (area) office and the applicant's annual accounting period is not an issue under consideration by the appeals (area) office. The applicant must attach to the application a separate statement signed by the applicant certifying that, to the best of the applicant's knowledge, the applicant's annual accounting period is not an issue under consideration by the appeals (area) office. The applicant must also provide a copy of the application to the appeals officer at the same time it files the application with the Service Center. The application must contain the name and telephone number of the appeals officer.
- The applicant is before a Federal court and the applicant's annual

accounting period is not an issue under consideration by the Federal court. The applicant must attach to the application a separate statement signed by the applicant certifying that, to the best of the applicant's knowledge, the applicant's annual accounting period is not an issue under consideration by the Federal court. The applicant must also provide a copy of the application to the government counsel at the same time it files the application with the Service Center. The application must contain the name and telephone number of the government counsel.

If the answer to question 4 is "No" because the applicant (or a partner or shareholder) is under examination and has not obtained the appropriate director's consent to the change or retention of the applicant's annual accounting period or the applicant is before an appeals office or Federal court and the applicant's annual accounting period is an issue under consideration by the appeals office or Federal court, do not complete Part III.

If the answer to question 4 is "No" solely because of a prior change as described in item (5) above, go to Part III after completing Section B.

If the answer to question 4 is "Yes" (and the answer to question 5, 6, or 7 is also "Yes"), sign Form 1128 and see *Part II—Automatic Approval Request* under *Where To File*, above. Do not complete Part III. If the answer to question 4 is "Yes" (and the answer to question 5, 6, or 7 is "No"), go to Part III after completing Section B.

**Line 6.** A partnership, S corporation, electing S corporation, or PSC establishes a "natural business year" under Rev. Proc. 2002-38 by satisfying the following "25-percent gross receipts test:"

1. Prior three years gross receipts.
  - a. Gross receipts from sales and services for the most recent 12-month period that ends with the last month of the requested annual accounting period are totaled and then divided into the amount of gross receipts from sales and services for the last 2 months of this 12-month period.
  - b. The same computation as in a, above is made for the two preceding 12-month periods ending with the last month of the requested annual accounting period.
2. Natural business year:
  - a. Except as provided in b, below, if each of the three results described

in 1, equals or exceeds 25 percent, then the requested annual accounting period is deemed to be the taxpayer's natural business year.

b. The taxpayer must determine whether any annual accounting period other than the requested annual accounting period also meets the 25-percent test described in a, above. If one or more other annual accounting periods produce higher averages of the three percentages (rounded to 1/100 of a percent) described in 1 than the requested annual accounting period, then the requested annual accounting period will not qualify as the taxpayer's natural business year.

3. Special rules:

a. To apply the 25-percent gross receipts test for any particular year, the taxpayer must compute its gross receipts under the method of accounting used to prepare its federal income tax returns for such tax year.

b. If the taxpayer has a predecessor organization and is continuing the same business as its predecessor, the taxpayer must use the gross receipts of its predecessor for purposes of computing the 25-percent gross receipts test.

c. If the taxpayer (including any predecessor organization) does not have a 47-month period of gross receipts (36-month period for the requested tax year plus an additional 11-month period for comparing the requested tax year with other potential tax years), then it cannot establish a natural business year under this revenue procedure.

d. If the requested tax year is a 52-53-week tax year, the calendar month ending nearest to the last day of the 52-53-week tax year is treated as the last month of the requested tax year for purposes of computing the 25-percent gross receipts test.

If the applicant is requesting to change to a natural business year that satisfies the 25-percent gross receipts test described in section 5.05 of Rev. Proc. 2002-38, the applicant must supply its gross receipts for the most recent 47 months (or for any predecessor).

**Line 7.** For an S corporation, an "ownership tax year" is the tax year (if any) that, as of the first day of the first effective year, constitutes the tax year of one or more shareholders (including any shareholder that concurrently changes to such tax year) holding more than 50 percent of the corporation's issued and

outstanding shares of stock. For this purpose, a shareholder that is tax-exempt under section 501(a) is disregarded if such shareholder is not subject to tax on any income attributable to the S corporation. Tax-exempt shareholders are not disregarded, however, if the S corporation is wholly-owned by such tax-exempt entities. A shareholder in an S corporation that wants to concurrently change its tax year must follow the instructions generally applicable to taxpayers changing their tax years contained in Regulations section 1.442-1(b), Rev. Proc. 2002-39, or any other applicable administrative procedure published by the IRS.

**Line 8.** Answer “Yes” if the partnership is a related entity that must concurrently change its tax year as a term and condition of the approval of the taxpayer’s request to change its tax year.

### Section C—Individuals

**Line 9.** If the answer to question 9 is “Yes,” and the restrictions of section 4.02 of Rev. Proc. 2003-62 (or its successor) do not apply, sign Form 1128 and see *Part II—Automatic Approval Request* above under *Where To File*. Do not complete Part III. If the answer to question 9 is “No,” go to Section A of Part III.

### Section D—Tax-Exempt Organizations

A tax-exempt organization can request a change to its tax year under the simplified method of either 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 following conditions described in section 3.03 of Rev. Proc. 85-58 apply:

1. 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

2. 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).

**Line 10.** If the answer to question 10 is “Yes,” and the organization is a section 501(a) organization to which section 3.03 of Rev. Proc. 85-58 applies or a central organization to which Rev. Proc. 76-10 applies, sign Form 1128 and see *Part II—Automatic Approval Request* above under *Where To File*. Do not complete Part III. If the answer to question 10 is “Yes,” and Rev. Procs. 85-58 and 76-10 do not apply, go to Part III.

### Part III—Ruling Request

Part III is completed only by applicants requesting to adopt, change, or retain a tax year that cannot use the automatic procedures listed in Part II.

Also, the applicant must complete the specific section(s) in Part III that applies to that particular applicant.

If the applicant is:	Complete only
A corporation (other than an S corporation or CFC)	Sections A and B, plus any other applicable section in Part III
An S corporation	Sections A and C
A Partnership	Sections A and D
A Controlled Foreign Corporation	Sections A and E



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

Rev. Proc. 2002-39 provides the general procedures for obtaining approval to adopt, change, or retain a tax year for taxpayers not qualifying under the automatic approval rules or if the application is late.

### Section A—General Information

All applicants must complete this section to request a ruling on an adoption of, change to, or retention of a tax year.

**Line 1.** If the applicant is a partnership, S corporation, electing S corporation, or PSC and any of the following situations apply, the applicable additional procedures described below must be followed.

- The applicant is under examination and has obtained the consent of the appropriate director to the change or retention of the applicant’s annual accounting period. The applicant must attach to the application a statement from the director consenting to the change or retention of its annual accounting period. The applicant must also provide a copy of the application to the director at the same time it files the application with the IRS National Office. The application must contain the name(s) and telephone number(s) of the examination agent(s).
- The applicant is before an appeals (area) office and the applicant’s annual accounting period is not an issue under consideration by the appeals (area) office. The applicant must attach to the application a separate statement signed by the appropriate person certifying that, to the best of that person’s knowledge, the entity’s annual accounting period is not an issue under consideration by the appeals (area) office. The applicant must also provide a copy of the application to the appeals officer at the same time it files the application with the IRS National Office. The application must contain the name and telephone number of the appeals officer.
- The applicant is before a Federal court and the applicant’s annual accounting period is not an issue under consideration by the Federal court. The applicant must attach to the application a separate statement signed by the appropriate person certifying that, to the best of that person’s knowledge, the entity’s annual accounting period is not an

issue under consideration by the Federal court. The applicant must also provide a copy of the application to the government counsel at the same time it files the application with the IRS National Office. The application must contain the name and telephone number of the government counsel.

**Line 4a.** Attach an explanation of the legal basis supporting the requested tax year. Include all authority (statutes, regulations, etc.) supporting the requested year. The applicant is encouraged to include all relevant facts and circumstances that may establish a business purpose.

**Line 4b.** If the applicant requests to establish a natural business year under the annual business cycle test or seasonal business test of sections 5.03(1) and 5.03(2) of Rev. Proc. 2002-39, it must provide its gross receipts from sales or services and approximate inventory costs (where applicable) for each month in the requested short period and for each month of the three immediately preceding tax years.

If the applicant is requesting to change to a natural business year that satisfies the 25-percent gross receipts test described in section 5.03(3) of Rev. Proc. 2002-39, the applicant must supply its gross receipts for the most recent 47 months (or for any predecessor).

**Line 14.** Applicants filing to request an automatic approval for a change in tax year under Rev. Procs. 2002-37, 2002-38, 2003-62, 85-58, or 76-10 (Part II) are not required to pay a user fee when Form 1128 is filed on time.

Applicants filing to request a letter ruling on a change in tax year under Rev. Proc. 2005-1 and Rev. Proc. 2002-39 must pay a \$1,500 user fee.

A request for an exempt organization letter ruling on a change in tax year under Rev. Proc. 2005-8, 2005-1 I.R.B. 243, requires payment of a \$155 user fee.



*You can find Rev. Proc. 2005-1 and Rev. Proc. 2005-8 on pages 1 and 243, respectively, of Internal Revenue Bulletin 2005-1 at [www.irs.gov/pub/irs-irbs/irb05-01.pdf](http://www.irs.gov/pub/irs-irbs/irb05-01.pdf).*

A separate \$1,500 user fee is also required for applicants filing a letter ruling request for an extension of time to file under Regulations section 301.9100-3 (including requests under Rev. Procs. 2002-37, 2002-38, and 2003-62 (Part II, Sections A, B, and C)).

**Note.** The user fees referred to in the above paragraphs are published in Rev. Proc. 2005-1 (exempt organizations, see Rev. Proc. 2005-8), or an annual update. The annual updates are published as revenue procedures in the Internal Revenue Bulletin. The Internal Revenue Bulletins can be accessed at [www.irs.gov/irb](http://www.irs.gov/irb). The fees for 2006 are in Internal Revenue Bulletin 2006-1.

Payment of the user fee (check or money order made payable to the Internal Revenue Service) must be attached to Form 1128 at the time the form is filed. See Rev. Proc. 2005-1 for more information.

### **Section B—Corporations (Other Than S Corporations and Controlled Foreign Corporations)**

Corporations must complete this section and any other section in Part III that applies to that particular entity.

For example, a PFIC 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.

### **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, above, any deferral of income to shareholders will not be treated as a business purpose. For more information, see Rev. Proc. 2002-38.

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 automatic approval rules discussed in Part II, Section B on page 4. See *Exceptions* on page 1.

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

**Line 23.** Enter the first date a business transaction resulted in a tax consequence, such as receiving income or incurring an expense.

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**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.

In addition, the Privacy Act requires that when we ask you for information we must first tell you our legal right to ask for the information, why we are asking for it, and what could happen if we do not receive it and whether your response is voluntary, required to obtain a benefit, or mandatory under the law.

Our authority to ask for information is sections 6001, 6011, and 6012(a) and their regulations, which require you to file a return or statement with us for any tax for which you are liable. Your response is mandatory under these sections. Section 6109 requires that you provide your SSN or EIN on what you file. This is so we know who you are, and can process your return and other papers. You must fill in all parts of the form that apply to you.

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.

However, section 6103 allows or requires the Internal Revenue Service to disclose or give the information shown on your application to others as described in the Code. For example, we may disclose your tax information to the Department of Justice to enforce the tax laws, both civil and criminal, and to cities, states, the District of Columbia, U.S. commonwealths or possessions, and certain foreign governments to carry out their laws. We may also disclose this information to Federal and state or local agencies to enforce Federal nontax criminal laws and to combat terrorism.

Keep this notice with your records. It may help you if we ask you for other information. If you have any questions about the rules for filing and giving information, call or visit any Internal Revenue Service office.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated burden for individual taxpayers filing this form is approved under OMB control number 1545-0074 and is included in the estimates shown in the instructions for their individual income tax return. The estimated burden for all other taxpayers who file this form is shown below.

	<b>Recordkeeping</b>	<b>Learning about the law or the form</b>	<b>Preparing and sending the form to the IRS</b>
Parts I and II	8 hr., 36 min.	5 hr., 51 min.	6 hr., 15 min.
Parts I and III	22 hr., 14 min.	5 hr., 37 min.	7 hr., 26 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, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6406, Washington, DC 20224. Do not send the tax form to this office. Instead, see *Where To File* on page 2.

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