

Part III

Administrative, Procedural and Miscellaneous

26 CFR 601.204: Changes in accounting periods and in methods of accounting.

(Also Part I, §§ 442, 706, 898, 1502; 1.442-1, 1.706-1, 1.1502-76.)

Rev. Proc. 2002-37

CONTENTS

SECTION 1. PURPOSE

SECTION 2. BACKGROUND

.01 *Taxable Year Defined*

- (1) *In general*
- (2) *Annual accounting period*
- (3) *Required taxable year*

.02 *Change in Taxable Year*

- (1) *In general*
- (2) *Annualization of short period return*
- (3) *No retroactive change in annual accounting period*

.03 *Approval of a Change*

SECTION 3. SIGNIFICANT CHANGES

SECTION 4. SCOPE

.01 *Applicability*

- (1) *In general*
- (2) *Certain 52-53-week taxable years*
- (3) *Natural business year*
- (4) *Section 898 election*

.02 *Inapplicability*

- (1) *Prior change*
- (2) *Interest in a pass-through entity*
- (3) *Shareholder of certain FSCs or IC-DISCs*
- (4) *FSC or an IC-DISC*
- (5) *S corporation*
- (6) *Electing S corporation*
- (7) *PSC*
- (8) *CFC or FPHC*

- (9) *Tax-exempt organization*
- (10) *Possessions corporation*
- (11) *Cooperative association*
- (12) *Corporation with a required taxable year*
- .03 *Nonautomatic Changes*
- .04 *Examples*

SECTION 5. DEFINITIONS

- .01 *Corporation*
- .02 *Pass-through Entity*
- .03 *Required Taxable Year*
- .04 *Permitted Taxable Year*
- .05 *Ownership Taxable Year*
- .06 *Natural Business Year*
 - (1) *Prior three years gross receipts*
 - (2) *Natural business year*
 - (3) *Special rules*
- .07 *First Effective Year*
- .08 *Short Period*

SECTION 6. TERMS AND CONDITIONS OF CHANGE

- .01 *In General*
- .02 *Short Period Tax Return*
- .03 *Subsequent Year Tax Returns*
- .04 *Record Keeping/Book Conformity*
- .05 *Changes in Natural Business Year*
- .06 *Changes in Ownership Taxable Year*
- .07 *52-53-week Taxable Years*
- .08 *Creation of Net Operating Loss or Capital Loss*
- .09 *Creation of General Business Credits*
- .10 *Concurrent Change for Related Entities*

SECTION 7. GENERAL APPLICATION PROCEDURES

- .01 *Approval*
- .02 *Filing Requirements*
 - (1) *Where to file*
 - (2) *When to file*
 - (3) *Label*
 - (4) *Signature requirements*
 - (5) *No user fee*
 - (6) *Additional information*
 - (7) *Consolidated application*

SECTION 8. REVIEW OF APPLICATION

- .01 *Service Center Review*
- .02 *Review of Director*

SECTION 9. EFFECTIVE DATE AND TRANSITION RULE

- .01 *Effective Date*
- .02 *Transition Rule*

SECTION 10. EFFECT ON OTHER DOCUMENTS

SECTION 11. PAPERWORK REDUCTION ACT

DRAFTING INFORMATION

SECTION 1. PURPOSE

This revenue procedure provides the exclusive procedures for certain corporations to obtain automatic approval to change their annual accounting period under § 442 of the Internal Revenue Code and § 1.442-1(b) of the Income Tax Regulations. This revenue procedure modifies, amplifies, and supersedes Rev. Proc. 2000-11, 2000-3 C.B. 309. 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 Commissioner of the Internal Revenue Service to change its annual accounting period under § 442 and the regulations thereunder.

SECTION 2. BACKGROUND

- .01 *Taxable Year Defined.*

(1) In general. Section 441(b) and § 1.441-1(b) (1) provide that the term "taxable year" generally means the

taxpayer's annual accounting period, if it is a calendar or fiscal year, or, if applicable, the taxpayer's required taxable year.

(2) *Annual accounting period.* Section 441(c) and § 1.441-1(b)(3) provide that the term "annual accounting period" means the annual period (calendar year or fiscal year) on the basis of which the taxpayer regularly computes its income in keeping its books.

(3) *Required taxable year.* Section 1.441-1(b)(2) provides that certain taxpayers must use the particular taxable year that is required under the Code and the regulations thereunder. See § 1.441-1(b)(2) for examples of taxpayers, including certain corporations, with required taxable years.

.02 *Change in Taxable Year.*

(1) In general. Section 1.442-1(a)(1) generally provides that a taxpayer that wants to change its annual accounting period and use a new taxable year must obtain the approval of the Commissioner.

(2) *Annualization of short period return.* Section 443(b) and § 1.443-1(b)(1)(i) generally provide that if a return is made for a short period resulting from a change of an annual accounting period, the taxable income for the short period must be placed on an annual basis by multiplying the income by 12 and

dividing the result by the number of months in the short period. Unless § 443(b)(2) and § 1.443-1(b)(2) apply, the tax for the short period generally is the same part of the tax computed on an annual basis as the number of months in the short period is of 12 months. But see, for example, §§ 1.852-3(e), 1.857-2(a)(4), and 1.1502-76 for exceptions to this general rule for a regulated investment company (RIC), a real estate investment trust (REIT), and a subsidiary corporation ceasing to be a member of a consolidated group, respectively.

(3) *No retroactive change in annual accounting period.*

Unless specifically authorized by the Commissioner, a taxpayer may not request, or otherwise make, a retroactive change in annual accounting period, regardless of whether the change is to a required taxable year.

.03 *Approval of a Change.* Section 1.442-1(b) provides, in part, that in order to secure the approval of the Commissioner to change an annual accounting period, a taxpayer must file an application, generally on Form 1128, "Application to Adopt, Change, or Retain a Tax Year," with the Commissioner within such time and in such manner as is provided in administrative procedures published by the Commissioner. In general, a change in annual accounting period will be approved where the taxpayer establishes a business purpose for the requested annual

accounting period and agrees to the Commissioner's prescribed terms, conditions, and adjustments for effecting the change.

SECTION 3. SIGNIFICANT CHANGES

Significant changes to Rev. Proc. 2000-11 made by this revenue procedure include:

.01 Section 4.01(1) of this revenue procedure provides that this revenue procedure is the exclusive procedure for corporations within its scope to change their annual accounting period;

.02 Section 4.01(2) of this revenue procedure waives only certain scope restrictions for changes to (or from) a 52-53-week taxable year that references the same calendar month;

.03 Section 4.01(3) of this revenue procedure provides that a corporation that wants to change to or retain a natural business year that satisfies the 25-percent gross receipts test described in section 5.05 of this revenue procedure, or to a 52-53-week taxable year ending with reference to such taxable year, may do so under this revenue procedure notwithstanding certain of the limitations imposed under section 4.02;

.04 Section 4.02(1) of this revenue procedure reduces the period of time required between a prior accounting period change and a change effected under this revenue procedure from 6 calendar years to 48 months;

.05 Section 4.02(1) of this revenue procedure also adds to the list of accounting period changes that will not be considered prior changes for purposes of the 48-month rule: (a) a change to comply with § 1.1502-75, (b) any prior change made by a corporation whose majority shareholder has changed its taxable year within the last 12 months if the corporation wants to change to that shareholder's taxable year in order to file consolidated financial statements, and (c) a change to a required taxable year or an ownership taxable year;

.06 Section 4.02(2) of this revenue procedure adds to the list of corporations with certain pass-through interests that are ineligible to use this revenue procedure certain shareholders of a closely-held REIT;

.07 Section 4.02(2) of this revenue procedure also incorporates into this list of potentially prohibited pass-through interests an interest in a controlled foreign corporation (CFC), foreign personal holding company (FPHC), or passive foreign investment company (PFIC) and, as a result, allows an exception for de minimis interests in these entities;

.08 Section 4.02(2)(b) of this revenue procedure provides that, in certain cases in which a partnership is owned 50-percent by each of two partners, the corporate partner's interest in the partnership will be disregarded;

.09 Section 4.02(8) of this revenue procedure provides an exception to the scope restrictions for a CFC or FPHC that wants to change to its required taxable year;

.10 Section 4.02(12) of this revenue procedure adds to the list of corporations ineligible to use this revenue procedure a corporation not otherwise described in this revenue procedure that has a required taxable year, unless that corporation is changing to its required taxable year;

.11 Section 6.04 of this revenue procedure now provides certain exceptions to the record keeping/book conformity rule; and

.12 Section 6.08 of this revenue procedure adds a term and condition to prevent the carryback of capital losses generated in the short period.

SECTION 4. SCOPE

.01 *Applicability.* (1) *In general.* Except as provided in section 4.02, this revenue procedure, which is the exclusive procedure for corporations within its scope, applies to a corporation requesting automatic approval to change its annual accounting period.

(2) *Certain 52-53-week taxable years.* This revenue procedure applies to a corporation (including a member of a consolidated group) that wants to change to (or from) a 52-53-

week taxable year, subject to the provisions of section 4.02 of this revenue procedure. However, notwithstanding sections 4.02(1), (2), (3), (6), (8), and (11) of this revenue procedure, this revenue procedure applies to a corporation (including a member of a consolidated group) that wants to change from a 52-53-week taxable year that references a particular month to a non-52-53-week taxable year that ends on the last day of that month, and vice versa.

(3) *Natural business year.* Notwithstanding sections 4.02(2) and (3) of this revenue procedure, this revenue procedure applies to a corporation that wants to change to a natural business year that satisfies the 25-percent gross receipts test described in section 5.

(4) *Section 898 election.* Notwithstanding section 4.02 of this revenue procedure, this revenue procedure applies to a CFC (as defined in § 957) that wants to revoke its one-month deferral election under § 898(c)(1)(B) and change its taxable year to the majority U.S. shareholder year (as defined in § 898(c)(1)(C)).

.02 *Inapplicability.* This revenue procedure does not apply to the following corporations:

(1) *Prior change.* A corporation that has changed its annual accounting period at any time within the most recent 48-month period ending with the last month of the requested taxable

year. For this purpose, the following changes will not be considered a change in annual accounting period:

(a) a prior change in accounting period by a corporation in order to comply with the common taxable year requirement of either § 1.1502-75(d)(3)(v) or 1.1502-76(a)(1). See § 1.442-1(d);

(b) a prior change in accounting period by a corporation either acquired within the last 12 months, or whose majority shareholder changed its taxable year within the last 12 months, if that corporation currently wants to change to the taxable year of its majority shareholder with which it does not file consolidated tax returns in order to file consolidated financial statements. For purposes of this section 4.02(1)(b), "majority shareholder" means ownership that satisfies the test of § 1504(a)(2), substituting "more than 50 percent" for "at least 80 percent;"

(c) a prior change from a 52-53-week taxable year that references a particular month to a non-52-53-week taxable year that ends on the last day of that month, and vice versa; or

(d) a prior change in accounting period to a required taxable year or an ownership taxable year.

(2) *Interest in a pass-through entity.* A corporation that has an interest in a pass-through entity as of the end of the

short period. However, an interest in a pass-through entity will be disregarded for this purpose if any of the following conditions are met:

(a) the pass-through entity would be required under the Code or regulations to change its taxable year to the new taxable year of the corporation (or, if applicable in the case of a CFC or FPHC, to a taxable year that begins one month-earlier than the new taxable year of the corporation). See section 6.10 of this revenue procedure for a special term and condition related to this exception;

(b) the pass-through entity is a partnership that is owned 50-percent by each of two partners and the corporation and the partnership both want to change to the taxable year of the other 50-percent partner. See section 6.10 of this revenue procedure for a special term and condition related to this exception;

(c) the new taxable year of the corporation would result in no change in or less deferral (as described in § 1.706-1(b)(3)) from the pass-through entity than the present taxable year of the corporation. If the pass-through entity is a partnership, CFC, or FPHC, the corporation should compare the existing deferral period (between the pass-through entity's and the corporation's current taxable years) with the new deferral

period (between the new required taxable year of the pass-through entity and the corporation's new taxable year). See section 4.04 of this revenue procedure for an example of this rule; or

(d) for pass-through entities not qualifying for the exceptions in either section 4.02(2)(a) or (b) of this revenue procedure, the pass-through entity in which the corporation has an interest has been in existence for at least 3 taxable years and the interest is de minimis. For this purpose, an interest in a pass-through entity is de minimis only if:

(i) for each of the prior 3 taxable years of the corporation, the amount of income (including ordinary income or loss, capital gains or losses, rents, royalties, interest, dividends and deduction equivalents of credits) from such pass-through entity is less than or equal to (A) 5 percent of the corporation's gross receipts (or, in the case of a member of a consolidated group, the consolidated group's gross receipts) for those taxable years, and (B) \$500,000; and

(ii) the amount of income from all such pass-through entities in the aggregate is less than or equal to the amounts described in (A) and (B) above. See section 4.04 of this revenue procedure for an example of this rule;

(3) *Shareholder of certain FSCs or IC-DISCs.* A corporation that is a shareholder of a Foreign Sales Corporation

(FSC) or Interest Charge Domestic International Sales Corporation (IC-DISC), as of the end of the short period. However, an interest in a FSC or IC-DISC is disregarded if either of the following conditions is met:

(a) the FSC or IC-DISC in which the corporation is the principal shareholder (*i.e.*, the shareholder with the highest percentage of voting power as defined in § 441(h)) would be required to change its taxable year pursuant to §§ 1.921-1T(b)(4) and (b)(6) to the new taxable year of the corporation. See section 6.10 of this revenue procedure for a special term and condition related to this exception; or

(b) the new taxable year of the corporation would result in no change in or less deferral of income (as determined under the principles of § 1.706-1(a)(3)) from the FSC or IC-DISC than the present taxable year of the corporation;

(4) *FSC or an IC-DISC.* A corporation that is a FSC or an IC-DISC. See § 1.921-1T(b)(4) for rules regarding automatic changes of the annual accounting period of a FSC or IC-DISC to the taxable year of its principal shareholder;

(5) *S corporation.* A corporation that is an S corporation (as defined in § 1361). See Rev. Proc. 2002-38, 2002-22 I.R.B. _____, for procedures to follow for certain automatic changes in the annual accounting period of an S corporation;

(6) *Electing S corporation.* A corporation that attempts to make an S corporation election for the taxable year immediately following the short period, unless the change is to a permitted taxable year;

(7) *PSC.* A corporation that is a Personal Service Corporation (PSC) (as defined in § 441(i)). See Rev. Proc. 2002-38 for procedures to follow for certain automatic changes in the annual accounting period of a PSC;

(8) *CFC or FPHC.* A corporation that is a CFC (as defined in § 957), including a CFC that is also PFIC (as defined in § 1297(a)), or a FPHC (as defined in § 552), unless the CFC or FPHC either does not have a required taxable year under final regulations under § 898, or is changing to its required taxable year or to a 52-53-week taxable year that references its required taxable year;

(9) *Tax-exempt organization.* A corporation that is a tax-exempt organization, other than an organization exempt from federal income tax under §§ 521, 526, 527, or 528. See Rev. Proc. 85-58, 1985-2 C.B. 740, for procedures to follow in changing an annual accounting period of a tax-exempt organization that is not within the scope of this revenue procedure;

(10) *Possessions corporation.* A corporation that has in effect an election under § 936;

(11) *Cooperative association.* A corporation that is a cooperative association (within the meaning of § 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. For purposes of this subsection, "substantially the same" means that ownership of more than 90 percent of the cooperative association's stock is owned by the same members; or

(12) *Corporation with a required taxable year.* A corporation that is not described in sections 4.02(1) through (11) of this revenue procedure that has a required taxable year (e.g., a REIT, or a Qualified Settlement Fund or Designated Settlement Fund as defined in § 1.468B), unless the corporation is changing to its required taxable year.

.03 *Nonautomatic Changes.* Corporations that are unable to obtain automatic approval for a change in accounting period under this revenue procedure, the applicable regulations, or any other revenue procedure must secure prior approval from the Commissioner for a change in an accounting period pursuant to § 442 and the regulations thereunder. See Rev. Proc. 2002-39, 2002-22 I.R.B. ____.

.04 *Examples.*

(1) Example 1. (i) Corporations V, W, X, Y, and Z hold equal 20 percent interests in the capital and profits of partnership ABC. V and W are calendar year taxpayers. X and Y have taxable years ending June 30, and Z has a taxable year ending September 30. ABC does not have a business purpose for a particular taxable year, and thus, pursuant to § 1.706-1, ABC is required to use a taxable year ending June 30 because that taxable year results in the least aggregate deferral of income to its partners. Z currently has a 3-month deferral period (the number of months from the end of ABC's taxable year to the end of Z's taxable year). Z wants to change its taxable year to a calendar year.

(ii) If Z changes its taxable year to a calendar year, ABC would be required to change its taxable year under § 706 to its majority interest taxable year, which is the calendar year. As a result of Z's new taxable year and ABC's new taxable year, Z's deferral period would be eliminated. Because Z's new taxable year would reduce Z's deferral, Z may disregard its interest in ABC under section 4.02(2)(c) of this revenue procedure.

(2) Example 2. (i) Corporation X, a calendar year taxpayer, wants to change its taxable year to a year ending June

30. X has interests in five partnerships, ABC, DEF, GHI, JKL, and MNO. All of the partnerships have been in existence for over three taxable years. X's interests in each of ABC and DEF is greater than 50 percent. X's interest in GHI, JKL, and MNO is 15 percent, 10 percent, and 5 percent, respectively. GHI uses the majority interest taxable year ending May 31 and JKL and MNO each use their respective majority interest taxable year ending December 31. X's distributive share of income/(loss) from JKL for the prior three taxable years is \$300,000, \$(100,000), and \$200,000, respectively, and from MNO is \$300,000, \$200,000, and \$100,000, respectively. X's gross receipts for each of those same taxable years was \$15,000,000.

(ii) X's interests in its pass-through entities will be disregarded only if each pass-through entity satisfies one of the exceptions enumerated under section 4.02(2) of this revenue procedure. In the instant case, X's interests in ABC and DEF each meet the exception in section 4.02(2)(a) because X is the majority interest partner in each partnership. X's interest in GHI meets the exception in section 4.02(2)(c) because X's new taxable year would result in less deferral than its old taxable year (the deferral between May 31 and June 30 of 1 month as compared to the deferral between May 31 and December 31 of 7 months). Because X is not the majority interest partner in JKL

and MNO and because its new taxable year would not result in less deferral from these partnerships, X's interests in JKL and MNO may be disregarded only if they satisfy the de minimis exception in section 4.02(2)(d). Although the income from JKL and MNO for each of the prior three taxable years is less than 5 percent of X's gross receipts and \$500,000, the income for year 1 from JKL and MNO, in the aggregate (\$300,000 and \$300,000), exceeds the \$500,000 amount specified in section 4.02(2)(d)(ii).

Consequently, JKL and MNO fail to satisfy the de minimis exception in section 4.02(2)(d). Because X's interests in all of its pass-through entities will not be disregarded, X is not within the scope of this revenue procedure.

SECTION 5. DEFINITIONS

The following definitions apply solely for the purpose of this revenue procedure:

.01 *Corporation.* The term "corporation" includes associations, joint-stock companies, and insurance companies, as provided in § 7701(a)(3), and includes each member of a consolidated group. However, the common parent of a consolidated group may change the group's annual accounting period under this revenue procedure if every member of the consolidated group meets all the requirements and complies with all the conditions of this revenue procedure.

.02 *Pass-through Entity*. The term "pass-through entity" means a partnership; a trust; an estate; a common trust fund (as defined in § 584); a CFC (as defined in § 957), but only to the extent the corporation is a U.S. shareholder (as defined in § 951(b)); an FPHC (as defined in § 552), but only to the extent the corporation is a U.S. shareholder (as defined in § 551(a)); a PFIC, but only if the corporation has elected to treat such PFIC as a qualified electing fund (as defined in § 1295); and a closely-held REIT (as defined in § 6655(e)(5)(B)), but only to the extent the corporation is described in § 6655(e)(5)(A).

.03 *Required Taxable Year*. The required taxable year is the particular taxable year that certain taxpayers are required to use under the Code and the regulations thereunder. See § 1.441-1(b)(2) for examples of taxpayers, including certain corporations, with required taxable years.

.04 *Permitted Taxable Year*. A "permitted taxable year" of an electing S corporation is the required taxable year; a taxable year elected under § 444; a natural business year that satisfies the 25-percent gross receipts test described in section 5.06 of this revenue procedure; the ownership taxable year; or a 52-53-week taxable year that references the required taxable year, taxable year elected under § 444, natural business year, or ownership taxable year.

.05 *Ownership Taxable Year.* An "ownership taxable year" of an electing S corporation is the taxable year (if any) that, as of the first day of the first effective year, constitutes the taxable year of one or more shareholders (including any shareholder that concurrently changes to such taxable year) holding more than 50-percent of the corporation's issued and outstanding shares of stock. For this purpose, under principles similar to § 1.706-3T for determining the taxable year of a partnership, a shareholder that is tax-exempt under § 501(a) is disregarded if such shareholder is not subject to tax on any income attributable to the electing S corporation. Tax-exempt shareholders are not disregarded, however, if the electing S corporation is wholly-owned by such tax-exempt entities. A shareholder in an electing S corporation that wants to concurrently change its taxable year must follow the instructions generally applicable to taxpayers changing their taxable years contained in § 1.442-1(b), Rev. Proc. 2002-39, or any other applicable administrative procedure published by the Commissioner.

.06 *Natural Business Year.* A corporation establishes a "natural business year" under this revenue procedure 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 (1) (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 gross receipts test described in (2) (a). 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 taxable year.

(b) Regardless of the taxpayer's method of accounting, the taxpayer's share of income from a pass-through entity generally must be reported as gross receipts in the month that the pass-through entity's taxable year ends.

(c) If a 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.

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

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

.07 *First Effective Year.* The first effective year is the first taxable year for which a change in annual accounting period

is effective, e.g., the short period required to effect the change. Thus, in the case of a change, the first effective year is the short period required to effect the change. The first effective year is also the first taxable year for complying with all the terms and conditions set forth in this revenue procedure necessary to effect the change in annual accounting period.

.08 *Short Period.* A corporation's short period is the period beginning with the day following the close of the old taxable year and ending with the day preceding the first day of the new taxable year.

SECTION 6. TERMS AND CONDITIONS OF CHANGE

.01 *In General.* A change in annual accounting period filed under this revenue procedure must be made pursuant to the terms and conditions provided in this revenue procedure.

.02 *Short Period Tax Return.* The corporation must file a federal income tax return for the short period required to effect a change in annual accounting period by the due date of that return, including extensions pursuant to § 1.443-1(a). The corporation's taxable income for the short period must be annualized and the tax must be computed in accordance with the provisions of § 443(b) and § 1.443-1(b). However, for changes to (or from) a 52-53-week taxable year referencing the same month as

the current (or requested) taxable year, see special rules in § 1.441-2.

.03 *Subsequent Year Tax Returns.* Returns for subsequent taxable years generally must be made on the basis of a full 12 months (or on a 52-53-week basis) ending on the last day of the requested taxable year, unless the corporation secures the approval of the Commissioner to change that taxable year.

.04 *Record Keeping/Book Conformity.* The books of the corporation must be closed as of the last day of the first effective year. Thereafter, the corporation must compute its income and keep its books and records (including financial statements and reports to creditors) on the basis of the requested taxable year, except that this requirement shall not apply (1) to books and records maintained solely for foreign law purposes (e.g., foreign tax reporting purposes), or (2) if the requested taxable year is the corporation's required taxable year.

.05 *Changes in Natural Business Year.* If an electing S corporation changes to a natural business year that satisfies the 25-percent gross receipts test under this revenue procedure and that annual accounting period no longer qualifies as a natural business year, the taxpayer is using an impermissible annual accounting period and should change to a permitted taxable year

or any other taxable year for which the taxpayer establishes a business purpose to the satisfaction of the Commissioner.

Certain S corporations may qualify for automatic approval to change their annual accounting period under Rev. Proc. 2002-38. Other taxpayers must request approval under Rev. Proc. 2002-39.

.06 Changes in Ownership Taxable Year. An electing S corporation that changes to an ownership taxable year under this revenue procedure must change to a permitted taxable year or any other taxable year for which the taxpayer establishes a business purpose to the satisfaction of the Commissioner, or request approval to retain its current taxable year, if, as of the first day of any taxable year, its ownership taxable year changes. Certain S corporations may qualify for automatic approval to change or retain their annual accounting period under Rev. Proc. 2002-38. Other taxpayers must request approval under Rev. Proc. 2002-39.

.07 52-53-week Taxable Years. If applicable, the corporation must comply with § 1.441-2(e) (relating to the timing of taking items into account in those cases where the taxable year of a pass-through entity ends with reference to the same calendar month as one or more of its owners).

.08 Creation of Net Operating Loss or Capital Loss. If the corporation generates a net operating loss (NOL) or capital loss

(CL) in the short period required to effect a change in annual accounting period, the corporation may not carry the NOL or CL back, but must carry it over in accordance with the provisions of §§ 172 and 1212, respectively, beginning with the first taxable year after the short period. However, the short period NOL or CL is carried back or carried over in accordance with §§ 172 or 1212, respectively, if it is either: (a) \$50,000 or less, or (b) results from a short period of 9 months or longer and is less than the NOL or CL for a full 12-month period beginning with the first day of the short period.

.09 *Creation of General Business Credits.* If there is an unused general business credit or any other unused credit generated in the short period, the corporation must carry that unused credit forward. An unused credit from the short period may not be carried back.

.10 *Concurrent Change for Related Entities.* If a corporation's interest in a pass-through entity, FSC, or IC-DISC (related entity) is disregarded pursuant to section 4.02(2)(a), 4.02(2)(b), or 4.02(3)(a) of this revenue procedure because the related entity is required to change its taxable year to the corporation's new taxable year (or, if applicable in the case of a CFC or FPHC, to a taxable year beginning one month earlier than the corporation's new taxable year), the related entity must

change its taxable year concurrently with the corporation's change in taxable year, either under Rev. Proc. 2002-38, Rev. Proc. 2002-39, or this revenue procedure, whichever is applicable. This related party change is required notwithstanding the testing date provisions in §§ 706(b)(4)(A)(ii), 898(c)(1)(C)(ii), § 1.921-1T(b)(6), and the special provision in § 706(b)(4)(B).

SECTION 7. GENERAL APPLICATION PROCEDURES

.01 *Approval.* Approval is hereby granted to any corporation within the scope of this revenue procedure to change its annual accounting period, provided the corporation complies with all the applicable provisions of this revenue procedure. Approval is granted beginning with the first effective year. A corporation granted approval under this revenue procedure to change its annual accounting period is deemed to have established a business purpose for the change to the satisfaction of the Commissioner.

.02 *Filing Requirements.*

(1) *Where to file.* Any corporation (including the common parent of a consolidated group) that wants to change its annual accounting period pursuant to the provisions of this revenue procedure must complete and file a Form 1128 with the Director, Internal Revenue Service Center, Attention: ENTITY CONTROL, where the corporation files its federal income tax return. No copies

of Form 1128 are required to be sent to the national office. The corporation also must attach a copy of the Form 1128 to the federal income tax return filed for the short period required to effect the change. Any corporation completing and filing a Form 1128 on behalf of a CFC or FPHC must file the Form 1128 where the corporation files its federal income tax return.

(2) *When to file.* A Form 1128 filed pursuant to this revenue procedure will be considered timely filed for purposes of § 1.442-1(b)(1) only if it is filed on or before the due date (including extensions) for filing the federal income tax return for the short period required to effect such change.

(3) *Label.* In order to assist in the processing of the change in annual accounting period, reference to this revenue procedure must be made a part of the Form 1128 by either typing or legibly printing the following statement at the top of page 1 of the Form 1128: "FILED UNDER REV. PROC. 2002-37." For a CFC that is revoking a § 898(c)(1)(B) election under section 4.01(4) of this revenue procedure, the label at the top of page 1 of the Form 1128 should read "REVOCATION OF § 898(c)(1)(B) ELECTION FILED UNDER REV. PROC. 2002-37."

(4) *Signature requirements.* The Form 1128 must be signed on behalf of the corporation requesting the change of annual accounting period by an individual with authority to bind the

corporation in such matters. If the corporation is a member of a consolidated group, the Form 1128 must be signed by a duly authorized officer of the common parent. If an agent is authorized to represent the corporation before the Service, to receive the original or a copy of correspondence concerning the application, or to perform any other act(s) regarding the application on behalf of the corporation, a power of attorney reflecting such authorization(s) should be attached to the application. A corporation's representative without a power of attorney to represent the corporation will not be given any information about the application.

(5) *No user fee.* A user fee is not required for an application filed under this revenue procedure and, except as provided in section 8.01 of this revenue procedure, the receipt of an application filed under this revenue procedure may not be acknowledged.

(6) *Additional information.* In the case of a corporation changing to a natural business year that satisfies the 25-percent gross receipts test described in section 5.06 of this revenue procedure, the corporation must supply the gross receipts for the most recent 47 months for itself (or any predecessor) in compliance with the instructions to Form 1128.

(7) *Consolidated application.* A common parent must file

a single application to change the annual accounting period of its consolidated group, even if one or more of the subsidiaries of the group are requesting to use a 52-53-week taxable year that ends with reference to the common parent's requested taxable year or the subsidiaries are requesting to use a taxable year consisting of 12 calendar months that coincides with the reference month of the common parent's requested 52-53-week taxable year. See § 1.1502-76(a)(1) (common parent must attach a statement to its tax return as required by Rev. Proc. 89-56, 1989-2 C.B. 643, and comply with Rev. Rul. 72-184, 1972-1 C.B. 289). On the Form 1128 filed on behalf of a common parent and its subsidiaries, the common parent corporation must clearly indicate which corporations in the consolidated group (if any) are requesting a 52-53-week taxable year, and which (if any) are requesting a taxable year consisting of 12 calendar months. In addition, the common parent must answer all relevant questions on the Form 1128 for each member of the consolidated group.

SECTION 8. REVIEW OF APPLICATION

.01 *Service Center Review.* A Service Center may deny a change of annual accounting period under this revenue procedure only if: (a) the Form 1128 is not filed timely, or (b) the corporation fails to meet the scope or any term and condition of this revenue procedure. If the change is denied, the Service

Center will return the Form 1128 with an explanation for the denial.

.02 *Review of Director.* The appropriate director may ascertain if the change in annual accounting period was made in compliance with all the applicable provisions of this revenue procedure. Corporations changing their annual accounting period pursuant to this revenue procedure without complying with all the provisions (including the terms and conditions) of this revenue procedure ordinarily will be deemed to have initiated the change in annual accounting period without the approval of the Commissioner. Upon examination, a corporation that has initiated an unauthorized change of annual accounting period may be denied the change. For example, the corporation may be required to recompute its taxable income or loss in accordance with its former (or required, if applicable) taxable year.

SECTION 9. EFFECTIVE DATE AND TRANSITION RULE

.01 *Effective Date.* This revenue procedure generally is effective for all changes in annual accounting periods for which the first effective year ends on or after May 10, 2002. However, if the time period for filing Form 1128 with respect to a taxable year set forth in section 7.02(2) of this revenue procedure has not yet expired, a corporation within the scope of this revenue procedure may elect early application of the revenue procedure by

providing the notification set forth in section 7.02(3) on the top of page 1 of Form 1128 and by satisfying the other procedural requirements of section 7.

.02 *Transition Rule.* If a corporation within the scope of this revenue procedure filed an application with the national office and the application is pending with the national office on May 10, 2002, the corporation may obtain approval under this revenue procedure. However, the national office will process the application in accordance with the authority under which it was filed, unless by the later of June 25, 2002, or the issuance of the letter ruling granting or denying approval for the change, the corporation notifies the national office that it wants to use this revenue procedure. If the corporation timely notifies the national office that it wants to use this revenue procedure, the national office will require the corporation to make appropriate modifications to the application to comply with the applicable provisions of this revenue procedure. In addition, any user fee that was submitted with the application will be refunded to the corporation.

SECTION 10. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2000-11 is modified, amplified, and superseded.

SECTION 11. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue

procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1786. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this revenue procedure are found in sections 7 and 10. The information in section 7 is required in order to determine whether the taxpayer properly obtained automatic approval to change its annual accounting period. The information in section 10 is required in order to allow a corporation to apply the provisions of this revenue procedure to a pending application. The likely respondents are corporations.

The estimated total annual reporting burden for the requirements contained in section 7 of this revenue procedure is reflected in the burden estimates for Form 1128. The estimated total annual reporting burden for the requirement contained in section 10 of this revenue procedure is 50 hours: the estimated annual burden per respondent is 30 minutes; the estimated number of respondents is 100; and the estimated frequency of response is once.

Books or records relating to a collection of information

must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Roy A. Hirschhorn and Martin Scully, Jr. of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Mr. Hirschhorn or Mr. Scully on (202) 622-4960 (not a toll-free call).