

§ 1.442-3T

26 CFR Ch. I (4-1-02 Edition)

Under these facts, Y may not adopt a November 30 taxable year and instead must adopt a taxable year that ends on December 31, which is the taxable year of X.

[T.D. 8123, 52 FR 3619, Feb. 5, 1987]

§ 1.442-3T Special limitations on certain adoptions and retentions of a taxable year (temporary).

(a) *Applicability.* This section generally applies to—

(1) Any partnership that wishes to adopt a taxable year other than the calendar year, the taxable year of its principal partners, or the taxable year to which all of its principal partners are concurrently changing, and

(2) Any corporation seeking S status that wishes to adopt or retain a taxable year other than the calendar year or a taxable year that meets the requirements of section 4.02 or 4.04 of Rev. Proc. 83-25, 1983-1 C.B. 689.

(b) *General rule.* A taxpayer to which this section applies may not adopt or retain a taxable year that results in any deferral of income to its partners or shareholders unless the taxpayer—

(1) Secures the prior approval of the Commissioner by establishing a substantial business purpose under paragraph (c)(2) of this section for the adoption or retention, or

(2) Is permitted to adopt or retain the taxable year without securing the prior approval of the Commissioner under paragraph (c)(1) of this section.

Thus, a taxpayer to which this section applies may not adopt or retain a taxable year that results in a deferral of income to its partners or shareholders under Rev. Proc. 72-51, 1972-2 C.B. 832, or section 4.03 of Rev. Proc. 83-25, 1983-1 C.B. 689.

(c) *Substantial business purpose*—(1) *Prior approval of the Commissioner not needed.* Notwithstanding § 1.706-1(b), § 1.442-1(b)(2), and 26 CFR 18.1378-1(a), a taxpayer to which this section applies may adopt or retain a taxable year that results in a deferral of income to its partners or shareholders without the prior approval of the Commissioner if the taxpayer can establish a substantial business purpose under § 1.442-2T(c). Thus, a taxpayer described in § 1.442-2T(c)(4) must secure the prior approval of the Commissioner to the adoption or retention even if the re-

quirements of § 1.442-2T(c)(1) are satisfied. A taxpayer shall effect an adoption or retention permitted under this paragraph (c)(1) in the manner prescribed by § 1.442-2T(f)(1), except that the taxpayer's first income tax return shall be treated as the return for the short period involved in a change of annual accounting period.

(2) *Prior approval of the Commissioner.* In any case where the taxpayer was in existence for the three 12-month periods described in § 1.442-2T(c)(2), or where a predecessor organization (within the meaning of § 4.04 of Rev. Proc. 83-25) was actively engaged in a trade or business at all times during the portion of those three 12-month periods prior to the inception of the taxpayer, the Commissioner will consider a request for prior approval of an adoption or retention of a taxable year that results in a deferral of income to its partners or shareholders only if the taxpayer is described in § 1.442-2T(e). In such a case, the application for approval shall be filed in the manner prescribed by § 1.442-2T(f)(2). In any other case, the taxpayer must establish a substantial business purpose in order to obtain the prior approval of the Commissioner, and must file an application for approval in accordance with § 1.706-1(b) or 26 CFR 18.1378-1(a) (whichever is applicable) and § 1.442-1T(b)(1). For this purpose, the following factors generally will not be sufficient to establish a substantial business purpose:

(i) The use of a particular year for regulatory or financial accounting purposes;

(ii) The hiring patterns of a particular business (e.g., the fact that a firm typically hires staff during certain times of the year);

(iii) The use of a particular year for administrative purposes, such as for the admission or retirement of partners or shareholders, promotion of staff, and compensation or retirement arrangements with staff, partners, or shareholders; and

(iv) The fact that a particular business involves the use of price lists, model year, or other items that change on an annual basis.

(d) *Time for filing.* (1) Except as otherwise provided in paragraph (d)(2) of this

section, a taxpayer cannot adopt or retain a taxable year under this section unless the return or form required to effect or request the adoption or retention is filed by its due date (with extensions if the adoption is effected by filing an income tax return for the taxpayer's first taxable year).

(2) A taxpayer may adopt or retain a taxable year under this section if the due date (without regard to extensions) for the return or form required to effect or request the adoption or retention is on or after November 6, 1986, and before March 9, 1987, and the return or form is filed before March 9, 1987 (or, in the case of an adoption effected by filing an income tax return for the taxpayer's first taxable year, if an application for extension is filed before March 9, 1987). This paragraph (d)(2) only extends the time for adopting or retaining a taxable year and does not extend the time for making an S election. An S election that is timely filed before March 9, 1987, however, will not be denied or rendered ineffective solely by reason of the need for the taxpayer to submit the information required by paragraph (c) of this section.

(3) In the case of an adoption or retention of a taxable year under this section that is effected by filing an income tax return for the taxpayer's first taxable year, any failure to file a return or to pay tax on or before the due date for the return or the date prescribed for payment will be treated as due to reasonable cause and will not give rise to any addition to tax under section 6651 if—

(i) The due date for the return (without regard to extensions) or the date prescribed for payment is on or after November 6, 1986, and before March 9, 1987, and

(ii) The return (or application for extension) is filed and the tax is paid before March 9, 1987.

(e) *Effective date.* This section generally applies if the first taxable year of the partnership or the first taxable year for which the election to be an S corporation is effective begins before January 1, 1987, unless the application necessary to effect or request the adoption or retention was timely filed before November 6, 1986. This section shall not apply, however, to an adop-

tion by a partnership of a taxable year that begins before January 1, 1986.

[T.D. 8123, 52 FR 3622, Feb. 5, 1987]

§ 1.443-1 Returns for periods of less than 12 months.

(a) *Returns for short period.* A return for a short period, that is, for a taxable year consisting of a period of less than 12 months, shall be made under any of the following circumstances:

(1) *Change of annual accounting period.* In the case of a change in the annual accounting period of a taxpayer, a separate return must be filed for the short period of less than 12 months 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. However, such a return is not required for a short period of six days or less, or 359 days or more, resulting from a change from or to a 52-53-week taxable year. See section 441(f) and § 1.441-2. The computation of the tax for a short period required to effect a change of annual accounting period is described in paragraph (b) of this section. In general, a return for a short period resulting from a change of annual accounting period shall be filed and the tax paid within the time prescribed for filing a return for a taxday of the short period. For rules applicable to a subsidiary corporation which becomes a member of an affiliated group which files a consolidated return, see § 1.1502-76.

(2) *Taxpayer not in existence for entire taxable year.* If a taxpayer is not in existence for the entire taxable year, a return is required for the short period during which the taxpayer was in existence. For example, a corporation organized on August 1 and adopting the calendar year as its annual accounting period is required to file a return for the short period from August 1 to December 31, and returns for each calendar year thereafter. Similarly, a dissolving corporation which files its returns for the calendar year is required to file a return for the short period from January 1 to the date it goes out of existence. Income for the short period is not required to be annualized if the taxpayer is not in existence for the entire