

without the consent of the Commissioner. Such blanket permission to revoke an election will be provided by the permanent regulations in the event of a determination by the Secretary or his delegate that such regulations contain provisions that may not reasonably have been anticipated by taxpayers at the time of making such election.

(f) *Furnishing of supplementary information required.* If the permanent regulations which are issued under the section of the Code or Act referred to in this section to which the election relates require the furnishing of information in addition to that which was furnished with the statement of election filed pursuant to paragraph (d) of this section, the taxpayer must furnish such additional information in a statement addressed to the district director, or the director of the regional service center, with whom the election was filed. This statement must clearly identify the election and the taxable year for which it was made. If such information is not provided the election may, at the discretion of the Commissioner, be held invalid.

(Sec. 191(b), Internal Revenue Code of 1954 (90 Stat. 1916, 26 U.S.C. 191(b))

[T.D. 7459, 42 FR 1469, Jan. 7, 1977; 42 FR 4121, Jan. 24, 1977; 42 FR 6806, Feb. 4, 1977, as amended by T.D. 7478, 42 FR 18276, Apr. 6, 1977; T.D. 7526, 42 FR 64625, Dec. 27, 1977; T.D. 7670, 45 FR 6932, Jan. 31, 1980; T.D. 7692, 45 FR 26324, Apr. 18, 1980; T.D. 7743, 45 FR 84052, Dec. 22, 1980; T.D. 7758, 46 FR 43036, Aug. 26, 1981; T.D. 8308, 55 FR 35593, Aug. 31, 1990. Redesignated by T.D. 8435, 57 FR 43896, Sept. 23, 1992]

§ 301.9100-14T Individual's election to terminate taxable year when case commences.

(a) *Scope.* The regulations prescribed in this section provide rules for making the election under section 1398(d)(2) to terminate the taxable year of an individual taxpayer.

(b) *Availability of election.* This election is available to an individual taxpayer in a case commenced after March 24, 1981, under chapter 7 (relating to liquidations) or chapter 11 (relating to reorganizations) of title 11 of the United States Code. If the case is dismissed, the taxpayer cannot make the election, and an election previously

made will be void. For purposes of this section, a partnership is not treated as an individual. If the taxpayer making the election is married (within the meaning of section 143), the election is available to the taxpayer's spouse, but only if the spouse is eligible to file, and does file, a joint return with the taxpayer for the taxable year ended as a result of the election.

(c) *Effect of election.* The election terminates the taxable year of the taxpayer (and of a spouse who joins in the election) on the day before the commencement date of the case. A new taxable year begins on the commencement date and (unless terminated earlier) ends on the date on which the taxpayer's taxable year in which the case commenced would have ended if the election had not been made.

(d) *Time and manner.* A taxpayer to whom the election is available makes the election by filing a return for the short taxable year ending the day before commencement of the case (the "first short taxable year") on or before the 15th day of the fourth full month following the end of that first short taxable year. The spouse of such a taxpayer makes the election by making a joint return with the taxpayer for that first short taxable year within the time prescribed in the preceding sentence. To facilitate processing, the taxpayer should write "Section 1398 Election" at the top of the return. A taxpayer may also make the election by attaching a statement of election to an application for extension of time for filing a return that satisfies the requirements under section 6081 for the first short taxable year. The application for extension must be submitted under section 6081 on or before the due date of the return for the first short taxable year. The statement must state that the taxpayer elects under section 1398(d)(2) to close his or her taxable year as of the day before commencement of the case. If the taxpayer's spouse elects to close his or her taxable year, the spouse must join in the application for extension and in the statement of election. If a joint return is not filed for the first short taxable year, the election of the spouse made with the application is void.

(e) *Irrevocability of election.* The election is irrevocable.

(f) *Subsequent bankruptcy case of debtor's spouse.* If a case under chapter 7 or chapter 11 of title 11 of the United States Code commences with respect to the spouse of a debtor to whom an election under this section was available, the spouse can make an election under this section even if the spouse's case commences in the same taxable year in which the debtor's case commences. The spouse can make the election whether or not the spouse previously joined in the debtor's election. If the spouse joined in the debtor's election, or if the debtor did not make the election, the debtor may join in the spouse's election, assuming the debtor is otherwise eligible to file a joint return with the spouse.

(g) *Examples.*

Example. (1) Assume that husband and wife are calendar-year taxpayers, that a bankruptcy case involving only the husband commences on March 1, 1982, and that a bankruptcy case involving only the wife commences on October 10, 1982. (2) If the husband does not make an election, his taxable year would not be affected; *i.e.*, it does not terminate on February 28. If the husband does make an election, his first short taxable year would be January 1 through February 28; his second short taxable year would begin March 1. The tax return for his first short taxable year would be due on June 15. The wife could join in the husband's election, but only if they file a joint return for the taxable year January 1 through February 28.

(3) The wife could elect to terminate her taxable year on October 9. If she did, and if the husband had not made an election or if the wife had not joined in the husband's election, she would have two taxable years in 1982—the first from January 1 through October 9, and the second from October 10 through December 31. The tax return for her first short taxable year would be due on February 15, 1983. If the husband had not made an election to terminate his taxable year on February 28, the husband could join in an election by his wife, but only if they file a joint return for the taxable year January 1 through October 9. If the husband had made an election but the wife had not joined in the husband's election, the husband could not join in an election by the wife to terminate her taxable year on October 9, since they could not file a joint return for such year.

(4) If the wife makes the election relating to her own bankruptcy case, and had joined the husband in making an election relating to his case, she would have two additional

taxable years with respect to her 1982 income and deductions—the second short taxable year would be March 1 through October 9, and the third short taxable year would be October 10 through December 31. The husband could join in the wife's election if they file a joint return for the second short taxable year. If the husband joins in the wife's election, they could file joint returns for the short taxable year ending December 31, but would not be required to do so.

[T.D. 7775, 46 FR 25292, May 6, 1981; 46 FR 30495, June 9, 1981. Redesignated by T.D. 8435, 57 FR 43896, Sept. 23, 1992]

§ 301.9100-15T Election to use retroactive effective date.

(a) *Scope.* The regulations prescribed in this section provide rules for making the election to use a retroactive effective date under section 7(f) of the Bankruptcy Tax Act of 1980.

(b) *Availability of election.* The election is available to the debtor (or debtors) in a case under title 11 of the United States Code (or a receivership, foreclosure, or similar proceeding in a Federal or State court) that commences after September 30, 1979, and before January 1, 1981. The court must approve the election. For purposes of this paragraph (b), a receivership, foreclosure, or similar proceeding before a Federal or State agency involving a financial institution to which section 585 or 593 applies shall be treated as a proceeding before a court.

(c) *Effect of election—(1) In general.* An election under this section changes the effective date of certain amendments to the Code made by the Bankruptcy Tax Act of 1980. The amendments affected by an election under this section are listed in paragraph (c) (2) and (3) of this section. If the election is made, all of the amendments listed in paragraph (c) (2) and (3) of this section apply to all transactions in the case (or similar proceeding) and to all parties in respect of all transactions in the case (or similar proceeding). Thus, the debtor may not elect to have only certain of the amendments apply to transactions in the case (or similar proceeding) and may not elect to have the amendments apply only to certain transactions in the case (or similar proceeding). An election under this section will not