

Notice of Intent to Waive Certain Limitations on Obtaining Expeditious Consent to Change an Accounting Period and Elect to be an S Corporation Effective January 1, 1997

Notice 97-3

SUMMARY: The Internal Revenue Service will issue guidance shortly that will waive certain limitations on a corporation's ability to expeditiously (*i.e.*, without the Commissioner's prior written approval) change its annual accounting period under § 1.442-1(c) of the Income Tax Regulations or Rev. Proc. 92-13, 1992-1 C.B. 665, in order to elect to be an S corporation under § 1362 of the Internal Revenue Code effective for the taxable year beginning January 1, 1997. The forthcoming guidance will provide specific procedures a corporation must follow to request an expeditious change of annual accounting period, and subsequently elect to be an S corporation.

BACKGROUND: Pursuant to § 1378, an S corporation generally must have a calendar year. However, a corporation may not expeditiously change its annual accounting period to a calendar year if it attempts to elect to be an S corporation effective for the taxable year immediately following the short period required to effect the change. *See* § 1.442-1(c)(2)(v); Rev. Proc. 92-13, section 4.01(5). In addition, a corporation is precluded under § 1.442-1(c)(2)(i) from expeditiously changing its annual accounting period if the corporation has changed it within the last ten calendar years, and under Rev. Proc. 92-13, section 4.01(2), if the corporation has changed it within the last six calendar years.

The Small Business Job Protection Act of 1996 (SBJPA), Pub. L. No. 104-188, 110 Stat. 1755, significantly amended Subchapter S of the Code, expanding eligibility to elect to be an S corporation. These amendments, generally effective for taxable years beginning after December 31, 1996, were intended to allow more corporations to elect to be S corporations as of January 1, 1997.

WAIVER OF LIMITATIONS: Consistent with this intent, the Service will issue further guidance shortly that will waive the limitations of §§ 1.442-1(c)(2)(i) and (c)(2)(v), and of sections

4.01(2) and 4.01(5) of Rev. Proc. 92-13, on a corporation's ability to expeditiously change its annual accounting period to a calendar year effective for the short period ending December 31, 1996, provided that the corporation:

(1) is otherwise eligible to change its annual accounting period under either § 1.442-1(c) or Rev. Proc. 92-13;

(2) is a small business corporation (as described in § 1361(b)) and timely elects to be an S corporation effective for the taxable year beginning on January 1, 1997; and

(3) follows the procedures to be provided in forthcoming guidance.

The forthcoming guidance will also provide special procedures to allow a corporation to request an expeditious change of annual accounting period and make the election to be an S corporation effective January 1, 1997. Until that guidance is issued, a corporation that qualifies to expeditiously change its annual accounting period under either § 1.442-1(c) or Rev. Proc. 92-13 as a result of this notice should not file the statement required by § 1.442-1(c)(1), Form 1128, Application to Adopt, Change or Retain a Tax Year (required by Rev. Proc. 92-13), or Form 2553, Election by a Small Business Corporation. Moreover, such a corporation should not submit a request to change its annual accounting period under § 1.442-1(b) (which provides procedures to obtain the Commissioner's prior written approval). However, a corporation that does not otherwise qualify to expeditiously change its annual accounting period may request permission to change its annual accounting period by following the procedures described in § 1.442-1(b).

DRAFTING— INFORMATION: The principal author of this notice is Susie K. Bird of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information, contact Ms. Sandra Cheston at (202) 622-4840 (not a toll-free call).