

§ 1.441-2T

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(f) *Election of year consisting of 52-53 weeks.* For rules relating to the 52-53-week taxable year, see §§ 1.441-2T, 1.441-3T, and 1.441-4T.

(g) *No books kept; no accounting period.* Except as otherwise provided in the Internal Revenue laws or regulations, the taxpayer's taxable year shall be the calendar year if—

- (1) The taxpayer keeps no books;
- (2) The taxpayer does not have an annual accounting period (as defined in section 441(c) and paragraph (c) of this section); or
- (3) The taxpayer has an annual accounting period, but such period does not qualify as a fiscal year (as defined in section 441(e) and paragraph (e) of this section).

For the purposes of paragraph (g)(1) of this section, the keeping of books does not require that records be bound. Records which are sufficient to reflect income adequately and clearly on the basis of an annual accounting period will be regarded as the keeping of books. A taxpayer whose taxable year is required to be a calendar year under section 441(g) and this paragraph (g) may not adopt a fiscal year without obtaining prior approval from the Commissioner. See section 442 and § 1.442-1T(a)(2).

(h) *Effective date.* This section is effective for taxable years beginning after December 31, 1986. See 26 CFR 1.441-1 (revised as of April 1, 1987) for rules applicable to taxable years beginning before January 1, 1987.

(Secs. 860(e), (92 Stat. 2849, 26 U.S.C. 860(e)); sec. 860(g) (92 Stat. 2850, 26 U.S.C. 860(g)); and sec. 7805 (68A Stat. 917, 26 U.S.C. 7805))

[T.D. 6500, 25 FR 11701, Nov. 26, 1960. Redesignated and amended by T.D. 8167, 52 FR 48526, Dec. 23, 1987]

§ 1.441-2T Election of year consisting of 52-53 weeks (temporary).

(a) *General rule.* Section 441(f) provides, in general, that a taxpayer may elect to compute his taxable income on the basis of a fiscal year which—

- (1) Varies from 52 to 53 weeks,
- (2) Ends always on the same day of the week, and
- (3) Ends always on—
 - (i) Whatever date this same day of the week last occurs in a calendar month, or

(ii) Whatever date this same day of the week falls which is nearest to the last day of the calendar month.

For example, if the taxpayer elects a taxable year ending always on the last Saturday in November, then for the year 1956, the taxable year would end on November 24, 1956. On the other hand, if the taxpayer had elected a taxable year ending always on the Saturday nearest to the end of November, then for the year 1956, the taxable year would end on December 1, 1956. Thus, in the case of a taxable year described in subparagraph (3)(i) of this paragraph, the year will always end within the month and may end on the last day of the month, or as many as six days before the end of the month. In the case of a taxable year described in subparagraph (3)(ii) of this paragraph, the year may end on the last day of the month, or as many as three days before or three days after the last day of the month.

(b) *Application of effective dates.* (1) For purposes of determining the effective date or the applicability of any provision of this title which is expressed in terms of taxable years beginning, including, or ending with reference to the first or last day of a specified calendar month, a 52-53-week taxable year is deemed to begin on the first day of the calendar month beginning nearest to the first day of the 52-53-week taxable year, and is deemed to end or close on the last day of the calendar month ending nearest to the last day of the 52-53-week taxable year, as the case may be. Examples of provisions of this title the applicability of which is expressed in terms referred to in the preceding sentence include the provisions relating to the time for filing returns and other documents, paying tax, or performing other acts, and the provisions of part II (section 1561 and following), subchapter B, chapter 6, relating to surtax exemptions of certain controlled corporations. The provisions of this subparagraph do not apply to the computation of the tax if subparagraph (2) of this paragraph, relating to the computation under section 21 of the effect of

changes in rates of tax during a taxable year, applies. The provisions of this subparagraph may be illustrated by the following examples:

Example (1). Assume that an income tax provision is applicable to taxable years beginning on or after January 1, 1957. For that purpose, a 52-53-week taxable year beginning on any day within the period December 26, 1956, to January 4, 1957, inclusive, shall be treated as beginning on January 1, 1957.

Example (2). Assume that an income tax provision requires that a return must be filed on or before the 15th day of the third month following the close of the taxable year. For that purpose, a 52-53-week taxable year ending on any day during the period May 25 to June 3, inclusive, shall be treated as ending on May 31, the last day of the month ending nearest to the last day of the taxable year, and the return, therefore, must be made on or before August 15.

Example (3). X, a corporation created on January 1, 1966, elects a 52-53-week taxable year ending on the Friday nearest the end of December. Thus, X's first taxable year begins on Saturday, January 1, 1966, and ends on Friday, December 30, 1966; its next taxable year begins on Saturday, December 31, 1966, and ends on Friday, December 29, 1967; and its next taxable year begins on Saturday, December 30, 1967, and ends on Friday, January 3, 1969. For purposes of applying the provisions of Part II, subchapter B, chapter 6 of the Code, X's first taxable year is deemed to begin on January 1, 1966, and end on December 31, 1966; its next taxable year is deemed to begin on January 1, 1967, and end on December 31, 1967; and its next taxable year is deemed to begin on January 1, 1968, and end on December 31, 1968. Accordingly, each such taxable year is treated as including one and only one December 31st.

(2) If a change in the rate of tax is effective during a 52-53-week taxable year (other than on the first day of such year as determined under subparagraph (1) of this paragraph), the tax for the 52-53-week taxable year shall be computed in accordance with section 21, regulating to effect of changes, and the regulations thereunder. For the purpose of the computation under section 21, the determination of the number of days in the period before the change, and in the period on and after the change, is to be made without regard to the provisions of subparagraph (1) of this paragraph. The provisions of this subparagraph may be illustrated by the following examples:

Example (1). Assume a change in the rate of tax is effective for taxable years beginning after June 30, 1956. For a 52-53-week taxable year beginning on Wednesday, November 2, 1955, the tax must be computed on the basis of the old rates for the actual number of days, from November 2, 1955, to June 30, 1956, inclusive, and on the basis of the new rates for the actual number of days from July 1, 1956, to Tuesday, October 30, 1956, inclusive.

Example (2). Assume a change in the rate of tax for taxable years beginning after June 30. For this purpose, a 52-53-week taxable year beginning on any of the days from June 25 to July 4, inclusive, is treated as beginning on July 1. Therefore, no computation under section 21 will be required for such year because of the change in rate.

(c) *Adoption of or change to or from 52-53-week taxable year.* (1) A new taxpayer may adopt the 52-53-week taxable year for his first taxable year if he keeps his books and computes his income on that basis, or if he conforms his books accordingly in closing them. The taxpayer must thereafter keep his books and report his income on the basis of the 52-53-week taxable year so adopted unless prior approval for a change is obtained from the Commissioner. See subparagraph (4) of this paragraph. The taxpayer shall file with his return for his first taxable year a statement containing the information required in subparagraph (3) of this paragraph. A newly-formed partnership may adopt a 52-53-week taxable year without the permission of the Commissioner only if such a year ends either with reference to the same month in which the taxable years of all its principal partners end or with reference to the month of December. See paragraph (b)(1) of §1.706-1.

(2) A taxpayer, including a partnership, may change to a 52-53-week taxable year without the permission of the Commissioner if the 52-53-week taxable year ends with reference to the end of the same calendar month as that in which the former taxable year ended, and if the taxpayer keeps his books and computes his income for the year of change on the basis of such 52-53-week taxable year, or if he conforms his books accordingly in closing them. The taxpayer must continue to keep his books and compute his income on the basis of such 52-53-week taxable year unless prior approval for a change is obtained. See subparagraph (4) of this

paragraph. The taxpayer shall indicate his election to change to such 52-53-week taxable year by a statement filed with his return for the first taxable year for which the election is made. This statement shall contain the information required in subparagraph (3) of this paragraph.

(3) The statement referred to in subparagraphs (1) and (2) of this paragraph shall contain the following information:

(i) The calendar month with reference to which the new 52-53-week taxable year ends;

(ii) The day of the week on which the 52-53-week taxable year always will end; and

(iii) Whether the 52-53-week taxable year will always end on (a) the date on which such day of the week falls in the calendar month, or (b) on the date on which such day of the week last occurs which is nearest to the last day of such calendar month.

(4) Where a taxpayer wishes to change to a 52-53-week taxable year and, in addition, wishes to change the month with reference to which the taxable year ends, or where a taxpayer wishes to change from a 52-53-week taxable year, he must obtain prior approval from the Commissioner, as provided in section 442 and § 1.442-1.

(5) If a change from or to a 52-53-week taxable year results in a short period (within the meaning of section 443) of 359 days or more, or six days or less, the tax computation under section 443(b) shall not apply. If the short period is 359 days or more, it shall be treated as a full taxable year. If the short period is six days or less, such short period is not a separate taxable year but shall be added to and deemed a part of the following taxable year. (In the case of a change from or to a 52-53-week taxable year not involving a change of the month with reference to which the taxable year ends, the tax computation under section 443(b) does not apply since the short period will always be 359 days or more, or six days or less.) In the case of a short period which is more than six days, but less than 359 days, taxable income for the short period shall be placed on an annual basis for the purpose of section 443(b) by multiplying such income by

365 and dividing the result by the number of days in the short period. In such case, the tax for the short period shall be the same part of the tax computed on such income placed on an annual basis as the number of days in the short period is of 365 days (unless section 443(b)(2) and paragraph (b)(2) of § 1.443-1, relating to the alternative tax computation, apply). For adjustment in deduction for personal exemption, see section 443(c) and paragraph (b)(1)(v) of § 1.443-1.

(6) The provisions of subparagraph (5) of this paragraph are illustrated by the following examples:

Example (1). A taxpayer having a fiscal year ending April 30 elects for years beginning after April 30, 1955, a 52-53-week taxable year ending on the last Saturday in April. This election involves a short period of 364 days, from May 1, 1955, to April 28, 1956, inclusive. Since this short period is 359 days or more, it is not placed on an annual basis and is treated as a full taxable year.

Example (2). Assume the same conditions as in example (1), except that the taxpayer elects for years beginning after April 30, 1955, a taxable year ending on the Tuesday nearest to April 30. This election involves a short period of three days, from May 1 to May 3, 1955. Since this short period is less than seven days, tax is not separately computed for it. This short period is added to and deemed part of the following 52-week taxable year which would otherwise begin on May 4, 1955, and end on May 1, 1956. Thus, that taxable year is deemed to begin on May 1, 1955, and end on May 1, 1956.

(d) *Computation of taxable income.* The principles of section 451, relating to the taxable year for inclusion of items of gross income, and section 461, relating to the taxable year for taking deductions, are generally applicable to 52-53-week taxable years. Thus, items of income and deductions are determined on the basis of a 52-53-week taxable year, except that such items may be determined as though the 52-53-week taxable year were a taxable year consisting of 12 calendar months if such practice is consistently followed by the taxpayer and if income is clearly reflected thereby. In the case of depreciation, unless some other practice is consistently followed, the allowance shall be determined as though the 52-53-week year were a taxable year consisting of 12

calendar months. Amortization deductions for the taxable year shall be determined as though the 52-53-week year were a taxable year consisting of 12 calendar months.

(e) *Partnerships, S corporations, and personal service corporations*—(1) *In general.* Paragraph (e) of this section applies if a partnership, partner, S corporation, S corporation shareholder, personal service corporation (within the meaning of § 1.441-4T(d)), or employee-owner (within the meaning of § 1.441-4T(h)) uses a 52-53-week taxable year.

(2) *Treatment of taxable years ending with reference to the same calendar month*—(i) *Timing of partners taking into account partnership items.* If the taxable year of a partnership and a partner end with reference to the same calendar month, then for purposes of determining the taxable year in which a partner takes into account—

(A) Items described in section 702, and

(B) Items that are deductible by the partnership (including items described in section 707(c)) and includible in the income of the partner, the partner's taxable year will be deemed to end on the last day of the partnership's taxable year.

(ii) *Timing of S shareholders taking into account S corporation items.* If the taxable year of an S corporation and a shareholder end with reference to the same calendar month, then for purposes of determining the taxable year in which a shareholder takes into account—

(A) Items described in section 1366(a), and

(B) Items that are deductible by the S corporation and includible in the income of the shareholder, the shareholder's taxable year will be deemed to end on the last day of the S corporation's taxable year.

(iii) *Personal service corporations and employee-owners.* If the taxable year of a personal service corporation and an employee-owner end with reference to the same calendar month, then for purposes of determining the taxable year in which an employee-owner takes into account items that are deductible by

the personal service corporation and includible in the income of the employee-owner, the employee-owner's taxable year will be deemed to end on the last day of the personal service corporation's taxable year.

(3) *Automatic approval for partnerships and S corporations.* If a partnership or S corporation is required to use a taxable year ending with respect to the last day of a particular month and the partnership or S corporation desires to use a 52-53-week taxable year with reference to such month, the partnership or S corporation is granted automatic approval to use such 52-53-week taxable year. See § 1.441-4T(b)(2)(ii) for a similar rule for personal service corporations.

(4) *Examples.* The provisions of paragraph (e)(2) of this section may be illustrated by the following examples.

Example (1). ABC Partnership uses a 52-53-week taxable year that ends on the Sunday nearest to December 31, and its partners, A, B, and C, are individual calendar year taxpayers. Assume that, for ABC's taxable year ending January 3, 1988, each partner's distributive share of ABC's taxable income is \$10,000. Under section 706(a) and paragraph (e)(2)(i) of this section, for the taxable year ending December 31, 1987, A, B, and C each must include \$10,000 in income with respect to the ABC year ending January 3, 1988. Similarly, if ABC makes a guaranteed payment to A on January 2, 1988, A must include the payment in income for his or her taxable year ending December 31, 1987.

Example (2). X, a personal service corporation, uses a 52-53-week taxable year that ends on the Sunday nearest to December 31, and all of the employee-owners of X are individual calendar year taxpayers. Assume that, for its taxable year ending January 3, 1988, X pays a bonus of \$10,000 to each employee-owner. Under paragraph (e)(2)(iii) of this section, each employee-owner must include the bonus in income for the taxable year ending December 31, 1987.

(5) *Effective date.* Paragraph (e) of this section applies to taxable years beginning after December 31, 1986.

(f) *Special rules for 1986 and subsequent years.* For special rules relating to certain adoptions of, or changes to or from, a 52-53-week taxable year ending

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in 1986 or 1987, see § 1.441-3T. For special rules relating to a 52-53-week taxable year beginning after December 31, 1986, see § 1.441-2T(e).

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§ 1.441-3T Special rules for certain adoptions of, retentions of, or changes to or from a 52-53-week taxable year (temporary).

(a) *Applicability.* This section applies to any partnership, partner, S corporation, S corporation shareholder, personal service corporation, or employee-owner that wishes to adopt or change to or from a 52-53-week taxable year. This section also applies to a corporation seeking S status that wishes to adopt, retain, or change to or from a 52-53-week taxable year. This section applies in the case of a change to or from a 52-53-week taxable year whether or not the taxpayer also wishes to change the month with reference to which its taxable year ends. Paragraph (c)(2) of this section applies to any taxpayer (including, for example, a corporation that is not seeking S status) that wishes to adopt or change to or from a 52-53-week taxable year.

(b) *Definitions*—(1) *Personal service corporation.* For purposes of this section only, the term “personal service corporation” means any corporation (other than an S corporation) if—

(i) The principal activity of that corporation is the performance of personal services, and

(ii) Such services are substantially performed by employee-owners.

A corporation shall not be treated as a personal service corporation, however, unless more than 10 percent of the fair market value of the outstanding stock of the corporation is held by employee-owners.

(2) *Employee-owner.* For purposes of this section, the term “employee-owner” means an employee who owns, on any day of the corporation’s taxable year, any outstanding stock of the personal service corporation. Section 318 will apply to determine stock ownership for purposes of this paragraph (b), except that “any” is to be substituted

for “50 percent or more in value” in section 318(a)(2)(C).

(3) *Performance of a substantial portion of services.* For purposes of paragraph (b)(1) of this section, personal services are substantially performed by employee-owners if the total time spent by employee-owners in performing those services is 10 percent or more of the total time spent by all employees (including employee-owners) in performing those services. In determining time spent in performing personal services of a corporation, time spent on matters that do not relate directly and intrinsically to the performance of services for or on behalf of clients or customers of the corporation shall not be taken into account. Thus, for example, in the case of a corporation performing accounting services, time spent in performing secretarial services, managerial work of a purely administrative nature, or janitorial services shall not be taken into account in determining either the time spent by employee-owners in performing accounting services or the total time spent by all employees in performing accounting services. Managerial time shall be taken into account, however, to the extent that it consists of the supervision of accounting services performed by employees for or on behalf of clients or customers of the corporation.

(c) *General rule*—(1) *Satisfaction of applicable conditions.* A taxpayer to which this section applies may not adopt, retain, or change to or from a 52-53-week taxable year under § 1.441-2(c) (1) or (2), § 1.442-1, or 26 CFR 18.1378-1 unless each of the applicable conditions set forth in paragraph (d) of this section is satisfied with respect to the taxpayer seeking the adoption, retention, or change. For additional requirements applicable to certain taxpayers that wish to adopt, retain, or change to or from a 52-53-week taxable year, see §§ 1.442-2T and 1.442-3T.

(2) *Evasion or avoidance of tax*—(i) *General rule.* A taxpayer may not adopt or change to or from a 52-53-week taxable year if the principal purpose for such action is the evasion or avoidance of Federal income tax.