

## **Caution: *DRAFT—NOT FOR FILING***

This is an early release draft of an IRS tax form, instructions, or publication, which the IRS is providing for your information as a courtesy. **Do not file draft forms.** Also, do not rely on draft instructions and publications for filing. We generally do not release drafts of forms until we believe we have incorporated all changes. However, in some cases unexpected issues arise, or legislation is passed, necessitating a change to a draft form we have posted on IRS.gov. Also, forms generally are subject to OMB approval before they are officially released. Drafts of instructions and publications are usually subject to at least some changes before being officially released.

All early releases of draft forms, instructions, and publications are available at [www.irs.gov/draftforms](http://www.irs.gov/draftforms). All information about forms, instructions, and publications is accessible from [www.irs.gov/formspubs](http://www.irs.gov/formspubs).

If you have any comments on this draft, you can email us at [taxforms@irs.gov](mailto:taxforms@irs.gov) or submit them to us on our IRS.gov page titled [Comment on Forms and Publications](#). Please include the form or publication number in the subject. We cannot respond to all comments due to the high volume we receive, but we will carefully consider each suggestion. Please note that we may not be able to consider many suggestions until the subsequent revision.

## Election To Have a Tax Year Other Than a Required Tax Year

▶ Information about Form 8716 and its instructions is at [www.irs.gov/form8716](http://www.irs.gov/form8716).

	Name	Employer identification number						
<b>Type or Print</b>	Number, street, and room or suite no. (or P.O. box number if mail is not delivered to street address)							
	City or town, state, and ZIP code							
<b>1</b>	Check applicable box to indicate type of entity: <input type="checkbox"/> Partnership <input type="checkbox"/> S corporation (or C corporation electing to be an S corporation) <input type="checkbox"/> Personal service corporation (PSC)	<b>2</b> Name and telephone number (including area code) of person who may be called for information:						
<b>3</b>	Enter ending date of the tax year for the entity's last filed return. A new entity should enter the ending date of the tax year it is adopting . . . . .	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">Month</td> <td style="width: 33%;">Day</td> <td style="width: 33%;">Year</td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </table>	Month	Day	Year			
Month	Day	Year						
<b>4</b>	Enter ending date of required tax year determined under section 441(i), 706(b), or 1378 . . . . .	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 66%;">Month</td> <td style="width: 33%;">Day</td> </tr> <tr> <td> </td> <td> </td> </tr> </table>	Month	Day				
Month	Day							
<b>5</b>	<b>Section 444(a) Election.</b> Check the applicable box and enter the ending date of the first tax year for which the election will be effective that the entity is (see instructions): <input type="checkbox"/> Adopting <input type="checkbox"/> Retaining <input type="checkbox"/> Changing to	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">Month</td> <td style="width: 33%;">Day</td> <td style="width: 33%;">Year</td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </table>	Month	Day	Year			
Month	Day	Year						
<p>Under penalties of perjury, I declare that the entity named above has authorized me to make this election under section 444(a), and that the statements made are, to the best of my knowledge and belief, true, correct, and complete.</p>								
▶	Signature and title (see instructions)	Date						

DRAFT AS OF  
June 13, 2013

DO NOT FILE

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## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

### Future Developments

For the latest information about developments related to Form 8716 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/form8716](http://www.irs.gov/form8716).

### Purpose of Form

Form 8716 is filed by partnerships, S corporations, and personal service corporations (as defined in section 441(j)(2)) to elect under section 444 to have a tax year other than a required tax year.

### When To File

Form 8716 must be signed and filed by the earlier of:

1. The 15th day of the 5th month following the month that includes the 1st day of the tax year the election will be effective or
2. The due date (not including extensions) of the income tax return for the tax year resulting from the section 444 election.

Items **1** and **2** relate to the tax year, or the return for the tax year, for which the ending date is entered on line 5 above.

Under Regulations section 301.9100-2, the entity is automatically granted a 12-month extension to make an election on Form 8716. To obtain an extension, type or legibly print "Filed Pursuant To Section 301.9100-2" at the top of Form 8716, and file the form within 12 months of the original due date.

### Where To File

File Form 8716 at the applicable IRS address shown below.

**If the entity's principal place of business or principal office or agency is located in**

**Use the following address**

Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin

Department of the Treasury  
Internal Revenue Service Center  
Cincinnati, OH 45999

Alabama, Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming

Department of the Treasury  
Internal Revenue Service Center  
Ogden, UT 84201

An entity without a principal office or agency or principal place of business in the United States must file Form 8716 with the Internal Revenue Service Center, P.O. Box 409101, Ogden, UT 84409.

Also file a copy of Form 8716 with your income tax return for the first tax year for which the election is made. To enable electronic filing, you may file an unsigned Form 8716 containing the same information as on the signed Form 8716 you filed separately.

### Effect of Section 444 Election

**Partnerships and S corporations.** An electing partnership or S corporation must file Form 8752, Required Payment or Refund Under Section 7519, for each year the election is in effect. Form 8752 is used to figure and make the payment required under section 7519 or to obtain a refund of net prior year payments. File Form 8752 by May 15 following the calendar year in which each applicable election year begins.

The section 444 election will end if the partnership or S corporation is penalized for willfully failing to comply with the requirements of section 7519.

**Personal service corporations (PSC).** An electing PSC should not file Form 8752. Instead, it must comply with the minimum distribution requirements (see next paragraph) of section 280H for each year the election is in effect. If the PSC does not meet these requirements, the applicable amounts it may deduct for payments made to its employee-owners may be limited.

Use Schedule H (Form 1120), Section 280H Limitations for a Personal Service Corporation (PSC), to figure the required minimum distribution and the maximum deductible amount. Attach Schedule H to the income tax return of the PSC for each tax year the PSC does not meet the minimum distribution requirements.

The section 444 election will end if the PSC is penalized for willfully failing to comply with the requirements of section 280H.

### Members of Certain Tiered Structures May Not Make Election

No election may be made under section 444(a) by an entity that is part of a tiered structure other than a tiered structure that consists entirely of partnerships and/or S corporations all of which have the same tax year. An election previously made will be terminated if an entity later becomes part of a tiered structure that is not allowed to make the election. See Temporary Regulations section 1.444-2T for other details.

### Acceptance of Election

After your election is received and accepted by the service center, the center will stamp it "Accepted" and return a copy to you. Be sure to keep a copy of the form marked "Accepted" for your records.

### End of Election

The election is made only once. It remains in effect until the entity changes its accounting period to its required tax year or some other permitted year or it is penalized for willfully failing to comply with the requirements of section 280H or 7519. If the election is terminated, the entity may not make another section 444 election.

### Signature

Form 8716 is not a valid election unless it is signed. For partnerships, a general partner or a limited liability company member manager must sign and date the election.

For corporations, the election must be signed and dated by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or any other corporate officer (such as tax officer) authorized to sign its tax return.

If a receiver, trustee in bankruptcy, or assignee controls the entity's property or business, that person must sign the election.

# Specific Instructions

## Line 1

Check the applicable box to indicate whether the entity is classified for federal income tax purposes as a partnership, an S corporation (or a C corporation electing to be an S corporation), or a PSC.

A corporation electing to be an S corporation that wants to make a section 444 election is not required to attach a copy of Form 8716 to its Form 2553, Election by a Small Business Corporation. However, the corporation is required to state on Form 2553 its intention to make a section 444 election (or a backup section 444 election). If a corporation is making a backup section 444 election (provided for in Part II, item Q, of Form 2553), it must type or print the words "Backup Election" at the top of the Form 8716 it files. See Temporary Regulations section 1.444-3T for more details.

## Line 2

Enter the name and telephone number (including the area code) of a person that the IRS may call for information needed to complete the processing of the election.

## Line 4

**Required tax year.** The required tax year for an S corporation or PSC is a calendar year. Generally, the required tax year for a partnership is the tax year of a majority of its partners (see Regulations section 1.706-1(b) for details).

## Line 5

The following limitations and special rules apply in determining the tax year an entity may elect.

**New entity adopting a tax year.** An entity adopting a tax year may elect a tax year under section 444 only if the deferral period of the tax year is not more than 3 months. See *Deferral period* below.

**Existing entity retaining a tax year.** In certain cases, an entity may elect to retain its tax year if the deferral period is not more than 3 months. If the entity does not want to elect to retain its tax year, it may elect to change its tax year as explained below.

**Existing entity changing a tax year.** An existing entity may elect to change its tax year if the deferral period of the elected tax year is not more than the shorter of 3 months or the deferral period of the tax year being changed. If the tax year being changed is the entity's required tax year, the deferral period for that year is zero and the entity is not permitted to make a section 444 election.

**Example.** ABC, a C corporation that historically used a tax year ending October 31, elects S status and wants to make a section

444 election for its tax year beginning November 1. ABC's required tax year under section 1378 is a calendar tax year. In this case, the deferral period of the tax year being changed is 2 months. Thus, ABC may elect to retain its tax year beginning November 1 and ending October 31 or elect a tax year beginning on December 1 (with a deferral period of one month). However, it may not elect a tax year beginning October 1 because the 3-month deferral period would be longer than the 2-month deferral period of the tax year being changed. If ABC elects a tax year beginning on December 1, it must file a short tax year return beginning November 1 and ending November 30.

**Deferral period.** The term "deferral period" means the number of months between the last day of the elected tax year and the last day of the required tax year. For example, if you elected a tax year that ends on September 30 and your required tax year is the calendar year, the deferral period would be 3 months (the number of months between September 30 and December 31).

**Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

<b>Recordkeeping</b> . . . . .	2 hr., 37 min.
<b>Learning about the law or the form</b> . . . . .	1 hr., 12 min.
<b>Preparing and sending the form to the IRS</b> . . . . .	1 hr., 16 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:M:S, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the form to this address. Instead, see *Where To File*, earlier.