

2006–56. Thus, these payments are included in the employee’s gross income, are reported as wages or other compensation on the employee’s Form W–2, and are subject to withholding and payment of employment taxes. See § 1.62–2(c)(3), (c)(5), and (h)(2), and section 8.06 of this revenue procedure.

SECTION 8. WITHHOLDING AND PAYMENT OF EMPLOYMENT TAXES

.01 The portion of a *per diem* allowance, if any, that relates to the days of business travel substantiated and that exceeds the amount deemed substantiated for those days under section 4.01, 4.02, or 5 of this revenue procedure is treated as paid under a nonaccountable plan and is subject to withholding and payment of employment taxes. See § 1.62–2(h)(2)(i)(B).

.02 In the case of a *per diem* allowance paid as a reimbursement, the excess described in section 8.01 of this revenue procedure is subject to withholding and payment of employment taxes in the payroll period in which the payor reimburses the expenses for the days of travel substantiated. See § 1.62–2(h)(2)(i)(B)(2).

.03 In the case of a *per diem* allowance paid as an advance, the excess described in section 8.01 of this revenue procedure is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the days of travel with respect to which the advance was paid are substantiated. See § 1.62–2(h)(2)(i)(B)(3). If some or all of the days of travel with respect to which the advance was paid are not substantiated within a reasonable period of time and the employee does not return the portion of the allowance that relates to those days within a reasonable period of time, the portion of the allowance that relates to those days is subject to withholding and payment of employment taxes no later than the first payroll period following the end of the reasonable period. See § 1.62–2(h)(2)(i)(A).

.04 In the case of a *per diem* allowance only for meal and incidental expenses for travel away from home paid to an employee in the transportation industry by a payor that uses the rule in section 4.04(4) of this revenue procedure, the excess of the *per diem* allowance paid for the period over the amount deemed substanti-

ated for the period under section 4.02 of this revenue procedure (after applying section 4.04(4) of this revenue procedure), is subject to withholding and payment of employment taxes no later than the first payroll period following the payroll period in which the excess is computed. See § 1.62–2(h)(2)(i)(B)(4).

.05 For example, assume that an employer pays an employee a *per diem* allowance under an arrangement that otherwise meets the requirements of an accountable plan to cover business expenses for meals and lodging for travel away from home at a rate of 120 percent of the federal *per diem* rate for the localities to which the employee travels. The employer does not require the employee to return the 20 percent by which the reimbursement for those expenses exceeds the federal *per diem* rate. The employee substantiates 6 days of travel away from home: 2 days in a locality in which the federal *per diem* rate is \$160 and 4 days in a locality in which the federal *per diem* rate is \$120. The employer reimburses the employee \$960 for the 6 days of travel away from home (2 x (120% x \$160) + 4 x (120% x \$120)), and does not require the employee to return the excess payment of \$160 (2 days x \$32 (\$192–\$160) + 4 days x \$24 (\$144–\$120)). For the payroll period in which the employer reimburses the expenses, the employer must withhold and pay employment taxes on \$160. See section 8.02 of this revenue procedure.

.06 If a *per diem* allowance arrangement has no mechanism or process to determine when an allowance exceeds the amount that may be deemed substantiated and the arrangement routinely pays allowances in excess of the amount that may be deemed substantiated without requiring actual substantiation of all the expenses or repayment of the excess amount, the failure of the arrangement to treat the excess allowances as wages for employment tax purposes causes all payments made under the arrangement to be treated as made under a nonaccountable plan. See Rev. Rul. 2006–56.

SECTION 9. EFFECTIVE DATE

This revenue procedure is effective for *per diem* allowances for lodging, meal and incidental expenses, or for meal and incidental expenses only, that are paid to an

employee on or after October 1, 2007, with respect to travel away from home on or after October 1, 2007. For purposes of computing the amount allowable as a deduction for travel away from home, this revenue procedure is effective for meal and incidental expenses or for incidental expenses only paid or incurred on or after October 1, 2007.

SECTION 10. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2006–41 is superseded.

DRAFTING INFORMATION

The principal author of this revenue procedure is Jeffrey T. Rodrick of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Mr. Rodrick at (202) 622–4930 (not a toll-free call).

26 CFR 601.204: *Changes in accounting periods and in methods of accounting.*
(Also Part I, §§ 442, 898; 1.442–1.)

Rev. Proc. 2007–64

SECTION 1. PURPOSE

This revenue procedure modifies a scope provision and one of the terms and conditions under which the Internal Revenue Service grants approval of requests by corporations for changes in annual accounting periods filed under Rev. Proc. 2006–45, 2006–45 I.R.B. 851. Specifically, this revenue procedure modifies the scope provision regarding a corporation that exits a consolidated group. See section 4.02(13) of Rev. Proc. 2006–45. In addition, this revenue procedure modifies the terms and conditions relating to record-keeping and book conformity in the case of a controlled foreign corporation (“CFC”) that has a majority U.S. shareholder year (as defined in § 898(c)(3) of the Internal Revenue Code) and that is changing to a one-month deferral year described in § 898(c)(2) or to a 52–53-week taxable year that references such one-month deferral year. See section 6.02 of Rev. Proc. 2006–45.

SECTION 2. BACKGROUND

.01 Section 442 and § 1.442-1(a) of the Income Tax Regulations generally provide that a taxpayer that wants to change its annual accounting period and use a new taxable year must obtain the approval of the Commissioner.

.02 Section 1.442-1(b)(2) provides that a change in annual accounting period will be approved only if the taxpayer agrees to the Commissioner's prescribed terms, conditions, and adjustments for effecting the change.

.03 Rev. Proc. 2006-45 provides the exclusive procedures for certain corporations to obtain automatic approval of the Commissioner to change their annual accounting periods.

.04 Section 4.02(13) of Rev. Proc. 2006-45 excludes from the scope of the revenue procedure a corporation that ceases to be a member of a consolidated group during the consolidated group's first effective year (as defined in section 5.05 of Rev. Proc. 2006-45).

.05 The Service has determined that it is appropriate to modify the scope of Rev. Proc. 2006-45 to clarify that any corporation leaving a consolidated group is excluded from the automatic change procedures under Rev. Proc. 2006-45 during the consolidated group's taxable year (without regard to a change in the consolidated group's accounting period) in which the corporation ceases to be a member of the consolidated group. A corporation that ceases to be a member of a consolidated group must continue to use the annual accounting period of the consolidated group, unless the corporation receives approval under Rev. Proc. 2002-39, 2002-1 C.B. 1046, to change its annual accounting period (or is required to change its annual accounting period upon joining another consolidated group).

.06 Section 898(c)(2) provides that a specified foreign corporation (*i.e.*, a CFC) may elect, in lieu of the taxable year under § 898(c)(1)(A) (*i.e.*, the majority U.S. shareholder year as defined in § 898(c)(3)), a taxable year beginning one month earlier than the majority U.S. shareholder year (*i.e.*, one-month deferral year described in § 898(c)(2)).

.07 Section 4.02(8) of Rev. Proc. 2006-45 includes in the scope of the revenue procedure a CFC that has a majority

U.S. shareholder year and that is changing to a one-month deferral year or to a 52-53-week taxable year that references such one-month deferral year.

.08 With respect to the terms and conditions of change under Rev. Proc. 2006-45, section 6.02(1) of that revenue procedure generally requires that a corporation compute its income and keep its books and records (including financial statements and reports to creditors) on the basis of the requested taxable year. That section further requires that the books and records of the corporation be closed as of the last day of the first effective year and that the corporation conform the accounting period used for financial statement purposes and reports to creditors concurrently.

.09 The Service has determined that in the case of a CFC changing to a one-month deferral year or to a 52-53-week taxable year that references such one-month deferral year, the CFC is not required to issue financial statements and reports to creditors on the basis of the requested year as otherwise required by section 6.02(1) of Rev. Proc. 2006-45. However, as required by section 6.02(1) of Rev. Proc. 2006-45, the CFC must close its books and records as of the last day of the first effective year and, every year after the first effective year, must close its books and records as of the last day of the requested taxable year, either a one-month deferral year or a 52-53-week taxable year that references such one-month deferral year. The CFC must also compute its income and earnings and profits for U.S. tax purposes on the basis of the requested year.

SECTION 3. SCOPE

.01 *Corporations leaving a consolidated group.* This revenue procedure applies to a corporation leaving a consolidated group that wants to change its annual accounting period in the year the corporation ceases to be a member of the consolidated group.

.02 *CFCs changing to one-month deferral year or to a 52-53-week taxable year that references such one-month deferral year.* This revenue procedure also applies to a CFC that has a majority U.S. shareholder year, and that is properly applying under Rev. Proc. 2006-45 to change to a one-month deferral year or to

a 52-53-week taxable year that references such one-month deferral year.

SECTION 4. MODIFICATIONS

.01 Section 4.02(13) is modified to read as follows: "*Corporation that exits a consolidated group.* A corporation that ceases to be a member of a consolidated group and wants to change its annual accounting period during the consolidated group's taxable year in which the corporation ceases to be a member of the consolidated group. For purposes of the prior sentence, the consolidated group's taxable year is determined without regard to a change in the consolidated group's annual accounting period. A corporation that ceases to be a member of a consolidated group must continue to use the annual accounting period of the consolidated group, unless the corporation receives approval under Rev. Proc. 2002-39 to change its annual accounting period (or is required to change its annual accounting period upon joining another consolidated group). A corporation that ceases to be a member of a consolidated group during the consolidated group's first effective year is not a member of the consolidated group for purposes of the consolidated group's change in accounting period. See section 7.02(7) of this revenue procedure.

(a) *Example 1.* On March 31, 2006, ABC Corporation ceases to be a member of a consolidated group that has a taxable year ending on November 30. ABC Corporation is not eligible to change its annual accounting period under this revenue procedure to a taxable year beginning before December 1, 2006.

(b) *Example 2.* Assume the same facts as *Example 1*, except that the consolidated group changes its annual accounting period to a taxable year ending on August 31, effective August 31, 2006. ABC Corporation is not eligible to change its annual accounting period under this revenue procedure to a taxable year beginning before December 1, 2006.

(c) *Example 3.* Assume the same facts as *Example 2*, except that the consolidated group changes its annual accounting period to a taxable year ending on January 31, effective January 31, 2006. ABC Corporation is not eligible to change its annual accounting period under this revenue procedure to a taxable year beginning before February 1, 2007."

.02 Section 6.02 of Rev. Proc. 2006-45 is modified to add paragraph (4) as follows: "(4) *CFCs changing to a year described in § 898(c)(2) or to a 52-53-week taxable year that references such one-month deferral year.* The terms and conditions regarding financial statements and reports to creditors in section

6.02(1) of this revenue procedure do not apply in the case of a CFC that has a majority U.S. shareholder year (as defined in § 898(c)(3)), and that is changing to a one-month deferral year described in § 898(c)(2) or to a 52–53-week taxable year that references such one-month deferral year. Such a CFC is nevertheless required to close its books and records as of the last day of the first effective year and every year thereafter to close its books and records on the last day of the requested taxable year, and to compute its income and earnings and profits for U.S.

tax purposes on the basis of the requested taxable year.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2006–45 is modified and clarified.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective for changes in annual accounting periods for which the first effective year (as defined in

section 5.05 of Rev. Proc. 2006–45) ends on or after October 18, 2006.

DRAFTING INFORMATION

The principal author of this revenue procedure is Jeffrey S. Marshall of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Mr. Marshall at (202) 622–4960 (not a toll-free call).