

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.

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§ 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 make the amendments listed in paragraph (c) (2) and (3) applicable to transactions occurring prior to commencement of the case (or similar proceeding) or transactions not in the case (or similar proceeding).

(2) *Amendments affected.* An election under this section changes the effective date of the amendments to the following sections:

(i) 111, relating to recovery of bad debts, prior taxes, and delinquency amounts,

(ii) 302, relating to the repeal of special treatment for certain railroad redemptions,

(iii) 312, relating to the effect of debt discharge on earnings and profits,

(iv) 337, relating to the application of the 12-month liquidation rule,

(v) 351, relating to certain transfers to controlled corporations,

(vi) 354 (other than the amendment made by section 6(i)(2) of the Bankruptcy Tax Act of 1980), 355, 357, 368, and 381, relating to corporate reorganizations,

(vii) 382, relating to special limitations on net operating loss carryover,

(viii) 542, relating to the personal holding company tax, and

(ix) 703, relating to elections of partnerships.

(3) *Other amendments affected in part.* Subject to the transitional rule of section 7(a)(2) of the Bankruptcy Tax Act of 1980, an election under this section changes the effective date of the amendments to sections 108 and 1017, relating to the tax treatment of discharge of indebtedness.

(4) *Substitution of effective dates.* The election under this section changes the effective date of the amendments listed in paragraph (c) (2) and (3) of this section by substituting “September 30, 1979” for “December 31 1980” wherever it appears in section 7(a), (c), and (d) of the Bankruptcy Tax Act of 1980.

(d) *Time and manner*—(1) *Time and place.* A debtor makes the election under this section by filing the written statement and evidence of court approval required under paragraph (d) (2) and (3) of this section on or before November 2, 1981, with the District Director or the Director of the Internal Revenue Service Center with whom an income tax return for the debtor would be filed if it were due on the date the election is filed. The election shall be considered to be made on the date on which the written statement and evidence of court approval is filed. The debtor should attach a copy of the

statement and evidence of court approval to the next income tax return filed on or after the date the election is made.

(2) *Statement.* The written statement must be signed by the debtor (or a person duly authorized to sign the income tax return of the debtor) and must contain the following:

(i) The name, address, and taxpayer identification number of the debtor,

(ii) A statement that the debtor is making the election under section 7(f) of the Bankruptcy Tax Act of 1980, and

(iii) Information (including the date of commencement) sufficient to identify the bankruptcy case or similar proceeding.

(3) *Evidence of court approval.* The evidence of court approval (or of approval of an agency in certain proceedings described in paragraph (b) of this section) must be a copy of an order or other document properly signed by the judge or other presiding officer. In addition to information identifying the debtor and the case or proceeding over which the officer presides, the order or other document must state that the court (or agency, as the case may be) approves the election of the debtor under section 7(f) of the Bankruptcy Tax Act of 1980.

(e) *Revocability.* An election under this section may be revoked only with the consent of the Commissioner. A request for revocation can be made only with approval of the court (or agency).

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

§ 301.9100-16T Election to accrue vacation pay.

(a) *In general.* Section 463 provides that taxpayers whose taxable income is computed under an accrual method of accounting may elect without the consent of the Commissioner, to deduct certain amounts with respect to vacation pay which, because of contingencies, would not otherwise be deductible. Such election must apply to the liability for all vacation pay accounts maintained by the taxpayer within a single trade or business if the liability is contingent when vacation pay is earned.

(b) *Time for making election.* (1) In the case of a taxpayer who established or maintained a vacation pay account