



Foreign Seller Ahead! Proceed with Caution

Top FIRPTA Questions & Answers

Presented by
LEGAL EDUCATION DEPARTMENT
of
Attorneys' Title Fund Services, LLC

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Proceed with Caution

Top FIRPTA Questions & Answers

Linda Monaco, B.C.S.

Senior Legal Education Attorney

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What is FIRPTA?

Laying the Foundation



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Foreign Investment in Real Property Tax Act

- 26 U.S.C. Sec. 1445 – FIRPTA
- Passed in 1980 to ensure that foreign investors pay tax on their gains
- Presumes that all sellers are foreign
- FIRPTA is a withholding against potential taxes owed
- Requires Buyer to
 - Withhold funds from transaction, 15% of amount realized
 - Fill in forms 8288 & 8288-A (updated Jan. 2023)
 - Remit to IRS within 20 days

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FIRPTA

- That means that buyer must withhold & remit on every transaction unless there is an exception
- These are the ONLY exceptions, by law
 1. **Not a foreign person**
 2. **Foreign person passes the substantial presence test**
 3. **Buyer, use & property qualify for \$300k exemption**
 4. **Seller has treaty benefits**
 5. **Contract or transfer price is \$0.00**
 6. **Governmental purchase**
 7. **Receive a withholding certification from IRS**



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Form 8288 – The Cover Sheet

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- The 8288 is the cover sheet for FIRPTA withholding
- It describes the transaction in whole
- Buyer is always the withholding agent
- Any one buyer can sign as the withholding agent for the transaction
- If the settlement agent or other person charges to fill in the form
 - It is chargeable to seller under FR/Bar-6 contract
 - They will need to acquire a PTIN (preparer tax identification number)
 - Renew or obtain a PTIN in 2023 is \$30.75 (renew each year)

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8288 U.S. Withholding Tax Return for Certain Dispositions by Foreign Persons

OMB No. 1545-0002

Form 8288 (Rev. 1-2023)

Page 1

1. Name of buyer or other party responsible for withholding. See instructions. 2. U.S. taxpayer identification number (TIN).

3. Date of transfer. 4. Date of withholding certificate or date of distribution (see instructions). 5. Number of Forms 8288-A or 8288-C attached.

Part I To Be Completed by the Buyer or Other Transferee Required To Withhold Under Section 1445(a)

6. Amount subject to withholding. 7. Withholding tax liability. Multiply line 6 by the applicable withholding rate on line 7a or 7b. Otherwise, check the box on line 7c.

7a. 10% (0.10) 7b. 15% (0.15) 7c. Withholding at an adjusted amount (see instructions).

8. Amount withheld.

Part II To Be Completed by an Entity Subject to the Provisions of Section 1445(e)

9. Large trust election to withhold at distribution (see instructions). 10. Amount subject to withholding. 11. Withholding tax liability. Multiply line 10 by the applicable withholding rate on line 11a, 11b, or 11c. Otherwise, check the box on line 11d.

11a. 10% (0.10) 11b. 15% (0.15) 11c. 21% (0.21) for 35% (0.35) for distributions to foreign persons 11d. Withholding at an adjusted amount (see instructions).

12. Amount withheld.

Part III To Be Completed by Buyer/Transferee Required To Withhold Under Section 1446(f)(1)

13. Amount subject to withholding. 14. Withholding tax liability. Multiply line 13 by the applicable withholding rate on line 14a or check the box on line 14b.

14a. 10% (0.10) 14b. Withholding at an adjusted amount (see instructions).

15. Amount withheld.

Part IV To Be Completed by the Partnership Required To Withhold Under Section 1446(f)(4)

16. Partnership distributions. Complete the following.

a. Total number of distributions. 16a. 16b. Total amount of distributions. 16c. Total amount of other withholding.

17. Transferee's liability under section 1446(f)(1) (17a. 17b. Total amounts withheld).

Part V To Be Completed by Buyer/Transferee Claiming a Refund of Withholding Under Section 1446(f)(4)

19. Amount subject to withholding. 20. Amount withheld (see instructions). 21. Withholding tax liability. Multiply line 19 by the applicable withholding rate on line 21a or check the box on line 21b.

21a. 10% (0.10) 21b. Withholding at an adjusted amount (see instructions).

22. Amount of refund requested.

Sign Here

Signature of withholding agent, partner, fiduciary, or corporate officer. Title (if applicable). Date.

Paid Preparer Use Only

Print preparer's name. Preparer's signature. Date. Check ☐ if PTIN self-employed.

Form 8288 (Rev. 1-2023)

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8288-A

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- Buyer is withholding agent
- If seller does not have an identification number (ITIN) leave blank
 - ITIN a number assigned to foreign person by IRS from W-7 application
- Copy A & B to IRS
- Copy C to buyer
- Extra copy of 8288 & 8288-A to seller pursuant to contract



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WITHHOLDING AGENT'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and phone no.		1 Date of transfer (mm/dd/yyyy)	OMB No. 1545-0902	Statement of Withholding on Certain Dispositions by Foreign Persons Copy A For Internal Revenue Service Center For Privacy Act and Paperwork Reduction Act Notice, see the Instructions for Form 8288.
		2 Gain recognized by foreign person	Form 8288-A (Rev. January 2023)	
WITHHOLDING AGENT'S U.S. TIN	U.S. TIN of FOREIGN PERSON subject to withholding (see instructions)	3 Amount realized	4 Federal income tax withheld	
		\$	\$	
FOREIGN PERSON'S name subject to withholding		5 Withholding under section:	6 FOREIGN PERSON subject to withholding:	
Foreign address (number, street, and apt. or suite no.)		a 1445 <input type="checkbox"/>	a Individual <input type="checkbox"/>	
City or town, state or province, country (not U.S.), and ZIP or foreign postal code		b 1445 (1) <input type="checkbox"/>	b Corporation <input type="checkbox"/>	
Mailing address of FOREIGN PERSON subject to withholding (if different)		7 Country code of FOREIGN PERSON subject to withholding	c Partnership <input type="checkbox"/>	
		8 Description of property transferred	d Other <input type="checkbox"/>	
			(specify)	

Form **8288-A** (Rev. 1-2023) Cat. No. 62261L **Attach Copies A and B to Form 8288** Department of the Treasury - Internal Revenue Service

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What does the FR/Bar contract say?

- No withholding required if
 - Seller provides proof of non-foreign status to buyer by
 - Written certification of non-foreign status
 - By contract, buyer is not required to accept any other exception
 - Other exceptions add risk to buyer

(i) No withholding is required under Section 1445 of the Code if the Seller is not a "foreign person". Seller can provide proof of non-foreign status to Buyer by delivery of written certification signed under penalties of perjury, stating that Seller is not a foreign person and containing Seller's name, U.S. taxpayer identification number and home address (or office address, in the case of an entity), as provided for in 26 CFR 1.1445-2(b). Otherwise, Buyer shall withhold the applicable percentage of the amount realized by Seller on the transfer and timely remit said funds to the IRS.

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Why this burden on buyer?



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Why buyer?

- Buyer has the money
- IRS cannot tell you what to do with someone else's money
- Buyer will be liable if withholding is incorrect
 - Penalties & interest
- Think about your paycheck, example:
 - Buyer is like an employer – has money
 - Seller is like an employee – provided services
 - Settlement agent if like ADP – fills in forms, etc.

FIRPTA Tip 1



1. Settlement agent is NOT withholding agent
 - Buyer is withholding agent
 - Buyer signs forms under penalty of perjury

So, what is my role in FIRPTA withholding?



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Who do you represent? – Buyer

- No withholding if
 - Non-foreign seller signs a non-foreign certification, or
 - Foreign seller falls into one of categories where withholding is not required & buyer willing to accept
- Withholding
 - Fill out the forms
 - Have buyer sign forms
 - Withhold proper funds
 - Forms & withheld funds are remitted on time (20 days after closing)

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Who do you represent? – Seller

- Provide notice of foreign status pursuant to contract
- Provide non-foreign certification
- May apply for a withholding certification
- Foreign seller
 - Encourage seller to apply for ITIN (Form W-7)
 - About 7 weeks to receive according to the IRS
 - Inform seller of requirement to file a tax return



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Who do you represent? – Settlement Agent

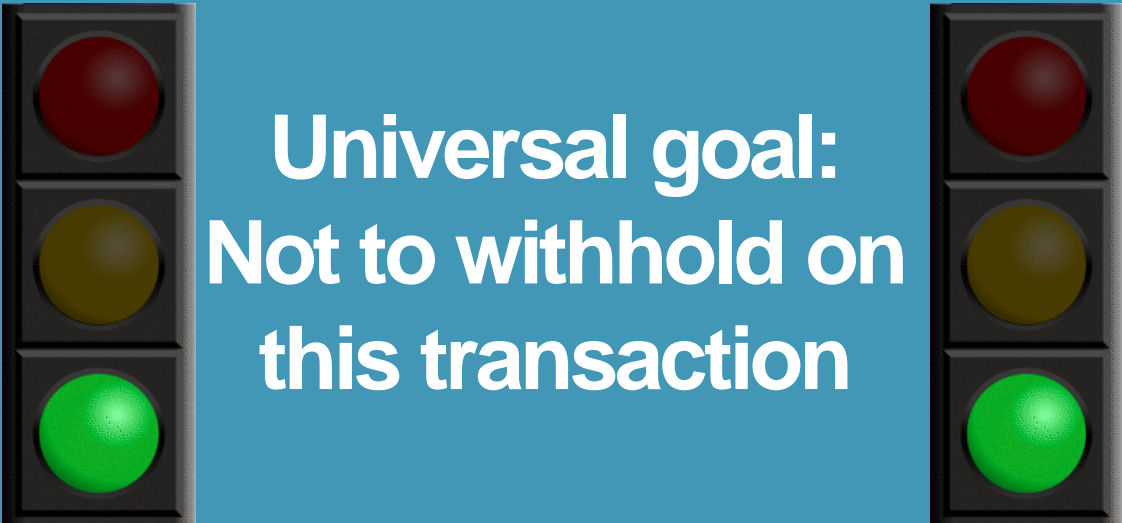
- No one
 - Facilitate FIRPTA withholding
 - May fill out forms on behalf of buyer
 - Buyer to sign Form 8288
 - Remit funds a forms to IRS within 20 days of closing
- May charge extra for service, if provided for in non-representation letter
 - Make sure to fill in bottom of 8288, if there was a charge to buyer



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FIRPTA Tip 2

2. May charge extra for filling in forms for buyer if, retainer letter or non-representation letter excluded FIRPTA from settlement fee



**Universal goal:
Not to withhold on
this transaction**



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Senior Legal Education Attorney

1

What is FIRPTA?

Laying the Foundation



2

Seller says no FIRPTA is required because . . .

CAUTION!

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Must withhold, by law unless ...

1. Seller is not foreign

- US Citizen or
- Foreign seller
 - Lawful permanent resident of US - has a “green card”



2. Passes substantial presence test

3. \$300,000 exemption with buyer, use & property qualify

- Buyer or member of family to use at least 50% of time in use for first two – 12 mo. periods
- Not commercial, vacant, teardown
- Titled in person's name



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Must withhold unless ...

4. Treaty special notice requirements are needed

- Tres. Reg. Sec. 1.1445-2 (d)(2)(iii)

5. Amount realized is zero (\$0.00)

6. US Governmental bodies acquiring US real property

- Tres. Reg. Sec. 1.1445-2

7. Withholding certificate received with no withholding required

- Application to IRS for a reduced rate or zero withholding on current transaction

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FIRPTA Tip 3

3. When sending out retainer or non-representation letter include a W-9 or non-foreign certification for each seller

Form
W-9
(Rev. October 2018)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

► Go to www.irs.gov/FormW9 for instructions and the latest information.

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Give Form to the
requester. Do not
send to the IRS.

Non-Foreign Certification by Individual Transferor (Seller's FIRPTA Affidavit)

Transferor: _____
Transferee: _____
Property: _____
Closing Date: _____

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Non-Foreign Certification by Entity Transferor (Seller's FIRPTA Affidavit)

Transferor: _____
Transferee: _____
Property: _____
Closing Date: _____

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Before me, the undersigned authority, personally appeared the person(s) named in paragraph 2(b) below who, after being duly sworn, stated as follows:

Before me, the undersigned authority, personally appeared the person(s) named below who, after being duly sworn, stated as follows:

Transferor is selling that certain real property located in _____, which is more particularly described as follows:

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What does a certification of non-foreign status need to include?



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What does a certification of non-foreign status need to include?

- No specific form
- Statement that transferor is not a foreign person
- Transferor's
 - Name
 - Home address (or office if an entity)
 - US identification number (SSN or EIN)
- Signed under penalty of perjury
 - Tres. Reg. Sec. 1.1445-2 (b)(2)

IRS Instructions for Form 8288:

Transferor not a foreign person. Generally, no withholding is required if you receive a certification of nonforeign status from the transferor, signed under penalties of perjury, stating that the transferor is not a foreign person and containing the transferor's name, address, and TIN (social security number (SSN) or employer identification number (EIN)). A certification of nonforeign status **includes a valid Form W-9** submitted by the transferor. The transferor can give the certification to a qualified substitute (defined earlier). The qualified substitute gives you a statement, under penalties of perjury, that the certification is in the qualified substitute's possession.

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Certification of non-foreign status

- Receive a certification of non-foreign status
 - Must retain such certification for 6 years
 - Five tax years after tax year of transfer
 - Tres. Reg. Sec. 1.1445-2 (b)(3)
 - May rely upon certification unless
 - Actual knowledge of falsehood
 - Foreign corporation with election under 26 U.S.C. Sec. 897(1) certification with no acknowledgment attached

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Certification of non-foreign status signed by

- Individual
 - By individual or
 - Qualified Substitute – gives a statement under penalties of perjury that certification of non-foreign status is in his/her possession
 - Person responsible for closing transaction
 - Transferee's agent
- Disregarded entity – may NOT sign
 - Owner of disregarded entity signs as self
 - For example, single member LLC is Joe Smith – Joe Smith signs non-foreign certification as Joe Smith
- Tres. Reg. Sec. 1.1445-2 (b)(2)(C)

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Certification of non-foreign status signed by

- Domestic corporation
 - Responsible officer
- Foreign corporation elected to be treated as domestic under 26 U.S.C. Sec. 897 (i)
 - Responsible officer
 - Must attach acknowledgment of election received from IRS
 - Acknowledgment must state information required by Tres. Reg. Sec. 1.897-3 has been determined to be complete
 - Certification without said acknowledgment CANNOT be relied upon



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Certification of non-foreign status signed by

- Partnership (domestic only)
 - General partner
- Trust (domestic only)
 - Trustee
- Estate (domestic only)
 - Personal representative



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FIRPTA Tip 4

4. Have foreign buyer retain non-foreign certification until disposition of real property
 - Will be needed if foreign seller to apply for a withholding certificate

**How far do I have to dig
to make sure the seller is
not lying?**



How far do I have to dig to make sure the seller is not lying?

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- If non-foreign certification is provided meeting requirements &
 - You have NOT received notice that certification is false or
 - You have NOT received notice not to rely on such a certification
- Then no withholding is required

IRS Instructions for Form 8288:

If you receive a certification (or statement), the withholding tax cannot be collected from you unless you knew that the certification (or statement) was false or you received a notice from your agent, the transferor's agent, or the qualified substitute that it was false. The certification must be signed by the individual, a responsible officer of a corporation, a general partner of a partnership, or the trustee, executor, or fiduciary of a trust or estate.

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How far do I have to dig to make sure the seller is not lying?

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- If other means (such as substantial presence test) were used to determine that transferor was not a foreign person &
 - Later it was determined that transferor was a foreign person, then
 - Withholding tax may be collected from buyer
 - See Instructions for Form 8288, Withholding Not Required, Transferor not a foreign person, pg. 5 (Rev. 1-2023)

You may also use other means to determine that the transferor is not a foreign person. But if you do, and it is later determined that the transferor is a foreign person, the withholding tax may be collected from you.

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What is the “Substantial Presence Test?”



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“Substantial Presence Test”



- Can be used as an exemption to FIRPTA withholding
- Seller will be considered a US resident for tax purposes if seller meets substantial presence test for calendar year
 - Seller must be physically present in US at least:
 1. 31 days during the current year, &
 2. 183 days during 3-year period (current year & 2 years immediately before) counting:
 - All the days present in current year, &
 - 1/3 days present in first year prior, &
 - 1/6 days present in second prior
- Seller to sign a detailed affidavit for buyer's benefit

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“Substantial Presence Test”



- **Example:**
- Seller was present in US on 120 days in each of 2020, 2019, and 2018
 - 2020 – 120
 - 2019 – 40 (1/3 of 120)
 - 2018 – 20 (1/6 of 120)
- Total 180 days, Seller is NOT considered a resident for 2020
- For additional details see “*IRS Substantial Presence Test*”
- Go to: <https://i94.cbp.dhs.gov/i94/#/home> and click on “Need a History of your arrivals & Departures?”

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FIRPTA Tip 5

5. If foreign seller “lives in the US,” do not close in January as foreign seller will NOT qualify for substantial presence test
- Cannot use substantial presence test in January
 - Requires person to be in US 31 days of current year

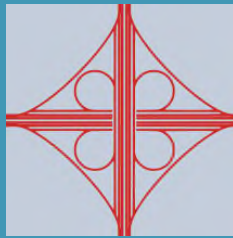


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**Sale price is less than
\$300,000, so no
withholding, correct?**



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\$300,000 exemption qualifications

- Contract is for \$300,000 or less
- Residence
 - Not commercial property
 - Not vacant land &
 - Not a teardown
- Individual(s) to take title
 - No trust
 - No companies
 - No LLC



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\$300,000 exemption qualifications

- Buyer or family member will reside in property
 - Family member 26 U.S.C. Sec. 267 (c)(4)
 - Brothers, Sisters (half or whole)
 - Spouse
 - Ancestors &
 - Lineal descendants

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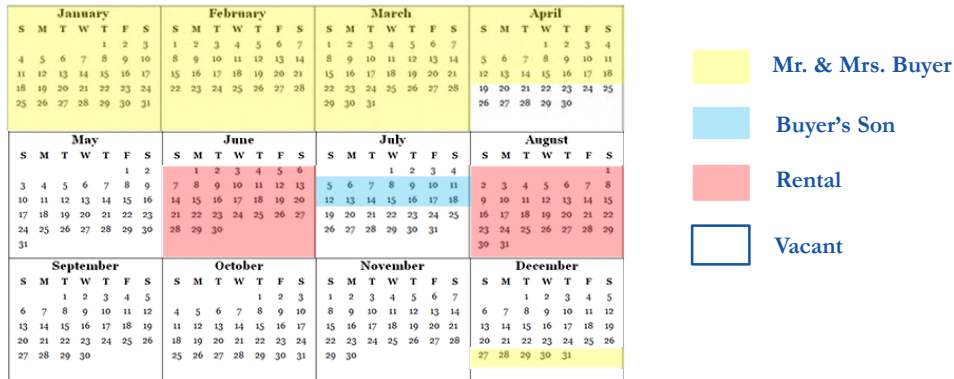
\$300,000 exemption qualifications

- Buyer or family member will reside in property
 - Minimum 50% of time occupied
 - “The number of days that the property will be vacant is not taken into account in determining the number of days such property is used by any person.” 26 U.S.C. Sec. 1.1445-2 (d)

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\$300,000 exemption qualifications

- Minimum 50% of time occupied



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\$300,000 exemption qualifications

- Buyer or family member will reside in property
 - First two 12-month periods post acquisition
 - 50% in first year of ownership
 - 50% in second year of ownership
- Buyer willing to sign affidavit of intent to comply
 - To protect settlement agent
- If buyer does not comply
 - Not foreseeable change in use – no problem
 - Foreseeable change in use – IRS will seek 15% plus penalties & interest

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\$1,000,000 reduction in withholding

- Sale price is over \$300,000 and up to & including \$1,000,000
- Meets all of qualifications of \$300,000 exemption
- May withhold 10%
 - 26 U.S.C. Sec. 1445 (c)(4)

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FIRPTA Tip 6

6. When using \$300,000 exemption (or \$1,000,000 reduced rate) verify that buyer, use & property qualify

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How long for IRS to respond to a withholding reduction request?



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IRS response time is linked to quality of application

- Seller applies because the tax burden will not be the 15% withholding amount
- Applications are detailed (IRS Form 8288-B)
 - Requires specific information & documentation
 - Similar to a tax return
- May begin gathering information upon listing of property
- May make application once contract is fully executed
- Response from 60 days to 2+ years!
 - Fully complete applications have an average turnaround time of 60 – 90 days regularly (pre-COVID)

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IRS response time is linked to quality of application

- Application must be postmarked by closing date
 - If post marked after closing date
 - Will be denied
 - Withheld funds due 20 days after closing
- Application will place **seller on IRS radar**
- All foreign sellers are required to file a tax return



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IRS response time is linked to quality of application

- Supporting documentation most often missed
 - Proof that no FIRPTA withholding was due at purchase
 - Retention of non-foreign certification upon purchase is necessary
- CPA or accountant can provide adjusted basis
 - Will need to submit proof of adjusted basis with application
- Application will take time to complete
 - Several weeks if seller is prepared
 - Longer if seller is unprepared



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IRS response time is linked to quality of application

- IRS will send letter stating that withholding is
 - Reduced
 - Not needed
 - Request denied
- Withholding pursuant to letter due 20 days from date of letter
 - Letter are held in basement & batch-mailed
- Letter is sent to person(s) specified in application
 - Paragraph 5 (if 8288-B form used)

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IRS response time is linked to quality of application

- Example
 - Amount realized
\$559,500.00
 - 15% = \$83,925.00
 - Amount due per letter
 - \$1,628.00
- Letter are batched-mailed

Internal Revenue Service
P.O. Box 409101
Ogden, UT 84409

Department of the Treasury



Date of the Withholding Certificate: 05/22/2019
Taxpayer Identification Number: [REDACTED]
File Number: [REDACTED]

Contact Person: CUSTOMER SERVICE
Contact Telephone Number: 267-941-1000
(Not a toll-free number)
Contact Hours: 06:00 am - 9:00 pm

Dear [REDACTED]

We received Form 8288-B, Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests. This Form 8288-B is for the disposition of the U.S. real property interest described as [REDACTED] MIAMI BEACH, FL. The transferor of the described property is [REDACTED] and the transferee is [REDACTED].

This letter is your approved withholding certificate and your legal notification that the required withholding amount for \$599,500.00 tax liability for the disposition of the U.S. real property interest described above would exceed their maximum tax liability. Therefore, we reduced the required withholding to \$1,628.00, which the transferee must remit to the IRS along with Form 8288 and 8288-A by the twentieth (20th) day following the date of this withholding certificate letter. We also determined that substitution of the reduced withholding amount would not jeopardize the collection of the tax imposed on any gain reported from the disposition of the U.S. real property interest.

As a reminder, this withholding certificate doesn't eliminate the requirement to file a U.S. income tax return to report this transaction.

If you have any questions, please call customer service. The telephone number and hours appear above. If the number is outside your local calling area, there will be a long-distance charge to you. Or, you may write to us at the address shown at the top of this letter.

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FIRPTA Tip 7, 8 & 9

7. It may not always be a good idea for a seller to apply for a withhold certificate
 - Direct seller to a tax attorney for proper evaluation
8. To verify timely remittance of a withholding certificate request, mail application yourself (may use 8288-B)
9. Fill in your name and firm address in paragraph 5 of application to have the IRS response sent to your office

**Seller wants to avoid
FIRPTA withholding so**



Seller avoiding FIRPTA withholding

- Seller proposes to quit claim to a US (fill in the blank) prior to sale
 - Gifts do not have FIRPTA withholding requirements
 - Gifts may be recharacterized as income to recipient
 - Gift givers are subject to gift tax
- Seller is already in a binding contract & any quit claim would violate the contract
- Sounds like a type of tax evasion



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What to do when getting
push back from seller for
FIRPTA?



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Push back from seller for FIRPTA

- Foreign sellers know about FIRPTA
- Rely on the contract
- FR/Bar requirements
 - Paragraph 10 (i)
 - “Seller shall inform [b]uyer in writing if [s]eller is a ‘foreign person’ as defined by ... (‘FIRPTA’).”
 - “Buyer and [s]eller are advised to seek legal counsel and tax advice regarding their respective rights, obligations, reporting and withholding requirements pursuant to FIRPTA.”

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Push back from seller for FIRPTA

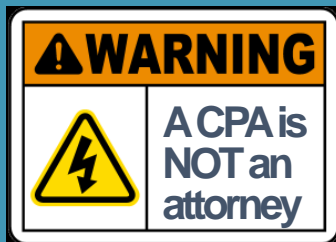
- FR/Bar requirements
 - Paragraph 18 V
 - “FIRPTA . . . Requires the buyer of the real property to withhold up to 15% of the amount realized by the seller”
 - No withholding if seller provides non-foreign certification
 - Seller applies for a withholding certificate prior to closing and no withholding certificate received by closing, buyer’s option to:
 - (iii) (a) timely remit or
 - (iii) (b) place funds in escrow at seller’s expense & buyer choosing escrow agent to wait
 - (iv) Net proceeds insufficient to meet withholding requirements, seller to deliver additional collected funds

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CPA says FIRPTA does not apply in this transaction. Can I rely on that?



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CPA says FIRPTA does not apply

- Maybe
- Many CPAs are knowledgeable about FIRPTA & many are not
- CPAs are not attorneys & not allowed to read & interpret law including FIRPTA – UPL
- Result:
 - Have seller provide a W-9 (you need this for the 1099-S) or a non-foreign certification or
 - Withhold pursuant to FIRPTA

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FIRPTA Tip 10

- Regardless of what **anyone says**, withhold for FIRPTA unless you have one or these seven items:
 1. **Not a foreign person**
 2. **Foreign person passes the substantial presence test**
 3. **Buyer, use & property qualify for the \$300k exemption**
 4. **Seller has treaty benefits**
 5. **Contract or transfer price is \$0.00**
 6. **Governmental purchase**
 7. **Receive a withholding certification from IRS**

**Do I need to Withhold
Against a Florida LLC if it
has an EIN?**



Do I need to withhold against a FL LLC if it has an EIN?

- Maybe – most difficult evaluation
 - Can this LLC give a non-foreign certification
- FIRPTA does not directly address LLCs



Definitions of Terms and Procedures Unique to FIRPTA

The following terms have special meanings with respect to U.S. Real Property Interest - FIRPTA.

- Dispositions
- Corporations
- Partnerships
- Trust and Estates
- U.S. Real Property Interest
- Foreign Person
- Transferor
- Transferee
- Amount Realized
- U.S. Real Property Holding Corporation (USRPHC)

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Florida LLC



Limited Liability Company (LLC)

A Limited Liability Company (LLC) is a business structure allowed by state statute. Each state may use different regulations, you should check with your state if you are interested in starting a Limited Liability Company.

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Florida LLC

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Classifications

Depending on elections made by the LLC and the number of members, the IRS will treat an LLC as either a corporation, partnership, or as part of the LLC's owner's tax return (a "disregarded entity"). Specifically, a domestic LLC with at least two members is classified as a partnership for federal income tax purposes unless it files Form 8832 and affirmatively elects to be treated as a corporation. For income tax purposes, an LLC with only one member is treated as an entity disregarded as separate from its owner, unless it files Form 8832 and elects to be treated as a corporation. However, for purposes of employment tax and certain excise taxes, an LLC with only one member is still considered a separate entity.

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Single Member LLC

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- Generally Single Member LLC are disregarded entities
 - Thus disregarded
 - Single member may give a non-foreign certification or
 - Withhold
- If single member LLC has elected to be treated as a corporation buyer may need to retain a tax attorney

From Instructions for Form 8288:

Transferor. For purposes of this withholding, this means any foreign person that disposes of a USRPI by sale, exchange, gift, or any other disposition. A disregarded entity cannot be the transferor for purposes of section 1445. Instead, the person considered as owning the assets of the disregarded entity for federal tax purposes is regarded as the transferor. A disregarded entity for these purposes means an entity that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, a qualified REIT subsidiary as defined in section 856(i), or a qualified subchapter S subsidiary under section 1361(b)(3)(B).

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Multiple Member LLC 2+

- Default to partnership (must be domestic)
- Obtain a non-foreign certification

If you receive a certification (or statement), the withholding tax cannot be collected from you unless you knew that the certification (or statement) was false or you received a notice from your agent, the transferor's agent, or the qualified substitute that it was false. The certification must be signed by the individual, a responsible officer of a corporation, a general partner of a partnership, or the trustee, executor, or fiduciary of a trust or estate.

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From Instructions for
Form 8288:

Section 1445(e)(1) Transactions

Partnerships. A domestic partnership that is not publicly traded must withhold tax under section 1446(a) on effectively connected taxable income allocated to its foreign partners and must file Forms 8804 and 8805. A PTP or nominee must generally withhold tax under section 1446(a) on distributions to its foreign partners and must file Forms 1042 and 1042-S. Because a domestic partnership that disposes of a USRPI is required to withhold under section 1446(a), it is not required to withhold under section 1445(e)(1).

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Joint Ownership of LLC by Spouses

- Buyer may need assistance of tax attorney
- Is spouses' residence in a community property state?
 - May be a disregarded or
 - May be a partnership
 - Must be a domestic partnership

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Joint Ownership of LLC by Spouse in Community Property States

Rev. Proc. 2002-69 addressed the issue of classification for an entity that is solely owned by husband and wife as community property under laws of a state, a foreign country or possession of the United States.

If there is a qualified entity owned by a husband and wife as community property owners, and they treat the entity as a:

- Disregarded entity for federal tax purposes, the Internal Revenue Service will accept the position that the entity is disregarded for federal tax purposes.
- Partnership for federal tax purposes, the Internal Revenue Service will accept the position that the entity is partnership for federal tax purposes.

A change in the reporting position will be treated for federal tax purposes as a conversion of the entity.

A business entity is a qualified entity if:

1. The business entity is wholly owned by a husband and wife as community property under the laws of a state, a foreign country, or possession of the United States;
2. No person other than one or both spouses would be considered an owner for federal tax purposes; and
3. The business entity is not treated as a corporation under IRC §310.7701-2.

Note: If an LLC is owned by husband and wife in a non-community property state, the LLC should file as a partnership. LLCs owned by a husband and wife are not eligible to be "qualified joint ventures" (which can elect not be treated as partnerships) because they are state law entities. For more information see [Election for Husband and Wife Unincorporated Businesses](#).

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Reminders

- Whom do you represent?
- Buyer is withholding agent & responsible for withholding
- Settlement agent is a facilitator (think ADP & payroll)
- FR/Bar contract provisions:
 - Paragraph 10 (i) – “Buyer and Seller are advised to seek legal counsel and tax advice regarding their respective rights, obligations, reporting and withholding requirements pursuant to FIRPTA.”



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FIRPTA Tip 10 & 11

- 10. You are not a tax attorney
- 11. It is buyer's responsibility to determine if FIRPTA withholding is required
 - Direct buyer to a tax attorney if necessary



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Only one of two sellers is foreign. How is FIRPTA calculated?



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Withholding for only one of two sellers

- Is the foreign person a resident alien (has a green card)?
 - If so, may give a non-foreign certification
- Does the foreign person “live” in the US?
 - If so, see if they qualify for the substantial presence test

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Withholding for only one of two sellers

- Divide amount realized by the transferor's capital contribution
 - Deed should have this information
 - Husband & wife are 50/50
 - In doubt – divide evenly
- From Instructions for the 8288



Joint transferors. If one or more foreign persons and one or more U.S. persons jointly transfer a USRPI, you must determine the amount subject to withholding in the following manner.

1. Allocate the amount realized from the transfer among the transferors based on their capital contribution to the property. For this purpose, a husband and wife are treated as having contributed 50% each.
2. Withhold on the total amount allocated to foreign transferors.
3. Credit the amount withheld among the foreign transferors as they mutually agree. The transferors must request that the withholding be credited as agreed upon by the 10th day after the date of transfer. If no agreement is reached, credit the withholding by evenly dividing it among the foreign transferors.

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Withholding for only one of two sellers

- Form 8288 amount realized will be amount associated with foreign persons

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Part I To Be Completed by the Buyer or Other Transferee Required To Withhold Under Section 1445(a)

6	Amount subject to withholding	6	\$	
7	Withholding tax liability. Multiply line 6 by the applicable withholding rate on line 7a or 7b. Otherwise, check the box on line 7c.			
a	10% (0.10)	7a	\$	
b	15% (0.15)	7b	\$	
c	Withholding at an adjusted amount (see instructions) <input type="checkbox"/>	7c	\$	
8	Amount withheld	8	\$	

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Seller will not make a profit, does FIRPTA still apply?



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Seller has no profit or it is a short sale

- Yes
- FIRPTA is not a tax
- FIRPTA is withholding against potential tax owed
 - Like federal income tax withheld from a paycheck
- Seller to provide collected funds if proceeds do not cover FIRPTA withholding, pursuant to contract
- May apply for a withholding certificate
 - In a short sale should have IRS result prior to closing, because it takes a long time to process a short sale
- Seller will need to file a tax return

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Seller has a tax ID, is withholding required?



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Seller has a tax ID, is withholding required?

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- Yes, unless
 1. Seller to provide a non-foreign certification, Tres. Reg. Sec. 1.1445-2(b)
 2. Seller meets the substantial presence test, IRS Substantial Presence Test
 3. Buyer, use & property qualify for \$300,000 exemption, Tres. Reg. Sec. 1.1445-2 (d)
 4. Seller has treaty benefits, Tres. Reg. Sec. 1.1445-2 (d)(2)
 5. Amount realized is \$0.00, Tres. Reg. Sec. 1.1445-2 (d)(8) or
 6. Governmental purchase, Tres. Reg. Sec. 1.1445-2 (d)(5)
 7. Seller has a withholding certificate letter from IRS, Tres. Reg. Sec. 1.1445-2 (d)(7)
- OTHERWISE Withhold

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Seller has a tax ID, is withholding required?

- Seller says he/she has a (fill in the blank) visa
- Having a visa is not in itself an exception to FIRPTA
 - However, if seller is “living” in US may qualify for substantial presence test
- Always
 - Obtain a W-9 or non-foreign certification
 - Affidavit with specifics of meeting substantial presence test or
 - Withhold

When is withholding due IRS?



When is withholding due to IRS?

- Must be postmarked no later than **20 days after closing**
- Include
 - Withheld funds
 - 8288 – signed by buyer
 - 8288-A
 - Copies A & B
 - One for each foreign seller

Send to:
Internal Revenue Services
Ogden Service Center
P. O. Box 409101
Ogden, UT 84409

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When is withholding due to IRS?

- On each item in package include:
 - Buyer name & SSN
 - Seller name & ITIN
 - Street address

Fund Loyal Law Firm 123 Main Street Great City, FL		1025
DATE <u>May 15, 2021</u>		
PAY TO THE ORDER OF <u>United States Treasury</u>	\$	75,000.00
<u>Seventy-Five Thousand and -----</u>		00/100 DOLLARS
MEMO: Betty Buyer – xxx-xx-0000 Sam Seller – 1445 Oak Road, Great City, FL		
⑆000000000⑆ ⑆000000000⑆		1025

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When is withholding due to IRS?

Fund Loyal Law Firm
123 Main Street
Great City, FL

May 15, 2020

Internal Revenue Service
Ogdon Service Center
PO Box 409101
Ogden, UT 84409

RE: FIRPTA withholding
Buyer: Betty Buyer – [REDACTED]-0000
Seller: Sam Seller – No ITIN
Address: 1445 Oak Road, Great City, FL

Sir/Madam:

- Include
 - Cover letter stating
 - Inventory of contents
 - Request to
 - Stamp “received” enclosed copy of letter &
 - Return it in enclosed SASE
 - Copy of cover letter
 - SASE

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FIRPTA Tip 12

12. When mailing FIRPTA withholding to IRS include a cover letter & make sure each document has

- Buyer's name and identification number
- Seller's name and identification number
- Street address of the transferred property
 - Including the check

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Do I have to file a 1099-S if I send in FIRPTA withholding?



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1099-S & FIRPTA withholding

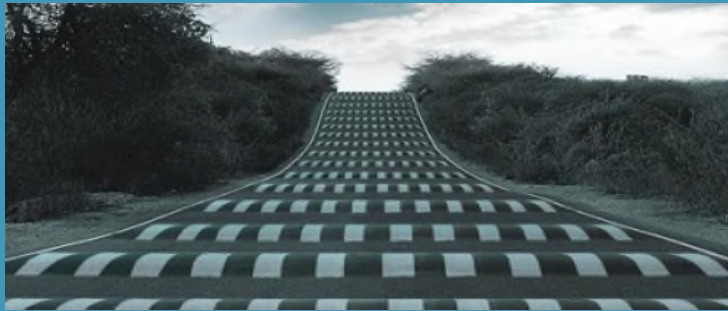
- YES
- FIRPTA is a withholding against potential tax owed, just like withholding in a paycheck
- 1099-S is a reporting to IRS of a real estate transaction
- There are specific steps to take at or before the transaction 
- File with IRS 1099-S & leave seller ITIN blank
- If IRS attempts to fine you for an incomplete 1099-S, send an affidavit
- For details see “The Catch-22 of Foreign Sellers and the Form 1099-S” 49 *Fund Concept* 105 (Sep. 2017) 

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Rapid Fire Q & A



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Rapid Fire Q & A

- Who is responsible for FIRPTA withholding
 - Withholding agent – THE BUYER
- Who signs the bottom of the 8288
 - Withholding agent – THE BUYER
- Who is required to fill in the 8288 & 8288-A
 - Withholding agent – THE BUYER
- Both seller & buyer are foreign does withholding apply?
 - Yes

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Rapid Fire Q & A

- Seller is not making a profit at all, does FIRPTA still apply?
 - Yes
- Property is being sold as a short sale does FIRPTA still apply?
 - Yes
- Seller says he/she has an SSN, is withholding required?
 - Yes, unless seller provides a non-foreign certification
- Seller has a visa is withholding required?
 - Yes, unless seller can meet the substantial presence test



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Rapid Fire Q & A

- Seller says they are US citizens but do not live in the US is withholding required?
 - No, if seller provides a non-foreign certification
- Seller's accountant is preparing the 8288 & 8288-A, is that OK?
 - It is buyer's responsibility & buyer has liability
- An estate for a foreigner is selling the property does FIRPTA apply?
 - PR will be selling & may give the non-foreign certification
 - PR will withhold before distribution to foreign beneficiaries



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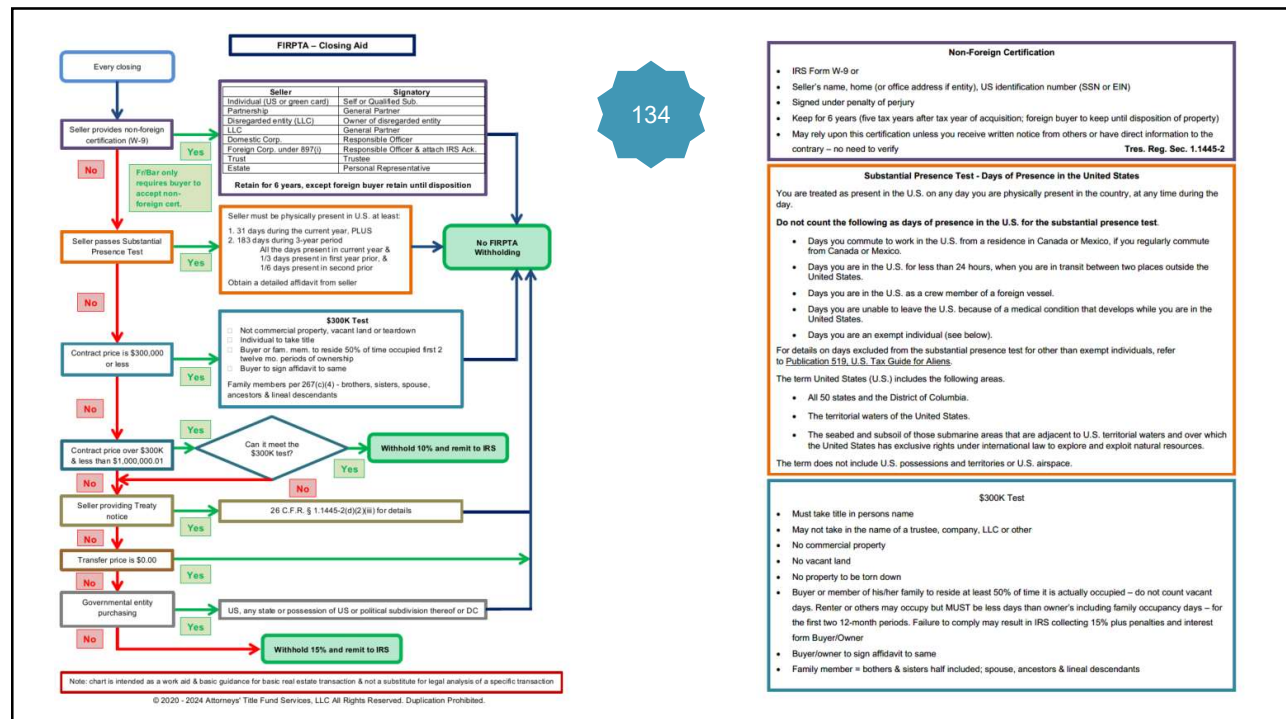
Rapid Fire Q & A

- Is it always a good idea for the seller to apply for a withholding certificate?
 - Not necessarily – seek legal advice from a tax attorney
- What forms does the buyer have to fill out?
 - 8288 &
 - 8288-A (one for each foreign seller)
- What is Linda's Extension?
 - X 6253

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Things to Remember



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Things to remember

- Buyer is responsible for FIRPTA withholding
- Liability is with buyer
- Buyer signs forms
- May rely upon non-foreign certification
- Use Tax Attorneys when needed
 - CPAs & accountants are not attorneys
- If in doubt, withhold & remit

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26 USC 1445: Withholding of tax on dispositions of United States real property interests

Text contains those laws in effect on April 9, 2023

From Title 26-INTERNAL REVENUE CODE

Subtitle A-Income Taxes

CHAPTER 3-WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

Subchapter A-Nonresident Aliens and Foreign Corporations

Jump To:

[Source Credit](#)

[Miscellaneous](#)

[Amendments](#)

[Effective Date](#)

§1445. Withholding of tax on dispositions of United States real property interests**(a) General rule**

Except as otherwise provided in this section, in the case of any disposition of a United States real property interest (as defined in section 897(c)) by a foreign person, the transferee shall be required to deduct and withhold a tax equal to 15 percent of the amount realized on the disposition.

(b) Exemptions**(1) In general**

No person shall be required to deduct and withhold any amount under subsection (a) with respect to a disposition if paragraph (2), (3), (4), (5), or (6) applies to the transaction.

(2) Transferor furnishes nonforeign affidavit

Except as provided in paragraph (7), this paragraph applies to the disposition if the transferor furnishes to the transferee an affidavit by the transferor stating, under penalty of perjury, the transferor's United States taxpayer identification number and that the transferor is not a foreign person.

(3) Nonpublicly traded domestic corporation furnishes affidavit that interests in corporation not United States real property interests

Except as provided in paragraph (7), this paragraph applies in the case of a disposition of any interest in any domestic corporation if the domestic corporation furnishes to the transferee an affidavit by the domestic corporation stating, under penalty of perjury, that-

(A) the domestic corporation is not and has not been a United States real property holding corporation (as defined in section 897(c)(2)) during the applicable period specified in section 897(c)(1)(A)(ii), or

(B) as of the date of the disposition, interests in such corporation are not United States real property interests by reason of section 897(c)(1)(B).

(4) Transferee receives qualifying statement**(A) In general**

This paragraph applies to the disposition if the transferee receives a qualifying statement at such time, in such manner, and subject to such terms and conditions as the Secretary may by regulations prescribe.

(B) Qualifying statement

For purposes of subparagraph (A), the term "qualifying statement" means a statement by the Secretary that-

(i) the transferor either-

(I) has reached agreement with the Secretary (or such agreement has been reached by the transferee) for the payment of any tax imposed by section 871(b)(1) or 882(a)(1) on any gain recognized by the transferor on the disposition of the United States real property interest, or

(II) is exempt from any tax imposed by section 871(b)(1) or 882(a)(1) on any gain recognized by the transferor on the disposition of the United States real property interest, and

(ii) the transferor or transferee has satisfied any transferor's unsatisfied withholding liability or has provided adequate security to cover such liability.

(5) Residence where amount realized does not exceed \$300,000

This paragraph applies to the disposition if-

(A) the property is acquired by the transferee for use by him as a residence, and

(B) the amount realized for the property does not exceed \$300,000.

(6) Stock regularly traded on established securities market

This paragraph applies if the disposition is of a share of a class of stock that is regularly traded on an established securities market.

(7) Special rules for paragraphs (2), (3), and (9)

Paragraph (2), (3), or (9) (as the case may be) shall not apply to any disposition-

(A) if-

- (i) the transferee or qualified substitute has actual knowledge that the affidavit referred to in such paragraph, or the statement referred to in paragraph (9)(A)(ii), is false, or
- (ii) the transferee or qualified substitute receives a notice (as described in subsection (d)) from a transferor's agent, transferee's agent, or qualified substitute that such affidavit or statement is false, or

(B) if the Secretary by regulations requires the transferee or qualified substitute to furnish a copy of such affidavit or statement to the Secretary and the transferee or qualified substitute fails to furnish a copy of such affidavit or statement to the Secretary at such time and in such manner as required by such regulations.

(8) Applicable wash sales transactions

No person shall be required to deduct and withhold any amount under subsection (a) with respect to a disposition which is treated as a disposition of a United States real property interest solely by reason of section 897(h)(5).

(9) Alternative procedure for furnishing nonforeign affidavit

For purposes of paragraphs (2) and (7)-

(A) In general

Paragraph (2) shall be treated as applying to a transaction if, in connection with a disposition of a United States real property interest-

- (i) the affidavit specified in paragraph (2) is furnished to a qualified substitute, and
- (ii) the qualified substitute furnishes a statement to the transferee stating, under penalty of perjury, that the qualified substitute has such affidavit in his possession.

(B) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this paragraph.

(c) Limitations on amount required to be withheld

(1) Cannot exceed transferor's maximum tax liability

(A) In general

The amount required to be withheld under this section with respect to any disposition shall not exceed the amount (if any) determined under subparagraph (B) as the transferor's maximum tax liability.

(B) Request

At the request of the transferor or transferee, the Secretary shall determine, with respect to any disposition, the transferor's maximum tax liability.

(C) Refund of excess amounts withheld

Subject to such terms and conditions as the Secretary may by regulations prescribe, a transferor may seek and obtain a refund of any amounts withheld under this section in excess of the transferor's maximum tax liability.

(2) Authority of Secretary to prescribe reduced amount

At the request of the transferor or transferee, the Secretary may prescribe a reduced amount to be withheld under this section if the Secretary determines that to substitute such reduced amount will not jeopardize the collection of the tax imposed by section 871(b)(1) or 882(a)(1).

(3) Procedural rules

(A) Regulations

Requests for-

- (i) qualifying statements under subsection (b)(4),
- (ii) determinations of transferor's maximum tax liability under paragraph (1), and
- (iii) reductions under paragraph (2) in the amount required to be withheld,

shall be made at the time and manner, and shall include such information, as the Secretary shall prescribe by regulations.

(B) Requests to be handled within 90 days

The Secretary shall take action with respect to any request described in subparagraph (A) within 90 days after the Secretary receives the request.

(4) Reduced rate of withholding for residence where amount realized does not exceed \$1,000,000

In the case of a disposition-

- (A) of property which is acquired by the transferee for use by the transferee as a residence,
- (B) with respect to which the amount realized for such property does not exceed \$1,000,000, and
- (C) to which subsection (b)(5) does not apply,

subsection (a) shall be applied by substituting "10 percent" for "15 percent".

(d) Liability of transferor's agents, transferee's agents, or qualified substitutes

(1) Notice of false affidavit; foreign corporations

If-

(A) the transferor furnishes the transferee or qualified substitute an affidavit described in paragraph (2) of subsection (b) or a domestic corporation furnishes the transferee an affidavit described in paragraph (3) of subsection (b), and

(B) in the case of-

(i) any transferor's agent-

(I) such agent has actual knowledge that such affidavit is false, or

(II) in the case of an affidavit described in subsection (b)(2) furnished by a corporation, such corporation is a foreign corporation, or

(ii) any transferee's agent or qualified substitute, such agent or substitute has actual knowledge that such affidavit is false,

such agent or qualified substitute shall so notify the transferee at such time and in such manner as the Secretary shall require by regulations.

(2) Failure to furnish notice

(A) In general

If any transferor's agent, transferee's agent, or qualified substitute is required by paragraph (1) to furnish notice, but fails to furnish such notice at such time or times and in such manner as may be required by regulations, such agent or substitute shall have the same duty to deduct and withhold that the transferee would have had if such agent or substitute had complied with paragraph (1).

(B) Liability limited to amount of compensation

An agent's or substitute's liability under subparagraph (A) shall be limited to the amount of compensation the agent or substitute derives from the transaction.

(3) Transferor's agent

For purposes of this subsection, the term "transferor's agent" means any person who represents the transferor-

(A) in any negotiation with the transferee or any transferee's agent related to the transaction, or

(B) in settling the transaction.

(4) Transferee's agent

For purposes of this subsection, the term "transferee's agent" means any person who represents the transferee-

(A) in any negotiation with the transferor or any transferor's agent related to the transaction, or

(B) in settling the transaction.

(5) Settlement officer not treated as transferor's agent

For purposes of this subsection, a person shall not be treated as a transferor's agent or transferee's agent with respect to any transaction merely because such person performs 1 or more of the following acts:

(A) The receipt and the disbursement of any portion of the consideration for the transaction.

(B) The recording of any document in connection with the transaction.

(e) Special rules relating to distributions, etc., by corporations, partnerships, trusts, or estates

(1) Certain domestic partnerships, trusts, and estates

In the case of any disposition of a United States real property interest as defined in section 897(c) (other than a disposition described in paragraph (4) or (5)) by a domestic partnership, domestic trust, or domestic estate, such partnership, the trustee of such trust, or the executor of such estate (as the case may be) shall be required to deduct and withhold under subsection (a) a tax equal to the highest rate of tax in effect for the taxable year under section 11(b) (or, to the extent provided in regulations, 20 percent) multiplied by the gain realized to the extent such gain-

(A) is allocable to a foreign person who is a partner or beneficiary of such partnership, trust, or estate, or

(B) is allocable to a portion of the trust treated as owned by a foreign person under subpart E of part I of subchapter J.

(2) Certain distributions by foreign corporations

In the case of any distribution by a foreign corporation on which gain is recognized under subsection (d) or (e) of section 897, the foreign corporation shall deduct and withhold under subsection (a) a tax equal to the highest rate of

tax in effect for the taxable year under section 11(b) multiplied by the amount of gain recognized on such distribution under such subsection.

(3) Distributions by certain domestic corporations to foreign shareholders

If a domestic corporation which is or has been a United States real property holding corporation (as defined in section 897(c)(2)) during the applicable period specified in section 897(c)(1)(A)(ii) distributes property to a foreign person in a transaction to which section 302 or part II of subchapter C applies, such corporation shall deduct and withhold under subsection (a) a tax equal to 15 percent of the amount realized by the foreign shareholder. The preceding sentence shall not apply if, as of the date of the distribution, interests in such corporation are not United States real property interests by reason of section 897(c)(1)(B). Rules similar to the rules of the preceding provisions of this paragraph shall apply in the case of any distribution to which section 301 applies and which is not made out of the earnings and profits of such a domestic corporation.

(4) Taxable distributions by domestic or foreign partnerships, trusts, or estates

A domestic or foreign partnership, the trustee of a domestic or foreign trust, or the executor of a domestic or foreign estate shall be required to deduct and withhold under subsection (a) a tax equal to 15 percent of the fair market value (as of the time of the taxable distribution) of any United States real property interest distributed to a partner of the partnership or a beneficiary of the trust or estate, as the case may be, who is a foreign person in a transaction which would constitute a taxable distribution under the regulations promulgated by the Secretary pursuant to section 897.

(5) Rules relating to dispositions of interest in partnerships, trusts, or estates

To the extent provided in regulations, the transferee of a partnership interest or of a beneficial interest in a trust or estate shall be required to deduct and withhold under subsection (a) a tax equal to 15 percent of the amount realized on the disposition.

(6) Distributions by regulated investment companies and real estate investment trusts

If any portion of a distribution from a qualified investment entity (as defined in section 897(h)(4)) to a nonresident alien individual or a foreign corporation is treated under section 897(h)(1) as gain realized by such individual or corporation from the sale or exchange of a United States real property interest, the qualified investment entity shall deduct and withhold under subsection (a) a tax equal to the highest rate of tax in effect for the taxable year under section 11(b) (or, to the extent provided in regulations, 20 percent) multiplied by the amount so treated.

(7) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations providing for exceptions from provisions of this subsection and regulations for the application of this subsection in the case of payments through 1 or more entities.

(f) Definitions

For purposes of this section-

(1) Transferor

The term "transferor" means the person disposing of the United States real property interest.

(2) Transferee

The term "transferee" means the person acquiring the United States real property interest.

(3) Foreign person

The term "foreign person" means any person other than-

- (A) a United States person, and
- (B) except as otherwise provided by the Secretary, an entity with respect to which section 897 does not apply by reason of subsection (l) thereof.

(4) Transferor's maximum tax liability

The term "transferor's maximum tax liability" means, with respect to the disposition of any interest, the sum of-

- (A) the maximum amount which the Secretary determines could be imposed as tax under section 871(b)(1) or 882(a)(1) by reason of the disposition, plus
- (B) the amount the Secretary determines to be the transferor's unsatisfied withholding liability with respect to such interest.

(5) Transferor's unsatisfied withholding liability

The term "transferor's unsatisfied withholding liability" means the withholding obligation imposed by this section on the transferor's acquisition of the United States real property interest or on the acquisition of a predecessor interest, to the extent such obligation has not been satisfied.

(6) Qualified substitute

The term "qualified substitute" means, with respect to a disposition of a United States real property interest-

- (A) the person (including any attorney or title company) responsible for closing the transaction, other than the transferor's agent, and

(B) the transferee's agent.

(Added Pub. L. 98–369, div. A, title I, §129(a)(1), July 18, 1984, 98 Stat. 655 ; amended Pub. L. 99–514, title III, §311(b)(4), title XVIII, §1810(f)(2)–(4)(A), (5), (6), (8), Oct. 22, 1986, 100 Stat. 2219 , 2827, 2828; Pub. L. 100–647, title I, §1003(b)(3), Nov. 10, 1988, 102 Stat. 3384 ; Pub. L. 103–66, title XIII, §13221(c)(3), Aug. 10, 1993, 107 Stat. 477 ; Pub. L. 104–188, title I, §1704(c)(1), Aug. 20, 1996, 110 Stat. 1878 ; Pub. L. 105–34, title III, §311(c)(1), Aug. 5, 1997, 111 Stat. 835 ; Pub. L. 108–27, title III, §301(a)(2)(C), May 28, 2003, 117 Stat. 758 ; Pub. L. 109–222, title V, §§505(b), 506(b), May 17, 2006, 120 Stat. 356 , 358; Pub. L. 110–289, div. C, title I, §3024(a)–(c), July 30, 2008, 122 Stat. 2895 ; Pub. L. 112–240, title I, §102(c)(1)(C), (3), Jan. 2, 2013, 126 Stat. 2319 ; Pub. L. 114–113, div. Q, title III, §§323(b), 324(a), (b), Dec. 18, 2015, 129 Stat. 3103 ; Pub. L. 115–97, title I, §13001(b)(3)(A)–(C), Dec. 22, 2017, 131 Stat. 2097 .)

EDITORIAL NOTES

AMENDMENTS

2017-Subsec. (e)(1). Pub. L. 115–97, §13001(b)(3)(A), in introductory provisions, substituted "the highest rate of tax in effect for the taxable year under section 11(b)" for "35 percent" and "multiplied by the gain" for "of the gain".

Subsec. (e)(2). Pub. L. 115–97, §13001(b)(3)(B), substituted "the highest rate of tax in effect for the taxable year under section 11(b) multiplied by the amount" for "35 percent of the amount".

Subsec. (e)(6). Pub. L. 115–97, §13001(b)(3)(C), substituted "the highest rate of tax in effect for the taxable year under section 11(b)" for "35 percent" and "multiplied by the amount" for "of the amount".

2015-Subsec. (a). Pub. L. 114–113, §324(a), substituted "15 percent" for "10 percent".

Subsec. (c)(4). Pub. L. 114–113, §324(b), added par. (4).

Subsec. (e)(3) to (5). Pub. L. 114–113, §324(a), substituted "15 percent" for "10 percent".

Subsec. (f)(3). Pub. L. 114–113, §323(b), substituted "any person other than-" for "any person other than a United States person." and added subpars. (A) and (B).

2013-Subsec. (e)(1). Pub. L. 112–240, §102(c)(1)(C), substituted "20 percent" for "15 percent" in introductory provisions.

Subsec. (e)(6). Pub. L. 112–240, §102(c)(3), substituted "20 percent" for "15 percent (20 percent in the case of taxable years beginning after December 31, 2010)".

2008-Subsec. (b)(7). Pub. L. 110–289, §3024(c)(1), amended par. (7) generally. Prior to amendment, par. (7) related to special rules for paragraphs (2) and (3).

Subsec. (b)(9). Pub. L. 110–289, §3024(a), added par. (9).

Subsec. (d). Pub. L. 110–289, §3024(c)(2)(C), substituted ", transferee's agents, or qualified substitutes" for "or transferee's agents" in heading.

Subsec. (d)(1). Pub. L. 110–289, §3024(c)(2)(A), amended par. (1) generally. Prior to amendment, par. (1) related to notice of false affidavit; foreign corporations.

Subsec. (d)(2). Pub. L. 110–289, §3024(c)(2)(B), amended par. (2) generally. Prior to amendment, par. (2) related to failure to furnish notice.

Subsec. (f)(6). Pub. L. 110–289, §3024(b), added par. (6).

2006-Subsec. (b)(8). Pub. L. 109–222, §506(b), added par. (8).

Subsec. (e)(6), (7). Pub. L. 109–222, §505(b), added par. (6) and redesignated former par. (6) as (7).

2003-Subsec. (e)(1). Pub. L. 108–27 substituted "15 percent" for "20 percent".

1997-Subsec. (e)(1). Pub. L. 105–34 substituted "20 percent" for "28 percent" in introductory provisions.

1996-Subsec. (e)(3). Pub. L. 104–188 inserted at end "Rules similar to the rules of the preceding provisions of this paragraph shall apply in the case of any distribution to which section 301 applies and which is not made out of the earnings and profits of such a domestic corporation."

1993-Subsec. (e)(1), (2). Pub. L. 103–66 substituted "35 percent" for "34 percent".

1988-Subsec. (e)(1). Pub. L. 100–647 inserted "(or, to the extent provided in regulations, 28 percent)" after "to 34 percent".

1986-Subsec. (b)(3). Pub. L. 99–514, §1810(f)(2), amended par. (3) generally, substituting "interests in corporation not United States real property interests" for "it is not a United States real property holding corporation" in heading, striking out the comma before "if the domestic corporation" in introductory provisions, inserting subpar. (A) designation and adding subpar. (B).

Subsec. (d)(1)(A). Pub. L. 99–514, §1810(f)(3)(B), substituted "paragraph (2)" for "paragraph (2)(A)".

Subsec. (d)(1)(B)(i). Pub. L. 99–514, §1810(f)(3)(A), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: "any transferor's agent, the transferor is a foreign corporation or such agent has actual knowledge that such affidavit is false, or".

Subsec. (e)(1). Pub. L. 99–514, §311(b)(4), substituted "34 percent" for "28 percent".

Pub. L. 99–514, §1810(f)(4), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "A domestic partnership, the trustee of a domestic trust, or the executor of a domestic estate shall be required to deduct and withhold under subsection (a) a tax equal to 10 percent of any amount of which such partnership, trustee, or executor has custody which is-

"(A) attributable to the disposition of a United States real property interest (as defined in section 897(c), other than a disposition described in paragraph (4) or (5)), and

"(B) either-

"(i) includible in the distributive share of a partner of the partnership who is a foreign person,

"(ii) includible in the income of a beneficiary of the trust or estate who is a foreign person, or

"(iii) includible in the income of a foreign person under the provisions of section 671."

Subsec. (e)(2). Pub. L. 99–514, §311(b)(4), substituted "34 percent" for "28 percent".

Subsec. (e)(3). Pub. L. 99–514, §1810(f)(5), inserted "The preceding sentence shall not apply if, as of the date of the distribution, interests in such corporation are not United States real property interests by reason of section 897(c)(1)(B)."

Subsec. (e)(4). Pub. L. 99–514, §1810(f)(6), substituted "section 897" for "section 897(g)".

Subsec. (e)(6). Pub. L. 99–514, §1810(f)(8), inserted "and regulations for the application of this subsection in the case of payments through 1 or more entities".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to distributions made after Dec. 31, 2017, see section 13001(c)(2) of Pub. L. 115–97, set out as a note under section 11 of this title.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by section 323(b) of Pub. L. 114–113 applicable to dispositions and distributions after Dec. 18, 2015, see section 323(c) of Pub. L. 114–113, set out as a note under section 897 of this title.

Pub. L. 114–113, [div. Q, title III, §324\(c\), Dec. 18, 2015](#), 129 Stat. 3103, provided that: "The amendments made by this section [amending this section] shall apply to dispositions after the date which is 60 days after the date of the enactment of this Act [Dec. 18, 2015]."

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by Pub. L. 112–240 applicable to taxable years beginning after Dec. 31, 2012 and applicable to amounts paid on or after Jan. 1, 2013, see section 102(d) of Pub. L. 112–240, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–289, [div. C, title I, §3024\(d\), July 30, 2008](#), 122 Stat. 2896, provided that: "The amendments made by this section [amending this section] shall apply to dispositions of United States real property interests after the date of the enactment of this Act [July 30, 2008]."

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 505(b) of Pub. L. 109–222 applicable to taxable years of qualified investment entities beginning after Dec. 31, 2005, except that no amount shall be required to be withheld under section 1441, 1442, or 1445 of the Internal Revenue Code of 1986 with respect to any distribution before May 17, 2006 if such amount was not otherwise required to be withheld under any such section as in effect before such amendments, see section 505(d) of Pub. L. 109–222, set out as a note under section 852 of this title.

Amendment by section 506(b) of Pub. L. 109–222 applicable to taxable years beginning after Dec. 31, 2005, except that such amendments shall not apply to any distribution, or substitute dividend payment, occurring before the date that is 30 days after May 17, 2006, see section 506(c) of Pub. L. 109–222, set out as a note under section 897 of this title.

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108–27 applicable to amounts paid after May 28, 2003, see section 301(d)(2) of Pub. L. 108–27, set out as an Effective and Termination Dates of 2003 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–34 applicable only to amounts paid after Aug. 5, 1997, see section 311(d)(2) of Pub. L. 105–34, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–188, [title I, §1704\(c\)\(2\), Aug. 20, 1996](#), 110 Stat. 1878 , provided that: "The amendment made by paragraph (1) [amending this section] shall apply to distributions after the date of the enactment of this Act [Aug. 20, 1996]."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–647, [title I, §1003\(b\)\(3\), Nov. 10, 1988](#), 102 Stat. 3384 , provided that the amendment made by that section is effective for taxable years beginning after Dec. 31, 1987.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 311(b)(4) of Pub. L. 99–514 applicable to payments made after Dec. 31, 1986, see section 311(c) of Pub. L. 99–514, as amended, set out as a note under section 593 of this title.

Amendment by section 1810(f)(2), (3), (5), (6), (8) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Pub. L. 99–514, [title XVIII, §1810\(f\)\(4\)\(B\), Oct. 22, 1986](#), 100 Stat. 2827 , provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to dispositions after the day 30 days after the date of the enactment of this Act [Oct. 22, 1986]."

EFFECTIVE DATE

Pub. L. 98–369, [div. A, title I, §129\(c\)\(1\), July 18, 1984](#), 98 Stat. 660 , provided that: "The amendment made by subsection (a) [enacting this section] shall apply to any disposition on or after January 1, 1985."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

26 USC 267: Losses, expenses, and interest with respect to transactions between related taxpayers

Text contains those laws in effect on April 9, 2023

From Title 26-INTERNAL REVENUE CODE

Subtitle A-Income Taxes

CHAPTER 1-NORMAL TAXES AND SURTAXES

Subchapter B-Computation of Taxable Income

PART IX-ITEMS NOT DEDUCTIBLE

Jump To:

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§267. Losses, expenses, and interest with respect to transactions between related taxpayers

(a) In general

(1) Deduction for losses disallowed

No deduction shall be allowed in respect of any loss from the sale or exchange of property, directly or indirectly, between persons specified in any of the paragraphs of subsection (b). The preceding sentence shall not apply to any loss of the distributing corporation (or the distributee) in the case of a distribution in complete liquidation.

(2) Matching of deduction and payee income item in the case of expenses and interest

If-

(A) by reason of the method of accounting of the person to whom the payment is to be made, the amount thereof is not (unless paid) includible in the gross income of such person, and

(B) at the close of the taxable year of the taxpayer for which (but for this paragraph) the amount would be deductible under this chapter, both the taxpayer and the person to whom the payment is to be made are persons specified in any of the paragraphs of subsection (b),

then any deduction allowable under this chapter in respect of such amount shall be allowable as of the day as of which such amount is includible in the gross income of the person to whom the payment is made (or, if later, as of the day on which it would be so allowable but for this paragraph). For purposes of this paragraph, in the case of a personal service corporation (within the meaning of section 441(i)(2)), such corporation and any employee-owner (within the meaning of section 269A(b)(2), as modified by section 441(i)(2)) shall be treated as persons specified in subsection (b).

(3) Payments to foreign persons

(A) In general

The Secretary shall by regulations apply the matching principle of paragraph (2) in cases in which the person to whom the payment is to be made is not a United States person.

(B) Special rule for certain foreign entities

(i) In general

Notwithstanding subparagraph (A), in the case of any item payable to a controlled foreign corporation (as defined in section 957) or a passive foreign investment company (as defined in section 1297), a deduction shall be allowable to the payor with respect to such amount for any taxable year before the taxable year in which paid only to the extent that an amount attributable to such item is includible (determined without regard to properly allocable deductions and qualified deficits under section 952(c)(1)(B)) during such prior taxable year in the gross income of a United States person who owns (within the meaning of section 958(a)) stock in such corporation.

(ii) Secretarial authority

The Secretary may by regulation exempt transactions from the application of clause (i), including any transaction which is entered into by a payor in the ordinary course of a trade or business in which the payor is predominantly engaged and in which the payment of the accrued amounts occurs within 8½ months after accrual or within such other period as the Secretary may prescribe.

(b) Relationships

The persons referred to in subsection (a) are:

- (1) Members of a family, as defined in subsection (c)(4);
- (2) An individual and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for such individual;
- (3) Two corporations which are members of the same controlled group (as defined in subsection (f));
- (4) A grantor and a fiduciary of any trust;
- (5) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;
- (6) A fiduciary of a trust and a beneficiary of such trust;
- (7) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;
- (8) A fiduciary of a trust and a corporation more than 50 percent in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
- (9) A person and an organization to which section 501 (relating to certain educational and charitable organizations which are exempt from tax) applies and which is controlled directly or indirectly by such person or (if such person is an individual) by members of the family of such individual;
- (10) A corporation and a partnership if the same persons own-
 - (A) more than 50 percent in value of the outstanding stock of the corporation, and
 - (B) more than 50 percent of the capital interest, or the profits interest, in the partnership;
- (11) An S corporation and another S corporation if the same persons own more than 50 percent in value of the outstanding stock of each corporation;
- (12) An S corporation and a C corporation, if the same persons own more than 50 percent in value of the outstanding stock of each corporation; or
- (13) Except in the case of a sale or exchange in satisfaction of a pecuniary bequest, an executor of an estate and a beneficiary of such estate.

(c) Constructive ownership of stock

For purposes of determining, in applying subsection (b), the ownership of stock-

- (1) Stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries;
- (2) An individual shall be considered as owning the stock owned, directly or indirectly, by or for his family;
- (3) An individual owning (otherwise than by the application of paragraph (2)) any stock in a corporation shall be considered as owning the stock owned, directly or indirectly, by or for his partner;
- (4) The family of an individual shall include only his brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; and
- (5) Stock constructively owned by a person by reason of the application of paragraph (1) shall, for the purpose of applying paragraph (1), (2), or (3), be treated as actually owned by such person, but stock constructively owned by an individual by reason of the application of paragraph (2) or (3) shall not be treated as owned by him for the purpose of again applying either of such paragraphs in order to make another the constructive owner of such stock.

(d) Amount of gain where loss previously disallowed

(1) In general

If-

- (A) in the case of a sale or exchange of property to the taxpayer a loss sustained by the transferor is not allowable to the transferor as a deduction by reason of subsection (a)(1), and
- (B) the taxpayer sells or otherwise disposes of such property (or of other property the basis of which in the taxpayer's hands is determined directly or indirectly by reference to such property) at a gain,

then such gain shall be recognized only to the extent that it exceeds so much of such loss as is properly allocable to the property sold or otherwise disposed of by the taxpayer.

(2) Exception for wash sales

Paragraph (1) shall not apply if the loss sustained by the transferor is not allowable to the transferor as a deduction by reason of section 1091 (relating to wash sales).

(3) Exception for transfers from tax indifferent parties

Paragraph (1) shall not apply to the extent any loss sustained by the transferor (if allowed) would not be taken into account in determining a tax imposed under section 1 or 11 or a tax computed as provided by either of such sections.

(e) Special rules for pass-thru entities

(1) In general

In the case of any amount paid or incurred by, to, or on behalf of, a pass-thru entity, for purposes of applying subsection (a)(2)-

- (A) such entity,
- (B) in the case of-

- (i) a partnership, any person who owns (directly or indirectly) any capital interest or profits interest of such partnership, or
- (ii) an S corporation, any person who owns (directly or indirectly) any of the stock of such corporation,

(C) any person who owns (directly or indirectly) any capital interest or profits interest of a partnership in which such entity owns (directly or indirectly) any capital interest or profits interest, and

(D) any person related (within the meaning of subsection (b) of this section or section 707(b)(1)) to a person described in subparagraph (B) or (C),

shall be treated as persons specified in a paragraph of subsection (b). Subparagraph (C) shall apply to a transaction only if such transaction is related either to the operations of the partnership described in such subparagraph or to an interest in such partnership.

(2) Pass-thru entity

For purposes of this section, the term "pass-thru entity" means-

- (A) a partnership, and
- (B) an S corporation.

(3) Constructive ownership in the case of partnerships

For purposes of determining ownership of a capital interest or profits interest of a partnership, the principles of subsection (c) shall apply, except that-

- (A) paragraph (3) of subsection (c) shall not apply, and
- (B) interests owned (directly or indirectly) by or for a C corporation shall be considered as owned by or for any shareholder only if such shareholder owns (directly or indirectly) 5 percent or more in value of the stock of such corporation.

(4) Subsection (a)(2) not to apply to certain guaranteed payments of partnerships

In the case of any amount paid or incurred by a partnership, subsection (a)(2) shall not apply to the extent that section 707(c) applies to such amount.

(5) Exception for certain expenses and interest of partnerships owning low-income housing

(A) In general

This subsection shall not apply with respect to qualified expenses and interest paid or incurred by a partnership owning low-income housing to-

- (i) any qualified 5-percent or less partner of such partnership, or
- (ii) any person related (within the meaning of subsection (b) of this section or section 707(b)(1)) to any qualified 5-percent or less partner of such partnership.

(B) Qualified 5-percent or less partner

For purposes of this paragraph, the term "qualified 5-percent or less partner" means any partner who has (directly or indirectly) an interest of 5 percent or less in the aggregate capital and profits interests of the partnership but only if-

- (i) such partner owned the low-income housing at all times during the 2-year period ending on the date such housing was transferred to the partnership, or
- (ii) such partnership acquired the low-income housing pursuant to a purchase, assignment, or other transfer from the Department of Housing and Urban Development or any State or local housing authority.

For purposes of the preceding sentence, a partner shall be treated as holding any interest in the partnership which is held (directly or indirectly) by any person related (within the meaning of subsection (b) of this section or section 707(b)(1)) to such partner.

(C) Qualified expenses and interest

For purpose of this paragraph, the term "qualified expenses and interest" means any expense or interest incurred by the partnership with respect to low-income housing held by the partnership but-

- (i) only if the amount of such expense or interest (as the case may be) is unconditionally required to be paid by the partnership not later than 10 years after the date such amount was incurred, and
- (ii) in the case of such interest, only if such interest is incurred at an annual rate not in excess of 12 percent.

(D) Low-income housing

For purposes of this paragraph, the term "low-income housing" means-

- (i) any interest in property described in clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B), and
- (ii) any interest in a partnership owning such property.

(6) Cross reference

For additional rules relating to partnerships, see section 707(b).

(f) Controlled group defined; special rules applicable to controlled groups

(1) Controlled group defined

For purposes of this section, the term "controlled group" has the meaning given to such term by section 1563(a), except that-

- (A) "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears in section 1563(a), and
- (B) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

(2) Deferral (rather than denial) of loss from sale or exchange between members

In the case of any loss from the sale or exchange of property which is between members of the same controlled group and to which subsection (a)(1) applies (determined without regard to this paragraph but with regard to paragraph (3))-

- (A) subsections (a)(1) and (d) shall not apply to such loss, but
- (B) such loss shall be deferred until the property is transferred outside such controlled group and there would be recognition of loss under consolidated return principles or until such other time as may be prescribed in regulations.

(3) Loss deferral rules not to apply in certain cases**(A) Transfer to DISC**

For purposes of applying subsection (a)(1), the term "controlled group" shall not include a DISC.

(B) Certain sales of inventory

Except to the extent provided in regulations prescribed by the Secretary, subsection (a)(1) shall not apply to the sale or exchange of property between members of the same controlled group (or persons described in subsection (b)(10)) if-

- (i) such property in the hands of the transferor is property described in section 1221(a)(1),
- (ii) such sale or exchange is in the ordinary course of the transferor's trade or business,
- (iii) such property in the hands of the transferee is property described in section 1221(a)(1), and
- (iv) the transferee or the transferor is a foreign corporation.

(C) Certain foreign currency losses

To the extent provided in regulations, subsection (a)(1) shall not apply to any loss sustained by a member of a controlled group on the repayment of a loan made to another member of such group if such loan is payable in a foreign currency or is denominated in such a currency and such loss is attributable to a reduction in value of such foreign currency.

(D) Redemptions by fund-of-funds regulated investment companies

Except to the extent provided in regulations prescribed by the Secretary, subsection (a)(1) shall not apply to any distribution in redemption of stock of a regulated investment company if-

- (i) such company issues only stock which is redeemable upon the demand of the stockholder, and
- (ii) such redemption is upon the demand of another regulated investment company.

(4) Determination of relationship resulting in disallowance of loss, for purposes of other provisions

For purposes of any other section of this title which refers to a relationship which would result in a disallowance of losses under this section, deferral under paragraph (2) shall be treated as disallowance.

(g) Coordination with section 1041

Subsection (a)(1) shall not apply to any transfer described in section 1041(a) (relating to transfers of property between spouses or incident to divorce).

(Aug. 16, 1954, ch. 736, 68A Stat. 78 ; Pub. L. 95-628, §2(a), Nov. 10, 1978, 92 Stat. 3627 ; Pub. L. 97-354, §3(h), Oct. 19, 1982, 96 Stat. 1689 ; Pub. L. 98-369, div. A, title I, §174(a)-(b)(4), title VII, §721(s), July 18, 1984, 98 Stat. 704-707 , 970; Pub. L. 99-514, title VIII, §§803(b)(5), 806(c)(2), title XVIII, §§1812(c)(1), (2), (3)(C), (4)(A), 1842(a), Oct. 22, 1986, 100 Stat. 2356 , 2364, 2834, 2835, 2852; Pub. L. 100-647, title I, §§1006(e)(9), 1008(e)(6), Nov. 10, 1988, 102 Stat. 3401 , 3441; Pub. L. 105-34, title XIII, §1308(a), title XVI, §1604(e)(1), Aug. 5, 1997, 111 Stat. 1041 , 1098; Pub. L. 106-170, title V, §532(c)(2)(C), Dec. 17, 1999, 113 Stat. 1930 ; Pub. L. 108-357, title VIII, §841(b), Oct. 22, 2004, 118 Stat. 1598 ; Pub. L. 111-325, title III, §306(b), Dec. 22, 2010, 124 Stat. 3549 ; Pub. L. 113-295, div. A, title II, §221(a)(44), Dec. 19, 2014, 128 Stat. 4044 ; Pub. L. 114-113, div. Q, title III, §345(a), Dec. 18, 2015, 129 Stat. 3115 .)

EDITORIAL NOTES**AMENDMENTS**

2015-Subsec. (d). Pub. L. 114-113 amended subsec. (d) generally. Prior to amendment, text read as follows: "If-

"(1) in the case of a sale or exchange of property to the taxpayer a loss sustained by the transferor is not allowable to the transferor as a deduction by reason of subsection (a)(1); and

"(2) the taxpayer sells or otherwise disposes of such property (or of other property the basis of which in his hands is determined directly or indirectly by reference to such property) at a gain, then such gain shall be recognized only to the extent that it exceeds so much of such loss as is properly allocable to the property sold or otherwise disposed of by the taxpayer. This subsection shall not apply if the loss sustained by the transferor is not allowable to the transferor as a deduction by reason of section 1091 (relating to wash sales)."

2014-Subsec. (d). Pub. L. 113–295, in concluding provisions, struck out "This subsection applies with respect to taxable years ending after December 31, 1953. " after "by the taxpayer." and "or by reason of section 118 of the Internal Revenue Code of 1939" after "sales)".

Subsec. (d)(1). Pub. L. 113–295 struck out "(or by reason of section 24(b) of the Internal Revenue Code of 1939)" after "subsection (a)(1)".

Subsec. (d)(2). Pub. L. 113–295 struck out "after December 31, 1953," before "the taxpayer".

2010-Subsec. (f)(3)(D). Pub. L. 111–325 added subpar. (D).

2004-Subsec. (a)(3). Pub. L. 108–357 designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

1999-Subsec. (f)(3)(B)(i), (iii). Pub. L. 106–170 substituted "1221(a)(1)" for "1221(1)".

1997-Subsec. (b)(13). Pub. L. 105–34, §1308(a), added par. (13).

Subsec. (f)(4). Pub. L. 105–34, §1604(e)(1), added par. (4).

1988-Subsec. (a)(1). Pub. L. 100–647, §1006(e)(9), struck out "(other than a loss in case of a distribution in corporate liquidation)" after "exchange of property" and inserted at end "The preceding sentence shall not apply to any loss of the distributing corporation (or the distributee) in the case of a distribution in complete liquidation."

Subsec. (a)(2). Pub. L. 100–647, §1008(e)(6), made technical correction to directory language of Pub. L. 99–514, §806(c)(2), see 1986 Amendment note below.

1986-Subsec. (a)(2). Pub. L. 99–514, §806(c)(2), as amended by Pub. L. 100–647, §1008(e)(6), inserted at end "For purposes of this paragraph, in the case of a personal service corporation (within the meaning of section 441(i)(2)), such corporation and any employee-owner (within the meaning of section 269A(b)(2), as modified by section 441(i)(2)) shall be treated as persons specified in subsection (b)."

Subsec. (a)(3). Pub. L. 99–514, §1812(c)(1), added par. (3).

Subsec. (b)(12). Pub. L. 99–514, §1812(c)(4)(A), substituted "same persons own" for "same persons owns".

Subsec. (e)(5)(D). Pub. L. 99–514, §803(b)(5), substituted in cl. (i) "interest in property described in clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B)" for "interest in low-income housing (as defined in paragraph (5) of section 189(e))" and in cl. (ii) "such property" for "low-income housing (as so defined)".

Subsec. (e)(6). Pub. L. 99–514, §1812(c)(3)(C), added par. (6).

Subsec. (f)(3)(B). Pub. L. 99–514, §1812(c)(2), inserted "(or persons described in subsection (b)(10))".

Subsec. (g). Pub. L. 99–514, §1842(a), added subsec. (g).

1984-Subsec. (a). Pub. L. 98–369, §174(a), amended subsec. (a) generally, substituting "In general" for "Deduction disallowed" in heading, "Deduction for losses disallowed" for "Losses" in par. (1) heading, and provisions dealing with matching of deduction and payee income item in the case of expenses and interest for provisions dealing with unpaid expenses and interest in par. (2).

Subsec. (b)(3). Pub. L. 98–369, §174(b)(2)(A), substituted "Two corporations which are members of the same controlled group (as defined in subsection (f))" for "Two corporations more than 50 percent in value of the outstanding stock of each of which is owned, directly or indirectly, by or for the same individual, if either one of such corporations, with respect to the taxable year of the corporation preceding the date of the sale or exchange was, under the law applicable to such taxable year, a personal holding company or a foreign personal holding company".

Subsec. (b)(10). Pub. L. 98–369, §174(b)(3), substituted "A corporation" for "An S corporation" in introductory provisions and "the corporation" for "the S corporation" in subpar. (A).

Subsec. (b)(12). Pub. L. 98–369, §174(b)(4), substituted "the same persons" for "the same individual".

Subsec. (e). Pub. L. 98–369, §174(b)(1), added subsec. (e).

Pub. L. 98–369, §174(a)(2), struck out subsec. (e) which provided that for purposes of subsection (a)(2) where the last day of the 2½ month period falls on Saturday, Sunday, or a legal holiday, such last day be treated as falling on the next succeeding day which is not a Saturday, Sunday, or a legal holiday, and the determination of what constitutes a legal holiday be made under section 7503 with respect to the payor's return of tax under this chapter for the preceding taxable year.

Subsec. (f). Pub. L. 98–369, §174(b)(2)(B), added subsec. (f).

Pub. L. 98–369, §174(b)(1), struck out subsec. (f) which related to special rules for unpaid expenses and interest of S corporations and treatment under such provisions of certain shareholders, etc., as related persons.

Pub. L. 98–369, §721(s), in closing provision of par. (1) substituted "then any deduction allowable under such sections in respect of such amount shall be allowable as of the day as of which such payment is includible in the gross income of the person to whom the payment is made (or, if later, as of the day on which it would be so allowable but for this paragraph)" for "then no deduction shall be allowed in respect of expenses otherwise deductible under section 162 or 212, or of interest otherwise deductible under section 163, before the day as of which the amount thereof is includible in the gross income of the person to whom the payment is made".

1982-Subsec. (b)(10) to (12). Pub. L. 97–354, §3(h)(1), (3), added pars. (10) to (12).

Subsec. (f). Pub. L. 97–354, §3(h)(2), added subsec. (f).

1978-Subsec. (e). Pub. L. 95–628 added subsec. (e).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114–113, [div. Q, title III, §345\(b\), Dec. 18, 2015](#), 129 Stat. 3115, provided that: "The amendment made by this section [amending this section] shall apply to sales and other dispositions of property acquired after December 31, 2015, by the taxpayer in a sale or exchange to which section 267(a)(1) of the Internal Revenue Code of 1986 applied."

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–325, [title III, §306\(c\), Dec. 22, 2010](#), 124 Stat. 3550, provided that: "The amendments made by this section [amending this section and section 302 of this title] shall apply to distributions after the date of the enactment of this Act [Dec. 22, 2010]."

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to payments accrued on or after Oct. 22, 2004, see section 841(c) of Pub. L. 108–357, set out as a note under section 163 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106–170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, [title XIII, §1308\(c\), Aug. 5, 1997](#), 111 Stat. 1042, provided that: "The amendments made by this section [amending this section and section 1239 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997]."

Pub. L. 105–34, [title XVI, §1604\(e\)\(2\), Aug. 5, 1997](#), 111 Stat. 1098, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect as if included in section 174(b) of the Tax Reform Act of 1984 [Pub. L. 98–369]."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

If any interest costs incurred after Dec. 31, 1986, are attributable to costs incurred before Jan. 1, 1987, the amendment by section 803(b)(5) of Pub. L. 99–514 is applicable to such interest costs only to the extent such interest costs are attributable to costs which were required to be capitalized under section 263 of the Internal Revenue Code of 1954 and which would have been taken into account in applying section 189 of the Internal Revenue Code of 1954 (as in effect before its repeal by section 803 of Pub. L. 99–514) or, if applicable, section 266 of such Code, see section 7831(d)(2) of Pub. L. 101–239, set out as an Effective Date note under section 263A of this title.

Amendment by section 803(b)(5) of Pub. L. 99-514 applicable, except as otherwise provided, to costs incurred after Dec. 31, 1986, in taxable years ending after that date, see section 803(d) of Pub. L. 99-514, set out as a note under section 263A of this title.

Amendment by section 806(c)(2) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, with special provisions applicable to taxpayers who are required to change their accounting periods, see section 806(e) of Pub. L. 99-514, set out as a note under section 1378 of this title.

Amendment by sections 1812(c)(1), (2), (3)(C), (4)(A) and 1842(a) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title I, §174(c), July 18, 1984, 98 Stat. 707, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

"(1) SUBSECTIONS (a) AND (b)(1).-The amendments made by subsections (a) and (b)(1) [amending this section] shall apply to amounts allowable as deductions under chapter 1 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for taxable years beginning after December 31, 1983. For purposes of the preceding sentence, the allowability of a deduction shall be determined without regard to any disallowance or postponement of deductions under section 267 of such Code.

"(2) SUBSECTION (b) (OTHER THAN PARAGRAPH (1)).-

"(A) IN GENERAL.-Except as provided in subparagraph (B), the amendments made by subsection (b) (other than paragraph (1) thereof) [amending this section and sections 170, 368, 514, and 1235 of this title] shall apply to transactions after December 31, 1983, in taxable years ending after such date.

"(B) EXCEPTION FOR TRANSFERS TO FOREIGN CORPORATIONS ON OR BEFORE MARCH 1, 1984.-The amendments made by subsection (b)(2) [amending this section] shall not apply to property transferred to a foreign corporation on or before March 1, 1984.

"(3) EXCEPTION FOR EXISTING INDEBTEDNESS, ETC.-

"(A) IN GENERAL.-The amendments made by this section [amending this section and sections 170, 368, 514, and 1235 of this title] shall not apply to any amount paid or incurred-

"(i) on indebtedness incurred on or before September 29, 1983, or

"(ii) pursuant to a contract which was binding on September 29, 1983, and at all times thereafter before the amount is paid or incurred.

"(B) TREATMENT OF RENEGOTIATIONS, EXTENSIONS, ETC.-If any indebtedness (or contract described in subparagraph (A)) is renegotiated, extended, renewed, or revised after September 29, 1983, subparagraph (A) shall not apply to any amount paid or incurred on such indebtedness (or pursuant to such contract) after the date of such renegotiation, extension, renewal, or revision."

Amendment by section 721(s) of Pub. L. 98-369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97-354, see section 721(y)(1) of Pub. L. 98-369, set out as a note under section 1361 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97-354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-628, §2(b), Nov. 10, 1978, 92 Stat. 3627, provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to payments made after the date of the enactment of this Act [Nov. 10, 1978]."

CONSTRUCTION OF SECTION 806 OF PUB. L. 99-514

Nothing in section 806 of Pub. L. 99-514 [amending this section] or in any legislative history relating thereto to be construed as requiring the Secretary of the Treasury or his delegate to permit an automatic change of a taxable year, see section 1008(e)(9) of Pub. L. 100-647, set out as a note under section 1378 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after

Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

EXCEPTION FOR CERTAIN INDEBTEDNESS

Pub. L. 99–514, [title XVIII, §1812\(c\)\(5\)](#), [Oct. 22, 1986](#), 100 Stat. 2835 , provided that: "Clause (i) of section 174(c)(3)(A) of the Tax Reform Act of 1984 [section 174(c)(3)(A)(i) of Pub. L. 98–369, set out as a note above] shall be applied by substituting 'December 31, 1983' for 'September 29, 1983' in the case of indebtedness which matures on January 1, 1999, the payments on which from January 1989 through November 1993 equal U/L plus \$77,600, the payments on which from December 1993 to maturity equal U/L plus \$50,100, and which accrued interest at 13.75 percent through December 31, 1989."

This content is from the eCFR and is authoritative but unofficial.

Title 26 - Internal Revenue

Chapter I - Internal Revenue Service, Department of the Treasury

Subchapter A - Income Tax

Part 1 - Income Taxes

Withholding of Tax on Nonresident Aliens and Foreign Corporations and Tax-Free Covenant

Bonds Withholding of...

Authority: 26 U.S.C. 7805, unless otherwise noted. 26 U.S.C. 7805, unless otherwise noted. 26 U.S.C. 7805. See Part 1 for more

Source: T.D. 6500, 25 FR 11402, Nov. 26, 1960; 25 FR 14021, Dec. 21, 1960, unless otherwise noted. T.D. 6500, 25 FR 11402, Nov. 26, 1960; 25 FR 14021, Dec. 31, 1960, T.D. 9381, 73 FR 8604, Feb. 15, 2008, unless otherwise noted. T.D. 6500, 25 FR 11607, Nov. 26, 1960; 25 FR 14021, Dec. 31, 1960, unless otherwise noted. See Part 1 for more

§ 1.1445-2 Situations in which withholding is not required under section 1445(a).

(a) **Purpose and scope of section.** This section provides rules concerning various situations in which withhold is not required under section 1445(a). In general, a transferee has a duty to withhold under section 1445(a) only if both of the following are true:

- (1) The transferor is a foreign person; and
- (2) The transferee is acquiring a U.S. real property interest.

Thus, paragraphs (b) and (c) of this section provide rules under which a transferee of property can ascertain that he has no duty to withhold because one or the other of the two key elements is missing. Under paragraph (b), a transferee may determine that no withholding is required because the transferor is not a foreign person. Under paragraph (c), a transferee may determine that no withholding is required because the property acquired is not a U.S. real property interest. Finally, paragraph (d) of this section provides rules concerning exceptions to the withholding requirement.

(b) **Transferor not a foreign person —**

- (1) **In general.** No withholding is required under section 1445 if the transferor of a U.S. real property interest is not a foreign person. Therefore, paragraph (b)(2) of this section provides rules pursuant to which the transferor can provide a certification of non-foreign status to inform the transferee that withholding is not required. A transferee that obtains such a certification must retain that document for five years, as provided in paragraph (b)(3) of this section. Except to the extent provided in paragraph (b)(4) of this section, the obtaining of this certification excuses the transferee from any liability otherwise imposed by section 1445 and § 1.1445-1(e). However, section 1445 and the rules of this section do not impose any obligation upon a transferee to obtain a certification from the transferor, thus, a transferee may instead rely upon other means to ascertain the non-foreign status of the transferor. If, however, the transferee relies upon other means and the transferor was, in fact, a foreign person, then the transferee is subject to the liability imposed by section 1445 and § 1.1445-1(e).

A transferee is in no event required to rely upon other means to ascertain the non-foreign status of the transferor and may demand a certification of non-foreign status. If the certification is not provided, the transferee may withhold tax under section 1445 and will be considered, for purposes of sections 1461 through 1463, to have been required to withhold such tax.

- (2) **Transferor's certification of non-foreign status —**

- (i) **In general.** The rules in this paragraph (b)(2)(i) apply for purposes of the transferor's certification of non-foreign status (including a certification of non-foreign status provided by a withholding qualified holder (as defined in § 1.1445-1(g)(11))).
- (A) A transferee of a U.S. real property interest is not required to withhold under section 1445(a) if, before or at the time of the transfer, the transferor furnishes to the transferee a certification that is signed under penalties of perjury and—
- (1) States that the transferor is not a foreign person; and
- (2) Sets forth the transferor's name, identifying number and home address (in the case of an individual) or office address (in the case of an entity).
- (B) For purposes of paragraph (b)(2)(i)(A) of this section, a foreign person is a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, or foreign estate, except that a withholding qualified holder (as defined in § 1.1445-1(g)(11)) is not a foreign person. Additionally, a foreign corporation that has made a valid election under section 897(i) is generally not treated as a foreign person for purposes of section 1445. In this regard, see § 1.1445-7. Pursuant to § 1.897-1(p), an individual's identifying number is the individual's Social Security number and any other person's identifying number is its U.S. employer identification number (EIN), or, if the transferor is a withholding qualified holder (as defined in § 1.1445-1(g)(11)) that does not have a U.S. taxpayer identification number, a foreign tax identification number issued by its jurisdiction of residence. A certification pursuant to this paragraph (b) must be verified as true and signed under penalties of perjury by a responsible officer in the case of a corporation, by a general partner in the case of a partnership, and by a trustee, executor, or equivalent fiduciary in the case of a trust or estate. No particular form is needed for a certification pursuant to this paragraph (b), nor is any particular language required, so long as the document meets the requirements of this paragraph (b)(2)(i), except that, with respect to a certification submitted by a withholding qualified holder (as defined in § 1.1445-1(g)(11)), the transferor must state on the certification that it is treated as a non-foreign person because it is a withholding qualified holder and must further specify whether it qualifies as a withholding qualified holder because it is a qualified holder under § 1.897(l)-1(d) or a foreign partnership that satisfies the requirements of § 1.1445-1(g)(11). Samples of acceptable certifications are provided in paragraph (b)(2)(iv) of this section.
- (ii) **Foreign corporation that "has made election under section 897(i).** A foreign corporation that has made a valid election under section 897(i) to be treated as a domestic corporation for purposes of section 897 may provide a certification of non-foreign status pursuant to this paragraph (b)(2). However, an electing foreign corporation must attach to such certification a copy of the acknowledgment of the election provided to the corporation by the Internal Revenue Service pursuant to § 1.897-3(d)(4).

An acknowledgment is valid for this purpose only if it states that the information required by § 1.897-3 has been determined to be complete.

- (iii) **Disregarded entities.** A disregarded entity may not certify that it is the transferor of a U.S. real property interest, as the disregarded entity is not the transferor for U.S. tax purposes, including sections 897 and 1445. Rather, the owner of the disregarded entity is treated as the transferor of property and must provide a certificate of non-foreign status to avoid withholding under section 1445. A disregarded entity for these purposes means an entity that is disregarded as an

entity separate from its owner under § 301.7701-3 of this chapter, a qualified REIT subsidiary as defined in section 856(i), or a qualified subchapter S subsidiary under section 1361(b)(3)(B). Any domestic entity must include in its certification of non-foreign status with respect to the transfer a certification that it is not a disregarded entity. This paragraph (b)(2)(iii) and the sample certification provided in paragraph (b)(2)(iv)(B) of this section (to the extent it addresses disregarded entities) is applicable for dispositions occurring September 4, 2003.

(iv) **Sample certifications –**

(A) **Individual transferor.**

“Section 1445 of the Internal Revenue Code provides that a transferee (buyer) of a U.S. real property interest must withhold tax if the transferor (seller) is a foreign person. To inform the transferee (buyer) that withholding of tax is not required upon my disposition of a U.S. real property interest, I, [name of transferor], hereby certify the following:

1. I am not a nonresident alien for purposes of U.S. income taxation;
2. My U.S. taxpayer identifying number [Social Security number] is ____; and
3. My home address is:

I understand that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement I have made here could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete. [Signature and Date]”

(B) **Entity transferor.**

“Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by [name of transferor], the undersigned hereby certifies the following on behalf of [name of the transferor]:

1. [Name of transferor] is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. [Name of transferor] is not a disregarded entity as defined in § 1.1445-2(b)(2)(iii);
3. [Name of transferor]'s U.S. employer identification number is ____; and
4. [Name of transferor]'s office address is _____.

[Name of transferor] understands that this certification may be disclosed to the Internal Revenue Service by transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete, and I further declare that I have authority to sign this document on behalf of [name of transferor].

[Signature(s) and date]

[Title(s)]"

- (v) **Form W-9.** For purposes of paragraph (b)(2)(i) of this section, a certification of non-foreign status includes a valid Form W-9, *Request for Taxpayer Identification Number and Certification*, or its successor, submitted to the transferee by the transferor.
- (vi) **Form W-8EXP.** A certification of non-foreign status may be made by a withholding qualified holder (as defined under § 1.1445-1(g)(11)) as provided in paragraph (b)(2)(i) of this section to certify its qualified holder status. A certification of non-foreign status under paragraph (b)(2)(i) of this section also includes a certification made on a Form W-8EXP (or its successor) that states that the transferor is treated as a non-foreign person because it is a withholding qualified holder and must further specify whether it qualifies as a withholding qualified holder because it is a qualified holder under § 1.897(l)-1(d) or a foreign partnership that satisfies the requirements of § 1.1445-1(g)(11). The certification must also meet all of the other requirements for a valid Form W-8EXP (or its successor) as provided on the form and the instructions to the form. A qualified holder may not provide a certification of non-foreign status on a Form W-9 (or its successor) as permitted in paragraph (b)(2)(v) of this section.
- (3) **Transferee must retain certification.** If a transferee obtains a transferor's certification pursuant to the rules of this paragraph (b), then the transferee must retain that certification until the end of the fifth taxable year following the taxable year in which the transfer takes place. The transferee must retain the certification, and make it available to the Internal Revenue Service when requested in accordance with the requirements of section 6001 and regulations thereunder.
- (4) **Reliance upon certification not permitted –**
 - (i) **In general.** A transferee may not rely upon a transferor's certification pursuant to this paragraph (b) under the circumstances set forth in either subdivision (ii) or (iii) of this paragraph (b)(4). In either of those circumstances, a transferee's withholding obligation shall apply as if a certification had never been obtained, and the transferee is fully liable pursuant to section 1445 and § 1.1445-1(e) for any failure to withhold.
 - (ii) **Failure to attach IRS acknowledgment of election.** A transferee that knows that the transferor is a foreign corporation may not rely upon a certification of non-foreign status provided by the corporation on the basis of election under section 897(i), unless there is attached to the certification a copy of the acknowledgment by the Internal Revenue Service of the corporation's election, as required by paragraph (b)(2)(ii) of this section.
 - (iii) **Knowledge of falsity.** A transferee is not entitled to rely upon a transferor's certification if prior to or at the time of the transfer the transferee either—

- (A) Has actual knowledge that the transferor's certification is false; or
- (B) Receives a notice that the certification is false from a transferor's or transferee's agent, pursuant to § 1.1445-4.

(iv) **Belated notice of false certification.** If after the date of the transfer a transferee receives a notice that a certification is false, then that transferee is entitled to rely upon the certification only with respect to consideration that was paid prior to receipt for the notice. Such a transferee is required to withhold a full 15 percent of the amount realized from the consideration that remains to be paid to the transferor if possible. Thus, if 15 percent or more of the amount realized remains to be paid to the transferor then the transferee is required to withhold and pay over the full 15 percent. The transferee must do so by withholding and paying over the entire amount of each successive payment of consideration to the transferor until the full 15 percent of the amount realized has been withheld and paid over. Amounts so withheld must be reported and paid over by the 20th day following the date on which each such payment of consideration is made. A transferee that is subject to the rules of this paragraph (b)(4)(iv) may not obtain a withholding certificate pursuant to § 1.1445-3, but must instead withhold and pay over the amounts required by this paragraph. For dispositions described in § 1.1445-1(b)(2), this paragraph shall be applied by replacing "15 percent" with "10 percent" each time it appears.

(c) **Transferred property not a U.S. real property interest —**

- (1) **In general.** No withholding is required under section 1445 if the transferee acquires only property that is not a U.S. real property interest. As defined in section 897(c) and § 1.897-1(c), a U.S. real property interest includes certain interests in U.S. corporations, as well as direct interests in real property and certain associated personal property. This paragraph (c) provides rules pursuant to which a person acquiring an interest in a U.S. corporation may determine that withholding is not required because that interest is not a U.S. real property interest. To determine whether an interest in tangible property constitutes a U.S. real property interest the acquisition of which would be subject to withholding, see § 1.897-1 (b) and (c).
- (2) **Interests in publicly traded entities.** No withholding is required under section 1445(a) upon the acquisition of an interest in a domestic corporation if any class of stock of the corporation is regularly traded on an established securities market.

This exemption shall apply if the disposition is incident to an initial public offering of stock pursuant to a registration statement filed with the Securities and Exchange Commission. Similarly, no withholding is required under section 1445(a) upon the acquisition of an interest in a publicly traded partnership or trust. However, the rule of this paragraph (c)(2) shall not apply to the acquisition, from a single transferor in a single (or related transferors (as defined in § 1.897-1(i)) transaction (or related transactions), of an interest described in § 1.897-1(c)(2)(iii)(B) (relating to substantial amounts of non-publicly traded interests in publicly traded corporations) or to similar interests in publicly traded partnerships or trusts. The person making an acquisition described in the preceding sentence must otherwise determine whether withholding is required, pursuant to section 1445 and the regulations thereunder. Transactions shall be deemed to be related if they are undertaken within 90 days of one another or if it can otherwise be shown that they were undertaken in pursuance of a prearranged plan.

- (3) **Transferee receives statement that interest in corporation is not a U.S. real property interest —**

- (i) **In general.** No withholding is required under section 1445(a) upon the acquisition of an interest in a domestic corporation, if the transferor provides the transferee with a copy of a statement, issued by the corporation pursuant to § 1.897-2(h), certifying that the interest is not a U.S. real property interest. In general, a corporation may issue such a statement only if the corporation was not a U.S. real property holding corporation at any time during the previous five years (or the period in which the interest was held by its present holder, if shorter) or if interests in the corporation ceased to be United States real property interests under section 897(c)(1)(B). (A corporation may not provide such a statement based on its determination that the interest in question is an interest solely as a creditor). See § 1.897-2 (f) and (h). The corporation may provide such a statement directly to the transferee at the transferor's request. The transferor must request such a statement prior to the transfer, and shall, to the extent possible, specify the anticipated date of the transfer. A corporation's statement may be relied upon for purposes of this paragraph (c)(3) only if the statement is dated not more than 30 days prior to the date of the transfer. A transferee may also rely upon a corporation's statement that is voluntarily provided by the corporation in response to a request from the transferee, if that statement otherwise complies with the requirements of this paragraph (c)(3) and § 1.897-2(h).
- (ii) **Reliance on statement not permitted.** A transferee is not entitled to rely upon a statement that a corporation is not a U.S. real property holding corporation if, prior to or at the time of the transfer, the transferee either—
- (A) Has actual knowledge that the statement is false, or
 - (B) Receives a notice that the statement is false from a transferor's or transferee's agent, pursuant to § 1.1445-4.

Such a transferee's withholding obligations shall apply as if a statement had never been given, and such a transferee may be held fully liable pursuant to § 1.1445-1(e) for any failure to withhold.

- (iii) **Belated notice of false statement.** If after the date of the transfer, a transferee receives notice that a statement provided under § 1.1445-2(c)(3)(i) (that an interest in a corporation is not a U.S. real property interest) is false, then such transferee may rely on the statement only with respect to consideration that was paid prior to the receipt of the notice.

Such a transferee is required to withhold a full 15 percent of the amount realized from the consideration that remains to be paid to the transferor, if possible. Thus, if 15 percent or more of the amount realized remains to be paid to the transferor, then the transferee is required to withhold and pay over the full 15 percent. The transferee must do so by withholding and paying over the entire amount of each successive payment of consideration to the transferor, until the full 15 percent of the amount realized has been withheld and paid over. Amounts so withheld must be reported and paid over by the 20th day following the date on which each such payment of consideration is made. A transferee that is subject to the rules of this § 1.1445-2(c)(3)(iii) may not obtain a withholding certificate pursuant to § 1.1445-3, but must instead withhold and pay over the amounts required by this paragraph.

(d) **Exceptions to requirement of withholding —**

- (1) **Purchase of residence for \$300,000 or less.** No withholding is required under section 1445(a) if one or more individual transferees acquire a U.S. real property interest for use as a residence and the amount realized on the transaction is \$300,000 or less. For purposes of this section, a U.S. real property interest is acquired for use as a residence if on the date of the transfer the transferee (or

transferees) has definite plans to reside at the property for at least 50 percent of the number of days that the property is used by any person during each of the first two 12-month periods following the date of the transfer. The number of days that the property will be vacant is not taken into account in determining the number of days such property is used by any person. A transferee shall be considered to reside at a property on any day on which a member of the transferee's family, as defined in section 267(c)(4), resides at the property. No form or other document need be filed with the Internal Revenue Service to establish a transferee's entitlement to rely upon the exception provided by this paragraph (d)(1). A transferee who fails to withhold in reliance upon this exception, but who does not in fact reside at the property for the minimum number of days set forth above, shall be liable for the failure to withhold (if the transferor was a foreign person and did not pay the full U.S. tax due on any gain recognized upon the transfer). However, if the transferee establishes that the failure to reside the minimum number of days was caused by a change in circumstances that could not reasonably have been anticipated at the time of the transfer, then the transferee shall not be liable for the failure to withhold.

The exception provided by paragraph (d)(1) does not apply in any case where the transferee is other than an individual even if the property is acquired for or on behalf of an individual who will use the property as a residence. However, this exception applies regardless of the organizational structure of the transferor (i.e., regardless of whether the transferor is an individual, partnership, trust, corporation, etc.).

(2) Coordination with nonrecognition provisions —

- (i) In general.** A transferee shall not be required to withhold under section 1445(a) with respect to the transfer of a U.S. real property interest if—
 - (A)** The transferor notifies the transferee, in the manner described in paragraph (d)(2)(iii) of this section, that by reason of the operation of a nonrecognition provision of the Internal Revenue Code or the provisions of any United States treaty the transferor is not required to recognize any gain or loss with respect to the transfer, and
 - (B)** By the 20th day after the date of the transfer the transferee mails a copy of the transferor's notice to the Internal Revenue Service, at the address provided in § 1.1445-1(g)(10), together with a cover letter setting forth the name, identifying number, and home address (in the case of an individual) or office address (in the case of an entity) of the transferee providing the notice to the Service. The rule of this paragraph (d)(2)(i) is subject to the exceptions set forth in paragraph (d)(2)(ii). For purposes of this paragraph (d)(2) a nonrecognition provision is any provision of the Internal Revenue Code for not recognizing gain or loss.
- (ii) Exceptions.** A transferee may not rely upon the rule of paragraph (d)(2)(i) of this section, and must therefore withhold under section 1445(a) with respect to the transfer of a U.S. real property interest, if either:
 - (A)** The transferor qualifies for nonrecognition treatment with respect to part, but not all, of the gain realized by the transferor upon the transfer, or
 - (B)** The transferee knows or has reason to know that the transferor is not entitled to the nonrecognition treatment claimed by the transferor.

In either of the above circumstances the transferee or transferor may request a withholding certificate from the Internal Revenue Service pursuant to the rules of § 1.1445-3.

- (iii) **Contents of the notice.** No particular form is required for a transferor's notice to a transferee that the transferor is not required to recognize gain or loss with respect to a transfer. The notice must be verified as true and signed under penalties of perjury by the transferor, by a responsible officer in the case of a corporation, by a general partner in the case of a partnership, and by a trustee or equivalent fiduciary in the case of a trust or estate. The following information must be set forth in paragraphs labeled to correspond with the designation set forth as follows—
 - (A) A statement that the document submitted constitutes a notice of a nonrecognition transaction or a treaty provision pursuant to the requirements of § 1.1445-2(d)(2);
 - (B) The name, identifying number, and home address (in the case of an individual) or office address (in the case of an entity) of the transferor submitting the notice;
 - (C) A statement that the transferor is not required to recognize any gain or loss with respect to the transfer;
 - (D) A brief description of the transfer; and
 - (E) A brief summary of the law and facts supporting the claim that recognition of gain or loss is not required with respect to the transfer.
- (iv) **No notice allowed.** The provisions of this paragraph (d)(2) do not apply to exclusions from income under section 121, to simultaneous like-kind exchanges under section 1031 that do not qualify for nonrecognition treatment in their entirety (see paragraph (d)(2)(ii)(A) of this section), and to non-simultaneous like-kind exchanges under section 1031 where the transferee cannot determine that the exchange has been completed and all the conditions for nonrecognition have been satisfied at the time it is otherwise required to pay the section 1445 withholding tax and file the withholding tax return (Form 8288, "U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests"). In these cases, the transferee is excused from withholding only upon the timely application for and receipt of a withholding certificate under § 1.1445-3 (see § 1.1445-3(b)(5) and (6) for specific rules applicable to transactions under sections 121 and 1031). This paragraph (d)(2)(iv) is applicable for dispositions and exchanges occurring September 4, 2003.

(3) **Special procedural rules applicable to foreclosures —**

(i) **Amount to be withheld —**

- (A) **foreclosures.** A transferee that acquires a U.S. real property interest pursuant to a repossession or foreclosure on such property under a mortgage, security agreement, deed of trust or other instrument securing a debt must withhold tax under section 1445(a) equal to 15 percent (10 percent in the case of dispositions described in § 1.1445-1(b)(2)) of the amount realized on such sale. Such amount must be reported and paid over to the Service under the general rules of § 1.1445-1. However, if the transferee complies with the notice requirements of § 1.1445-2(d)(3) (ii) and (iii), such transferee may report and pay over to the Service on or before the 20th day following the final determination by a court or trustee with jurisdiction over the foreclosure action, the lesser of:
 - (1) The amount otherwise required to be withheld under section 1445(a), or
 - (2) The "alternative amount" as defined in the succeeding sentence. The alternative amount is the entire amount, if any, determined by a court or trustee with jurisdiction over the matter, that accrues to the debtor/transferor out of the amount realized from

the foreclosure sale. The amount of any mortgage, lien, or other security agreement secured by the property, that is terminated, assumed by another person, or otherwise extinguished (as to the debtor/transferor) shall not be treated as an amount that accrues to the debtor/transferor for purposes of this § 1.1445-2(d)(3)(i)(A). If the alternative amount is zero, no withholding is required. Any difference between the amount withheld at the time of the foreclosure sale and the amount to be reported and paid over to the Service must be transferred to the court or trustee with jurisdiction over the foreclosure action. Amounts withheld, if any, are to be reported and paid to the Service by using Forms 8288 and 8288-A in conformity with § 1.1445-1(d).

(B) **Deeds in lieu of foreclosures.** A transferee of a U.S. real property interest pursuant to a deed in lieu of foreclosure must withhold tax equal to 15 percent (10 percent in the case of dispositions described in § 1.1445-1(b)(2)) of the amount realized by the debtor/transferor on the transfer. However, no withholding is required if:

- (1) The transferee is the only person with a security interest in the property,
- (2) No cash or other property (other than incidental fees incurred with respect to the transfer) is paid, directly or indirectly, to any person with respect to the transfer, and
- (3) The notice requirement of § 1.1445-2(d)(3) are satisfied.

The amount withheld, if any, must be reported and paid over to the Service not later than the 20th day following the date of transfer. In a case where withholding would otherwise be required, a withholding certificate may be requested in accordance with § 1.1445-3.

(ii) **Notice to the court or trustee in a foreclosure action –**

(A) **Notice on day of purchase.** A transferee in a foreclosure sale that chooses to use the special rules applicable to foreclosures must provide notice to the court or trustee with jurisdiction over the foreclosure action on the day the property is transferred with respect to such transferee's withholding obligation. No particular form is necessary but the notice must set forth the transferee's name, home address in the case of an individual, office address in the case of an entity, a brief description of the property, the date of the transfer, the amount realized on the sale of the foreclosed property and the amount withheld under section 1445(a).

(B) **Notice whether amount withheld or alternative amount is reported and paid over to the Service.** A purchaser/transferee in a foreclosure that chooses to use the special rules applicable to foreclosures must provide notice to the court or trustee with jurisdiction over the foreclosure action regarding whether the amount withheld or the alternative amount will be (or has been) reported and paid over to the Service. The notice should set forth all the information required by the preceding paragraph (d)(3)(ii)(A), the amount withheld or alternative amount that will be (or has been) reported and paid over to the Service, and the amount that will be (or has been) paid over to the court or trustee.

(iii) **Notice to the Service –**

(A) **General rule.** A transferee that in reliance upon the rules of this paragraph (d)(3) withholds an alternative amount (or does not withhold because the alternative amount is zero) must, on or before the 20th day following the final determination by a court or trustee in a

foreclosure action or on or before the 20th day following the date of the transfer with respect to a transfer pursuant to a deed in lieu of foreclosure, provide notice thereof to the Assistant Commissioner (International) at the address provided in § 1.1445-1(g)(10). (The filing of such a notice shall not relieve a creditor of any obligation it may have to file a notice pursuant to section 6050J and the regulations thereunder.) No particular form is required but the following information must be set forth in paragraphs labelled to correspond with the numbers set forth below.

- (1) A statement that the notice constitutes a notice of foreclosure action or transfer pursuant to a deed in lieu of foreclosure under § 1.1445-2(d)(3).
- (2) The name, identifying number, and home address (in the case of an individual) or office address (in the case of an entity) of the purchaser/transferee.
- (3) The name, identifying number, and home address (in the case of an individual) or office address (in the case of an entity) of the debtor/transferor.
- (4) In a foreclosure action, the date of the final determination by a court or trustee regarding the distribution of the amount realized from the foreclosure sale. In a transfer pursuant to a deed in lieu of foreclosure, the date the property is transferred to the purchaser/transferee.
- (5) A brief description of the property.
- (6) The amount realized from the foreclosure sale or with respect to the transfer pursuant to a deed in lieu of foreclosure.
- (7) The alternative amount.

(B) **Special rule for lenders required to file Form 1099-A where the alternative amount is zero.** A person required under section 6050J to file Form 1099-A does not have to comply with the notice requirement of § 1.1445-2(d)(3)(iii)(A) if the alternative amount is zero. In such case, the filing of the Form 1099-A will be deemed to satisfy the notice requirements of § 1.1445-2(d)(3)(iii)(A).

(iv) **Requirements not applicable.** A transferee is not required to withhold tax or provide notice pursuant to the rules of this paragraph (d)(3) if no substantive withholding liability applies to the transfer of the property by the debtor/transferor. For example, if the debtor/transferor provides the transferee with a certification of non-foreign status pursuant to paragraph (b) of this section, then no substantive withholding liability would exist with respect to the acquisition of the property from the debtor transferor. In such a case, no withholding of tax or notice to the Internal Revenue Service is required of the transferee with respect to the repossession or foreclosure.

(v) **Anti-abuse rule.** If a U.S. real property interest is transferred in foreclosure or pursuant to a deed in lieu of foreclosure for a principal purpose of avoiding the requirements of section 1445(a), then the provisions of this paragraph (d)(3) shall not apply to the transfer and the transferee shall be fully liable for any failure to withhold with respect to the transfer. A principal purpose to avoid section 1445(a) will be presumed (subject to rebuttal on the basis of all relevant facts and circumstances) if:

- (A) The transferee acquires property in which it, or a related party, has a security interest;

- (B) The security interest did not arise in connection with the debtor/transferor's or a related party's or predecessor in interest's acquisition, improvement, or maintenance of the property; and
 - (C) The total amount of all debts secured by the property exceeds 90 percent of the fair market value of the property.
- (4) **Installment payments.** A transferee of a U.S. real property interest is not required to withhold under section 1445 when making installment payments on an obligation arising out of a dispositions that took place before January 1, 1985. With respect to disposition that take place after December 31, 1984, the transferee shall be required to satisfy its entire withholding obligation within the time specified in § 1.1445-1(c) regardless of the amount actually paid by the transferee. Thereafter, no withholding is required upon further installment payments on an obligation arising out of the transfer. A transferee that is unable to satisfy its entire withholding obligation within the time specified in § 1.1445-1(c) may request a withholding certificate pursuant to § 1.1445-3.
- (5) **Acquisitions by governmental bodies.** No withholding of tax is required under section 1445 with respect to any acquisition of property by the United States, a state or possession of the United States, a political subdivision thereof, or the District of Columbia.
- (6) [Reserved]
- (7) **Withholding certificate obtained by transferee or transferor.** No withholding is required under section 1445(a) if the transferee is provided with a withholding certificate that so specifies. Either the transferor or the transferee may seek a withholding certificate from the Internal Revenue Service, pursuant to the provisions of § 1.1445-3.
- (8) **Amount realized by transferor is zero.** If the amount realized by transferor on a transfer of a U.S. real property interest is zero, no withholding is required.
- (e) **Applicability dates.** The requirement in paragraphs (d)(2)(i)(B), (d)(2)(iii)(B), and (d)(3)(iii)(A)(2) and (3) of this section that taxpayer identification numbers be provided (in all cases) is applicable for dispositions of U.S. real property interests occurring after November 3, 2003. The exclusion of entities described in section 897(l) from the definition of foreign person in paragraph (b)(2)(i) of this section applies to dispositions and distributions after December 18, 2015, and the withholding rates set forth in paragraphs (b)(4)(iv), (c)(3)(iii), and (d)(3)(i) of this section apply to dispositions after February 16, 2016. For dispositions on or before February 16, 2016, see paragraphs (b)(4)(iv), (c)(3)(iii), and (d)(3)(i) of this section as contained in 26 CFR part 1 revised as of April 1, 2015. Paragraph (b)(2)(v) of this section applies to certifications provided on or after May 7, 2019, except that a taxpayer may choose to apply paragraph (b)(2)(v) of this section with respect to certifications provided before May 7, 2019. Paragraphs (b)(2)(i) and (b)(2)(vi) of this section, apply with respect to dispositions of U.S. real property interests and distributions described in section 897(h) occurring on or after December 29, 2022. For dispositions of U.S. real property interests and distributions described in section 897(h) occurring before December 29, 2022, see § 1.1445-2(b)(2)(i) and (b)(2)(vi), as contained in 26 CFR part 1, revised as of April 1, 2021.

[T.D. 8113, 51 FR 46633, Dec. 24, 1986; 52 FR 3917, Feb. 6, 1987, as amended by T.D. 8198, 53 FR 16230, May 5, 1988; T.D. 9082, 68 FR 46084, Aug. 5, 2003; T.D. 9751, 81 FR 8401, Feb. 19, 2016; T.D. 9926, 85 FR 76932, Nov. 30, 2020; T.D. 9971, 87 FR 80065, Dec. 29, 2022]



Substantial Presence Test

You will be considered a United States resident for tax purposes if you meet the substantial presence test for the calendar year. To meet this test, you must be physically present in the United States (U.S.) on at least:

1. 31 days during the current year, and
2. 183 days during the 3-year period that includes the current year and the 2 years immediately before that, counting:
 - All the days you were present in the current year, and
 - 1/3 of the days you were present in the first year before the current year, and
 - 1/6 of the days you were present in the second year before the current year.

Example:

You were physically present in the U.S. on 120 days in each of the years 2012, 2013, and 2014. To determine if you meet the substantial presence test for 2014, count the full 120 days of presence in 2014, 40 days in 2013 (1/3 of 120), and 20 days in 2012 (1/6 of 120). Since the total for the 3-year period is 180 days, you are not considered a resident under the substantial presence test for 2014.

Days of Presence in the United States

You are treated as present in the U.S. on any day you are physically present in the country, at any time during the day. However, there are exceptions to this rule. Do not count the following as days of presence in the U.S. for the substantial presence test.

- Days you commute to work in the U.S. from a residence in Canada or Mexico, if you regularly commute from Canada or Mexico.
- Days you are in the U.S. for less than 24 hours, when you are in transit between two places outside the United States.
- Days you are in the U.S. as a crew member of a foreign vessel.
- Days you are unable to leave the U.S. because of a medical condition that develops while you are in the United States.
- Days you are an exempt individual (see below).

For details on days excluded from the substantial presence test for other than exempt individuals, refer to [Publication 519, U.S. Tax Guide for Aliens](#).

The term United States (U.S.) includes the following areas.

Individuals Topic

- Tools
- Taxpayer Advocate
- Affordable Care Act

Online Tools & Updates

- International Taxpayers Videos
- International Taxpayers Press Releases
- International Taxpayers Interactive Tools

- All 50 states and the District of Columbia.
- The territorial waters of the United States.
- The seabed and subsoil of those submarine areas that are adjacent to U.S. territorial waters and over which the United States has exclusive rights under international law to explore and exploit natural resources.

The term does not include U.S. possessions and territories or U.S. airspace.

Exempt Individual

Do not count days for which you are an exempt individual. The term "exempt individual" does **not** refer to someone exempt from U.S. tax, but to anyone in the following categories:

- An individual temporarily present in the U.S. as a [foreign government-related individual](#) under an "A" or "G" visa, other than individuals holding "A-3" or "G-5" class visas.
- A [teacher or trainee](#) temporarily present in the U.S. under a "J" or "Q" visa, who substantially complies with the requirements of the visa.
- A [student](#) temporarily present in the U.S. under an "F," "J," "M," or "Q" visa, who substantially complies with the requirements of the visa.
- A [professional athlete](#) temporarily in the U.S. to compete in a charitable sports event.

If you exclude days of presence in the U.S. for purposes of the substantial presence test because you were an exempt individual or were unable to leave the U.S. because of a medical condition or medical problem, you must include [Form 8843, Statement for Exempt Individuals and Individuals With a Medical Condition](#), with your income tax return. If you do not have to file an income tax return, send Form 8843 to the address indicated in the instructions for Form 8843 by the due date for filing an income tax return.

If you do not timely file Form 8843, you cannot exclude the days you were present in the U.S. as an exempt individual or because of a medical condition that arose while you were in the U.S. This does not apply if you can show, by clear and convincing evidence that you took reasonable actions to become aware of the filing requirements and significant steps to comply with those requirements.

Closer Connection Exception to the Substantial Presence Test

Even if you passed the substantial presence test you can still be treated as a nonresident alien if you qualify for one of the following exceptions;

1. The closer connection exception available to all aliens. Please refer to [Conditions for a Closer Connection to a Foreign Country](#).
2. The closer connection exception available only to students. Please refer to [The Closer Connection Exception to the Substantial Presence Test for Foreign Students and Sample Letter](#).

References/Related Topics

- [Determining Alien Tax Status](#)

Page Last Reviewed or Updated: 15-Jan-2020



Definitions of Terms and Procedures Unique to FIRPTA

The following terms have special meanings with respect to U.S. Real Property Interest - FIRPTA.

- Dispositions
- Corporations
- Partnerships
- Trust and Estates
- U.S. Real Property Interest
- Foreign Person
- Transferor
- Transferee
- Amount Realized
- U.S. Real Property Holding Corporation (USRPHC)

Dispositions

The disposition of a U.S. real property interest by a foreign person (the transferor) is subject to income tax withholding (IRC section 1445). The transferee is the withholding agent. If you are the transferee, you must find out if the transferor is a foreign person. If the transferor is a foreign person and you fail to withhold, you may be held liable for the tax.

Normally the sale/purchase of real estate qualifies as a disposition however many other transactions also qualify as dispositions (e.g. gifts, redemptions, capital contributions, etc.).

Withholding is required on certain distributions and other transactions by domestic or foreign corporations, partnerships, trusts, and estates.

Corporations

A **foreign corporation** that distributes a U.S. real property interest must withhold a tax equal to 21% of the gain it recognizes on the distribution to its shareholders. However, this withholding requirement does not apply if the foreign corporation has elected under IRC section 897(i) to be treated as a domestic corporation.

A **domestic corporation** must withhold a tax equal to 15% of the fair market value of the property distributed to a foreign person if:

1. The shareholder's interest in the corporation is a U.S. real property interest, and
2. The property distributed is either in redemption of stock or in liquidation of the corporation.

U.S. real property holding corporations. A distribution from a domestic corporation that is a U.S. real property holding corporation (USRPHC) is generally subject to NRA withholding and withholding under the U.S. real property interest provisions. This also applies to a corporation that was a USRPHC at any time during the shorter of the period during which the U.S. real property interest was held, or the 5-year period ending on the date of disposition. A USRPHC can satisfy both withholding provisions if it withholds under one of the following procedures.

- Apply NRA Withholding on Forms 1042/1042-S on the full amount of the distribution, whether or not any portion of the distribution represents a return of basis or capital gain. If a reduced tax rate applies under an income tax treaty, then the rate of withholding must not be less than 10%, unless the treaty specifies a lower rate for distributions from a USRPHC.
- Apply NRA Withholding on Forms 1042/1042-S to the portion of the distribution that the USRPHC estimates is a dividend. Then, withhold 10% on the remainder of the distribution (or on a smaller amount if a withholding certificate is obtained and the amount of the distribution that is a return of capital is established).

The same procedure must be used for all distributions made during the year. A different procedure may be used each year.

Partnerships

If a domestic partnership that is not publicly traded disposes of a U.S. real property interest at a gain, the gain is treated as effectively connected income and is subject to the rules explained under [Partnership Withholding on Effectively Connected Income](#), and would not be subject to withholding under the FIRPTA provisions.

A publicly traded partnership that disposes of a U.S. real property interest must withhold tax on distributions to foreign partners, unless it elects to withhold based on effectively connected taxable income allocable to foreign partners as discussed under [Publicly Traded Partnerships](#).

Trust and Estates

You are a Withholding Agent if you are a trustee, fiduciary, or executor of a trust or estate having one or more foreign beneficiaries. You must establish a U.S. real property interest account. You enter in the account all gains and losses realized during the taxable year of the trust or estate from dispositions of U.S. real property interests. You must withhold 35% on any distribution to a foreign beneficiary that is attributable to the balance in the real property interest account on the day of the distribution. A distribution from a trust or estate to a beneficiary (foreign or domestic) will be treated as attributable first to any balance in the U.S. real property interest account and then to other amounts.

A trust with more than 100 beneficiaries may elect to withhold from each distribution 35% of the amount attributable to the foreign beneficiary's proportionate share of the current balance of the trust's real property interest account. This election does not apply to publicly traded trusts or real estate investment trusts (REITs). For more information about this election, refer to section 1.1445-5(c) of the regulations.

Publicly traded trusts and REITs must withhold on distributions of U.S. real property interests to foreign persons. The withholding rate is 35%. For more information, including how to compute the amount subject to withholding, refer to section 1.1445-8 of the regulations. Refer to [Notice 2007-55](#) for guidance to clarify the treatment of certain distributions by REITs to foreign governments.

Generally, any distribution from a qualified investment entity attributable to gain from the sale or exchange of a U.S. real property interest is treated as such gain by the nonresident alien individual or foreign corporation receiving the distribution. For tax years beginning after October 22, 2004, any distribution by a REIT on stock regularly traded on a securities market in the United States is not treated as gain from the sale or exchange of a U.S. real property interest if the shareholder did not own more than 5% of that stock at any time during the REIT's tax year. These distributions are included in the shareholder's gross income as a dividend from the REIT, not as long-term capital gain.

U.S. Real Property Interest

The term U.S. Real Property interest means an interest in real property (including an interest in a mine, well, or other natural deposit) located in the United States or the U.S. Virgin Islands, as well as certain personal property that is associated with the use of real property (such as farming machinery). It also means any interest, other than as a creditor, in any domestic corporation unless it is established that the corporation was at no time a U.S. real property holding corporation during the shorter of the period during which the interest was held, or the 5-year period ending on the date of disposition. If on the date of disposition, the corporation did not hold any U.S. real property interests, and all the interests held at any time during the shorter of the applicable periods were disposed of in transactions in which the full amount of any gain was recognized, then an interest in the corporation is not a U.S. real property interest.

After December 31, 2004, the sale of an interest in a domestically controlled qualified investment entity is not the sale of a U.S. real property interest. A qualified investment entity is any real estate investment trust (REIT) or any regulated investment company (RIC). The entity is domestically controlled if at all times during the testing period less than 50% in value of its stock was held, directly or indirectly, by foreign persons. The testing period is the shorter of (a) the 5-year period ending on the date of the disposition, or (b) the period during which the entity was in existence.

Foreign Person

A Foreign Person is a nonresident alien individual, foreign corporation that has not made an election under section 897(i) of the Internal Revenue Code to be treated as a domestic corporation, foreign partnership, foreign trust, or foreign estate. It does not include a resident alien individual.

Transferor

The term Transferor means any foreign person that disposes of a U.S. real property interest by sale, exchange, gift, or any other transfer. A transfer includes distributions to shareholders of a corporation, partners of a partnership, and beneficiaries of a trust or estate.

The owner of a disregarded entity is treated as the transferor of the property, not the entity.

Transferee

The term Transferee means any person, foreign or domestic, that acquires a U.S. real property interest by purchase, exchange, gift, or any other transfer.

Amount Realized

The Amount Realized by the transferor is the sum of:

1. The cash paid, or to be paid (principal only),
2. The fair market value of other property transferred, or to be transferred, and
3. The amount of any liability assumed by the transferee or to which the property is subject immediately before and after the transfer.

U.S. Real Property Holding Corporation (USRPHC)

In general, a corporation is a U.S. real property holding corporation if the fair market value of the U.S. real property interests held by the corporation on any applicable determination date equals or exceeds 50 percent of the sum of the fair market values of its -

- U.S. real property interests,
- Interests in real property located outside the United States, and
- Certain business assets.

Refer to Treasury Regulation 1.897-2, United States real property holding corporations.

References/Related Topics

- [FIRPTA Withholding](#)

Note: This page contains one or more references to the Internal Revenue Code (IRC), Treasury Regulations, court cases, or other official tax guidance. References to these legal authorities are included for the convenience of those who would like to read the technical reference material. To access the applicable IRC sections, Treasury Regulations, or other official tax guidance, visit the [Tax Code, Regulations, and Official Guidance](#) page. To access any Tax Court case opinions issued after September 24, 1995, visit the [Opinions Search](#) page of the United States Tax Court.

Page Last Reviewed or Updated: 04-Feb-2020

Internal Revenue Service
P.O. Box 409101
Ogden, UT 84409

Department of the Treasury

Date of the Withholding Certificate: 05/22/2019

Taxpayer Identification Number: [REDACTED]

File Number: [REDACTED]

Contact Person: CUSTOMER SERVICE

Contact Telephone Number: 267-941-1000

(Not a toll-free number)

Contact Hours: 06:00 am - 9:00 pm

Dear [REDACTED]

We received Form 8288-B, Application for Withholding Certificate for Dispositions by Foreign Persons of U.S. Real Property Interests. This Form 8288-B is for the disposition of the U.S. real property interest described as [REDACTED] MIAMI BEACH, FL. The transferor of the described property is [REDACTED] and the transferee is [REDACTED]

This letter is your approved withholding certificate and your legal notification that the required withholding amount for \$599,500.00 tax liability for the disposition of the U.S. real property interest described above would exceed their maximum tax liability. Therefore, we reduced the required withholding to \$1,628.00, which the transferee must remit to the IRS along with Form 8288 and 8288-A by the twentieth (20th) day following the date of this withholding certificate letter. We also determined that substitution of the reduced withholding amount would not jeopardize the collection of the tax imposed on any gain reported from the disposition of the U.S. real property interest.

As a reminder, this withholding certificate doesn't eliminate the requirement to file a U.S. income tax return to report this transaction.

If you have any questions, please call customer service. The telephone number and hours appear above. If the number is outside your local calling area, there will be a long-distance charge to you. Or, you may write to us at the address shown at the top of this letter.

Sincerely,



Ginni L. Redfern
Operations Manager, Accounts Management 1

Letter 3310 (SC/CG) Catalog Number 28675B



Limited Liability Company (LLC)

A Limited Liability Company (LLC) is a business structure allowed by state statute. Each state may use different regulations, you should check with your state if you are interested in starting a Limited Liability Company.

Owners of an LLC are called members. Most states do not restrict ownership, so members may include individuals, corporations, other LLCs and foreign entities. There is no maximum number of members. Most states also permit “single-member” LLCs, those having only one owner.

A few types of businesses generally cannot be LLCs, such as banks and insurance companies. Check your state’s requirements and the federal tax regulations for further information. There are special rules for foreign LLCs.

Classifications

Depending on elections made by the LLC and the number of members, the IRS will treat an LLC as either a corporation, partnership, or as part of the LLC’s owner’s tax return (a “disregarded entity”). Specifically, a domestic LLC with at least two members is classified as a partnership for federal income tax purposes unless it files Form 8832 and affirmatively elects to be treated as a corporation. For income tax purposes, an LLC with only one member is treated as an entity disregarded as separate from its owner, unless it files Form 8832 and elects to be treated as a corporation. However, for purposes of employment tax and certain excise taxes, an LLC with only one member is still considered a separate entity.

Effective Date of Election

An LLC that does not want to accept its default federal tax classification, or that wishes to change its classification, uses [Form 8832, Entity Classification Election \(PDF\)](#), to elect how it will be classified for federal tax purposes. Generally, an election specifying an LLC’s classification cannot take effect more than 75 days prior to the date the election is filed, nor can it take effect later than 12 months after the date the election is filed. An LLC may be eligible for late election relief in certain circumstances. See [About Form 8832, Entity Classification Election](#) for more information.

Related Topics

- Single Member Limited Liability Companies
- LLC Filing as a Corporation or Partnership
- Limited Liability Company - Possible Repercussions
- Where to File Tax Returns - Addresses Listed by Return Type
- Powers of Attorney for LLCs
- Business Structures

Forms & Instructions

- About Form 8832, Entity Classification Election

Publications

- About Publication 3402, Taxation of Limited Liability Companies



Single Member Limited Liability Companies

A Limited Liability Company (LLC) is an entity created by state statute. Depending on elections made by the LLC and the number of members, the IRS will treat an LLC either as a corporation, partnership, or as part of the owner's tax return (a "disregarded entity"). A domestic LLC with at least two members is classified as a partnership for federal income tax purposes unless it files Form 8832 and elects to be treated as a corporation. For income tax purposes, an LLC with only one member is treated as an entity disregarded as separate from its owner, unless it files Form 8832 and affirmatively elects to be treated as a corporation. However, for purposes of employment tax and certain excise taxes, an LLC with only one member is still considered a separate entity.

Owner of Single-Member LLC

If a single-member LLC does not elect to be treated as a corporation, the LLC is a "disregarded entity," and the LLC's activities should be reflected on its owner's federal tax return. If the owner is an individual, the activities of the LLC will generally be reflected on:

- [Form 1040 Schedule C, Profit or Loss from Business \(Sole Proprietorship\) \(PDF\)](#)
- [Form 1040 Schedule E, Supplemental Income or Loss \(PDF\)](#)
- [Form 1040 Schedule F, Profit or Loss from Farming \(PDF\)](#)

An individual owner of a single-member LLC that operates a trade or business is subject to the tax on net earnings from self employment in the same manner as a sole proprietorship.

If the single-member LLC is owned by a corporation or partnership, the LLC should be reflected on its owner's federal tax return as a division of the corporation or partnership.

Taxpayer Identification Number

For federal income tax purposes, a single-member LLC classified as a disregarded entity generally must use the owner's social security number (SSN) or employer identification number (EIN) for all information returns and reporting related to

Related Topics

- [Single Member Limited Liability Companies](#)
- [LLC Filing as a Corporation or Partnership](#)
- [Limited Liability Company - Possible Repercussions](#)
- [Where to File Tax Returns - Addresses Listed by Return Type](#)
- [Powers of Attorney for LLCs](#)
- [Business Structures](#)

Forms

- [About Form 8832, Entity Classification Election](#)

Publications

- [About Publication 3402, Taxation of Limited Liability Companies](#)

income tax. For example, if a disregarded entity LLC that is owned by an individual is required to provide a Form W-9, Request for Taxpayer Identification Number (TIN) and Certification, the W-9 should provide the owner's SSN or EIN, not the LLC's EIN.

For certain Employment Tax and Excise Tax requirements discussed below, the EIN of the LLC must be used. An LLC will need an EIN if it has any employees or if it will be required to file any of the excise tax forms listed below. Most new single-member LLCs classified as disregarded entities will need to obtain an EIN. An LLC [applies for an EIN](#) by filing [Form SS-4, Application for Employer Identification Number \(PDF\)](#). See Form SS-4 for information on applying for an EIN.

A single-member LLC that is a disregarded entity that does not have employees and does not have an excise tax liability does not need an EIN. It should use the name and TIN of the single member owner for federal tax purposes. However, if a single-member LLC, whose taxable income and loss will be reported by the single member owner needs an EIN to open a bank account or if state tax law requires the single-member LLC to have a federal EIN, then the LLC can apply for and obtain an EIN.

Employment Tax and Certain Excise Tax Requirements

In August, 2007, [final regulations \(T.D. 9356\) \(PDF\)](#) were issued requiring disregarded LLCs to be treated as the taxpayer for certain excise taxes accruing on or after January 1, 2008 and employment taxes accruing on or after January 1, 2009. Single-member disregarded LLCs will continue to be disregarded for other federal tax purposes.

A single-member LLC that is classified as a disregarded entity for income tax purposes is treated as a separate entity for purposes of employment tax and certain excise taxes. For wages paid after January 1, 2009, the single-member LLC is required to use its name and employer identification number (EIN) for reporting and payment of employment taxes. A single-member LLC is also required to use its name and EIN to register for excise tax activities on Form 637; pay and report excise taxes reported on Forms 720, 730, 2290, and 11-C; and claim any refunds, credits and payments on Form 8849. See employment and excise tax returns for more information.

Joint Ownership of LLC by Spouse in Community Property States

Rev. Proc. 2002-69 addressed the issue of classification for an entity that is solely owned by husband and wife as community property under laws of a state, a foreign country or possession of the United States.

If there is a qualified entity owned by a husband and wife as community property owners, and they treat the entity as a:

- Disregarded entity for federal tax purposes, the Internal Revenue Service will accept the position that the entity is disregarded for federal tax purposes.

- Partnership for federal tax purposes, the Internal Revenue Service will accept the position that the entity is partnership for federal tax purposes.

A change in the reporting position will be treated for federal tax purposes as a conversion of the entity.

A business entity is a qualified entity if;

1. The business entity is wholly owned by a husband and wife as community property under the laws of a state, a foreign country, or possession of the United States;
2. No person other than one or both spouses would be considered an owner for federal tax purposes; and
3. The business entity is not treated as a corporation under IRC §310.7701-2.

Note: If an LLC is owned by husband and wife in a non-community property state, the LLC should file as a partnership. LLCs owned by a husband and wife are not eligible to be "qualified joint ventures" (which can elect not be treated as partnerships) because they are state law entities. For more information see [Election for Husband and Wife Unincorporated Businesses](#).

Page Last Reviewed or Updated: 17-Jan-2020

Request for Taxpayer Identification Number and Certification

Give Form to the
requester. Do not
send to the IRS.

► Go to www.irs.gov/FormW9 for instructions and the latest information.

Print or type. See Specific Instructions on page 3.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes. <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____ Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. <input type="checkbox"/> Other (see instructions) ► _____	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <i>(Applies to accounts maintained outside the U.S.)</i>
	5 Address (number, street, and apt. or suite no.) See instructions.	Requester's name and address (optional)
	6 City, state, and ZIP code	
	7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number										
				-				-		
or										
Employer identification number										
				-						

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ►	Date ►
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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 W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting*, later, for further information.

Note: If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 24% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the instructions for Part II for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code*, later, and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships*, earlier.

What is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code*, later, and the Instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

Note: ITIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C corporation, or S corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

Line 3

Check the appropriate box on line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3.

IF the entity/person on line 1 is a(n) . . .	THEN check the box for . . .
• Corporation	Corporation
• Individual	Individual/sole proprietor or single-member LLC
• Sole proprietorship, or	
• Single-member limited liability company (LLC) owned by an individual and disregarded for U.S. federal tax purposes.	
• LLC treated as a partnership for U.S. federal tax purposes,	Limited liability company and enter the appropriate tax classification. (P= Partnership; C= C corporation; or S= S corporation)
• LLC that has filed Form 8832 or 2553 to be taxed as a corporation, or	
• LLC that is disregarded as an entity separate from its owner but the owner is another LLC that is not disregarded for U.S. federal tax purposes.	
• Partnership	Partnership
• Trust/estate	Trust/estate

Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

- 1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 5 ²
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

Note: You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

Line 6

Enter your city, state, and ZIP code.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note: See *What Name and Number To Give the Requester*, later, for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at www.SSA.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/Businesses and clicking on Employer Identification Number (EIN) under Starting a Business. Go to www.irs.gov/Forms to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to www.irs.gov/OrderForms to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note: Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code*, earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.

You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLE accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor ²
5. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
6. Sole proprietorship or disregarded entity owned by an individual	The owner ³
7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor*
For this type of account:	Give name and EIN of:
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity ⁴
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee

For this type of account:	Give name and EIN of:
14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
15. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships*, earlier.

***Note:** The grantor also must provide a Form W-9 to trustee of trust.

Note: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records From Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at spam@uce.gov or report them at www.ftc.gov/complaint. You can contact the FTC at www.ftc.gov/idtheft or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see www.IdentityTheft.gov and Pub. 5027.

Visit www.irs.gov/IdentityTheft to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.



Instructions for the Requester of Form W-9

(Rev. October 2018)

Request for Taxpayer Identification Number and Certification

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

Future Developments

For the latest developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [IRS.gov/FormW9](https://www.irs.gov/FormW9).

What's New

Backup withholding rate. The backup withholding rate is 24% for reportable payments.

Reminders

FATCA and backup withholding exemptions. FATCA requires a participating foreign financial institution to report all U.S. account holders that are specified U.S. persons. Form W-9 has an *Exemptions* box on the front of the form that includes entry for the *Exempt payee code (if any)* and *Exemption from FATCA Reporting Code (if any)*. The references for the appropriate codes are in the *Exemptions* section of Form W-9, and in the *Payees Exempt From Backup Withholding* and *Payees and Account Holders Exempt From FATCA Reporting* sections of these instructions.

The *Certification* section in Part II of Form W-9 includes certification relating to FATCA reporting.

Backup withholding liability. If you do not collect backup withholding from affected payees as required, you may become liable for any uncollected amount.

TIN matching e-services. The IRS website offers TIN Matching e-services for certain payers to validate name and TIN combinations. See [Taxpayer Identification Number \(TIN\) Matching](https://www.irs.gov/tinmatching), later.

How Do I Know When To Use Form W-9?

Use Form W-9 to request the taxpayer identification number (TIN) of a U.S. person (including a resident alien) and to request certain certifications and claims for exemption. (See *Purpose of Form* on Form W-9.) Withholding agents may require signed Forms W-9 from U.S. exempt recipients to overcome a presumption of foreign status. For federal tax purposes, a U.S. person includes but is not limited to:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- Any estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

A partnership may require a signed Form W-9 from its U.S. partners to overcome a presumption of foreign status and to avoid withholding on the partner's allocable share of the

partnership's effectively connected income. For more information, see Regulations section 1.1446-1.

A participating foreign financial institution (PFFI) should request Form W-9 from an account holder that is a U.S. person. If an account is jointly held, the PFFI should request a Form W-9 from each holder that is a U.S. person.

Advise foreign persons to use the appropriate Form W-8 or Form 8233, *Exemption From Withholding on Compensation for Independent (and Certain Dependent) Personal Services of a Nonresident Alien Individual*. See Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*, for more information and a list of the W-8 forms.

Electronic Submission of Forms W-9

Requesters may establish a system for payees and payees' agents to submit Forms W-9 electronically, including by fax. A requester is anyone required to file an information return. A payee is anyone required to provide a taxpayer identification number (TIN) to the requester.

Payee's agent. A payee's agent can be an investment advisor (corporation, partnership, or individual) or an introducing broker. An investment advisor must be registered with the Securities and Exchange Commission (SEC) under the Investment Advisers Act of 1940. The introducing broker is a broker-dealer that is regulated by the SEC and the National Association of Securities Dealers, Inc., and that is not a payer. Except for a broker who acts as a payee's agent for "readily tradable instruments," the advisor or broker must show in writing to the payer that the payee authorized the advisor or broker to transmit the Form W-9 to the payer.

Electronic system. Generally, the electronic system must:

- Ensure the information received is the information sent, and document all occasions of user access that result in the submission;
- Make reasonably certain that the person accessing the system and submitting the form is the person identified on Form W-9, the investment advisor, or the introducing broker;
- Provide the same information as the paper Form W-9;
- Be able to supply a hard copy of the electronic Form W-9 if the Internal Revenue Service requests it; and
- Require as the final entry in the submission an electronic signature by the payee whose name is on Form W-9 that authenticates and verifies the submission. The electronic signature must be under penalties of perjury and the perjury statement must contain the language of the paper Form W-9.



For Forms W-9 that are not required to be signed, the electronic system need not provide for an electronic signature or a perjury statement.

For more details, see the following.

- Announcement 98-27, which is on page 30 of Internal Revenue Bulletin 1998-15 at [IRS.gov/pub/irs-irbs/irb98-15.pdf](https://www.irs.gov/pub/irs-irbs/irb98-15.pdf).
- Announcement 2001-91, which is on page 221 of Internal Revenue Bulletin 2001-36 at [IRS.gov/pub/irs-irbs/irb01-36.pdf](https://www.irs.gov/pub/irs-irbs/irb01-36.pdf).

Individual Taxpayer Identification Number (ITIN)

Form W-9 (or an acceptable substitute) is used by persons required to file information returns with the IRS to get the payee's (or other person's) correct name and TIN. For individuals, the TIN is generally a social security number (SSN).

However, in some cases, individuals who become U.S. resident aliens for federal tax purposes are not eligible to obtain an SSN. This includes certain resident aliens who must receive information returns but who cannot obtain an SSN.

These individuals must apply for an ITIN on Form W-7, Application for IRS Individual Taxpayer Identification Number, unless they have an application pending for an SSN. Individuals who have an ITIN must provide it on Form W-9.

Note. ITINs that haven't been included on a U.S. federal tax return at least once in the last 3 consecutive tax years will expire. Expired ITINs must be renewed in order to avoid delays in processing the ITIN holder's tax return. If the IRS deactivates the ITIN because it has expired, the ITIN may still be used on Form W-9. However, the ITIN holder will have to apply to renew the deactivated ITIN if there is a need to file a tax return. For more information, see the Instructions for Form W-7.

Substitute Form W-9

You may develop and use your own Form W-9 (a substitute Form W-9) if its content is substantially similar to the official IRS Form W-9 and it satisfies certain certification requirements.

You may incorporate a substitute Form W-9 into other business forms you customarily use, such as account signature cards. However, the certifications on the substitute Form W-9 must clearly state (as shown on the official Form W-9) that under penalties of perjury:

1. The payee's TIN is correct,
2. The payee is not subject to backup withholding due to failure to report interest and dividend income,
3. The payee is a U.S. person, and
4. The FATCA code entered on this form (if any) indicating that the payee is exempt from FATCA reporting is correct.

You may provide certification instructions on a substitute Form W-9 in a manner similar to the official form. If you are not collecting a FATCA exemption code by omitting that field from the substitute Form W-9 (see [Payees and Account Holders Exempt From FATCA Reporting](#), later), you may notify the payee that item 4 does not apply.

You may not:

1. Use a substitute Form W-9 that requires the payee, by signing, to agree to provisions unrelated to the required certifications, or
2. Imply that a payee may be subject to backup withholding unless the payee agrees to provisions on the substitute form that are unrelated to the required certifications.

A substitute Form W-9 that contains a separate signature line just for the certifications satisfies the requirement that the certifications be clearly stated.

If a single signature line is used for the required certifications and other provisions, the certifications must be highlighted, boxed, printed in bold-face type, or presented in some other manner that causes the language to stand out from all other information contained on the substitute form. Additionally, the following statement must be presented to stand out in the same manner as described above and must appear immediately above the single signature line:

"The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding."

If you use a substitute form, you are required to provide the Form W-9 instructions to the payee only if he or she requests them. However, if the IRS has notified the payee that backup withholding applies, then you must instruct the payee to strike out the language in the certification that relates to underreporting. This instruction can be given orally or in writing. See item 2 of the *Certification* on Form W-9. You can replace "defined below" with "defined in the instructions" in item 3 of the *Certification* on Form W-9 when the instructions will not be provided to the payee except upon request. For more information, see Rev. Proc. 83-89, 1983-2 C.B. 613; amplified by Rev. Proc. 96-26, which is on page 22 of Internal Revenue Bulletin 1996-8 at [IRS.gov/pub/irs-irbs/irb96-08.pdf](https://www.irs.gov/pub/irs-irbs/irb96-08.pdf).

TIN Applied For

For interest and dividend payments and certain payments with respect to readily tradable instruments, the payee may return a properly completed, signed Form W-9 to you with "Applied For" written in Part I. This is an "awaiting-TIN" certificate. The payee has 60 calendar days, from the date you receive this certificate, to provide a TIN. If you do not receive the payee's TIN at that time, you must begin backup withholding on payments.

Reserve rule. You must backup withhold on any reportable payments made during the 60-day period if a payee withdraws more than \$500 at one time, unless the payee reserves an amount equal to the current year's backup withholding rate on all reportable payments made to the account.

Alternative rule. You also may elect to backup withhold during this 60-day period, after a 7-day grace period, under one of the two alternative rules discussed below.

Option 1. Backup withhold on any reportable payments if the payee makes a withdrawal from the account after the close of 7 business days after you receive the awaiting-TIN certificate. Treat as reportable payments all cash withdrawals in an amount up to the reportable payments made from the day after you receive the awaiting-TIN certificate to the day of withdrawal.

Option 2. Backup withhold on any reportable payments made to the payee's account, regardless of whether the payee makes any withdrawals, beginning no later than 7 business days after you receive the awaiting-TIN certificate.



The 60-day exemption from backup withholding does not apply to any payment other than interest, dividends, and certain payments relating to readily tradable instruments. Any other reportable payment, such as nonemployee compensation, is subject to backup withholding immediately, even if the payee has applied for and is awaiting a TIN.

Even if the payee gives you an awaiting-TIN certificate, you must backup withhold on reportable interest and dividend payments if the payee does not certify, under penalties of perjury, that the payee is not subject to backup withholding.

If you do not collect backup withholding from affected payees as required, you may become liable for any uncollected amount.

Payees Exempt From Backup Withholding

The following payees are exempt from backup withholding with respect to the payments below, and should enter the corresponding exempt payee code on Form W-9. You may rely on the payee's claim of exemption unless you have actual knowledge that the exempt payee code and/or classification selected are not valid, or if they are inconsistent with each other.

In that case, you may rely on the Form W-9 for purposes of obtaining the payee's TIN, but you must treat the payee as non-exempt. If the payee failed to enter an exempt payee code, but the classification selected indicates that the payee is exempt, you may accept the classification and treat the payee as exempt unless you have actual knowledge that the classification is not valid.

If the payee is not exempt, you are required to backup withhold on reportable payments if the payee does not provide a TIN in the manner required or does not sign the certification, if required.

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2);
2. The United States or any of its agencies or instrumentalities;
3. A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions, agencies, or instrumentalities;
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities;
5. A corporation;
6. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession;
7. A futures commission merchant registered with the Commodity Futures Trading Commission;
8. A real estate investment trust;
9. An entity registered at all times during the tax year under the Investment Company Act of 1940;
10. A common trust fund operated by a bank under section 584(a);
11. A financial institution;
12. A middleman known in the investment community as a nominee or custodian; or
13. A trust exempt from tax under section 664 or described in section 4947.

The following types of payments are exempt from backup withholding as indicated for payees listed in 1 through 13 above.

Interest and dividend payments. All listed payees are exempt except the payee in item 7.

Broker transactions. All payees listed in items 1 through 4 and 6 through 11 are exempt. Also, C corporations are exempt. A person registered under the Investment Advisers Act of 1940 who regularly acts as a broker also is exempt.

Barter exchange transactions and patronage dividends. Only payees listed in items 1 through 4 are exempt.

Payments reportable under sections 6041 and 6041A. Payees listed in items 1 through 5 generally are exempt.

However, the following payments made to a corporation and reportable on Form 1099-MISC, Miscellaneous Income, are not exempt from backup withholding.

- Medical and health care payments.
- Attorneys' fees (also gross proceeds paid to an attorney, reportable under section 6045(f)).
- Payments for services paid by a federal executive agency. (See Rev. Rul. 2003-66, which is on page 1115 of Internal Revenue Bulletin 2003-26 at [IRS.gov/pub/irs-irbs/irb03-26.pdf](https://www.irs.gov/pub/irs-irbs/irb03-26.pdf).)

Payments made in settlement of payment card or third party network transactions. Only payees listed in items 1 through 4 are exempt.

Payments Exempt From Backup Withholding

Payments that are not subject to information reporting also are not subject to backup withholding. For details, see sections 6041, 6041A, 6042, 6044, 6045, 6049, 6050A, 6050N, and 6050W and their regulations. The following payments generally are exempt from backup withholding.

Dividends and patronage dividends.

- Payments to nonresident aliens subject to withholding under section 1441.
- Payments to partnerships not engaged in a trade or business in the United States and that have at least one nonresident alien partner.
- Payments of patronage dividends not paid in money.
- Payments made by certain foreign organizations.
- Section 404(k) distributions made by an ESOP.

Interest payments.

- Payments of interest on obligations issued by individuals. However, if you pay \$600 or more of interest in the course of your trade or business to a payee, you must report the payment. Backup withholding applies to the reportable payment if the payee has not provided a TIN or has provided an incorrect TIN.
- Payments described in section 6049(b)(5) to nonresident aliens.
- Payments on tax-free covenant bonds under section 1451.
- Payments made by certain foreign organizations.
- Mortgage or student loan interest paid to you.

Other types of payment.

- Wages.
- Distributions from a pension, annuity, profit-sharing or stock bonus plan, any IRA, an owner-employee plan, or other deferred compensation plan.
- Distributions from a medical or health savings account and long-term care benefits.
- Certain surrenders of life insurance contracts.
- Distribution from qualified tuition programs or Coverdell ESAs.
- Gambling winnings if regular gambling winnings withholding is required under section 3402(q). However, if regular gambling winnings withholding is not required under section 3402(q), backup withholding applies if the payee fails to furnish a TIN.
- Real estate transactions reportable under section 6045(e).
- Cancelled debts reportable under section 6050P.
- Fish purchases for cash reportable under section 6050R.

Payees and Account Holders Exempt From FATCA Reporting

Reporting under chapter 4 (FATCA) with respect to U.S. persons generally applies only to foreign financial institutions (FFI) (including a branch of a U.S. financial institution that is treated as an FFI under an applicable intergovernmental agreement (IGA)). Thus, for example, a U.S. financial institution maintaining an account in the United States does not need to collect an exemption code for FATCA reporting. If you are providing a Form W-9, you may pre-populate the FATCA exemption code with "Not Applicable," "N/A," or a similar indication that an exemption from FATCA reporting does not apply. Any payee that provides such a form, however, cannot be treated as exempt from FATCA reporting. For details on the FATCA reporting requirements, including specific information regarding which financial institutions are required to report, see sections 1471 to 1474 and related regulations. See Regulations section 1.1471-3(d)(2) for when an FFI may rely on documentary

evidence to treat a U.S. person as other than a specified U.S. person and see Regulations section 1.1471-3(f)(3) for when an FFI may presume a U.S. person as other than a specified U.S. person.

If you receive a Form W-9 with a FATCA exemption code and you know or have reason to know the person is a specified U.S. person, you may not rely on the Form W-9 to treat the person as exempt from FATCA reporting. However, you may still rely on an otherwise completed Form W-9 to treat a person as a specified U.S. person. An exemption from FATCA reporting (or lack thereof) does not affect backup withholding as described earlier in these instructions. The following are not specified U.S. persons and are thus exempt from FATCA reporting.

A. An organization exempt from tax under section 501(a), or any individual retirement plan as defined in section 7701(a)(37);

B. The United States or any of its agencies or instrumentalities;

C. A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions, agencies, or instrumentalities;

D. A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations 1.1472-1(c)(1)(i);

E. A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations 1.1472-1(c)(1)(i);

F. A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any State;

G. A real estate investment trust;

H. A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940;

I. A common trust fund as defined in section 584(a);

J. A bank as defined in section 581;

K. A broker;

L. A trust exempt from tax under section 664 or described in section 4947; or

M. A tax-exempt trust under a section 403(b) plan or section 457(g) plan.

Joint Foreign Payees

If the first payee listed on an account gives you a Form W-8 or a similar statement signed under penalties of perjury, backup withholding applies unless:

1. Every joint payee provides the statement regarding foreign status, or
2. Any one of the joint payees who has not established foreign status gives you a TIN.

If any one of the joint payees who has not established foreign status gives you a TIN, use that number for purposes of backup withholding and information reporting.

For more information on foreign payees, see the Instructions for the Requester of Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and W-8IMY.

Names and TINs To Use for Information Reporting

Show the full name and address as provided on Form W-9 on the information return filed with the IRS and on the copy furnished to the payee. If the payee has marked their address "NEW", you should update your records. If you made payments to more than one payee or the account is in more than one name, enter on the first name line of the information return only the name of the payee whose TIN is shown on Form W-9. You may show the names of any other individual payees in the area below the first name line on the information return. Forms W-9 showing an ITIN must have the name exactly as shown on line 1a of the Form W-7 application. If you are a PFFI reporting a U.S. account on Form 8966, FATCA Report, and the account is jointly held by U.S. persons, file a separate Form 8966 for each holder.



For more information on the names and TINs to use for information reporting, see section J of the General Instructions for Certain Information Returns.

Notices From the IRS

The IRS will send you a notice if the payee's name and TIN on the information return you filed do not match the IRS's records. (See *Taxpayer Identification Number (TIN) Matching*, next.) If you receive a backup withholding notice, you may have to send a "B" notice to the payee to solicit another TIN. Pub. 1281, Backup Withholding for Missing and Incorrect Name/TIN(s), contains copies of the two types of "B" notices. If you receive a penalty notice, you also may have to send a solicitation to the payee. See Pub. 1586, Reasonable Cause Regulations and Requirements for Missing and Incorrect Name/TINs.

Taxpayer Identification Number (TIN) Matching

TIN Matching allows a payer or authorized agent who is required to file Forms 1099-B, DIV, INT, K, MISC, OID, and/or PATR to match TIN and name combinations with IRS records before submitting the forms to the IRS. TIN Matching is one of the e-services products that is offered and is accessible through the IRS website. Go to IRS.gov and enter "e-services" in the search box. It is anticipated that payers who validate the TIN and name combinations before filing information returns will receive fewer backup withholding (CP2100) notices and penalty notices.

Additional Information

For more information on backup withholding, see Pub. 1281.

U.S. Withholding Tax Return for Certain Dispositions by Foreign Persons

Go to www.irs.gov/Form8288 for instructions and the latest information.

OMB No. 1545-0902

If this is a corrected return, check here ☐

Complete the withholding agent information and Part I through Part V, as applicable. Also, complete and attach Copies A and B of Form(s) 8288-A or Copy A or B, as applicable, of Form(s) 8288-C. Attach additional sheets if you need more space.

Note: Report only one disposition on each Form 8288 filed.

Withholding Agent Information

1a Name of buyer or other party responsible for withholding. See instructions.	b U.S. taxpayer identification number (TIN)
c Street address, apt. or suite no., or rural route. Do not use a P.O. box.	
d City or town, state or province, country, and ZIP or foreign postal code	e Phone number (optional)
2 Description and location of the U.S. real property interest acquired, transferred or distributed, or description of transferred partnership interest. See instructions.	
3 Date of transfer	4 Date of withholding certificate or date of distribution (see instructions)
5 Number of Forms 8288-A or 8288-C attached	

Part I To Be Completed by the Buyer or Other Transferee Required To Withhold Under Section 1445(a)

6 Amount subject to withholding	6	\$	
7 Withholding tax liability. Multiply line 6 by the applicable withholding rate on line 7a or 7b. Otherwise, check the box on line 7c.			
a 10% (0.10)	7a	\$	
b 15% (0.15)	7b	\$	
c Withholding at an adjusted amount (see instructions) <input type="checkbox"/>	7c	\$	
8 Amount withheld	8	\$	

Part II To Be Completed by an Entity Subject to the Provisions of Section 1445(e)

9 Large trust election to withhold at distribution (see instructions) <input type="checkbox"/>			
10 Amount subject to withholding	10	\$	
11 Withholding tax liability. Multiply line 10 by the applicable withholding rate on line 11a, 11b, or 11c. Otherwise, check the box on line 11d.			
a 10% (0.10)	11a	\$	
b 15% (0.15)	11b	\$	
c 21% (0.21) (or 35% (0.35) for distributions made before January 1, 2018)	11c	\$	
d Withholding at an adjusted amount (see instructions) <input type="checkbox"/>	11d	\$	
12 Amount withheld	12	\$	

Part III To Be Completed by Buyer/Transferee Required To Withhold Under Section 1446(f)(1)

13 Amount subject to withholding	13	\$	
14 Withholding tax liability. Multiply line 13 by the applicable withholding rate on line 14a or check the box on line 14b.			
a 10% (0.10)	14a	\$	
b Withholding at an adjusted amount (see instructions) <input type="checkbox"/>	14b	\$	
15 Amount withheld	15	\$	

Part IV To Be Completed by the Partnership Required To Withhold Under Section 1446(f)(4)**16 Partnership distributions.** Complete the following items.

a	Total number of distributions	16a		
b	Total amount of distributions	16b	\$	
c	Total amount of other withholding	16c	\$	
17	Transferee's liability under section 1446(f)(1) (if known)	17	\$	
18	Total amounts withheld	18	\$	

Part V To Be Completed by Buyer/Transferee Claiming a Refund of Withholding Under Section 1446(f)(4)

19	Amount subject to withholding	19	\$	
20	Amount withheld (see instructions)	20	\$	
21	Withholding tax liability. Multiply line 19 by the applicable withholding rate on line 21a or check the box on line 21b.			
a	10% (0.10)	21a	\$	
b	Withholding at an adjusted amount (see instructions) <input type="checkbox"/>	21b	\$	
22	Amount of refund requested	22	\$	

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of withholding agent, partner, fiduciary, or corporate officer_____
Title (if applicable)_____
Date**Paid Preparer Use Only**

Print/Type preparer's name

Preparer's signature

Date

Check ☐ if self-employed

PTIN

Firm's name

Firm's EIN

Firm's address

Phone no.

Instructions for Form 8288



Department of the Treasury
Internal Revenue Service

(Rev. January 2023)

(Use with the January 2023 revision of Form 8288)

U.S. Withholding Tax Return for Certain Dispositions by Foreign Persons

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

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Future Developments

For the latest information about developments related to Form 8288 and its instructions, such as legislation enacted after they were published, go to [IRS.gov/Form8288](https://www.irs.gov/Form8288).

What's New

- The Tax Cuts and Jobs Act added section 1446(f), effective January 1, 2018, which generally requires that if any portion of the gain on a disposition of an interest in a partnership would be treated under section 864(c)(8) as gain effectively connected with the conduct of a trade or business in the United States, the transferee purchasing the interest in the partnership from a non-U.S. transferor must withhold a tax equal to 10% of the amount realized on the disposition unless an exception to withholding applies.
- Notice 2018-08, 2018-07 I.R.B. 352, available at [IRS.gov/IRB/2018-07_IRB#NOT-2018-08](https://www.irs.gov/IRB/2018-07_IRB#NOT-2018-08), temporarily suspended the application of section 1446(f) to the transfer of publicly traded partnership (PTP) interests.
- Notice 2018-29, 2018-16 I.R.B. 495, available at [IRS.gov/IRB/2018-16_IRB#NOT-2018-29](https://www.irs.gov/IRB/2018-16_IRB#NOT-2018-29), provided interim guidance under section 1446(f)(1) on withholding

related to transfers of non-PTP interests and temporarily suspended withholding under section 1446(f)(4).

- Proposed regulations under section 1446(f), available at [IRS.gov/IRB/2019-27_IRB#REG-105476-18](https://www.irs.gov/irb/2019-27_IRB#REG-105476-18), were issued on May 7, 2019, for transfers of both non-PTP and PTP interests. During the period that [Notice 2018-29](#) applied, instead of applying the rules described in the Notice, taxpayers and other affected persons may choose to apply Regulations sections 1.1446(f)-1, 1.1446(f)-2, and 1.1446(f)-5 of the proposed regulations in their entirety to all transfers as if they were final regulations.
- T.D. 9926, published on November 30, 2020, available at [IRS.gov/IRB/2020-51_IRB#TD-9926](https://www.irs.gov/irb/2020-51_IRB#TD-9926), contains final regulations (the section 1446(f) regulations) relating to withholding and reporting required under section 1446(f)(1), including requirements that apply to brokers effecting transfers of PTP interests and partnership withholding under section 1446(f)(4) (on distributions to a transferee that failed to properly withhold under section 1446(f)(1)). The section 1446(f) regulations also revise certain requirements under section 1446(a) relating to withholding and reporting on distributions made by PTPs.
- The section 1446(f) regulations generally apply to transfers occurring on or after January 29, 2021. However, in accordance with Notice 2021-51, 2021-36 I.R.B. 361, available at [IRS.gov/IRB/2021-36_IRB#NOT-2021-51](https://www.irs.gov/irb/2021-36_IRB#NOT-2021-51), the following provisions of the section 1446(f) regulations apply to transfers occurring on or after January 1, 2023:

- a. Withholding and reporting on transfers of PTP interests,
 - b. The revisions included in the section 1446(f) regulations relating to withholding on PTP distributions under section 1446(a), and
 - c. Partnership withholding under section 1446(f)(4) on distributions to a transferee that failed to properly withhold under section 1446(f)(1).
- To reflect the withholding and reporting requirements under sections 1446(f)(1) and (f)(4), applicable to transfers occurring on or after January 1, 2023, updated Forms 8288 and 8288-A and a new Form 8288-C are being released.
 - These instructions have been updated to incorporate the use of this form for a transferee of a non-PTP interest required to withhold under section 1446(f)(1) on the amount realized from the transfer and for partnership withholding under section 1446(f)(4) on distributions to a transferee that failed to withhold under section 1446(f)(1).
 - The *General Instructions* have been subdivided into three major sections:

- a. The [General Instructions for Section 1445 Withholding](#),
- b. The [General Instructions for Section 1446\(f\)\(1\) Withholding](#), and
- c. The [General Instructions for Section 1446\(f\)\(4\) Withholding](#).

General Instructions

Purpose of Form

Form 8288 is used to report and transmit amounts withheld on certain dispositions and distributions that are

subject to sections 1445 and 1446(f)(1). It is also used to report and transmit amounts withheld under section 1446(f)(4) or to claim a credit or refund for amounts withheld under section 1446(f)(4) for transfers occurring on or after January 1, 2023.

Section 1445 withholding. A withholding obligation under section 1445 is generally imposed on the buyer or other transferee (withholding agent) when a U.S. real property interest (USRPI) is acquired from a foreign person. The withholding obligation also applies to foreign and domestic corporations, qualified investment entities (QIEs), and the fiduciaries of certain trusts and estates that make certain distributions. This withholding serves to collect U.S. tax that may be owed by the foreign person.

TIP *If an exception applies, you may be required to withhold at a reduced rate or you may not be required to withhold. See [Exceptions to Section 1445 Withholding](#), later.*

Section 1446(f)(1) withholding. Section 1446(f)(1) generally imposes a withholding obligation on the buyer or other transferee (withholding agent) on a transfer of an interest in a partnership (including a distribution made with respect to such interest) by a foreign person (transferor) if:

1. The transferor realized a gain on the sale, and
2. Any portion of the gain would be treated under section 864(c)(8) as effectively connected with the conduct of a trade or business within the United States.

TIP *If an exception applies, you may be required to withhold at a reduced rate or you may not be required to withhold. See [Exceptions to Section 1446\(f\)\(1\) Withholding on Transfers of Non-PTP Interests](#), later.*

Section 1446(f)(4) withholding. Section 1446(f)(4) generally imposes a withholding obligation on a partnership that makes a distribution with respect to the transferee of a partnership interest that failed to withhold the required amount under section 1446(f)(1). A transferee may claim a refund for the excess amount if the partnership has withheld amounts in excess of the tax and interest owed by the transferee.

TIP *If an exception applies, the partnership may not be required to withhold. See [Exceptions to Section 1446\(f\)\(4\) Withholding](#), later.*

When not to use Forms 8288 and 8288-A. Do not use Forms 8288 and 8288-A, instead use Forms 1042 and 1042-S to report and pay over these withheld amounts for any of the following.

1. A distribution with respect to gains from the disposition of a USRPI from a trust that is regularly traded on an established securities market is subject to section 1445 but is not reported on Forms 8288 and 8288-A.
2. A dividend distribution by a qualified investment entity (QIE) to a nonresident alien or a foreign corporation that is attributable to gains from sales or exchanges of a USRPI by the QIE. However, a dividend distribution by a QIE is not subject to withholding under section 1445 as a gain from the sale or exchange of a USRPI if:

- a. The distribution is on stock regularly traded on a securities market in the United States, and
- b. The nonresident alien or foreign corporation did not own more than 10% (for dispositions and distributions before December 17, 2015, did not own more than 5% of such stock in the case of a real estate investment trust (REIT)) of that stock at any time during the 1-year period ending on the date of the distribution.

The dividend distribution, however, may be subject to withholding under section 1441 or 1442.

3. A distribution of effectively connected taxable income by a PTP that is subject to the withholding requirements of section 1446(a).
4. The transfer of a PTP interest (including a distribution made with respect to the PTP interest) that is subject to withholding under section 1446(f)(1).

General Instructions for Section 1445 Withholding

A withholding obligation under section 1445 is generally imposed on the buyer or other transferee (withholding agent) when a USRPI is acquired from a foreign person. The withholding obligation also applies to foreign and domestic corporations, QIEs, and the fiduciaries of certain trusts and estates.

Who Must File

A buyer or other transferee of a USRPI must complete and file Part I of Form 8288 to report and transmit the amount withheld. A corporation, QIE, or fiduciary that is required to withhold tax under section 1445(e) must complete and file Part II of Form 8288 to report and transmit the amount withheld. If two or more persons are joint transferees, each is obligated to withhold. However, the obligation of each will be met if one of the joint transferees withholds and transmits the required amount to the IRS.

Amount To Withhold

Generally, you must withhold 15% of the amount realized on the disposition by the [transferor](#), defined later.

Note. Prior to February 17, 2016, the transferor was generally required to withhold 10% of the amount realized on the disposition.

For information about:

- Withholding at 21% (35% for distributions made before January 1, 2018), see [Entities Subject to Section 1445\(e\)](#), later;
- Withholding at a reduced amount, see [Purchase of residence for \\$1 million or less](#); and
- Applying for reduction or elimination of withholding, see [Withholding certificate issued by the IRS](#), later.

Joint transferors. If one or more foreign persons and one or more U.S. persons jointly transfer a USRPI, you must determine the amount subject to withholding in the following manner.

1. Allocate the amount realized from the transfer among the transferors based on their capital contribution to the property. For this purpose, a husband and wife are treated as having contributed 50% each.

2. Withhold on the total amount allocated to foreign transferors.

3. Credit the amount withheld among the foreign transferors as they mutually agree. The transferors must request that the withholding be credited as agreed upon by the 10th day after the date of transfer. If no agreement is reached, credit the withholding by evenly dividing it among the foreign transferors.

When To File

A transferee must file Form 8288 and transmit the tax withheld to the IRS by the 20th day after the date of transfer.

You must withhold even if an application for a withholding certificate is or has been submitted to the IRS on the date of transfer. However, you do not have to file Form 8288 and transmit the withholding until the 20th day after the day the IRS mails you a copy of the withholding certificate or notice of denial. But, if the principal purpose for filing the application for a withholding certificate was to delay paying the IRS the amount withheld, interest and penalties will apply to the period beginning on the 21st day after the date of transfer and ending on the day full payment is made.

Installment payments. You must withhold the full amount at the time of the first installment payment. If you cannot because the payment does not involve sufficient cash or other liquid assets, you may obtain a withholding certificate from the IRS. See the instructions for Form 8288-B for more information.

Where To File

Send Form 8288 with the amount withheld, and copies A and B of Form(s) 8288-A to:

Ogden Service Center
P.O. Box 409101
Ogden, UT 84409

Forms 8288-A Must Be Attached

Anyone who completes Form 8288 must also complete a Form 8288-A for each person subject to withholding. Copies A and B of Form 8288-A must be attached to Form 8288. Copy C is for your records. Multiple Forms 8288-A related to a single transaction can be filed with one Form 8288. You are not required to furnish a copy of Form 8288 or 8288-A directly to the transferor.

The IRS will stamp Copy B of each Form 8288-A and will forward the stamped copy to the foreign person subject to withholding at the address shown on Form 8288-A. To receive credit for the withheld amount, the transferor must generally attach the stamped Copy B of Form 8288-A to a U.S. income tax return (for example, Form 1040-NR or 1120-F) or application for early refund filed with the IRS.

Transferor's taxpayer identification number (TIN) missing. If you do not have the transferor's TIN, you must still file Forms 8288 and 8288-A. A stamped copy of Form 8288-A will not be provided to the transferor if the transferor's TIN is not included on that form. The IRS will send a letter to the transferor requesting the TIN and

providing instructions for how to get a TIN. When the transferor provides the IRS with a TIN, the IRS will provide the transferor with a stamped Copy B of Form 8288-A.

Penalties

Under section 6651, penalties apply for failure to file Form 8288 when due and for failure to pay the withholding when due. In addition, if you are required to but do not withhold tax under section 1445, the tax, including interest, may be collected from you. Under section 7202, you may be subject to a penalty of up to \$10,000 for willful failure to collect and pay over the tax. Corporate officers or other responsible persons may be subject to a penalty under section 6672 equal to the amount that should have been withheld and paid over to the IRS.

Definitions for Section 1445 Withholding

Agent. An agent is any person who represents the transferor or transferee in any negotiation with another person (or another person's agent) relating to the transaction or in settling the transaction.

Amount realized. The sum of the cash paid or to be paid (not including interest or original issue discount), the fair market value of other property transferred or to be transferred, and the amount of any liability assumed by the transferee or to which the USRPI is subject immediately before and after the transfer. Generally, the amount realized for purposes of this withholding is the sales or contract price.

Date of transfer. The first date on which consideration is paid or a liability is assumed by the transferee. However, for purposes of sections 1445(e)(2), (3), and (4), and Regulations sections 1.1445-5(c)(1)(iii) and 1.1445-5(c)(3), the date of transfer is the date of distribution that creates the obligation to withhold. Payment of consideration does not include the payment before passage of legal or equitable title of earnest money (other than pursuant to an initial purchase contract), a good-faith deposit, or any similar amount primarily intended to bind the parties to the contract and subject to forfeiture. A payment that is not forfeitable may also be considered earnest money, a good-faith deposit, or a similar sum.

Domestically controlled QIE. A QIE is domestically controlled if at all times during the testing period less than 50% in value of its stock was held, directly or indirectly, by foreign persons. The testing period is the shorter of:

- The 5-year period ending on the date of the disposition (or distribution), or
- The period during which the entity was in existence.

For the purpose of determining whether a QIE is domestically controlled, the following rules apply.

1. A person holding less than 5% of any class of stock of a QIE which is regularly traded on an established securities market in the United States at all times during the testing period will be treated as a U.S. person unless the QIE has actual knowledge that such person is not a U.S. person.

2. Any stock in a QIE that is held by another QIE will be treated as held by a foreign person if:

- Any class of stock of such other QIE is regularly traded on an established securities market, or

- Such other QIE is a regulated investment company (RIC) that issues certain redeemable securities.

Notwithstanding the above, the stock of the QIE will be treated as held by a U.S. person if such other QIE is domestically controlled.

3. Stock in a QIE that is held by any other QIE not described above will be treated as held by a U.S. person in proportion to the stock ownership of such other QIE which is (or is treated as) held by a U.S. person.

Foreign person. A nonresident alien individual, a foreign corporation that does not have a valid election under section 897(i) to be treated as a domestic corporation, a foreign partnership, a foreign trust, or a foreign estate. A resident alien individual is not a foreign person.

A qualified foreign pension fund or any entity wholly owned by such fund is not a foreign person for purposes of section 1445. See sections 897(l) and 1445(f)(3) for more information.

Qualified investment entity (QIE). A QIE is:

- Any REIT, and
- Any RIC which is a U.S. real property holding corporation or which would be a U.S. real property holding corporation.

In determining if a RIC is a U.S. real property holding corporation, the RIC is required to include as USRPIs its holdings of stock in a RIC or REIT that is a U.S. real property holding company, even if such stock is regularly traded and the RIC did not own more than 10% of such stock in the case of a REIT (5% for dispositions before December 17, 2015) or 5% of such stock in the case of a RIC, and even if such stock is domestically controlled.

For more information, see [Pub. 515](#).

Qualified substitute. For this purpose, a qualified substitute is:

- The person (including any attorney or title company) responsible for closing the transaction, other than the transferor's agent; and
- The transferee's agent.

Transferee. Any person, foreign or domestic, that acquires a USRPI by purchase, exchange, gift, or any other transfer.

Transferor. For purposes of this withholding, this means any foreign person that disposes of a USRPI by sale, exchange, gift, or any other disposition. A disregarded entity cannot be the transferor for purposes of section 1445. Instead, the person considered as owning the assets of the disregarded entity for federal tax purposes is regarded as the transferor. A **disregarded entity** for these purposes means an entity that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, a qualified REIT subsidiary as defined in section 856(i), or a qualified subchapter S subsidiary under section 1361(b)(3)(B).

Transferee's or transferor's agent. For purposes of section 1445(e), a transferee's or transferor's agent is any person who represents or advises an entity, a holder of an interest in an entity, or a fiduciary with respect to the planning, arrangement, or completion of a transaction described in sections 1445(e)(1) through (4).

U.S. real property interest (USRPI). Any interest, other than an interest solely as a creditor, in the following.

1. Real property located in the United States or the U.S. Virgin Islands.
2. Certain personal property associated with the use of real property.
3. A domestic corporation, unless it is shown that the corporation was not a U.S. real property holding corporation during the previous 5 years (or during the period in which the transferor held the interest, if shorter).

A USRPI does not include the following.

1. An interest in a domestically controlled QIE.
2. An interest in a REIT that is held by a qualified shareholder. For the definition of a qualified shareholder, see section 897(k)(3). But see section 897(k)(2)(B) for the cut-back rule if the qualified shareholder has one or more applicable investors.
3. An interest in a corporation that:
 - Did not hold any USRPI as of the date the interest in such corporation is disposed,
 - Has disposed of all its USRPIs in transactions in which the full amount of any gain was recognized as provided in section 897(c)(1)(B), and
 - Neither such corporation nor any predecessor of such corporation was a REIT or a RIC at any time during the shorter of the previous 5 years or the period in which the transferor held the interest.
4. An interest in certain publicly traded corporations, partnerships, and trusts.

See Regulations sections 1.897-1 and 1.897-2 for more information. Also see [Transferred property that isn't a USRPI](#), later.

Withholding agent. For purposes of this return, this means the buyer or other transferee who acquires a USRPI from a foreign person.

Exceptions to Section 1445 Withholding

Withholding at a Reduced Rate

Purchase of residence for \$1 million or less.

Withholding is required at a reduced rate of 10% in the case of a disposition of:

- A property which is acquired by the transferee for use by the transferee as a residence, and
- The amount realized for the property is \$1 million or less. However, see *Purchase of residence for \$300,000 or less*, next.

Withholding Not Required

Purchase of residence for \$300,000 or less. If one or more individuals acquire U.S. real property for use as a residence and the amount realized (in most cases, the sales price) is \$300,000 or less, no withholding is required.

A USRPI is acquired for use as a residence if you or a member of your family has definite plans to reside in the property for at least 50% of the number of days the property is used by any person during each of the first two 12-month periods following the date of transfer. Do not

take into account the number of days the property will be vacant in making this determination. No form or other document is required to be filed with the IRS for this exception. However, if you do not in fact use the property as a residence, the withholding tax may be collected from you.

This exception applies whether or not the transferor (seller) is an individual, partnership, trust, corporation, or other transferor. However, this exception does not apply if the actual transferee (buyer) is not an individual, even if the property is acquired for an individual.

Transferor not a foreign person. Generally, no withholding is required if you receive a certification of nonforeign status from the transferor, signed under penalties of perjury, stating that the transferor is not a foreign person and containing the transferor's name, address, and TIN (social security number (SSN) or employer identification number (EIN)). A certification of nonforeign status includes a valid Form W-9 submitted by the transferor. The transferor can give the certification to a [qualified substitute](#) (defined earlier). The qualified substitute gives you a statement, under penalties of perjury, that the certification is in the qualified substitute's possession.

If you receive a certification (or statement), the withholding tax cannot be collected from you unless you knew that the certification (or statement) was false or you received a notice from your agent, the transferor's agent, or the qualified substitute that it was false. The certification must be signed by the individual, a responsible officer of a corporation, a general partner of a partnership, or the trustee, executor, or fiduciary of a trust or estate.

A disregarded entity may not certify that it is the transferor for U.S. tax purposes. Rather, the owner of the disregarded entity is treated as the transferor of the property and must provide the certificate of nonforeign status to avoid withholding under section 1445.

A foreign corporation electing to be treated as a domestic corporation under section 897(i) must attach to the certification a copy of the acknowledgment of the election received from the IRS. The acknowledgment must state that the information required by Regulations section 1.897-3 has been determined to be complete. If the acknowledgment is not attached, you may not rely on the certification. Keep any certification of nonforeign status you receive in your records for 5 years after the year of transfer.

A qualified foreign pension fund or any entity wholly owned by such fund may provide a certification of nonforeign status to establish that it is not a foreign person for purposes of section 1445. See sections 897(l) and 1445(f)(3) for more information.

You may also use other means to determine that the transferor is not a foreign person. But if you do and it is later determined that the transferor is a foreign person, the withholding tax may be collected from you.

Late notice of false certification. If, after the date of transfer, you receive a notice from your agent, the transferor's agent, or the qualified substitute that the certification of nonforeign status is false, you do not have

to withhold on consideration paid before you received the notice. However, you must withhold the full 15% of the amount realized from any consideration that remains to be paid, if possible. You must do this by withholding and paying over the entire amount of each successive payment of consideration until the full 15% has been withheld and paid to the IRS. These amounts must be reported and transmitted to the IRS by the 20th day following the date of each payment.

Transferred property that isn't a USRPI. If you acquire an interest in property that is not a USRPI (defined under [U.S. real property interest \(USRPI\)](#), earlier), withholding is generally not required. A USRPI includes certain interests in U.S. corporations, as well as direct interests in real property and certain associated personal property.

No withholding is required on the acquisition of an interest in a domestic corporation if (a) any class of stock of the corporation is regularly traded on an established securities market, or (b) the transferee receives a statement issued by the corporation that the interest is not a USRPI, unless you know that the statement is false or you receive a notice from your agent or the transferor's agent that the statement is false. A corporation's statement may be relied on only if it is dated not more than 30 days before the date of transfer.

Late notice of false statement. If, after the date of transfer, you receive a notice indicating that the statement is false, see [Late notice of false certification](#), earlier.

Generally, no withholding is required on the acquisition of an interest in a foreign corporation. However, withholding may be required if the foreign corporation has made the election under section 897(i) to be treated as a domestic corporation.

Transferor's nonrecognition of gain or loss. You may receive a notice from the transferor signed under penalties of perjury stating that the transferor is not required to recognize gain or loss on the transfer because of a nonrecognition provision of the Internal Revenue Code (see Temporary Regulations section 1.897-6T(a)(2)) or a provision in a U.S. tax treaty. You may rely on the transferor's notice, and not withhold, unless (a) only part of the gain qualifies for nonrecognition, or (b) you know or have reason to know that the transferor is not entitled to the claimed nonrecognition treatment.

No particular form is required for this notice. By the 20th day after the date of transfer, you must send a copy of the notice of nonrecognition (with a cover letter giving your name, address, and TIN) to:

Ogden Service Center
P.O. Box 409101
Ogden, UT 84409

See Regulations section 1.1445-2(d)(2) for more information on the transferor's notice of nonrecognition.



A notice of nonrecognition cannot be used for the exclusion from income under section 121, like-kind exchanges that do not qualify for nonrecognition treatment in their entirety, and deferred like-kind exchanges that have not been completed when it is time to file Form 8288. In these cases, a withholding certificate issued by the IRS, as described next, must be obtained.

Withholding certificate issued by the IRS. A withholding certificate may be issued by the IRS to reduce or eliminate withholding on dispositions of USRPIs by foreign persons. Either a transferee or transferor may apply for the certificate. The certificate may be issued if:

- Reduced withholding is appropriate because the 10%, 15%, or 21% (35% for distributions made before January 1, 2018) amount exceeds the transferor's maximum tax liability;
- The transferor is exempt from U.S. tax or nonrecognition provisions apply; or
- The transferee or transferor enters into an agreement with the IRS for the payment of the tax.

An application for a withholding certificate must comply with the provisions of Regulations sections 1.1445-3 and 1.1445-6, and Rev. Proc. 2000-35, 2000-35 I.R.B. 211. You can find Rev. Proc. 2000-35 at [IRS.gov/pub/irs-irbs/irb00-35.pdf](https://www.irs.gov/pub/irs-irbs/irb00-35.pdf). In certain cases, you may use Form 8288-B to apply for a withholding certificate. The IRS will normally act on an application by the 90th day after a complete application is received.

If you receive a withholding certificate from the IRS that excuses withholding, you are not required to file Form 8288. However, if you receive a withholding certificate that reduces (rather than eliminates) withholding, there is no exception to withholding, and you are required to file Form 8288. Attach a copy of the withholding certificate to Form 8288. See [When To File](#) under *General Instructions for Section 1445 Withholding*, earlier, for more information.

No consideration paid. Withholding is not required if the amount realized by the transferor is zero (for example, the property is transferred as a gift and the recipient does not assume any liabilities or furnish any other consideration to the transferor).

Options to acquire USRPIs. No withholding is required with respect to any amount realized by the grantor on the grant or lapse of an option to acquire a USRPI. However, withholding is required on the sale, exchange, or exercise of an option.

Property acquired by a governmental unit. If the property is acquired by the United States, a U.S. state or possession or political subdivision, or the District of Columbia, withholding is generally not required.

For rules that apply to foreclosures, see Regulations section 1.1445-2(d)(3).

Applicable wash sale transaction. If a distribution from a domestically controlled QIE is treated as a distribution of a USRPI only because an interest in the entity was disposed of in an applicable wash sale transaction, withholding is generally not required. See section 897(h)(5).

Late Filing of Certification or Notice

You may be eligible for relief for a late filing if a statement or notice was not provided to the relevant person or the IRS by the specified deadline and if you have reasonable cause for the failure to make a timely filing. Once you become aware that you have failed to timely file certain certificates or notices, you must file the required certification or notice with the appropriate person or the IRS. Also include the following.

- A statement at the top of the document(s) that it is “FILED PURSUANT TO REV. PROC. 2008-27.”
- An explanation describing why the failure was due to reasonable cause. Within the explanation, provide that you filed with, or obtained from, an appropriate person the required certification or notice.

The completed certification or notice attached to the explanation must be sent to:

Ogden Service Center
P.O. Box 409101
Ogden, UT 84409

For more information, see Rev. Proc. 2008-27, 2008-21 I.R.B. 1014, available at [IRS.gov/IRB/2008-21_IRB#RP-2008-27](https://www.irs.gov/irb/2008-21_IRB#RP-2008-27).

Liability of Agents

If you (or the [qualified substitute](#)) received (a) a transferor’s certification of nonforeign status, or (b) a corporation’s statement that an interest is not a USRPI, and the [transferee’s or transferor’s agent](#), or the substitute, knows the document is false, the agent (or substitute) must notify you. If notification is not provided, the agent (or substitute) will be liable for the tax that should have been withheld, but only to the extent of the agent’s (or substitute’s) compensation from the transaction.

If you (or the substitute) receive a notice of false certification or statement from your [agent](#), the transferor’s agent, or the qualified substitute, you must withhold tax as if you had not received a certification or statement. See [Late notice of false certification](#), earlier.

A person is not treated as an agent if the person only performs one or more of the following acts in connection with the transaction.

1. Receiving and disbursing any part of the consideration.
2. Recording any document.
3. Typing, copying, and other clerical tasks.
4. Obtaining title insurance reports and reports concerning the condition of the property.
5. Transmitting documents between the parties.
6. Functioning exclusively in his or her capacity as a representative of a condominium association or cooperative housing corporation. This exemption includes the board of directors, the committee, or other governing body.

Entities Subject to Section 1445(e)

Withholding under section 1445(e) is required on certain distributions and other transactions by domestic or foreign

corporations, QIEs, trusts, and estates. A domestic trust or estate must withhold 21% (35% for distributions made before January 1, 2018) of the amount distributed to a foreign beneficiary from a “U.S. real property interest account” that it is required to establish under Regulations section 1.1445-5(c)(1)(iii). A foreign corporation that has not made the election under section 897(i) must withhold 21% (35% for distributions made before January 1, 2018) of the gain it recognizes on the distribution of a USRPI to its shareholders. Certain domestic corporations are required to withhold tax on distributions to foreign shareholders.

No withholding is required on the transfer of an interest in a domestic corporation if any class of stock of the corporation is regularly traded on an established securities market. Also, no withholding is required on the transfer of an interest in a PTP or trust.

No withholding will be required with respect to an interest holder if the entity or fiduciary receives a certification of nonforeign status from the interest holder. A certification of nonforeign status includes a valid Form W-9 submitted by the transferor. An entity or fiduciary may also use other means to determine that an interest holder is not a foreign person, but if it does so and it is later determined that the interest holder is a foreign person, the withholding may be collected from the entity or fiduciary.

Section 1445(e)(1) Transactions

Partnerships. A domestic partnership that is not publicly traded must withhold tax under section 1446(a) on effectively connected taxable income allocated to its foreign partners and must file Forms 8804 and 8805. A PTP or nominee must generally withhold tax under section 1446(a) on distributions to its foreign partners and must file Forms 1042 and 1042-S. Because a domestic partnership that disposes of a USRPI is required to withhold under section 1446(a), it is not required to withhold under section 1445(e)(1).

Trusts and estates. If a domestic trust or estate disposes of a USRPI, the amount of gain realized must be paid into a separate “USRPI account.” For these purposes, a domestic trust is one that does not make the large trust election (explained next), is not a QIE, and is not publicly traded. The fiduciary must withhold 21% (35% for distributions made before January 1, 2018) of the amount distributed to a foreign person from the account during the tax year of the trust or estate in which the disposition occurred. The withholding must be paid over to the IRS within 20 days of the date of distribution. Special rules apply to grantor trusts. See Regulations section 1.1445-5 for more information and how to compute the amount subject to withholding.

Large trust election. Trusts with more than 100 beneficiaries may make an election to withhold upon distribution rather than at the time of transfer. The amount to be withheld from each distribution is 21% (35% for distributions made before January 1, 2018) of the amount attributable to the foreign beneficiary’s proportionate share of the current balance of the trust’s section 1445(e)(1) account. This election does not apply to any QIE or to any publicly traded trust. Special rules apply to large trusts that make recurring sales of growing crops and timber.

A trust's section 1445(e)(1) account is the total net gain realized by the trust on all section 1445(e)(1) transactions after the date of the election, minus the total of all distributions made by the trust after the date of the election from such total net gain. See Regulations section 1.1445-5(c)(3) for more information.

Section 1445(e)(2) Transactions

A foreign corporation that distributes a USRPI must generally withhold 21% (35% for distributions made before January 1, 2018) of the gain recognized by the corporation. No withholding or reduced withholding is required if the corporation receives a withholding certificate from the IRS.

Section 1445(e)(3) Transactions

Generally, a domestic corporation that distributes any property to a foreign person that holds an interest in the corporation must withhold 15% (10% for distributions before February 17, 2016) of the fair market value of the property distributed if:

- The foreign person's interest in the corporation is a USRPI under section 897; and
- The property is distributed in redemption of stock under section 302, in liquidation of the corporation under sections 331 through 346, or with respect to stock under section 301 that is not made out of the earnings and profits of the corporation.

No withholding or reduced withholding is required if the corporation receives a withholding certificate from the IRS.

Section 1445(e)(4) Transactions

No withholding is required under section 1445(e)(4), relating to certain taxable distributions by domestic or foreign partnerships, trusts, and estates, until the effective date of a Treasury Decision under section 897(e)(2)(B)(ii) and (g).



Though withholding is not currently required under section 1445(e)(4), withholding may be required under section 1446(f)(1) on the amount realized when a domestic or foreign partnership makes a distribution to a foreign partner.

Section 1445(e)(5) Transactions

The transferee of a partnership interest must withhold 15% (10% for dispositions before February 17, 2016) of the amount realized on the disposition by a foreign partner of an interest in a domestic or foreign partnership in which at least 50% of the value of the gross assets consists of USRPIs and at least 90% of the value of the gross assets consists of U.S. real property, interests plus any cash or cash equivalents. However, no withholding is required under section 1445(e)(5) for dispositions of interests in other partnerships, trusts, or estates until the effective date of a Treasury Decision under section 897(g). No withholding is required if, no earlier than 30 days before the transfer, the transferee receives a statement signed by a general partner under penalties of perjury that at least 50% of the value of the gross assets of the partnership does not consist of USRPIs or that at least 90% of the value of the gross assets does not consist of USRPIs, plus

cash or cash equivalents. The transferee may rely on the statement unless the transferee knows it is false or the transferee receives a false statement notice pursuant to Regulations section 1.1445-4.



A disposition of a partnership interest that meets this exception may instead be subject to withholding under section 1446(f)(1). See [Transfers of Partnership Interests Subject to Withholding Under Sections 1445\(e\)\(5\) and 1446\(f\)\(1\)](#), later.

Section 1445(e)(6) Transactions

A QIE must withhold 21% (35% for distributions made before January 1, 2018) of a distribution to a nonresident alien or a foreign corporation that is treated as gain realized from the sale or exchange of a USRPI. No withholding under section 1445 is required on a distribution to a nonresident alien or foreign corporation if the distribution is on stock regularly traded on a securities market in the United States and the alien or corporation did not own more than 10% (for distributions before December 17, 2015, did not own more than 5% of such stock in case of a REIT) of that stock at any time during the 1-year period ending on the date of distribution.

A distribution made after December 17, 2015, by a REIT is generally not treated as gain from the sale or exchange of a USRPI if the shareholder is a qualified shareholder (as described in section 897(k)(3)).

General Instructions for Section 1446(f)(1) Withholding

Section 1446(f)(1) generally imposes a 10% withholding obligation on the buyer or other transferee (withholding agent) when an interest in a partnership is acquired from a foreign person (transferor) if:

1. The transferor realized a gain on the sale, and
2. Any portion of the gain would be treated under section 864(c)(8) as effectively connected with the conduct of a trade or business within the United States (effectively connected gain).

A transfer can occur when a partnership distribution results in gain under section 731. Under section 1446(f)(4), if the transferee fails to withhold any required amount, the partnership must deduct and withhold from distributions to the transferee the amount that the transferee failed to withhold (plus interest). See [General Instructions for Section 1446\(f\)\(4\) Withholding](#), later.

Who Must File

Unless any of exceptions 1 through 6 of the [Exceptions to Section 1446\(f\)\(1\) Withholding on Transfers of Non-PTP Interests](#), later, applies, a buyer or other transferee of a partnership interest must complete and file Part III of Form 8288 to report and transmit the amount withheld. However, if [exception 6](#) applies, the transferee has a separate filing obligation.

Amount To Withhold

Generally, you must withhold 10% of the [transferor's](#) amount realized on the [transfer](#), defined later.

When To File

A transferee must file Form 8288 and transmit the tax withheld to the IRS by the 20th day after the date of transfer.

Where To File

Send Form 8288 with the amount withheld, and copies A and B of Form(s) 8288-A to:

Ogden Service Center
P.O. Box 409101
Ogden, UT 84409

Forms 8288-A Must Be Attached

Anyone who completes Form 8288 must also complete a Form 8288-A for each person subject to withholding. Copies A and B of Form 8288-A must be attached to Form 8288. Copy C is for your records. Multiple Forms 8288-A related to a single transaction can be filed with one Form 8288. You are not required to furnish a copy of Form 8288 or 8288-A directly to the transferor.

The IRS will stamp Copy B of each Form 8288-A and will forward the stamped copy to the foreign person subject to withholding at the address shown on Form 8288-A. To receive credit for the withheld amount, the transferor must generally attach the stamped Copy B of Form 8288-A to a U.S. income tax return (for example, Form 1040-NR or 1120-F).

Transferor's taxpayer identification number (TIN) missing. If you do not have the transferor's TIN, you must still file Forms 8288 and 8288-A. A stamped copy of Form 8288-A will not be provided to the transferor if the transferor's TIN is not included on that form. The IRS will send a letter to the transferor requesting the TIN and provide instructions for how to get a TIN. When the transferor provides the IRS with a TIN, the IRS will provide the transferor with a stamped Copy B of Form 8288-A.

Penalties

Under section 6651, penalties apply for failure to file Form 8288 when due and for failure to pay the withholding when due. In addition, if you are required to but do not withhold tax under section 1446(f)(1), the tax, including interest, may be collected from you. Under section 7202, you may be subject to a penalty of up to \$10,000 for willful failure to collect and pay over the tax. Corporate officers or other responsible persons may be subject to a penalty under section 6672 equal to the amount that should have been withheld and paid over to the IRS. See Regulations section 1.1461-3 for other penalties that may apply.

Definitions for Section 1446(f)(1) Withholding

Amount realized. See [Determining the Amount To Withhold](#), later.

Controlling partner. A partner that, together with any person that bears a relationship described in section 267(b) or 707(b)(1) to the partner, owns directly or indirectly a 50% or greater interest in the capital, profits, deductions, or losses of the partnership at any time within the 12 months before the determination date.

Foreign person. A person that is not a U.S. person, including a qualified intermediary (QI) branch of a U.S. financial institution (as defined in Regulations section 1.1471-1(b)(109)).

TIN. The TIN assigned to a person under section 6109.

Transfer. A sale, exchange, or other disposition, which includes a distribution from a partnership to a partner, as well as a transfer treated as a sale or exchange under section 707(a)(2)(B).

Transferee. Any person, foreign or domestic, that acquires a partnership interest through a transfer, and includes a partnership that makes a distribution.

Transferor. Generally means any person, foreign or domestic, that transfers a partnership interest. In the case of a trust, to the extent all or a portion of the income of the trust is treated as owned by the grantor or another person under sections 671 through 679 (such trust, a grantor trust), the term "transferor" means the grantor or such other person.

Transferor's agent or transferee's agent. Any person who represents the transferor or transferee (respectively) in any negotiation with another person relating to the transaction or in settling the transaction. A person will not be treated as a transferor's agent or a transferee's agent solely because it performs one or more of the activities described in Regulations section 1.1445-4(f)(3) (relating to activities of settlement officers and clerical personnel).

U.S. person. A person described in section 7701(a)(30).

Exceptions to Section 1446(f)(1) Withholding on Transfers of Non-PTP Interests

A transferee, including a partnership when the partner is a distributee, is not required to withhold on the transfer of a non-PTP interest if it properly relies on one of the following six certifications, the requirements of which are more fully described in Regulations section 1.1446(f)-2(b) and [Pub. 515](#). A transferee may not rely on a certification if it has actual knowledge that the certification is incorrect or unreliable. A certification must provide the name and address of the person providing it, be signed under penalties of perjury, and generally include the TIN of the transferor. See Regulations sections 1.1446(f)-1(c)(2)(i) and 1.1446(f)-2(b)(1). Only the certification for exception 6 (related to claims for treaty benefits) must be submitted to the IRS.

A partnership that is a transferee because it makes a distribution may generally rely on a certification from a transferor in the same manner, with the following modifications.

- For exception 2, a distributing partnership may rely on its books and records or on a certification from the distributee partner.
- For exception 3, a distributing partnership may only rely on its books and records.
- For exception 4, a distributing partnership may only rely on its books and records but must also obtain a representation from the distributee partner stating that the distributee partner satisfies the reporting and tax payment requirements with respect to the partnership's ECI for the look-back period.

A partnership may not rely on its books and records if it knows, or has reason to know, that the information in its own books and records is incorrect or unreliable.

Exceptions

The relevant information for many of the exceptions is based on a determination date. See Regulations section 1.1446(f)-1(c)(4) and [Pub. 515](#) for more information regarding the determination date.

1. Certification of nonforeign status. The transferor provides a certification of nonforeign status signed under penalties of perjury that states that the transferor is not a foreign person, and provides the transferor's name, TIN, and address. A certification of nonforeign status includes a valid Form W-9 (including a valid form that the transferee already has in its possession).

2. Certification of no realized gain. The transferor provides a certification that, on the transfer of the partnership interest, there was no realized gain (including no ordinary income arising from the application of section 751 and Regulations section 1.751-1) as of the determination date.

3. Certification of less than 10% effectively connected gain. The transferor provides a certification from the partnership stating that:

1. On the deemed sale of the partnership assets in the manner described in Regulations section 1.864(c)(8)-1(c) as of the determination date either:

a. The partnership would have no effectively connected gain (or the net amount of its effectively connected gain would be less than the 10% of the total net gain), or

b. The transferor's distributive share of net effectively connected gain resulting from the deemed sale would be less than 10% of the transferor's distributive share of the total net gain; or

2. The partnership was not engaged in a trade or business within the United States at any time during the tax year of the partnership until the date of transfer.

4. Certification of less than 10% effectively connected income (ECI). The transferor provides a certification that:

1. The transferor was a partner in the partnership for the transferor's immediately prior tax year (for which it has already received a Schedule K-1 (Form 1065)) and the 2 preceding tax years (the look-back period) and had a distributive share of gross income from the partnership in each of these years;

2. The transferor's distributive share of gross ECI from the partnership, and from certain persons related to the transferor, as reported on a Schedule K-1 (Form 1065) or other statement required by the partnership, was less than \$1 million for each of the tax years during the look-back period;

3. The transferor's distributive share of partnership gross ECI, as reported on a Schedule K-1 (Form 1065) or other statement required by the partnership, for each year

during the look-back period, was less than 10% of its total distributive share of partnership gross income; and

4. For each year during the look-back period, the transferor's distributive share of partnership ECI or gain (or losses properly allocated and apportioned to that income) has been timely reported on a federal income tax return of the transferor (or if the transferor was a partnership, its direct or indirect nonresident alien and foreign corporate partners) and any tax due with respect to such amounts has been timely paid, provided the return was required to be filed when the transferor furnishes the certification.

5. Certification of nonrecognition. The transferor provides a certification that it is not required to recognize any gain or loss with respect to the transfer by reason of the operation of a nonrecognition provision of the Internal Revenue Code. The certification must briefly describe the transfer and provide the relevant law and facts relating to the certification.

This exception does not apply if only a portion of the gain is not recognized. In that case, the transferor may be able to provide a [Certification of maximum tax liability](#), later, if the requirements under Regulations section 1.1446(f)-2(c)(4)(v) are met.

6. Certification that an income tax treaty applies. The transferor provides a certification using Form W-8BEN or W-8BEN-E, as applicable, or applicable substitute form that meets the requirements under Regulations section 1.1446-1(c)(5) that the transferor is not subject to tax on any gain from the transfer pursuant to an income tax treaty. The form should contain the information necessary to support the claim for treaty benefits. Within 30 days after the date of the transfer, the transferee must mail a copy of the certificate, together with a cover letter providing the name, TIN, and address of the transferee and the partnership in which the interest was transferred to the IRS, at the address in [Where To File](#), earlier. See Regulations section 1.1446(f)-2(b)(7).

The transferor may not provide this certification if any portion of the gain is subject to tax. In that case, the transferor may be able to provide a [Certification of maximum tax liability](#), later, if the requirements under Regulations section 1.1446(f)-2(c)(4)(vi) are met.

Determining the Amount To Withhold

In general, the transferee must withhold 10% of the amount realized. The amount realized includes the following.

1. The cash paid (or to be paid),
2. The fair market value of property transferred (or to be transferred),
3. The amount of any liabilities assumed by the transferee or to which the partnership is subject, and
4. The reduction in the transferor's share of partnership liabilities.

The rules for determining the amount to withhold are contained in Regulations section 1.1446(f)-2(c). See also [Pub. 515](#). If certain requirements are met, the transferee may rely on a certification of the amount of the transferor's share of partnership liabilities reported on the most recent

Schedule K-1 (Form 1065) issued by the partnership or a certification from a partnership that provides the amount of the transferor's share of partnership liabilities as of the determination date.

Modified amount realized. If a foreign partnership is the transferor, separate rules may apply to determine a modified amount realized. The modified amount realized is determined by multiplying the amount realized by the aggregate percentage computed as of the determination date. The aggregate percentage is the percentage of the gain (if any) arising from the transfer that would be allocated to any presumed foreign taxable persons. For this purpose, a presumed foreign taxable person is any person that has not provided a certification of nonforeign status, as previously described in the [exception 1](#) to withholding, or a certification that, pursuant to a tax treaty, no portion of the foreign taxable person's gain is subject to tax. The foreign partnership claims the modified amount realized by providing a certification on Form W-8IMY as provided under Regulations section 1.1446(f)-2(c)(2)(iv). The transferee should not submit the certification to the IRS for approval.

Lack of money or property or lack of knowledge regarding liabilities. Under certain circumstances, the amount that the transferee must withhold equals 100% of the amount realized without regard to any decrease in the transferor's share of the partnership liabilities. These circumstances are if:

1. The amount otherwise required to be withheld would exceed the amount realized determined without regard to the decrease in the transferor's share of partnership liabilities, or
2. The transferee is unable to determine the amount realized because it does not have actual knowledge of the transferor's share of partnership liabilities (and has not received or cannot rely on a certification of the transferor's share of partnership liabilities received from the transferor (including the most recent Schedule K-1 (Form 1065)) or a certification of the transferor's share of liabilities received from the partnership).

Certification of maximum tax liability. A transferor that meets certain requirements can certify its maximum tax liability to the transferee. The maximum tax liability is the amount of the transferor's effectively connected gain multiplied by the applicable percentage described in Regulations section 1.1446-3(a)(2). The applicable percentage for foreign corporations is the highest rate of tax under section 11(b) and for non-corporations is the highest rate of tax under section 1. This certification may be used if a nonrecognition provision or an income tax treaty excludes only a portion of the effectively connected gain. While the certification should not be submitted to the IRS for approval, if a portion of the gain on the transfer is not subject to tax pursuant to an income tax treaty, the certification requirements described in [exception 6](#) must be met.

Transfers of Partnership Interests Subject to Withholding Under Sections 1445(e)(5) and 1446(f)(1)

The transfer of a partnership interest may be subject to withholding under section 1445(e)(5) or Regulations section 1.1445-11T(d)(1) if 50% or more of the value of the partnership's gross assets consists of USRPIs, and 90% or more of the value of its gross assets consists of USRPIs plus any cash or cash equivalents. The transfer of a partnership interest may also be subject to withholding under section 1446(f)(1) and Regulations section 1.1446(f)-2, if the partnership also holds other property used in the conduct of a trade or business within the United States. If both sections 1445(e)(5) and 1446(f)(1) could apply to the same transfer, the transfer is subject to the payment and reporting requirements of section 1445 only and not section 1446(f)(1). However, if the transferor has applied for a withholding certificate under the last sentence of Regulations section 1.1445-11T(d)(1), the transferee must withhold the greater of the amounts required under section 1445(e)(5) or 1446(f)(1). A transferee that has complied with the withholding requirements under either section 1445(e)(5) or 1446(f)(1), as described in this paragraph, will be deemed to satisfy its withholding requirement.

Liability of Agents

A transferee's or transferor's agent must provide notice to a transferee (or other person required to withhold) if that agent is furnished with a certification described in Regulations 1.1446(f)-1 or 1.1446(f)-2 that the agent knows is false. A person required to withhold may not rely on a certification if it receives the notice described in Regulations section 1.1446(f)-5(c)(1). An agent's liability is limited to the amount of compensation that the agent derives from the transaction. In addition, an agent that assists in the preparation of, or fails to disclose knowledge of, a false certification may be liable for civil and criminal penalties. For more information, see Regulations section 1.1446(f)-5.

General Instructions for Section 1446(f)(4) Withholding

Section 1446(f)(4) generally imposes a withholding obligation on a partnership that makes a distribution to a transferee partner that failed to withhold the required amount under section 1446(f)(1) when it acquired an interest in the partnership. Withholding under section 1446(f)(4) applies to transfers of interests in partnerships, other than publicly traded partnerships (PTPs), that occur on or after January 1, 2023.

Who Must File

Unless an exception applies (see [Exceptions to Section 1446\(f\)\(4\) Withholding](#), later), a partnership that makes a distribution to a transferee partner that failed to properly withhold under section 1446(f)(1) must complete and file Part IV of Form 8288 to report and transmit the amount withheld.

Amount To Withhold

The partnership must generally withhold the entire amount of each distribution made to the transferee partner until it has met its withholding obligation under section 1446(f)(4). Generally, the partnership's withholding obligation will be 10% of the amount realized on the transfer, plus interest. See [Withholding under Section 1446\(f\)\(4\)](#), later.

When To File

A partnership must file Form 8288 and transmit the tax withheld to the IRS by the 20th day after the date of the distribution to the transferee.

Where To File

Send Form 8288 with the amount withheld, and copy A of Form(s) 8288-C to:

Ogden Service Center
P.O. Box 409101
Ogden, UT 84409

Form 8288-C Must Be Attached

A partnership should file a separate Form 8288 with Part IV completed and only one Form 8288-C attached for each distribution per transferee partner subject to the withholding requirements of section 1446(f)(4). Copy A of Form 8288-C must be attached to Form 8288. Copy B is sent to the transferee(s). Copy C is for your records.

Transferor's taxpayer identification number (TIN) missing. If you do not have the transferee's TIN, you must still file Forms 8288 and 8288-C. The IRS will send a letter to the transferee requesting the TIN and provide instructions for how to get a TIN.



For the definitions of transfer, transferee, and transferor, see Definitions for Section 1446(f)(1) Withholding, earlier.

Penalties

Under section 6651, penalties apply for failure to file Form 8288 when due and for failure to pay the withholding when due. In addition, if you are required to but do not withhold tax under section 1446(f)(4), the tax, including interest, may be collected from you. Under section 7202, you may be subject to a penalty of up to \$10,000 for willful failure to collect and pay over the tax. The general partner(s) or other responsible persons may be subject to a penalty under section 6672 equal to the amount that should have been withheld and paid over to the IRS.

Exceptions to Section 1446(f)(4) Withholding

Withholding has been satisfied by transferee. A partnership is not required to withhold under section 1446(f)(4) if it relies on a timely certification of withholding received from the transferee that states that an exception to withholding applies or that the transferee withheld the full amount required to be withheld.

PTP interests. A PTP is not required to withhold under section 1446(f)(4).

Distributing partnerships. A partnership that is a transferee because it made a distribution subject to

section 1446(f)(1) is not required to withhold under section 1446(f)(4).

Withholding under Section 1446(f)(4)

Certification of withholding. A partnership must determine the amount realized on the transfer and any amount withheld by the transferee based on a certification of withholding from the transferee, without regard to whether the certification is received timely. A partnership may not rely on the certification of withholding if it knows or has reason to know that it is incorrect or unreliable. A partnership that already possesses a certification of nonforeign status (including a Form W-9) for the transferor may instead rely on this certification to determine that it has no withholding obligation. However, if the partnership receives a certification of withholding that is inconsistent with the information on the certification of nonforeign status in its possession, the partnership is treated as having actual knowledge, or reason to know, that the certification of nonforeign status is incorrect or unreliable.

A partnership that does not receive or cannot rely on a certification from the transferee must withhold under section 1446(f)(4) until it receives a certification that it can rely on.

Notification from the IRS. A partnership that receives notification from the IRS that a transferee has provided incorrect information regarding the amount realized or amount withheld on the certification or has failed to pay the IRS the amount reported as withheld on the certification must withhold the amount prescribed in the notification on any distributions made to the transferee on or after the date that is 15 days after it receives the notification. The IRS will not issue a notification on the basis that the amount realized on the certification is incorrect if it determines that the transferee properly relied on a certification that included the incorrect information to compute the amount realized.

Subsequent transferees. A partnership is not required to withhold on distributions that are made after the date on which the transferee disposes of the transferred interest, unless the partnership has actual knowledge that any person that acquires the transferee's interest in the partnership is a related person, that is, a person that bears a relationship described in section 267(b) or 707(b)(1) with respect to the transferee or the transferor from which the transferee acquired the interest.

When to withhold. A partnership must withhold on distributions made with respect to a transferred interest beginning on the later of:

- The date that is 30 days after the date of transfer, or
- The date that is 15 days after the date on which the partnership acquires actual knowledge that the transfer has occurred.

A partnership is treated as satisfying its withholding obligation and may stop withholding on distributions with respect to a transferred interest on the earlier of:

- The date on which the partnership completes withholding and paying the amount required to be withheld, or
- The date on which the partnership receives and may rely on a certification from the transferee (without regard

to whether such certification is timely received) that claims an [exception](#) to section 1446(f)(1) withholding.

Amount of withholding. A partnership required to withhold under section 1446(f)(4) must withhold the full amount of each distribution made with respect to the transferred interest until it has withheld:

- A tax of 10% of the amount realized (generally the amount realized on the transfer determined solely under Regulations section 1.1446(f)-2(c)(2)(i)), reduced by any amount withheld by the transferee; plus
- Any interest computed on the amount that should have been withheld.

However, any amount of a distribution that is required to be withheld under another withholding provision (such as under section 1441 or 1442) is not also required to be withheld under section 1446(f)(4).

Withholding following a notification from the IRS. A partnership that receives [notification from the IRS](#) (discussed earlier) must withhold the amount prescribed in the notification on any distributions made to the transferee on or after the date that is 15 days after it receives the notification.

Computation of interest. The amount of interest required to be withheld is the amount of interest that would be required to be paid under section 6601 and Regulations section 301.6601-1 if the amount that should have been withheld by the transferee was considered an underpayment of tax. Interest is payable between the date that is 20 days after the date of the transfer and the date on which the transferee's withholding tax liability due under section 1446(f)(1) is satisfied.

Buyer/Transferee Claiming Refund of Section 1446(f)(4) Withholding

A transferee may claim a refund for an excess amount if it has been overwithheld upon under section 1446(f)(4). An excess amount is the amount of tax and interest withheld that exceeds the transferee's withholding tax liability plus any interest owed by the transferee with respect to such liability. The transferee may also be liable for any applicable penalties or additions to tax. A transferee must complete Part V of Form 8288 and attach Form(s) 8288-C it received from the partnership when making a claim for refund of section 1446(f)(4) withholding.

Specific Instructions for Form 8288

Corrected return. Check the box at the top of the page to indicate the Form 8288 you are filing is a corrected return.

Withholding Agent Information

Line 1. Name, address, and TIN of the withholding agent. For purposes of Form 8288, the withholding agent is:

- The buyer/transferee of a USRPI liable for section 1445(a) withholding,
- The entity or fiduciary liable for section 1445(e) withholding,

- The buyer/transferee of a partnership interest liable for section 1446(f)(1) withholding,
- The partnership liable for section 1446(f)(4) withholding, or
- The buyer/transferee of a partnership interest making a claim of refund of section 1446(f)(4) withholding.

Do not enter the name, address, or TIN of a title company, mortgage company, etc., unless it happens to be the actual person or entity responsible for withholding.



IRS will contact the person or entity listed on line 1 to resolve any problems that may arise concerning underwithholding and/or penalties.

Name and address. If you are a fiduciary for either section 1445(a) or 1446(f)(1) withholding, list your name and the name of the trust or estate. Enter the home address of an individual or the office address of an entity.

Taxpayer Identification Number (TIN). For a U.S. individual, the TIN is a social security number (SSN). For any person other than an individual (for example, corporation, QIE, estate, or trust), the TIN is an employer identification number (EIN). If you do not have an EIN, you can apply for one. For more information on how to apply for an EIN, go to [IRS.gov/Businesses/Small-Businesses-Self-Employed/How-to-Apply-for-an-EIN](https://www.irs.gov/Businesses/Small-Businesses-Self-Employed/How-to-Apply-for-an-EIN).

For a nonresident alien individual who is not eligible for an SSN, the TIN is an IRS individual taxpayer identification number (ITIN). For more information on the requirements and how to apply for an ITIN, go to [IRS.gov/ITIN](https://www.irs.gov/ITIN).

Even if the individual does not already have an ITIN, he or she should complete Forms 8288 and 8288-A and mail the forms along with any payment to the address shown under [Where To File](#), earlier.

Line 2. Enter the location and a description of the property, including any substantial improvements (for example, "12-unit apartment building"). For an interest in a corporation that constitutes a USRPI, enter the class or type and amount of the interest (for example, "10,000 shares Class A Preferred Stock XYZ Corporation"). For an interest in a partnership, enter the type of partnership interest (such as capital or preferred) transferred and, if there are multiple classes of the same type of partnership interest, enter the class of interest transferred. Also, enter the percentage interest in the partnership or the number of units in the partnership that were transferred. For example, "40% of the Class B capital interest in the ABC Partnership."

Line 3. Enter the date of the transfer that is subject to withholding. If you are completing Part II and are a QIE, a domestic trust or estate, or you make a large trust election, enter the date of distribution. If you are completing Part III and are a partnership that made a distribution subject to withholding under section 1446(f)(1), enter the date of the distribution.

Line 4. If you are completing Part II and the IRS issued a withholding certificate for this transfer under Regulations section 1.1445-3 or 1.1445-6 and [Rev. Proc. 2000-35](#), provide the date that the withholding certificate was issued. If a partnership is completing Part IV because it is

withholding under section 1446(f)(4), enter the date of the applicable distribution.

Line 5. Enter the number of Forms 8288-A or 8288-C attached, as applicable. If the partnership is completing Part IV, the number of Forms 8288-C attached will always be one. Copies A and B of each Form 8288-A should be counted as one form.



Complete only one part of Parts I through V.

Part I—To Be Completed by the Buyer or Other Transferee Required To Withhold Under Section 1445(a)

Line 6. Enter the amount subject to withholding, generally the amount realized on the transfer.

Line 7. Withholding tax liability. Enter an amount on only one of lines 7a, 7b, or 7c.

Line 7a. Enter the amount subject to withholding multiplied by 10% (0.10). Amounts entered on line 7a include the following:

- Withholding under section 1445(a) for the purchase of a residence with an amount realized of more than \$300,000, but less than or equal to \$1 million. Generally, no withholding is required for the purchase of a residence if the amount realized is \$300,000 or less. For more information, see [Exceptions to Section 1445 Withholding](#), earlier.
- Any dispositions of property prior to February 17, 2016, subject to a 10% rate of withholding under section 1445(a).

Line 7b. Enter the amount subject to withholding multiplied by 15% (0.15). Generally, this is the rate of withholding for transactions required to be reported under section 1445(a) in Part I. Include withholding for the purchase of a residence with an amount realized of more than \$1 million.

Line 7c. If withholding is at a reduced rate, enter the adjusted withholding amount, and check the box. Attach a copy of the withholding certificate. See [Exceptions to Section 1445 Withholding](#), earlier.

Line 8. Enter the amount you actually withheld.

Example 1. B, a corporation, purchases a USRPI from F, a foreign person. On settlement day, the settlement agent pays off existing loans, withholds 15% of the amount realized by F on the sale, and disburses the remaining amount to F. B, not the settlement agent, is the withholding agent and must complete Form 8288 and Form 8288-A.

Part II—To Be Completed by an Entity Subject to the Provisions of Section 1445(e)

Line 9. If withholding is from a large trust election to withhold upon distribution, check the box. See [Large trust election](#) under *Section 1445(e)(1) Transactions*, earlier.

Line 10. Enter the amount subject to withholding.

Line 11. Withholding tax liability. Enter an amount on only one of lines 11a, 11b, 11c, or 11d.

Line 11a. Enter the amount subject to withholding multiplied by 10% (0.10). This rate is used for any dispositions of property prior to February 17, 2016, subject to a 10% rate of withholding under section 1445(e).

Line 11b. Enter the amount subject to withholding multiplied by 15% (0.15). Generally, this is the rate of withholding for transactions required to be reported under section 1445(e) in Part II. However, see the discussion of various section 1445(e) transactions under [Entities Subject to Section 1445\(e\)](#), earlier.

Line 11c. Enter the amount subject to withholding multiplied by 21% (0.21) (35% (0.35) for distributions made before January 1, 2018). See the discussion of various section 1445(e) transactions under [Entities Subject to Section 1445\(e\)](#), earlier.

Line 11d. If withholding is at a reduced rate, enter the adjusted withholding amount, and check the box. Attach a copy of the withholding certificate. See the discussion of various section 1445(e) transactions under [Entities Subject to Section 1445\(e\)](#), earlier.

Line 12. Enter the amount you actually withheld.

Example 2. C, a domestic corporation, distributes property to F, a foreign shareholder whose interest in C is a USRPI. The distribution is in redemption of C's stock (section 1445(e)(3) transaction). C must withhold 15% of the fair market value of the property distributed to F. C must complete Form 8288 and Form 8288-A.

Part III—To Be Completed by Buyer/Transferee Required To Withhold Under Section 1446(f)(1)



Each separate transfer subject to the withholding requirements of section 1446(f)(1) requires the filing of a separate Form 8288.

Line 13. Amount subject to withholding, generally, the amount realized by the transferor. However, see the discussion earlier regarding [modified amount realized](#).

Line 14. Withholding tax liability. Enter an amount on line 14a or 14b but not both.

Line 14a. Enter the amount subject to withholding multiplied by 10% (0.10). Generally, this is the rate of withholding for transactions required to be reported under section 1446(f)(1) in Part III.

Line 14b. If withholding is at an adjusted amount, enter the adjusted withholding amount, and check the box. For circumstances when withholding is at an adjusted amount, see discussion earlier under [Determining the Amount To Withhold](#).

Line 15. Enter the amount you actually withheld.

Part IV—To Be Completed by the Partnership Required To Withhold Under Section 1446(f)(4)



File a separate Form 8288 for each distribution made to a transferee partner that is subject to the withholding requirements of section 1446(f)(4). Only attach the Form 8288-C applicable to the current distribution.

Line 16. Line 16 is used to report the cumulative number and amounts related to this distribution plus any prior distributions that you have made to a transferee that failed to properly withhold with respect to a transfer under section 1446(f)(1). These distributions are subject to withholding under section 1446(f)(4) and Regulations section 1.1446(f)-3.

Line 16a. Enter the total number of distributions, including this one, made to the transferee. This amount should equal the total number of Forms 8288-C that you filed, including this one, for the transferee with respect to the transfer.

Line 16b. Enter the total amount of distributions, including this one, made to the transferee. This amount should equal the total of the amounts in box 5 of the Form(s) 8288-C you have filed, including this one, for the transferee with respect to the transfer.

Line 16c. If any portion of a distribution, including this one, was subject to withholding under another provision of the Internal Revenue Code (such as section 1441 or 1442), enter the total amount of other withholding on these distributions. This amount should equal the total of the amount(s) in box 6 of the Form(s) 8288-C you have filed, including this one, for the transferee with respect to the transfer.

Line 17. If known, enter the total amount of the transferee's liability under section 1446(f)(1), without regard to any withholding you performed under section 1446(f)(4). Generally, this amount will be 10% of the amount realized on the transfer.

Line 18. Enter the total amount of section 1446(f)(4) tax that you have withheld on the transferee with respect to this transfer. This should equal the total of the amounts in box 5 of the Form(s) 8288-C you have filed, including this one, for the transferee with respect to the transfer.

Example 3. On a transfer of an interest in Partnership, Transferee had a section 1446(f)(1) withholding obligation of \$110, but failed to withhold any tax on the transfer or to provide a certification of withholding to Partnership. Partnership has actual knowledge of the transfer at the time that it occurred. For its first distribution following the date on which it is required to withhold under section 1446(f)(4), Partnership distributes \$100 of income described in section 871(a) to Transferee. Partnership is required to withhold \$30 under section 1441 on the \$100 distribution. Partnership must withhold the remaining \$70 (\$100 - \$30) from the distribution under section 1446(f)(4). Transferee receives net \$0 on the distribution. Partnership must file a Form 8288 and complete Part IV by entering "1" on line 16a; entering "\$100" on line 16b; entering "\$30" on line 16c; leaving line 17 blank since it has not received

a certification of withholding from Transferee; and entering "\$70" on line 18. Partnership must also attach Copy A of Form 8288-C to its Form 8288 and send Copy B of Form 8288-C to the transferee. Partnership should retain Copy C of Form 8288-C for its records.

Partnership must continue to withhold under section 1446(f)(4) on future distributions made to Transferee until it can rely on a certification of withholding from Transferee and it has withheld the required amount plus interest. For each distribution, it must file a Form 8288 and complete Part IV with the cumulative amounts related to all distributions Partnership has made to Transferee. It must also complete Form 8288-C with the amounts specific to this distribution.

Part V—To Be Completed by Buyer/Transferee Claiming a Refund of Withholding Under Section 1446(f)(4)



The IRS can process your refund claim only if you either (a) previously filed Form 8288 with Part III completed under section 1446(f)(1) or (b) file this Form 8288 with both Parts III and V completed. If you are filing under the latter case, because you have not withheld any amounts under section 1446(f)(1), do not attach a Form 8288-A.

Line 19. Enter the amount that was subject to withholding under section 1446(f)(1) on the transfer, generally the amount realized by the transferor.

Line 20. Enter the total of the amount(s) that the partnership has withheld under section 1446(f)(4) (attach a copy of Copy B of Form(s) 8288-C).

Line 21. Withholding tax liability. Enter the amount you were required to withhold under section 1446(f)(1) on either line 21a or 21b (but not both). Do not reduce this line by:

- Amounts you withheld on the transfer as reflected on Form(s) 8288-A,
- An amount of tax you paid pursuant to an IRS Notice, or
- Tax that the transferor has paid for which you have obtained proof, such as on Form 4669.

Instead, attach copies of these documents to Form 8288 along with any other information relevant to determining your outstanding withholding tax liability.

Line 21a. Enter the amount subject to withholding multiplied by 10% (0.10). Generally, this is the rate of withholding for transactions required to be reported under section 1446(f)(1) in Part III.

Line 21b. If withholding is at a reduced rate, enter the adjusted withholding amount, and check the box. See the instructions for line 14b, earlier, for circumstances when withholding is at an adjusted amount.

Line 22. Enter the excess of line 20 over line 21a or 21b. Note that you are also liable for interest on any withholding tax liability reported on line 21. The IRS will compute that amount and reduce your claimed excess amount accordingly. You may also be liable for any penalties or additions to tax.

Paid Preparer

Generally, anyone you pay to prepare Form 8288 must sign it and include their Preparer Tax Identification Number (PTIN) in the space provided.

Privacy Act and Paperwork Reduction Act Notice.

We ask for the information on this form to carry out the Internal Revenue laws of the United States. Section 1445 generally imposes a withholding obligation on the withholding agent (the buyer or other transferee) when a USRPI is acquired from a foreign person. Section 1445 also imposes a withholding obligation on certain foreign and domestic corporations, QIEs, and the fiduciaries of certain trusts and estates. Section 1446(f)(1) generally imposes a withholding obligation on the withholding agent (the buyer or other transferee, including a partnership that makes a distribution resulting in gain under section 731) when an interest in a partnership is acquired from a foreign person (transferor) that results in gain any portion of which would be treated under section 864(c)(8) as effectively connected with the conduct of a trade or business within the United States. Section 1446(f)(4) generally imposes a withholding obligation on a partnership if a transferee fails to withhold any amount required to be withheld under section 1446(f)(1). This form is used to report and transmit the amount withheld.

You are required to provide this information. Section 6109 requires you to provide your taxpayer identification number. We need this information to ensure that you are complying with the Internal Revenue laws and to allow us to figure and collect the right amount of tax. Failure to provide this information in a timely manner, or providing false information, may subject you to penalties. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for administration of their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law

enforcement and intelligence agencies to combat terrorism.

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 these forms will vary depending on individual circumstances. The estimated burden for business taxpayers filing this form is approved under OMB control number 1545-0123. The estimated burden for all other taxpayers who file these forms is shown next.

	Form 8288	Form 8288-A	Form 8288-C
Record keeping	9hrs., 5 min.	3 hrs., 6 min.	2hrs., 52 min.
Learning about the law or the form	5 hrs., 13 min.	35 min.	24 min.
Preparing and sending the form to the IRS	6 hrs., 48 min.	40 min.	27 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making these forms simpler, we would be happy to hear from you. You can send us comments from [IRS.gov/FormComments](https://www.irs.gov/FormComments). Or you can write to the Internal Revenue Service, Tax Forms and Publications, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the form to this address. Instead, see [Where To File](#), earlier.

WITHHOLDING AGENT'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and phone no.		1 Date of transfer (mm/dd/yyyy) / /	OMB No. 1545-0902	Statement of Withholding on Certain Dispositions by Foreign Persons
		2 Gain recognized by foreign corporation \$	Form 8288-A (Rev. January 2023)	
WITHHOLDING AGENT'S U.S. TIN	U.S. TIN of FOREIGN PERSON subject to withholding (see instructions)	3 Amount realized \$	4 Federal income tax withheld \$	Copy A For Internal Revenue Service Center For Privacy Act and Paperwork Reduction Act Notice, see the Instructions for Form 8288.
FOREIGN PERSON'S name subject to withholding		5 Withholding under section: a 1445 <input type="checkbox"/> b 1446(f)(1) <input type="checkbox"/>	6 FOREIGN PERSON subject to withholding: a Individual <input type="checkbox"/> b Corporation <input type="checkbox"/> c Partnership <input type="checkbox"/> d Other <input type="checkbox"/> (specify) _____	
Foreign address (number, street, and apt. or suite no.)		7 Country code of FOREIGN PERSON subject to withholding		
City or town, state or province, country (not U.S.), and ZIP or foreign postal code		8 Description of property transferred		
Mailing address of FOREIGN PERSON subject to withholding (if different)				

Form **8288-A** (Rev. 1-2023)

Cat. No. 62261L

Attach Copies A and B to Form 8288

Department of the Treasury - Internal Revenue Service

WITHHOLDING AGENT'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and phone no.		1 Date of transfer (mm/dd/yyyy) / /	OMB No. 1545-0902 Form 8288-A (Rev. January 2023)	<p align="center">Statement of Withholding on Certain Dispositions by Foreign Persons</p> <p align="center">Copy B</p> <p align="center">Send to Internal Revenue Service Center (For Use by Foreign Person Subject to Withholding)</p> <p align="center">This information is being furnished to the Internal Revenue Service.</p>
		2 Gain recognized by foreign corporation \$		
WITHHOLDING AGENT'S U.S. TIN	U.S. TIN of FOREIGN PERSON subject to withholding (see instructions)	3 Amount realized \$	4 Federal income tax withheld \$	
FOREIGN PERSON'S name subject to withholding		5 Withholding under section: a 1445 <input type="checkbox"/> b 1446(f)(1) <input type="checkbox"/>	6 FOREIGN PERSON subject to withholding: a Individual <input type="checkbox"/> b Corporation <input type="checkbox"/> c Partnership <input type="checkbox"/> d Other <input type="checkbox"/> (specify) _____	
Foreign address (number, street, and apt. or suite no.)		7 Country code of FOREIGN PERSON subject to withholding		
City or town, state or province, country (not U.S.), and ZIP or foreign postal code		8 Description of property transferred		
Mailing address of FOREIGN PERSON subject to withholding (if different)				

Form **8288-A** (Rev. 1-2023)

Department of the Treasury - Internal Revenue Service

Instructions for the Foreign Person Subject to Withholding

Generally, if you are a foreign person that disposes of real property located in the United States as seller or transferor, the buyer or other transferee must withhold 15% of the amount realized under section 1445. Certain foreign interest holders that are beneficiaries or shareholders are subject to federal income tax withholding at a rate of 21%. If you are a foreign person that transfers an interest in a partnership that is engaged in a trade or business in the United States, the buyer or transferee must withhold 10% of the amount realized under section 1446(f)(1).

How to report. You must file a U.S. tax return (Form 1040-NR, 1041, 1065, or 1120-F) to report the sale or other disposition as effectively connected with the conduct of a trade or business in the United States. To receive credit for any federal income tax withheld shown in box 4, attach Form 8288-A to your tax return, unless you make a request for early refund. Foreign partnerships should report the credit for withholding on Form 8804 and attach Form 8288-A. See Pub. 515 and Pub. 519 for more information.

Applying for an early refund.

Caution: The early refund procedures discussed next are not available for withholding under section 1446(f)(1) or 1446(f)(4).

If box 5a is checked and the amount shown in box 4 is greater than your maximum tax liability, you may apply for an early refund. However, you must still file your tax return when due. To apply for an early refund, you must first apply for and receive a withholding certificate from the IRS. After you have received your withholding certificate, you may apply for an early refund by sending a statement that must include the following information in separate paragraphs numbered as shown below.

1. Your name, address, and U.S. taxpayer identification number (TIN);
2. The amount required to be withheld as stated in the withholding certificate issued by the IRS;
3. The amount withheld shown in box 4 (attach a copy of this Form 8288-A); and
4. The amount to be refunded.

Where to apply. Send your application for a withholding certificate and/or application for early refund to:

Ogden Service Center
P.O. Box 409101
Ogden, UT 84409

See Pub. 515 and Form 8288-B for information about withholding certificates.

WITHHOLDING AGENT'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and phone no.		1 Date of transfer (mm/dd/yyyy) / /	OMB No. 1545-0902	Statement of Withholding on Certain Dispositions by Foreign Persons
		2 Gain recognized by foreign corporation \$	Form 8288-A (Rev. January 2023)	
WITHHOLDING AGENT'S U.S. TIN	U.S. TIN of FOREIGN PERSON subject to withholding (see instructions)	3 Amount realized \$	4 Federal income tax withheld \$	Copy C For Withholding Agent For Privacy Act and Paperwork Reduction Act Notice, see the Instructions for Form 8288.
FOREIGN PERSON'S name subject to withholding		5 Withholding under section: a 1445 <input type="checkbox"/> b 1446(f)(1) <input type="checkbox"/>	6 FOREIGN PERSON subject to withholding: a Individual <input type="checkbox"/> b Corporation <input type="checkbox"/> c Partnership <input type="checkbox"/> d Other <input type="checkbox"/> (specify) _____	
Foreign address (number, street, and apt. or suite no.)		7 Country code of FOREIGN PERSON subject to withholding		
City or town, state or province, country (not U.S.), and ZIP or foreign postal code		8 Description of property transferred		
Mailing address of FOREIGN PERSON subject to withholding (if different)				

Form **8288-A** (Rev. 1-2023)

Keep for your records

Department of the Treasury - Internal Revenue Service

Instructions for the Withholding Agent

Prepare Form 8288-A for each foreign person subject to withholding under section 1445 or 1446(f)(1). PTPs and their nominees should use Forms 1042 and 1042-S to report the withholding. Attach Copies A and B to Form 8288, U.S. Withholding Tax Return for Certain Dispositions by Foreign Persons. Copy B will be stamped by the IRS and sent to the foreign person subject to withholding if the form is complete, including the transferor's taxpayer identification number (TIN). Retain Copy C for your records. You do not have to give a copy of this form to the foreign person subject to withholding.

U.S. taxpayer identification number (TIN). A U.S. TIN is a(n) social security number (SSN), employer identification number (EIN), or individual taxpayer identification number (ITIN). For more information, see *Forms 8288-A Must Be Attached and Transferor's taxpayer identification number (TIN) missing* in the Instructions for Form 8288.

Address. You must enter the foreign home address (for an individual) or the foreign office address (for other than an individual) of the foreign person subject to withholding. You may enter a separate mailing address in the space provided. If provided, the IRS will use the separate mailing address to forward Copy B to the foreign person subject to withholding.

Note: The home or office address of the foreign person subject to withholding must be an address outside the United States. If the foreign

person does not have an address outside the United States, enter the country of residence of the foreign person in this section and provide a complete mailing address.

Box 1. Enter the date of transfer. However, enter the date of distribution if you withheld under section 1445(e)(2), (e)(3), or (e)(6), or section 1446(f)(1), or if you made the large trust election to withhold at the date of distribution.

Box 2. Complete only if you are a foreign corporation required to withhold under section 1445(e)(2).

Box 3. Enter the amount realized by the foreign person whose name appears on this form.

Box 4. Enter the federal income tax you withheld for the foreign person whose name appears on this form.

Box 5. Check the applicable box to indicate the section under which withholding was made.

Box 6. Check the applicable box to indicate whether the foreign person subject to withholding is an individual, a corporation, a partnership, or other. If "Other," specify whether the foreign person is a trust or estate.

Box 7. Enter the applicable two-letter code from the list at www.irs.gov/countrycodes for the foreign home address or foreign office address of the foreign person subject to withholding.

See the Instructions for Form 8288 for more information.



Instructions for Form 1099-S

Proceeds From Real Estate Transactions

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

Future Developments

For the latest information about developments related to Form 1099-S and its instructions, such as legislation enacted after they were published, go to [IRS.gov/Form1099S](https://www.irs.gov/Form1099S).

Reminders

In addition to these specific instructions, you should also use the 2020 [General Instructions for Certain Information Returns](https://www.irs.gov/GeneralInstructionsforCertainInformationReturns). Those general instructions include information about the following topics.

- Who must file.
- When and where to file.
- Electronic reporting.
- Corrected and void returns.
- Statements to recipients.
- Taxpayer identification numbers (TINs).
- Backup withholding.
- Penalties.
- Other general topics.

You can get the general instructions at [IRS.gov/1099generalinstructions](https://www.irs.gov/1099generalinstructions) or go to [IRS.gov/Form1099S](https://www.irs.gov/Form1099S).

Online PDF fillable Copies B and C. To ease statement furnishing requirements, Copies B and C are fillable online in a PDF format available at [IRS.gov/Form1099S](https://www.irs.gov/Form1099S). You can complete these copies online for furnishing statements to recipients and for retaining in your own files.

Specific Instructions

File Form 1099-S, Proceeds From Real Estate Transactions, to report the sale or exchange of real estate.

Reportable Real Estate

Generally, you are required to report a transaction that consists in whole or in part of the sale or exchange for money, indebtedness, property, or services of any present or future ownership interest in any of the following.

1. Improved or unimproved land, including air space.
2. Inherently permanent structures, including any residential, commercial, or industrial building.
3. A condominium unit and its appurtenant fixtures and common elements, including land.
4. Stock in a cooperative housing corporation (as defined in section 216).
5. Any non-contingent interest in standing timber.

Sale or exchange. A sale or exchange includes any transaction properly treated as a sale or exchange for federal income tax purposes, even if the transaction is not currently taxable. For example, a sale of a main home may be a reportable sale even though the transferor may be entitled to exclude the gain under section 121. But see [Exceptions](#), later. Also, a transfer to a corporation that qualifies for nonrecognition of gain under section 351 is a reportable exchange. In addition, a

transfer under a land contract is reportable in the year in which the parties enter into the contract.

Ownership interest. An ownership interest includes fee simple interests, life estates, reversions, remainders, and perpetual easements. It also includes any previously created rights to possession or use for all or part of any particular year (for example, a leasehold, easement, or timeshare), if such rights have a remaining term of at least 30 years, including any period for which the holder may renew such rights, determined on the date of closing. For example, a preexisting leasehold on a building with an original term of 99 years and a remaining term of 35 years on the closing date is an ownership interest; however, if the remaining term is 10 years, it is not an ownership interest. An ownership interest does not include any option to acquire real estate. An ownership interest also includes any contractual interest in a sale or exchange of standing timber for a lump-sum payment that is fixed and not contingent.

Involuntary conversion. A sale of real estate under threat or imminence of seizure, requisition, or condemnation is generally a reportable transaction.

Timber. Report on Form 1099-S payments of timber royalties made under a pay-as-cut contract, reportable under section 6050N. For more information, see Announcement 90-129, 1990-48 I.R.B. 10.

Exceptions

The following is a list of transactions that are not reportable; however, you may choose to report them. If you do, you are subject to the rules in these instructions.

1. Sale or exchange of a residence (including stock in a cooperative housing corporation) for \$250,000 or less if you received an acceptable written assurance (certification) from the seller that such residence is the principal residence (within the meaning of section 121) of the seller and the full amount of the gain on such sale is excludable from gross income under section 121. If the certification includes an assurance that the seller is married, the preceding sentence shall be applied by substituting "\$500,000" for "\$250,000." If there are joint sellers, you must obtain a certification from each seller (whether married or not) or file Form 1099-S for any seller who does not make the certification. Also the seller must include in the certification that there has been no period of nonqualified use (as that term is defined in section [121\(b\)\(5\)\(C\)](#)) after December 31, 2008, and as required by section [6045\(e\)\(5\)\(A\)\(iii\)](#), that the full amount of the gain from the sale is excludable under section 121. The certification must be signed by each seller under penalties of perjury.

A sample certification format can be found in Rev. Proc. 2007-12, 2007-4 I.R.B. 354, available at [IRS.gov/irb/2007-04_IRB/ar09.html](https://www.irs.gov/irb/2007-04_IRB/ar09.html). The sample certification does not include an assurance that there has been no period of nonqualified use and an assurance that the full amount of the gain from the sale is excludable under section 121. The seller must add the information as explained, earlier.

You may get the certification any time on or before January 31 of the year after the year of sale. You may rely on the certification and not file or furnish Form 1099-S unless you know that any assurance on the certification is incorrect.

You must keep the certification for 4 years after the year of sale. You may keep the certification on paper, microfilm, microfiche, or in an electronic storage system.

You are not required to obtain the certification. However, if you do not obtain it, you must file and furnish Form 1099-S.

2. Any transaction in which the transferor is a corporation (or is considered to be a corporation under Regulations section 1.6045-4(d)(2)); a governmental unit, including a foreign government or an international organization; or an exempt volume transferor. Under this rule, if there are exempt and nonexempt transferors, you must file Form 1099-S only for the nonexempt transferor.

An exempt volume transferor is someone who sold or exchanged during the year, who expects to sell or exchange during the year, or who sold or exchanged in either of the 2 previous years at least 25 separate items of reportable real estate to at least 25 separate transferees. In addition, each item of reportable real estate must have been held, at the date of closing, or will be held, primarily for sale or resale to customers in the ordinary course of a trade or business. You are not required to report an exempt volume transferor's transactions if you receive the penalties of perjury certification required by Regulations section 1.6045-4(d)(3).

3. Any transaction that is not a sale or exchange, including a bequest, a gift (including a transaction treated as a gift under section 1041), and a financing or refinancing that is not related to the acquisition of real estate.

4. A transfer in full or partial satisfaction of a debt secured by the property. This includes a foreclosure, a transfer in lieu of foreclosure, or an abandonment.

5. A de minimis transfer for less than \$600. A transaction is de minimis if it can be determined with certainty that the total money, services, and property received or to be received is less than \$600, as measured on the closing date. For example, if a contract for sale provides for total consideration of "\$1.00 plus other valuable consideration," the transfer is not a de minimis transfer unless you can determine that the "other valuable consideration" is less than \$599, as measured on the closing date. The \$600 rule applies to the transaction as a whole, not separately to each transferor.

No reporting is required for the sale or exchange of an interest in the following types of property, provided the sale is not related to the sale or exchange of reportable real estate.

- An interest in surface or subsurface natural resources (for example, water, ores, or other natural deposits) or crops, whether or not such natural resources or crops are severed from the land. For this purpose, the terms "natural resources" and "crops" do not include standing timber. For timber royalties, see [Timber](#), earlier.
- A burial plot or vault.
- A manufactured structure used as a dwelling that is manufactured and assembled at a location different from that where it is used, but only if such structure is not affixed, on the closing date, to a foundation. This exception applies to the transfer of an unaffixed mobile home that is unrelated to the sale or exchange of reportable real estate.

Who Must File

Generally, the person responsible for closing the transaction, as explained in (1) below, is required to file Form 1099-S. If no one is responsible for closing the transaction, the person required to file Form 1099-S is explained in (2), later. However, you may designate the person required to file Form 1099-S in a written agreement, as explained under (3), later.

1. If you are the person responsible for closing the transaction, you must file Form 1099-S. If a [Closing Disclosure](#) prescribed under the Dodd-Frank Wall Street Reform and

Consumer Protection Act (Dodd-Frank) is used and a person is listed as the settlement agent on the closing disclosure, the person responsible for closing the transaction is the person listed as the settlement agent on that closing disclosure. The Closing Disclosure combines and replaces the HUD-1 Settlement Statement and the final Truth-in-Lending (TIL) statement under the Real Estate Settlement Procedures Act (RESPA) of 1974, as amended, and the Federal Truth in Lending Act, which is contained in title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601). The form incorporates the information provided on the Loan Estimate. A closing disclosure includes any amendments, variations, or substitutions that may be prescribed under Dodd-Frank if any such form discloses the transferor and transferee, the application of the proceeds, and the identity of the settlement agent or other person responsible for preparing the form.

If the closing disclosure is not used, or no settlement agent is listed, the person responsible for closing the transaction is the person who prepares a closing disclosure that identifies the transferor and transferee, reasonably identifies the real estate transferred, and describes how the proceeds are to be or were disbursed.

If no closing disclosure is used, or if two or more closing disclosures are used, the person responsible for closing the transaction is, in the following order:

- a. The transferee's attorney who is present at the delivery of either the transferee's note or a significant part of the cash proceeds to the transferor or who prepares or reviews the preparation of the documents transferring legal or equitable ownership;
- b. The transferor's attorney who is present at the delivery of either the transferee's note or a significant part of the cash proceeds to the transferor or who prepares or reviews the preparation of the documents transferring legal or equitable ownership; or
- c. The disbursing title or escrow company that is most significant in disbursing gross proceeds.

If there is more than one attorney described in (a) or (b), the one whose involvement is most significant is the person considered responsible for closing the transaction.

2. If no one is responsible for closing the transaction as explained in (1) above, the person responsible for filing is, in the following order: (a) the mortgage lender, (b) the transferor's broker, (c) the transferee's broker, or (d) the transferee.

For purposes of (2) above, apply the following definitions.

a. Mortgage lender means a person who lends new funds in connection with the transaction, but only if the loan is at least partially secured by the real estate. If there is more than one lender, the one who lends the most new funds is the mortgage lender. If several lenders advance equal amounts of new funds, and no other person advances a greater amount of new funds, the mortgage lender is the one who has the security interest that is most senior in priority. Amounts advanced by the transferor are not treated as new funds.

b. Transferor's broker means the broker who contracts with the transferor and who is compensated for the transaction.

c. Transferee's broker means the broker who significantly participates in the preparation of the offer to acquire the property or who presents such offer to the transferor. If there is more than one such person, the transferee's broker is the one who most significantly participates in the preparation of the acquisition offer. If there is no such person, the one who most significantly participates in the presentation of the offer is the transferee's broker.

d. Transferee means the person who acquires the greatest interest in the property. If no one acquires the greatest interest,

the transferee is the person listed first on the ownership transfer documents.

3. **Designation agreement.** You can enter into a written agreement at or before closing to designate who must file Form 1099-S for the transaction. The agreement will identify the person responsible for filing if such designated person signs the agreement. It is not necessary that all parties to the transaction (or that more than one party) enter into the agreement.

You may be designated in the agreement as the person who must file if you are the person responsible for closing the transaction (as explained in (1) under [Who Must File](#), earlier), the transferee's or transferor's attorney (as explained in (1) under [Who Must File](#), earlier), the title or escrow company that is most significant in disbursing gross proceeds, or the mortgage lender (as explained in (2a) under [Who Must File](#), earlier).

The designation agreement may be in any written form and may be included on the closing disclosure. It must:

- Identify by name and address the person designated as responsible for filing,
- Include the names and addresses of each person entering into the agreement,
- Be signed and dated by all persons entering into the agreement,
- Include the names and addresses of the transferor and transferee, and
- Include the address and any other information necessary to identify the property.

Each person who signs the agreement must keep it for 4 years.



For each transaction, be sure that only one person is responsible for filing and that only one Form 1099-S is filed for each transferor.

Employees, Agents, and Partners

If an employee, agent, or partner, acting within the scope of such person's employment, agency, or partnership, participates in a real estate transaction, only the employer, principal, or partnership (not the employee, agent, or partner) may be the reporting person. However, the participation of a person listed on the closing disclosure as the settlement agent acting as an agent of another is not attributed to the principal.

Foreign Transferors

Sales or exchanges involving foreign transferors are reportable on Form 1099-S. For information on the transferee's responsibility to withhold income tax when a U.S. real property interest is acquired from a foreign person, see [Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Entities](#).

Multiple Transferors

For multiple transferors of the same real estate, you must file a separate Form 1099-S for each transferor. At or before closing, you must request from the transferors an allocation of the gross proceeds among the transferors. The request and the response are not required to be in writing. You must make a reasonable effort to contact all transferors of whom you have knowledge. However, you may rely on the unchallenged response of any transferor, and you need not make additional contacts with other transferors after at least one complete allocation is received (100% of gross proceeds, whether or not received in a single response). If you receive the allocation, report gross proceeds on each Form 1099-S accordingly.

You are not required to, but you may, report gross proceeds in accordance with an allocation received after the closing date but before the due date of Form 1099-S (without extensions). However, you cannot report gross proceeds in accordance with

an allocation received on or after the due date of Form 1099-S (without extensions).

If no gross proceeds are allocated to a transferor because no allocation or an incomplete allocation is received, you must report the total unallocated gross proceeds on the Form 1099-S made for that transferor. If you do not receive any allocation or you receive conflicting allocations, report on each transferor's Form 1099-S the total unallocated gross proceeds.

Spouses. If the transferors were spouses at the time of closing, who held the property as joint tenants, tenants by the entirety, tenants in common, or as community property, treat them as a single transferor. Only one Form 1099-S showing either of them as the transferor is required. You need not request an allocation of gross proceeds if spouses are the only transferors. But if you receive an uncontested allocation of gross proceeds from them, file Form 1099-S for each spouse according to the allocation. If there are other transferors, you must make a reasonable effort to contact either spouse to request an allocation.

Partnerships. If the property is transferred by a partnership, file only one Form 1099-S for the partnership, not separate Forms 1099-S for each partner.

Multiple Assets Sold

If real estate is sold or exchanged and other assets are sold or exchanged in the same transaction, report the total gross proceeds from the entire transaction on Form 1099-S.

TINs

You must request the transferor's TIN no later than the time of closing. The TIN request need not be made in a separate mailing. Rather, it may be made in person, in a mailing that includes other items, or electronically. The transferor is required to furnish his or her complete, non-truncated TIN and to certify that the TIN is correct. For U.S. persons (including U.S. resident aliens), you may request a TIN on [Form W-9, Request for Taxpayer Identification Number and Certification](#). Foreign persons may provide their TIN to you on the appropriate [Form W-8](#). See part J in the 2020 [General Instructions for Certain Information Returns](#).

Alternatively, you may provide a written statement to the transferor similar to the following: "You are required by law to provide (insert name of person responsible for filing) with your correct taxpayer identification number. If you do not provide (insert name of person responsible for filing) with your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law."

The solicitation must contain space for the name, address, and TIN of the transferor, and a place to certify under penalties of perjury that the TIN furnished is the correct TIN of the transferor. The certification must read similar to: "Under penalties of perjury, I certify that I am a U.S. person or U.S. resident alien and the number shown on this statement is my correct taxpayer identification number."

If you use a closing disclosure, you may provide a copy of such statement, appropriately modified to solicit the TIN, to the transferor. Keep the Form W-9, W-8, or substitute form in your records for 4 years.

Separate Charge Prohibited

You may not charge your customers a separate fee for complying with the Form 1099-S filing requirements. However, you may take into account the cost of filing the form in setting the fees you charge your customers for services in a real estate transaction.

Statements to Transferors

If you are required to file Form 1099-S, you must furnish a statement to the transferor. Furnish a copy of Form 1099-S or an acceptable substitute statement to each transferor. For more information about the requirement to furnish a statement to the transferor, see part M in the 2020 [General Instructions for Certain Information Returns](#).



You are not required to indicate on Form 1099-S that the transferor's (seller's) financing was federally subsidized. Also, you are not required to enter the following.

- Both total gross proceeds and the allocated gross proceeds for a multiple transferor transaction (enter either one or the other).
- An indication that the transferor may receive property or services for an obligation having a stated principal amount.
- An indication that, in connection with a contingent payment transaction, the transferor may receive gross proceeds that cannot be determined with certainty under the regulations and is not included in gross proceeds.

Truncating transferor's TIN on payee statements. Pursuant to Regulations section 301.6109-4, all filers of this form may truncate a transferor's TIN (social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN)) on payee statements. Truncation is not allowed on any documents the filer files with the IRS. A filer's TIN may not be truncated on any form. See part J in the 2020 [General Instructions for Certain Information Returns](#).

Filer's Name, Address, and Telephone Number Box

Enter the name, address, and telephone number of the person who is filing Form 1099-S. The name and address must be the same as the filer information reported on Form 1096.

Transferor's Name and Address Box

Enter the name and address of the seller or other transferor of the real estate. If spouses are joint sellers, it is only necessary to enter one name and the TIN for that person on the form.

Account Number

The account number is required if you have multiple accounts for a recipient for whom you are filing more than one Form 1099-S. Additionally, the IRS encourages you to designate an account number for all Forms 1099-S that you file. See part L in the 2020 [General Instructions for Certain Information Returns](#).

Box 1. Date of Closing

Enter the closing date. On a closing disclosure, the closing date is the closing disclosure date. If a closing disclosure is not used, the closing date is the earlier of the date title transfers or the date the economic burdens and benefits of ownership shift to the transferee.

Box 2. Gross Proceeds

Enter the gross proceeds from the sale or exchange of real estate. Gross proceeds means any cash received or to be received for the real property by or on behalf of the transferor, including the stated principal amount of a note payable to or for the benefit of the transferor and including a note or mortgage paid off at settlement. If the transferee assumes a liability of the transferor or takes the property subject to a liability, such liability is treated as cash and is includible as part of gross proceeds. For a contingent payment transaction, include the maximum determinable proceeds. Also see [Multiple Assets Sold](#), earlier.

If you are reporting a like-kind exchange of property for which no gross proceeds are reportable, enter -0- (zero) in box 2 and enter an "X" in the checkbox in box 4.

Gross proceeds do not include the value of property or services received or to be received by, or on behalf of, the transferor or separately stated cash received for personal property, such as draperies, rugs, or a washer and dryer.

Do not reduce gross proceeds by any expenses paid by the transferor, such as sales commissions, deed preparation, advertising, and legal expenses. If a closing disclosure is used for a transfer of real estate for cash and notes only, gross proceeds generally will be the contract sales price shown on that statement. If other property or services were exchanged, see the [box 4 instructions](#), later.

Contingent payment transaction. A contingent payment transaction is one in which the receipt, by or on behalf of the transferor, is subject to a contingency. The maximum determinable proceeds means the greatest amount of gross proceeds possible if all the contingencies are satisfied. If the maximum amount of gross proceeds cannot be determined with certainty, the maximum determinable proceeds are the greatest amount that can be determined with certainty.

Box 3. Address (Including City, State, and ZIP Code) or Legal Description

Enter the address of the property, including the city, state, and ZIP code. If the address does not sufficiently identify the property, also enter a legal description, such as section, lot, and block. For timber royalties, enter "Timber royalties." For lump-sum timber payments, enter "Lump-sum timber payment."

Box 4. Check Here if the Transferor Received or Will Receive Property or Services as Part of the Consideration

If the transferor received or will receive property (other than cash and consideration treated as cash in figuring gross proceeds) or services as part of the consideration for the property, enter an "X" in the checkbox in box 4.

Box 5. Check Here if the Transferor is a Foreign Person (Nonresident Alien, Foreign Partnership, Foreign Estate, or Foreign Trust)

If the transferor is a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust), enter an "X" in the checkbox in box 5. See Form 8288 and its separate instructions for tax withholding requirements for properties sold by a foreign transferor.

Box 6. Buyer's Part of Real Estate Tax

For a real estate transaction involving a residence, enter the real estate tax paid in advance that is allocable to the buyer. You do not have to report an amount as allocable to the buyer for real estate taxes paid in arrears. You may use the appropriate information included on the closing disclosure, or comparable form, provided at closing. For example, a residence is sold in a county where the real estate tax is paid annually in advance. The seller paid real estate taxes of \$1,200 for the year in which the sale took place. The sale occurred at the end of the 9th month of the real estate tax year. Therefore, \$300 of the tax paid in advance is allocated to the buyer, by reference to the amount of real estate tax shown on the closing disclosure as paid by the seller in advance, and is reported in box 5. See Notice 93-4, 1993-1 C.B. 295.

Non-Foreign Certification by Individual Transferor

(Seller's FIRPTA Affidavit)

Transferor: _____

Transferee: _____

Property: _____

Closing Date: _____

Before me, the undersigned authority, personally appeared the person(s) named in paragraph 2(b) below who, after being duly sworn, stated as follows:

1. This certificate is to inform the transferee that withholding Federal Income Tax is not required, upon the sale of the following described real property:

[legal description]

2. The undersigned Transferor certifies and declares as follows:

- a. I am not a foreign person for purposes of United States income taxation, and am not subject to the tax withholding requirements of Section 1445 of the Internal Revenue Code of 1954, as amended.

- b. My United States taxpayer identification or Social Security number is: _____

- c. My home address is: _____

3. There are no other persons who have an ownership interest in the above described property other than those persons listed in paragraph 2(b) above.

- a. The undersigned hereby further certifies and declares:

- b. I understand the purchaser of the described property intends to rely on the foregoing representations in connection with the United States Foreign Investment in Real Property Tax Act. (FIRPTA).

4. I understand this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statements contained in this certification may be punished by fine, imprisonment or both.

Under penalties of perjury, I state that this declaration was carefully read and is true and correct.

(Affiant)
Print Name: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____, 20____, by _____ who ☐ is personally known or ☐ has produced _____ as identification.

[Notary Seal]

Notary Public
Printed Name: _____
My Commission Expires: _____

Non-Foreign Certification by Entity Transferor

(Seller's FIRPTA Affidavit)

Transferor: _____

Transferee: _____

Property: _____

Closing Date: _____

Before me, the undersigned authority, personally appeared the person(s) named below who, after being duly sworn, stated as follows:

Transferor is selling that certain real property located in _____, which is more particularly described as follows:

[legal description]

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. For U.S. tax purposes (including section 1445), the owner of a disregarded entity (which has legal title to a U.S. real property interest under local law) will be the transferor of the property and not the disregarded entity. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by _____, the undersigned hereby certifies the following on behalf of _____:

1. _____ is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. _____ is not a disregarded entity as defined in §1.1445-2(b)(2)(iii);
3. _____'s U.S. employer identification number is _____; and
4. _____'s office address is _____.

_____ understands that this certification may be disclosed to the Internal Revenue Service by transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete, and I further declare that I have authority to sign this document on behalf of _____.

(Affiant)
Print Name: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____, 20____, by _____ who ☐ is personally known or ☐ has produced _____ as identification.

[Notary Seal]

Notary Public
Printed Name: _____
My Commission Expires: _____

IRS Residency Certification - (No withholding required)

(Buyer's FIRPTA Affidavit)

Transferor: _____

Transferee: _____

Property: _____

Closing Date: _____

The undersigned ("Affiant") being duly sworn on oath, deposes, states, represents, warrants, confirms and says that:

Transferee understands that Section 1445 of the Internal Revenue Code provides that a Transferee (Buyer) of a U.S. Real Property Interest must withhold tax if the Transferor (Seller) is a foreign person. However, no withholding is required under Section 1445(a) of the Internal Revenue Code if an individual Transferee acquires a U.S. Real Property Interest for use as a residence and the amount realized on the transaction is THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) or less.

Transferee hereby certifies as follows:

1. Transferee is purchasing that certain real property located in _____, which is more particularly described as follows:

[legal description]

2. Transferee has definite plans to reside on these premises for at least fifty percent (50%) of the number of days that the property is in use, during each of the first two (2), twelve (12) month periods following the date of this transfer.
3. The amount realized (the "Sales Price") of this residence does not exceed THREE HUNDRED THOUSAND DOLLARS (\$300,000.00).

It is further understood that this Certificate may be disclosed to the Internal Revenue Service, and that any false statement contained herein could be punished by fine, imprisonment or both. Under penalties of perjury Transferee declares that Transferee has examined carefully this certification, and to the best of Transferee's knowledge and belief, it is true, correct and complete.

Affiant is familiar with the nature of an oath and with the penalties for falsely swearing to statements made in an instrument of this nature. This affidavit is given to induce (Closing Agent) to conduct the closing on the subject property with the knowledge that said closing agent is relying upon the statements, representations and other matters set forth herein. Buyer hereby holds Closing Agent harmless and fully indemnifies same with respect to the matters set forth herein. "Affiant," "Seller," "Transferor," "Buyer," and "Transferee" include singular or plural as context so requires or admits.

Under penalties of perjury, I declare that I have read the foregoing Affidavit and that the facts stated in it are true.

(Affiant)
Print Name: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____, 20____, by _____ who ☐ is personally known or ☐ has produced _____ as identification.

[Notary Seal]

Notary Public
Printed Name: _____
My Commission Expires: _____

IRS Residency Certification - (10% withholding)

(Buyer's FIRPTA Affidavit)

Transferor: _____

Transferee: _____

Property: _____

Closing Date: _____

The undersigned ("Affiant") being duly sworn on oath, deposes, states, represents, warrants, confirms and says that:

Transferee understands that Section 1445 of the Internal Revenue Code provides that a Transferee (Buyer) of a U.S. Real Property Interest must withhold tax if the Transferor (Seller) is a foreign person. However, TEN PERCENT (10%) withholding is required under Section 1445(a) of the Internal Revenue Code if an individual Transferee acquires a U.S. Real Property Interest for use as a residence and the amount realized on the transaction is over THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) and up to and including ONE MILLION DOLLARS (\$1,000,000.00).

Transferee hereby certifies as follows:

1. Transferee is purchasing that certain real property located in _____, which is more particularly described as follows:

[legal description]
2. Transferee has definite plans to reside on these premises for at least fifty percent (50%) of the number of days that the property is in use, during each of the first two (2), twelve (12) month periods following the date of this transfer.
3. The amount realized (the "Sales Price") of this residence does not exceed ONE MILLION DOLLARS (\$1,000,000.00) but is more than THREE HUNDRED THOUSAND DOLLARS (\$300,000.00), therefore TEN PERCENT (10%) withholding is required.

It is further understood that this Certificate may be disclosed to the Internal Revenue Service, and that any false statement contained herein could be punished by fine, imprisonment or both. Under penalties of perjury Transferee declares that Transferee has examined carefully this certification, and to the best of Transferee's knowledge and belief, it is true, correct and complete.

Affiant is familiar with the nature of an oath and with the penalties for falsely swearing to statements made in an instrument of this nature. This affidavit is given to induce (Closing Agent) to conduct the closing on the subject property with the knowledge that said closing agent is relying upon the statements, representations and other matters set forth herein. Buyer hereby holds Closing Agent harmless and fully indemnifies same with respect to the matters set forth herein. "Affiant," "Seller," "Transferor," "Buyer," and "Transferee" include singular or plural as context so requires or admits.

Under penalties of perjury, I declare that I have read the foregoing Affidavit and that the facts stated in it are true.

(Affiant)
Print Name: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____, 20____, by _____ who ☐ is personally known or ☐ has produced _____ as identification.

[Notary Seal]

Notary Public
Printed Name: _____
My Commission Expires: _____

The Catch-22 of Foreign Sellers and the Form 1099-S



By Linda Monaco, Fund Legal Education Attorney

Transactions involving a foreign seller can bring complications for the settlement agent, but it does not need to be that way. In order to make the closing process go more smoothly, determine if the transaction is subject to Foreign Investment in Real Property Tax Act (FIRPTA) withholding. If so, withhold the proper amount, usually 15 percent, fill in the simple Internal Revenue Service (IRS) Forms 8288 and 8288-A, and submit the forms and funds to the IRS within 20 days of closing. Transactions which are subject to FIRPTA withholding still require the issuance of an IRS Form 1099-S to the seller and reporting to the IRS.

The IRS released a new Form 1099-S earlier this year. The new form has added a numbered “checkbox” for foreign sellers. The checkbox, in line number five, states “[c]heck here if the transferor is a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust).” The Form 1099-S consists of three parts, Copy A for the IRS which is filed with the report, Copy B for the transferor, and Copy C for the filer.

7575 ☐ VOID ☐ CORRECTED

FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number		1 Date of closing	OMB No. 1545-0997 <div style="font-size: 2em; font-weight: bold;">2017</div> Form 1099-S	Proceeds From Real Estate Transactions
		2 Gross proceeds \$		
FILER'S federal identification number	TRANSFEROR'S identification number	3 Address or legal description (including city, state, and ZIP code)		
TRANSFEROR'S name				
Street address (including apt. no.)		4 Check here if the transferor received or will receive property or services as part of the consideration ► <input type="checkbox"/>		
City or town, state or province, country, and ZIP or foreign postal code				
Account or escrow number (see instructions)		5 Check here if the transferor is a foreign person (nonresident alien, foreign partnership, foreign estate, or foreign trust) ► <input type="checkbox"/>		
		6 Buyer's part of real estate tax \$		

Copy A
For
Internal Revenue
Service Center
File with Form 1096.
 For Privacy Act and Paperwork Reduction Act Notice, see the 2017 General Instructions for Certain Information Returns.

Form **1099-S** Cat. No. 64292E www.irs.gov/form1099s Department of the Treasury - Internal Revenue Service
Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page

Form 1099-S requires the taxpayer identification number (TIN). Sometimes this is not a problem; however, many foreign sellers do not have a TIN. Since 2003, all foreign buyers have been required to obtain a TIN; however, many still do not apply for it. Additionally, reporting a Form 1099-S without a TIN can subject the reporter (i.e., the settlement agent) to a minimum penalty of \$50 per form. Since one cannot report information that does not exist, the IRS has given some guidance in this area.

On every reportable transaction, the settlement agent should request the TIN from the seller. This request may be in person or by regular or electronic mail; the request may be part of a request for other items. There is no need for a special or separate request. The request must be made no later than the time of closing. It is better to make this request early in the transaction to allow time for the seller to also meet their FIRPTA requirements, if necessary. The closing table is not the time to find out that the seller is a foreigner subject to FIRPTA. Notate the date and time of the request in the file.

The IRS has provided a sample request:

You are required by law to provide Sally Settlementagent with your correct taxpayer identification number. If you do not provide Sally Settlementagent with your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law.

If the above request is in writing, add spaces for each seller's name, address, and TIN. Below that information, add a certification which should be similar to this example as provided by the IRS:

Under penalties of perjury, I certify that I am a U.S. person or U.S. resident alien and the number shown on this statement is my correct taxpayer identification number.

The details of each request, when the seller did not provide a TIN, must be included in an affidavit submitted by the settlement agent during the annual Form 1099-S reporting period. A single affidavit for all such requests for the year is all that the IRS requires at this time. The beginning of the affidavit should be the same as all other affidavits. Then, each entry will list the details of each request. The details should include the name of the foreign person who did not provide a TIN, the date and time (if available) of the request, and the date the transaction occurred.

For example:

On Jan. 6, 2017 at 1:38 p.m., I contacted Solo Foreignseller. I requested his TIN. I stated that this information is required to be furnished under authority of law. Mr. Foreignseller did not provide me with his TIN. The transaction closed on Jan. 31, 2017.

The IRS states that this affidavit should be attached to the transmittal document forwarding the Form 1099-S returns. However, at the current time, there is no method to submit the affidavit with magnetic or electronic Form 1099-S submissions. Therefore, the IRS further advises keeping the affidavit in the settlement agent's files and submitting the affidavit only in response to a letter from the IRS proposing a penalty.

How does all of this work in DoubleTime? In DoubleTime one can leave the tax identification number (TIN) blank. When printing the 1099-S in DoubleTime it will show the error message: "missing seller tax identification number (TIN)." Even though this message appears, one may still print or email the 1099-S without a TIN. The year-end summary of 1099-S will show all errors including those with missing TINs. If TIN information has not yet been received, leave the TIN blank.

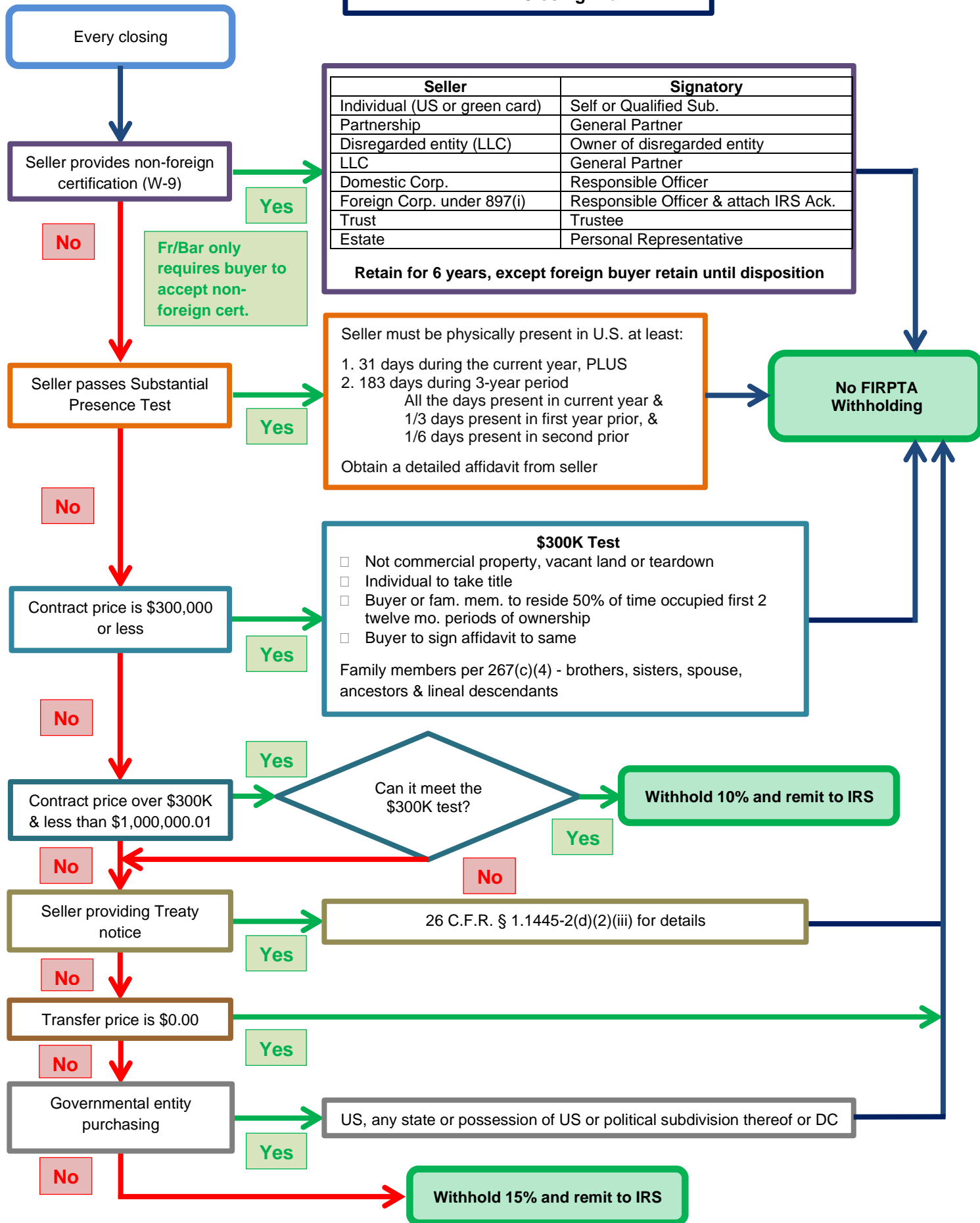
Next year, prior to the due date, generate the yearly report for filing electronically (for reporting more than 250 Forms 1099-S per year) or paper filing (for reporting 250 or fewer Forms 1099-S per year). Send this report to the IRS with Copy A of each Form 1099-S. This report will include all uncorrected

errors in the Forms 1099-S. So, if a Form 1099-S has no TIN, the IRS will receive that Form 1099-S with no TIN. If the report is filed by mail and not electronically, include the affidavit with all TIN requests detailed with the report.

If the report is electronically submitted and later the IRS sends a letter with a proposed penalty for failure to include the TIN, send the IRS a copy of the TIN request letter with a copy of the affidavit prepared giving all of the details of each request.

Although it may seem the filing of a Form 1099-S for a foreign seller is a difficult path to navigate and a Catch-22, with proper planning and documentation, it will be smooth sailing.

FIRPTA – Closing Aid



Note: chart is intended as a work aid & basic guidance for basic real estate transaction & not a substitute for legal analysis of a specific transaction

Non-Foreign Certification

- IRS Form W-9 or
 - Seller's name, home (or office address if entity), US identification number (SSN or EIN)
 - Signed under penalty of perjury
 - Keep for 6 years (five tax years after tax year of acquisition; foreign buyer to keep until disposition of property)
 - May rely upon this certification unless you receive written notice from others or have direct information to the contrary – no need to verify
- Tres. Reg. Sec. 1.1445-2**

Substantial Presence Test - Days of Presence in the United States

You are treated as present in the U.S. on any day you are physically present in the country, at any time during the day.

Do not count the following as days of presence in the U.S. for the substantial presence test.

- Days you commute to work in the U.S. from a residence in Canada or Mexico, if you regularly commute from Canada or Mexico.
- Days you are in the U.S. for less than 24 hours, when you are in transit between two places outside the United States.
- Days you are in the U.S. as a crew member of a foreign vessel.
- Days you are unable to leave the U.S. because of a medical condition that develops while you are in the United States.
- Days you are an exempt individual (see below).

For details on days excluded from the substantial presence test for other than exempt individuals, refer to Publication 519, U.S. Tax Guide for Aliens.

The term United States (U.S.) includes the following areas.

- All 50 states and the District of Columbia.
- The territorial waters of the United States.
- The seabed and subsoil of those submarine areas that are adjacent to U.S. territorial waters and over which the United States has exclusive rights under international law to explore and exploit natural resources.

The term does not include U.S. possessions and territories or U.S. airspace.

\$300K Test

- Must take title in persons name
- May not take in the name of a trustee, company, LLC or other
- No commercial property
- No vacant land
- No property to be torn down
- Buyer or member of his/her family to reside at least 50% of time it is actually occupied – do not count vacant days. Renter or others may occupy but MUST be less days than owner's including family occupancy days – for the first two 12-month periods. Failure to comply may result in IRS collecting 15% plus penalties and interest from Buyer/Owner
- Buyer/owner to sign affidavit to same
- Family member = brothers & sisters half included; spouse, ancestors & lineal descendants

FIRPTA Tips

1. Settlement agent is NOT the withholding agent. Buyer is the withholding agent and will sign forms under penalty of perjury.
2. May charge extra for filling in forms for buyer if, retainer letter or non-representation letter excluded FIRPTA from settlement fee.
3. When sending out retainer or non-representation letter include a non-foreign certification for each seller.
4. Have foreign buyer retain non-foreign certification until disposition of real property. Foreign buyer will need this certification, if he/she applies for a withholding certificate when selling the same property.
5. If foreign seller “lives in the US,” DO NOT CLOSE IN JANUARY as foreign seller will NOT qualify for substantial presence test.
6. When using the \$300,000 exemption (or \$1,000,000 reduced rate) to FIRPTA withholding verify that the buyer, property and use qualify.
7. It may not always be a good idea for a sell to apply for a withhold certificate. Direct sell to a tax attorney for proper evaluation.
8. To verify timely required for a withholding certificate, mail application yourself (may use 8288-B).
9. Fill in your name and firm address in paragraph 5 of the application (8288-B) to have the IRS response sent to your office.
10. Regardless of what **anyone says**, withhold for FIRPTA unless you have one or these seven items:
 1. **Not a foreign person**
 2. **Foreign person passes the substantial presence test**
 3. **Buyer, property & contract qualify for the \$300K exemption**
 4. **Seller has treaty benefits**
 5. **Contract or transfer price is \$0.00**
 6. **Governmental purchase**
 7. Receive a withholding certification from IRS
11. You are not a tax attorney.
12. It is the buyer’s responsibility to determine if FIRPTA withholding is required. Direct buyer to a tax attorney if necessary.
13. When mailing FIRPTA withholding to IRS include a cover letter and make sure each document has: buyer’s name and identification number; seller’s name and identification number; and street address of the transferred property (including the check).

CERTIFICATE OF ATTENDANCE

Certified Paralegals are required to record evidence of 50 hours of continuing legal education hours to renew the CP credential every 5 years. CLE hours are recorded in CPs' accounts through the [NALA online portal](https://www.nala.org/certification/certtest2view). Of the 50 hours, 5 hours must be in legal ethics, and no more than 10 hours may be recorded in non-substantive areas. If attending a non-NALA sponsored educational event, this certificate may be used to obtain verification of attendance. Please be sure to obtain the required signatures for verification of attendance. The requirements to maintain the CP credential are available from NALA's web site at <https://www.nala.org/certification/certtest2view>. Please keep this certificate in the event of a CLE audit or further information is needed.

PLEASE COMPLETE THE SPACES BELOW AND ATTACH A PROGRAM

Session Length In Hours	Session Topics (Description and Speakers)	Validation of Attendance
1.0	Foreign Seller Ahead: Proceed With Caution / Linda Monaco	<i>Linda Monaco</i>

Name of CP (Please Print)			NALA Account Number (On Mailing Label)		
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Address			Authorized Signature of Sponsor Representative		
			<i>Linda Monaco</i>		
			Date of Educational Event:		
City:		State (XX):			
Preferred e-mail address			Location:		
			Recorded Webinar		

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May 24, 2024

Reference Number:	2405903N
Title:	Foreign Seller Ahead - Proceed with Caution
Level:	Intermediate
Approval Period:	6/23/2024 - 12/31/2025

CLE Credits

General	1.0
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Certification Credits

Real Estate	1.0
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