

Section 1446 Regulations; Withholding on Effectively Connected Taxable Income Allocable to Foreign Partners

REG-108524-00

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking, notice of proposed rulemaking by cross reference to temporary regulations and notice of public hearing.

SUMMARY: The IRS is proposing to issue temporary regulations under section 1446 of the Internal Revenue Code relating to the circumstances under which a partnership may take partner-level deductions and losses into account in computing its withholding tax obligation with respect to a foreign partner's allocable share of effectively connected taxable income. The text of the temporary regulations (T.D. 9200) published elsewhere in this issue of the Bulletin also serves as the text of these proposed regulations. In addition, the proposed regulations amend regulations under sections 1464, 6071, 6091, 6151, 6302, 6402, 6414, and 6722 to implement the section 1446 regime. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments and requests to comment at the public hearing scheduled for October 3, 2005, must be received by August 16, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-108524-00), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-108524-00),

Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20044. Alternatively, taxpayers may submit comments electronically via either the IRS internet site at www.irs.gov/regs or the Federal eRulemaking Portal at www.regulations.gov (IRS and REG-108524-00). The public hearing will be held in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC on October 3, 2005.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Ronald M. Gootzeit, at (202) 622-3860 or to be placed on the attendance list for the hearing, Richard A. Hurst at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collections of information should be received by July 18, 2005. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may

be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in this proposed regulation are in §1.1446-6T. This information is required to determine the extent to which a partnership is required to pay a withholding tax under section 1446 with respect to its effectively connected taxable income allocable to a foreign partner. The reporting requirement in §1.1446-6T is voluntary. The likely respondents include individuals, businesses or other for profit institutions, and small businesses or organizations.

Estimated total annual reporting burden: 2,500 hours.

Estimated average annual burden hours per respondent: .5 hours.

Estimated number of respondents: 5,000.

Estimated annual frequency of responses: on occasion and annually.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Temporary regulations published elsewhere in this issue of the Bulletin amend the Income Tax Regulations (26 CFR part 1) relating to section 1446. The text of those regulations also serves as the text of the proposed regulations pertaining to section 1446 that are included in this document. The preamble to the temporary regulations explains the amendments to section 1446. The proposed regulations also amend the Income Tax and Procedure and Administration Regulations (26 CFR Parts 1 and 301) relating to sections 1464, 6071,

6091, 6151, 6302, 6402, 6414, and 6722. The amendments to these sections are necessary to coordinate the sections with the final section 1446 regulations issued elsewhere in this issue of the Bulletin.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. It also has been determined that section 533(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collections of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that only a limited number of small entities are impacted by these collections and the burden associated with such collections is .5 hours. Moreover, the information collection in §1.1446-6T is voluntary. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. The Treasury Department and IRS request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 3, 2005, beginning at 10 a.m. in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. All visitors must enter at the Constitution Avenue entrance and present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the

immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by August 16, 2005. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the schedule of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these proposed regulations are David J. Sotos, formerly of the Office of the Associate Chief Counsel (International), and Ronald M. Gootzeit of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and IRS participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:
Authority: 26 U.S.C. 7805 * * *

§1.1446-6 also issued under 26 U.S.C. 1446(f). * * *

Par. 2. Section 1.1446-6 is added to read as follows:

§1.1446-6 Special rules to reduce a partnership's 1446 tax with respect to a foreign partner's allocable share of effectively connected taxable income.

[The text of this proposed section is the same as the text of §1.1446-6T published elsewhere in this issue of the Bulletin].

Par. 3. In §1.1464-1, paragraph (a) is amended by adding three sentences at the end of the paragraph to read as follows:

§1.1464-1 Refunds or credits.

(a) * * * With respect to section 1446, this section shall only apply to a publicly traded partnership described in §1.1446-4. See §1.1446-3(d)(2)(iv) for rules permitting a withholding agent to obtain a refund of tax paid under section 1446. The previous two sentences shall apply to partnership taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

Par. 4. In §1.6071-1, paragraph (c)(15) is revised to read as follows:

§1.6071-1 Time for filing returns and other documents.

* * * * *

(c) * * *

(15) For provisions relating to the time for filing an annual information return on Form 1042-S or Form 8805 of the tax withheld under chapter 3 of the Internal Revenue Code (relating to withholding of tax on nonresident aliens and foreign corporations and tax-free covenant bonds), see §1.1461-1(c) and §1.1446-3(d). The references in the previous sentence to Form 8805 and §1.1446-3(d) shall apply to partnership taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

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Par. 5. In §1.6091-1, paragraph (b)(17) is added to read as follows:

§1.6091-1 Place for filing returns or other documents.

* * * * *

(b) * * *

(17) For the place for filing information returns on Form 8805 with respect to certain amounts paid on behalf of foreign partners, see the instructions to the form.

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Par. 6. In §1.6151-1, paragraph (d)(2) is revised to read as follows:

§1.6151-1 Time and place for paying tax shown on returns.

* * * * *

(d) * * *

(2) For provisions relating to the use of such financial institutions for the deposit of taxes required to be withheld under chapter 3 of the Internal Revenue Code on nonresident aliens and foreign corporations and tax-free covenant bonds, see §1.6302-2. With respect to section 1446, the previous sentence shall apply only to a publicly traded partnership described in §1.1446-4. This paragraph shall apply to publicly traded partnerships described in the previous sentence only for partnership taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

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Par. 7. In §1.6302-2, paragraphs (a)(1)(i) and (2) are revised to read as follows:

§1.6302-2 Use of Government depositaries for payment of tax withheld on nonresident aliens and foreign corporations.

(a) * * *

(1) * * *

(i) *Monthly deposits.* Except as provided in paragraphs (a)(1)(ii) and (iv) of this section, every withholding agent who, pursuant to chapter 3 of the Internal Revenue Code, has accumulated at the close of any calendar month beginning on or after January 1, 1973, an aggregate amount of undeposited taxes of \$200 or more shall deposit such aggregate amount with an authorized financial institution (see paragraph (b)(1)(ii) of this section) within 15 days after the close of such calendar month. However, the preceding sentence shall not apply if the withholding agent has made a deposit of taxes pursuant to paragraph (a)(1)(ii) of this section with respect to a quarter monthly period which occurred during such month. With respect to section 1446, this section shall only apply to a publicly traded partnership described in §1.1446-4. The previous sentence shall apply to partnership taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

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(2) *Cross reference.* For rules relating to the adjustment of deposits, see §1.1461-2(b) and §1.6414-1. For rules requiring payment of any undeposited tax, see §1.1461-1.

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Par. 8. Section 1.6414-1 is amended by:

1. Adding three sentences at the end of the undesignated text following paragraph (a)(2).

2. Revising the third sentence of paragraph (b).

The addition and revision read as follows:

§1.6414-1 Credit or refund of tax withheld on nonresident aliens and foreign corporations.

(a) * * * With respect to the payment of withholding tax under section 1446, this section shall only apply to a publicly traded partnership described in §1.1446-4. See §1.1446-3(d)(2)(iv) for rules regarding refunds to a withholding agent under section 1446. The previous two sentences shall apply to partnership taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

(b) * * * The amount so claimed as a credit may be applied, to the extent it has not been applied under paragraph (b) of §1.1461-2, by the withholding agent to reduce the amount of a payment or deposit of tax required by §1.1461-1 or paragraph (a) of §1.6302-2 for any payment period occurring in the calendar year following the calendar year of overwithholding. * * *

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PART 301—PROCEDURE AND ADMINISTRATION

Par. 9. The authority for 26 CFR part 301 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 10. In §301.6302-1, paragraph (b)(2) is revised to read as follows:

§301.6302-1 Mode or time of collection of taxes.

* * * * *

(b) * * *

(2) For provisions relating to the use of Federal Reserve banks or authorized commercial banks in depositing the tax

required to be withheld under chapter 3 of the Internal Revenue Code on nonresident aliens and foreign corporations and tax-free covenant bonds, see §1.6302-2 of this chapter. The previous sentence shall include payment of withholding tax under section 1446 and §1.1446-4. References in this paragraph (b)(2) to payment of withholding tax under section 1446, shall apply to partnership taxable years beginning after the date these regulations are published in the **Federal Register**.

Par. 11. In §301.6402-3, the second and third sentences of paragraph (e) are revised, and a sentence is added at the end of the paragraph to read as follows:

§301.6402-3 Special rules applicable to income tax.

* * * * *

(e) * * * Also, if the overpayment of tax resulted from the withholding of tax at source under chapter 3 of the Internal Revenue Code, a copy of the Form 1042-S, Form 8805, or other statement (see §1.1446-3(d)(2)) required to be provided to the beneficial owner or partner pursuant to §1.1461-1(c)(1)(i) or §1.1446-3(d) of this chapter must be attached to the return. For purposes of claiming a refund, the Form 1042-S, Form 8805, or other statement must include the taxpayer identification number of the beneficial owner or partner even if not otherwise required. * * * References in this paragraph to Form 8805 or other statements required under §1.1446-3(d)(2) shall apply to partnership taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

Par. 12. In §301.6722-1, paragraph (d)(3) is revised to read as follows:

§301.6722-1 Failure to furnish correct payee statements.

* * * * *

(d) * * *

(3) *Other items.* The term *payee statement* also includes any form, statement, or schedule required to be furnished to the recipient of any amount from which tax is required to be deducted and withheld under chapter 3 of the Internal Revenue Code (or from which tax would be required to be so deducted and withheld but for an exemption under the Internal

Revenue Code or any treaty obligation of the United States), generally the recipient copy of Form 1042-S or Form 8805. The reference in the previous sentence to Form 8805 shall apply to partnership taxable years beginning after the date that these regulations are published as final regulations in the **Federal Register**.

Mark E. Matthews,
*Deputy Commissioner for
Services and Enforcement.*

(Filed by the Office of the Federal Register on May 13, 2005, 8:45 a.m., and published in the issue of the Federal Register for May 18, 2005, 70 F.R. 28743)