

Publication 515

Withholding of Tax on Nonresident Aliens and Foreign Entities

For use in preparing

2025 Returns

Volume 6 of 7



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Escrow in lieu of deposit. Under certain circumstances, a withholding agent may be permitted to set aside a withheld amount in escrow rather than depositing the tax. A participating FFI that withholds tax on a withholdable payment not otherwise subject to chapter 3 withholding or backup withholding under section 3406 made to a recalcitrant account holder of a dormant account may, in lieu of depositing the tax withheld, set aside the amount withheld in escrow until the date that the account ceases to be a dormant account. In such case, the tax withheld becomes due 90 days following the date that the account ceases to be a dormant account if the account holder does not provide the required documentation, or becomes refundable to the account holder if the account holder provides documentation establishing that withholding does not apply.

A withholding agent that withholds tax under chapter 3 on certain payments that include an undetermined amount of income may retain 30% of the payment to hold in escrow in accordance with Regulations section 1.1441-3(d). Similarly, if a withholding agent is unable to determine whether the payment is a withholdable payment because the source or character of the payment is unknown, the withholding agent may retain 30% of the payment to hold in escrow for chapter 4 purposes in accordance with Regulations section 1.1471-2(a)(5).

Electronic deposit requirement. You must deposit all withheld taxes under chapter 3 or 4 by electronic funds transfer. In most cases, electronic funds transfers are made using the Electronic Federal Tax Payment System (EFTPS). If you do not want to use EFTPS, you can arrange for your tax professional, financial institution, or other trusted third party to make deposits on your behalf.

You may also arrange for your financial institution to initiate a same-day wire payment on your behalf. EFTPS is a free service provided by the Department of Treasury. Services provided by your tax professional, financial institution, or other third party may have a fee. For more information about EFTPS or to enroll in EFTPS, visit [EFTPS.gov](https://www.eftps.gov) or call 800-555-4477. For additional information about EFTPS, see Pub. 966, Electronic Federal Tax Payment System, A Guide To Getting Started.



Qualified business taxpayers that request an EIN will automatically be enrolled in EFTPS. They will receive information on how to activate their account.

Note. All payments should be stated in U.S. dollars and should be made in U.S. dollars.

Penalty for failure to make deposits on time. If you fail to make a required deposit within the time prescribed, a penalty is imposed on the underpayment

(the excess of the required deposit over any actual timely deposit for a period). You can avoid the penalty if you can show that the failure to deposit was for reasonable cause and not because of willful neglect. Also, the IRS may waive the penalty if certain requirements are met.

Depositing on time. For deposits made by EFTPS to be on time, you must initiate the deposit by 8 p.m. Eastern time the day before the date the deposit is due. If you use a third party to make deposits on your behalf, they may have different cutoff times.

Penalty rate. If the deposit is:

- 1 to 5 days late, the penalty is 2% of the underpayment;
- 6 to 15 days late, the penalty is 5%; or
- 16 or more days late, the penalty is 10%.

However, if the deposit is not made within 10 days after the IRS issues the first notice demanding payment, the penalty is 15%.

If you owe a penalty for failing to deposit tax for more than one deposit period, and you make a deposit, your deposit is applied to the most recent period to which the deposit relates unless you designate the deposit period or periods to which your deposit is to be applied. You can make this designation only during a 90-day period that begins on the date of the penalty notice.

The notice contains instructions on how to make this designation.

Adjustment for Overwithholding

What to do if you overwithheld tax depends on when you discover the overwithholding.

Overwithholding discovered by March 15 of the following calendar year. If you discover that you overwithheld tax under chapter 3 or 4 by March 15 of the following

calendar year, you may use the undeposited amount of tax to make any necessary adjustments between you and the recipient of the income. However, if the undeposited amount is not enough to make any adjustments, or if you discover the overwithholding after the entire amount of tax has been deposited, you can use either the reimbursement procedure or the set-off procedure to adjust the overwithholding.



If March 15 is a Saturday, Sunday, or legal holiday, the next business day is the final date for these actions.

For more information on the reimbursement procedure and set-off procedure, and what to do if you discover the overwithholding after March 15 of the following calendar year, see *Adjustment for Overwithholding* in the Instructions for Form 1042.

Returns Required

Every withholding agent, whether U.S. or foreign, must file Forms 1042 and 1042-S to report:

- Amounts subject to chapter 3 withholding paid to foreign persons (including persons presumed to be foreign), even if no amount is deducted and withheld from the payment under chapter 3; and
- Payments to which chapter 4 withholding is applied or which are allocated on an applicable withholding statement provided by a participating FFI or registered deemed-compliant FFI to a chapter 4 withholding rate pool of U.S. payees (chapter 4 reportable amounts).

Do not use Forms 1042 and 1042-S to report tax withheld on the following.

- Wages, salaries, or other compensation reported on Form W-2 (see Wages Paid to

Employees—Graduated Withholding, earlier, under *Pay for Personal Services Performed*).

- Any part of a U.S. or foreign partnership's (other than a publicly traded partnership) ECTI allocable to a foreign partner (see Partnership Withholding on ECTI, later).
- Dispositions of USRPIs by foreign persons (see U.S. Real Property Interest, later).
- Pensions, annuities, and certain other deferred income reported on Form 1099.
- Income, social security, and Medicare taxes on wages paid to a household employee reported on Schedule H (Form 1040).
- Amounts subject to backup withholding under section 3406, including withholdable payments that are reportable payments and that are paid to a recalcitrant account holder of a participating FFI or registered deemed-

compliant FFI that has elected on its withholding statement for withholding under section 3406 to apply instead of withholding under chapter 4.



Forms 1042 and 1042-S must be filed by March 15 of the year following the calendar year in which the income subject to reporting was paid. If March 15 falls on a Saturday, Sunday, or legal holiday, the due date is the next business day.

Form 1042. Every U.S. and foreign withholding agent that is required to file a Form 1042-S must also file an annual return on Form 1042. You must file Form 1042 even if you were not required to withhold any income tax under chapter 3 on the payment, or if the payment is a chapter 4 reportable amount.

E-filing of Form 1042 is required for a withholding agent that is a financial institution, a withholding agent that must file 10 or more information returns in a calendar,

as described in Regulations section 301.6011-2, or a partnership with more than 100 partners. However, [Notice 2024-26, 2024-12 I.R.B. 713](#), provides withholding agents that are foreign persons (including foreign financial institutions) an administrative exemption from the requirement to e-file Forms 1042 for the calendar year 2025 (tax year 2024). See the Instructions for Form 1042 for more information. For general information about e-filing, see Pub. 4163, Modernized e-File (MeF) Information for Authorized IRS e-File Providers for Business Returns.

You are encouraged to e-file Form 1042. However, you may file a paper Form 1042 with the:



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

Form 1042-S. Every U.S. and foreign withholding agent must file a Form 1042-S for amounts subject to chapter 3 withholding and chapter 4 reportable amounts unless an exception applies. You may be required to e-file Form 1042-S. Go to [IRS.gov/InfoReturn](https://www.irs.gov/InfoReturn) for e-file options.

A separate Form 1042-S is required for each recipient of income to whom you made payments during the preceding calendar year regardless of whether you withheld or were required to withhold tax. However, if you make a withholdable payment to an NQI or a flow-through entity that is allocable to a chapter 4 withholding rate pool, as indicated on a withholding statement upon which you may rely with respect to the payment allocable to such a pool, you should complete a separate Form 1042-S for each chapter 4 withholding rate pool (that is, pool of recalcitrant account holders, pool of nonparticipating FFIs, pool of payees that are

U.S. persons), treating the intermediary or flow-through entity as the recipient (and the applicable pool as the chapter 4 status of the recipient). You need not issue a Form 1042-S to each recipient included in such pool. You must use a separate Form 1042-S for each type of income that you paid to the same recipient. See *Statements to recipients*, later.

You must furnish a Form 1042-S for each recipient even if you did not withhold tax because you repaid the tax withheld to the recipient or because the income payment was exempt from tax under the Internal Revenue Code or under a U.S. income tax treaty (except for a withholdable payment that is not a chapter 4 reportable amount).

You can use a substitute Form 1042-S if it meets the requirements listed in Pub. 1179. Paper substitutes that totally conform to the format and size of the official form may be used without prior approval from the IRS. See [Pub. 1179](#) for more information.

If you are reporting amounts withheld by another withholding agent, Form 1042-S requests the name and EIN of the withholding agent that withheld the tax to the extent required in the Instructions for Form 1042-S.



If you file a substitute for Copy A with the IRS that does not conform to the specifications in Pub. 1179, you may be subject to a penalty for failing to file a correct return. See Penalties, later.

Joint owners. If there are joint owners of the withholdable payment, see *Payments directly to beneficial owners* under *Payments to Recipients* in the Instructions for Form 1042-S.

E-filing. For information about Form 1042-S e-filing requirements for withholding agents or their agents, and partnerships with a Form 1042-S filing requirement, including the threshold return limits, see *Electronic Reporting* in the Instructions for [Form 1042-S](#).

For additional information and instructions on e-filing Forms 1042-S, get Pub. 1187 or go to [IRS.gov/InfoReturn](https://www.irs.gov/InfoReturn) for e-file options.

Form 1042-T. If you are not required to e-file and Form 1042-S is filed on paper, it must be filed with Form 1042-T. You may need to file more than one Form 1042-T. See the instructions for [Form 1042-T](#) for more information.

Deposit interest paid to certain nonresident alien individuals. Interest earned by residents of certain foreign countries is subject to information reporting. Deposit interest of \$10 or more paid to any nonresident alien individual who is a resident of a foreign country with which the United States has agreed to exchange tax information pursuant to an income tax treaty or other convention or bilateral agreement, must be reported on Form 1042-S.

[Revenue Procedure 2021-32](#) identifies those countries for which reporting of deposit interest is required with respect to a resident of any such country.

Note. You may elect to report interest paid to any nonresident alien.

Statements to recipients. You must furnish a statement to each recipient for whom you are filing a Form 1042-S by the due date for filing Forms 1042 and 1042-S with the IRS. You may use a copy of the official Form 1042-S for this purpose. Any substitute forms must comply with the rules set out in Pub. 1179. You must furnish a separate substitute Form 1042-S for each type of income or payment. The withholding agent must ensure that any substitute Form 1042-S copies B, C, and D, which are furnished to the recipient, conforms in format and size to the official Form 1042-S and contains the exact same information as the copy filed with the IRS or e-filed.

However, the size of a substitute Form 1042-S, copies B, C, and D, may be adjusted if the substitute form is presented on a landscape-oriented page instead of portrait. Only one Form 1042-S may be submitted per page, regardless of orientation.

Form 8966

A withholding agent that makes a withholdable payment to a passive NFFE with one or more substantial U.S. owners (or, in the case of a reporting Model 2 FFI, controlling persons of such an entity) or an owner-documented FFI with a specified U.S. person owning certain equity or debt interests in the FFI must report the payment and each such substantial U.S. owner (or controlling person, as applicable) or specified U.S. person owner of the passive NFFE or owner-documented FFI, respectively, on Form 8966 (in addition to reporting the payment and tax (if any) on Forms 1042 and 1042-S when the payment is an amount subject to chapter 3

withholding). An exception to the requirement to report on Form 8966 applies when the payment is made to an account reported by an FFI as a U.S. account under the FFI's applicable chapter 4 requirements or the requirements of an applicable IGA.

Form 8966 must be filed by March 31 of the year following the calendar year in which the payment is made. An automatic 90-day extension of time to file [Form 8966](#) may be requested. To request an automatic 90-day extension of time to file Form 8966, file [Form 8809-I](#). See the Instructions for Form 8809-I for where to file that form. You should request an extension as soon as you are aware that an extension is necessary, but no later than the due date for filing Form 8966. Under certain hardship conditions, the IRS may grant an additional 90-day extension to file Form 8966.

To request an additional 90-day extension of time to file Form 8966, file a second Form 8809-I before the end of the initial extended due date.

E-filing requirement for Form 8966. For information about the Form 8966 e-filing requirements, including the threshold return limits, for financial institutions and all other entities with a Form 8966 filing requirement, see *Electronic filing requirement* and *How to file electronically* in the [Instructions for Form 8966](#).

Extensions of Time To File

You can request extensions of time to file Forms 1042 and 1042-S with the IRS and additional extensions to furnish Forms 1042-S to recipients.

Extension to file Form 1042. You can get an automatic 6-month extension of time to file Form 1042 by filing [Form 7004](#).

File Form 7004 on or before the due date of Form 1042. Form 7004 does not extend the time for payment of tax.



Form 7004 extends only the due date for filing the returns with the IRS. It does not extend the due date for furnishing statements to recipients.

Extension to file Form 1042-S with the IRS. You can get an automatic 30-day extension of time to file Form 1042-S by filing [Form 8809](#). You should request an extension as soon as you are aware that an extension is necessary, but no later than the due date for filing Form 1042-S.

You may request one additional extension of 30 days by submitting a second Form 8809 before the end of the first extension period. Requests for an additional extension are not automatically granted. When requesting the additional extension, include a copy of the filed Form 8809.

The IRS will send you a letter of explanation approving or denying your request for an additional extension. See the instructions for [Form 8809](#) for more information.

Note. If you have questions about Form 8809, call the Technical Services Operations (TSO) toll free at 866-455-7438 or 304-263-8700 (not toll free). Persons with a hearing or speech disability with access to TTY/TDD equipment can call 304-579-4827 (not toll free).



If you are requesting extensions of time to file for more than one withholding agent or payer, you must submit the extension request electronically.

Extension to furnish statements to recipients. You may request a one-time 30-day extension to furnish copies of Form 1042-S. See Instructions for Form 1042-S for more information.

Penalties

If you do not file a correct and complete Form 1042 or Form 1042-S with the IRS on time or if you do not provide a correct and complete Form 1042-S to the recipient on time, you may be subject to a penalty.

Failure to file Form 1042. The penalty for not filing Form 1042 when due (including extensions) is usually 5% of the unpaid tax for each month or part of a month the return is late, but not more than 25% of the unpaid tax.

Failure to file correct Form 1042-S. A penalty may be imposed for failure to file a complete and correct Form 1042-S when due (including extensions).

For more information on the penalty for failure to timely file a correct Form 1042-S with the IRS, see *Penalties* in the current-year revision of the [Instructions for Form 1042S](#) .

Failure to furnish Form 1042-S to recipient. For more information on the penalty for failure to timely furnish Form 1042-S to a recipient, see *Penalties* in the current-year revision of the Instructions for Form 1042-S.

Penalty for intentional disregard of requirements to file or furnish returns. If you intentionally disregard the requirement to file Form 1042-S when due, to furnish Form 1042-S to the recipient when due, or to report correct information, the penalty is the greater of \$680 or 10% of the total amount of the items that must be reported, with no maximum penalty.

Failure to e-file. If you are required to e-file Form 1042-S but you fail to do so, and you do not have an approved waiver, penalties may apply unless you establish reasonable cause for your failure.

For more information on failure to e-file, see *Penalties* in the current-year revision of the Instructions for Form 1042-S.

Partnership Withholding on ECTI

Under section 1446(a), a partnership (foreign or domestic) that has income effectively connected with a U.S. trade or business (or income treated as effectively connected) must pay a withholding tax on the ECTI that is allocable to its foreign partners. A publicly traded partnership or nominee for a publicly traded partnership distribution must withhold tax on actual distributions of ECI. See *Publicly Traded Partnership Distributions (PTP Distributions)*, later. Chapter 4 withholding does not apply to this income.

This withholding tax does not apply to income that is not effectively connected with the partnership's U.S. trade or business.

That income may be subject to chapter 3 withholding tax, as discussed earlier.

Who Must Withhold

The partnership, or a withholding agent for the partnership, must pay the withholding tax. A partnership that must pay the withholding tax but fails to do so may be liable for the payment of the tax and any penalties and interest.

The partnership must determine whether a partner is a foreign partner. A foreign partner can be a nonresident alien individual, foreign corporation, foreign partnership, foreign estate or trust, foreign tax-exempt organization, or foreign government.

U.S. partner. A partner that is a U.S. person should provide Form W-9 to the partnership.

A partnership may rely on a partner's certification of nonforeign status and assume that a partner is not a foreign partner unless the form:

- Does not give the partner's name, U.S. TIN, and address; or
- Is not signed under penalties of perjury and dated.

The partnership must keep the certification for as long as it may be relevant to the partnership's liability for tax under section 1446.

The partnership may not rely on the certification if it has actual knowledge or has reason to know that any information on the form is incorrect or unreliable.

If a partnership does not receive a Form W-9 (or similar documentation), the partnership must presume that the partner is a foreign person.

Foreign Partner

A partner that is a foreign person should provide the appropriate Form W-8 (as shown in Chart D) to the partnership.

Partners who have otherwise provided Form W-8 to a partnership for purposes of section 1441 or 1442, as discussed earlier, can use the same form for purposes of section 1446(a) if they meet the requirements discussed earlier under Documentation. However, a foreign simple trust that has provided documentation for its beneficiaries for purposes of section 1441 must provide a Form W-8 on its own behalf for purposes of section 1446.

The partnership may not rely on the certification if it has actual knowledge or has reason to know that any information on the form is incorrect or unreliable.

The partnership must keep the certification for as long as it may be relevant to the partnership's liability for section 1446 tax.

Chart D. **Documentation for Foreign Partners***

| IF you are a... | THEN provide to the partnership Form... |
|---|--|
| nonresident alien | W-8BEN. |
| foreign corporation | W-8BEN-E. |
| foreign partnership | W-8IMY. |
| foreign government | W-8EXP. |
| foreign grantor trust** | W-8IMY. |
| certain foreign trust or foreign estate | W-8BEN. |

| | |
|--|-------------------------------|
| foreign tax-exempt organization (including a private foundation) | W-8EXP. |
| nominee | W-8 used by beneficial owner. |
| <p>* A partnership may substitute its own form for the official version of Form W-8 to ascertain the identity of its partners.</p> <p>** A domestic grantor trust must provide a statement as shown in Regulations section 1.1446-1(c)(2)(ii)(E), and documentation for its grantor.</p> | |

Amount of Withholding Tax

The amount a partnership must withhold is based on its effectively connected taxable income that is allocable to its foreign partners for the partnership's tax year. However, see *Publicly Traded Partnerships*, later.

Reduction of withholding. The foreign partner's share of the partnership's gross ECI is reduced by the following.

- The partner's share of partnership deductions connected to that income for the year.
- The partner's tax treaty benefits related to that income (see Chart D. Documentation for Foreign Partners for documentation).

The partnership may reduce the foreign partner's share of partnership gross ECI by the following.

1. State and local income taxes the partnership withholds and pays on behalf of the partner on current-year effectively connected taxable income allocated to the partner.
2. The foreign partner's partner-level deductions and losses that the partner certifies to the partnership as:
 - a. Carried forward from a prior year,

- a. Properly allocated to gross ECI of the partner's trade or business in the United States, and
- b. Reasonably expected to be available and claimed on the partner's U.S. income tax return.

To certify the deductions and losses, a partner must submit to the partnership Form 8804-C.

If the partner's investment in the partnership is the only activity producing ECI and the section 1446 tax is less than \$1,000, no withholding is required. The partner must provide Form 8804-C to the partnership to receive the exemption from withholding.

A foreign partner may submit a Form 8804-C to a partnership at any time during the partnership's year and prior to the partnership's filing of its Form 8804.

An updated certificate is required when the facts or representations made in the original certificate have changed or a status report is required.

For more information, see the [Instructions for Form 8804-C](#).

Tax rate. The withholding tax rate on a partner's share of ECTI is 37% for noncorporate partners and 21% for corporate partners. However, the partnership may withhold at the highest rate applicable to a particular type of income allocated to a partner provided the partnership received the appropriate documentation. See Regulations section 1.1446-3(a)(2)(ii).

Installment payments. A partnership must make installment payments of withholding tax on its foreign partners' share of effectively connected taxable income whether or not distributions are made during the partnership's tax year.

The amount of a partnership's installment payment is the sum of the installment payments for each of its foreign partners. The amount of each installment payment can be figured by using [Form 8804-W](#).



Date payments are due. Payments of withholding tax must be made during the partnership's tax year in which the ECTI is derived. A partnership must pay the IRS a part of the annual withholding tax for its foreign partners by the 15th day of the 4th, 6th, 9th, and 12th months of its tax year for U.S. income tax purposes. Any additional amounts due are to be paid with Form 8804, the annual partnership withholding tax return, discussed later.

A foreign partner's share of withholding tax paid by a partnership is treated as distributed to the partner on the earliest of:

- The day on which the tax was paid by the partnership,

- The last day of the partnership's tax year for which the tax was paid, or
- The last day on which the partner owned an interest in the partnership during that year.

The amount treated as distributed to the partner resulting from an installment payment is generally treated as an advance or draw under Regulations section 1.731-1(a)(1) (ii) to the extent of the partner's share of income for the partnership year.

Notification to partners. In most cases, a partnership must notify each foreign partner of the tax withheld on its behalf within 10 days of the installment payment date. No particular form is required for this notification. For more information on the substance of the notification and exceptions, see Regulations section 1.1446-3(d)(1)(i).

Real property transfers. If a domestic partnership disposes of a USRPI, gain or loss from the sale allocable to a foreign partner is treated as effectively connected to the conduct of a U.S. trade or business and is included in ECTI. The partnership or withholding agent must withhold following the rules discussed here for section 1446(a) withholding. A domestic partnership's compliance with these rules satisfies the requirements for withholding on the disposition of U.S. real property interests (discussed later).

If a foreign partnership disposes of a U.S. property interest, the transferee must withhold under section 1445(a), although gain or loss from the sale is also treated as effectively connected to the conduct of a U.S. trade or business and is included in ECTI.

The foreign partnership may credit the amount withheld under section 1445(a) that is allocable to foreign partners against its tax liability under section 1446.

Transfers of interests in partnerships engaged in the conduct of a U.S. trade or business. If a domestic partnership transfers a direct or indirect interest in another partnership engaged in the conduct of a U.S. trade or business, gain or loss from the sale allocable to a foreign partner that is treated under section 864(c)(8) as effectively connected to the conduct of a U.S. trade or business is included in ECTI.

If a foreign partnership transfers an interest in another partnership for a gain and section 864(c)(8) treats any portion of that gain as effectively connected with the conduct of a trade or business in the United States, then the partnership will be withheld upon under section 1446(f)(1).

The foreign partnership may credit the amount withheld under section 1446(f)(1) that is allocable to foreign partners against its tax liability under section 1446(a).

Reporting and Paying the Tax

Three forms are required for reporting and paying over tax withheld on ECTI allocable to foreign partners. This does not apply to publicly traded partnerships, discussed later.

Form 8804. The withholding tax liability of the partnership for its tax year is reported on Form 8804. Form 8804 is also a transmittal form for Forms 8805.

Any additional withholding tax owed for the partnership's tax year is paid (in U.S. currency) with Form 8804.



File [Form 8804](#) by the 15th day of the 3rd month after the close of the partnership's tax year.

If you need more time to file Form 8804, file Form 7004 to request an extension of time to file. Form 7004 does not extend the time to pay the tax.

Form 8805. This form is used to show the amount of ECTI and any withholding tax payments allocable to a foreign partner for the partnership's tax year. At the end of the partnership's tax year, [Form 8805](#) must be sent to each foreign partner on whose behalf tax under section 1446 was withheld or whose Form 8804-C the partnership considered, whether or not any withholding tax is paid. It must be delivered to the foreign partner by the due date of the partnership return (including extensions). A copy of Form 8805 for each foreign partner must also be attached to Form 8804 when it is filed. Also attach the most recent Form 8804-C, discussed earlier, to the Form 8805 filed for the partnership's tax year in which the [Form 8804-C](#) was considered.

A copy of Form 8805 must be attached to the foreign partner's U.S. income tax return to take a credit on its Form 1040-NR or Form 1120-F.

Form 8813. This form is used to make payments of withheld tax to the U.S. Treasury. Payments must be made in U.S. currency by the payment dates (see *Date payments are due*, earlier). See the Instructions for Form 8804-C for when you must attach a copy of that form to [Form 8813](#).

Penalties. A penalty may be imposed for failure to file Form 8804 when due (including extensions). It is generally the same as the penalty for not filing Form 1042, discussed earlier under *Failure to file Form 1042*.

A penalty may be imposed for failure to file Form 8805 when due (including extensions) or for failure to provide complete and correct information.

The amount of the penalty depends on when you file a correct Form 8805. The penalty for each Form 8805 is generally the same as the penalty for not filing Form 1042-S. For more information, see *Penalties* in the current-year revision of the Instructions for Form 1042-S.

If you fail to provide a complete and correct Form 8805 to each partner when due (including extensions), a penalty may be imposed. The amount of the penalty depends on when you provide the correct Form 8805. The penalty for each Form 8805 is generally the same as the penalty for not providing a correct and complete Form 1042-S. For more information, see *Penalties* in the current-year revision of the Instructions for Form 1042-S.

Exception. No penalty is imposed if you meet certain requirements. The rules are the same as for Form 1042-S. However, if a filer intentionally disregards the requirement to file Form 8805 when due, to furnish

Form 8805 to the recipient when due, or to report correct information, the penalty for each Form 8805 (or statement to recipient) may be higher.

For more information, see *Penalties* in the current-year revision of the Instructions for Form 1042-S.

Identification numbers. A partnership that has not been assigned a U.S. EIN must obtain one. If a number has not been assigned by the due date of the first withholding tax payment, the partnership should enter the date the number was applied for on Form 8813 when making its payment. As soon as the partnership receives its EIN, it must immediately provide that number to the IRS.

To ensure proper crediting of the withholding tax when reporting to the IRS, the partnership must include each partner's U.S. TIN on Form 8805.

If there are partners in the partnership without identification numbers, the partnership should inform them of the need to get a number. See U.S. or Foreign TINs, earlier.

Publicly Traded Partnership Distributions (PTP Distributions)

A PTP that has ECTI must pay withholding tax under section 1446(a) on any distributions of that income made to its foreign partners. A PTP must use Forms 1042 and 1042-S (Income Code 27) to report withholding from PTP distributions. The rate of withholding is 37% for noncorporate partners and 21% for corporate partners under section 1446(a).

A publicly traded partnership (PTP) is any partnership an interest in which is regularly traded on an established securities market or is readily tradable on a secondary market. These rules do not apply to a PTP treated as a corporation under section 7704.

Foreign partner. The partnership determines whether a partner is a foreign partner using the rules discussed earlier under Foreign Partner.

Nominee. The withholding agent under section 1446(a) can be the PTP or a nominee. Starting in 2023, a nominee for section 1446(a) purposes is a person receiving a PTP distribution on behalf of a foreign person and that is a domestic person, a U.S. branch of a foreign corporation that is treated as a U.S. person, or a QI that assumes primary withholding responsibility for the distribution. See Regulations section 1.1446-4(b)(3) (describing nominees and their withholding requirements). For purposes of section 1446(a) withholding, a nominee generally determines whether a partner is a foreign partner under the same requirements applicable to a PTP. See Foreign partner directly above.

A nominee for a PTP distribution must, in addition to withholding on the distribution to the extent required under section 1446(a), withhold on amounts attributable to the distribution that are subject to withholding under chapters 3 and 4, in addition to withholding under section 1446(f) on an amount realized on the distribution. See Ordering rules and Section 1446(f): PTP Interests, later. A nominee determines each amount subject to withholding on a PTP distribution based on a qualified notice issued by the PTP making the distribution or, in the absence of a qualified notice (or when a qualified notice does not specify each amount attributable to the distribution), based on the withholding default rule in section 1.1446-4(d).

A PTP or a nominee for a PTP distribution is not generally required to withhold on the distribution, however, when it pays the distribution to a nominee for the distribution.

In such a case, the PTP or nominee is required to report the nominee to which it pays the distribution as the recipient for Form 1042-S reporting. If a PTP or nominee pays a PTP distribution to an NQI, however, the PTP or nominee must generally determine its withholding based on a withholding statement and partner documentation provided by the NQI with respect to the distribution. An NQI for this purpose includes a U.S. branch that is not acting as a U.S. person for a PTP distribution. See the Instructions for Form W-8IMY for additional information on payments of PTP distributions made to NQIs. If a PTP or nominee for a PTP distribution pays the distribution to a QI not acting as a nominee for the distribution, the PTP or nominee can determine its withholding based on withholding rate pool information provided by the QI or partner information provided by a QI that acts as a disclosing QI.

See [Revenue Procedure 2022-43](#) for information on the withholding and other requirements of QIs acting as nominees or as disclosing QIs for PTP distributions (starting January 1, 2023). See the [Instructions for Form 1042-S](#) for the reporting of a PTP distribution paid to an account holder of a disclosing QI and when a nominee for a PTP distribution is required to report information about the PTP making a distribution on a Form 1042-S.

Distributions subject to withholding. The partnership or nominee must withhold tax on any actual distributions of money or property to foreign partners. The amount of the distribution includes the amount of any tax under section 1446(a) required to be withheld. In the case of a partnership that receives a partnership distribution from another partnership (a tiered partnership), the distribution also includes the tax withheld from that distribution.

If the distribution is in property other than money, the partnership cannot release the property until it has enough funds to pay over the withholding tax.

A PTP or nominee that complies with these withholding requirements satisfies the requirements discussed later under *U.S. Real Property Interest*. Distributions subject to withholding include:

- Amounts subject to withholding under section 1445(e) (1) on distributions pursuant to an election under Regulations section 1.1445-5(c)(3), and
- Amounts not subject to withholding under section 1445 because the distributee is a partnership or is a foreign corporation that has made an election to be treated as a domestic corporation.

Ordering rules. Partnership distributions are considered to be paid out of the following types of income in the order listed.

1. Amounts attributable to income described in section 1441 or 1442 that are not effectively connected with the conduct of a trade or business in the United States and are subject to withholding under Regulations section 1.1441-2(a).
2. Amounts attributable to income described in section 1441 or 1442 that are not effectively connected with the conduct of a trade or business in the United States and are not subject to withholding under Regulations section 1.1441-2(a).
3. Amounts attributable to income effectively connected with the conduct of a trade or business in the United States and not subject to withholding under Regulations section 1.1446-1 through 1.1446-6.

4. Amounts subject to withholding under Regulations section 1.1446-1 through 1.1446-6.
5. Other amounts not listed above.

Depositing taxes a PTP withholds under section 1446. The general rules for making payments of taxes withheld under section 1446(a) do not apply to PTP distributions. Instead, apply the rules discussed earlier, under *Depositing Withheld Taxes*.

Section 1446(f) Withholding

Section 13501 of the TCJA added section 1446(f) effective for transfers of partnership interests occurring on or after January 1, 2018. Section 1446(f) generally requires that a transferee of an interest in a partnership withhold 10% of the amount realized on the disposition if any portion of the gain, if any, would be treated under section 864(c)(8) as effectively connected with the conduct of a trade or business within the United States.

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).

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 disposition of certain 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), provides interim guidance regarding withholding of U.S. tax related to transfers of interests in partnerships, other than PTPs, under section 1446(f). It also temporarily suspended withholding under section 1446(f)(4).

On May 7, 2019, the Department of Treasury and the IRS issued proposed regulations under section 1446(f) (84 FR 21198) for transfers of both non-PTP and PTP interests. During the period that Notice 2018-29 applies, 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.

On November 30, 2020, the Department of Treasury and the IRS issued final regulations under section 1446(f) in T.D. 9926 (85 FR 76910) for transfers of both non-PTP and PTP interests. The final regulations require any transferee to withhold 10% of the amount realized on any transfer of a partnership interest (other than certain PTP interests) under section 1446(f)(1), unless an exception to withholding applies.

These regulations generally apply to transfers that occur on or after January 29, 2021. However, in accordance with Notice 2021-51, 2021-36 I.R.B. 361, the rules related to withholding under section 1446(f) (4) and to transfers of PTP interests apply to transfers occurring on or after January 1, 2023. Additionally, the final regulations revised certain provisions in Regulations section 1.1446-4 for withholding under section 1446(a) on PTP distributions. Also in accordance with Notice 2021-51, these revisions apply to PTP distributions made on or after January 1, 2023. Notices 2018-8 and 2018-29 apply to transfers that occur before the effective date of the final regulations or, as previously described, taxpayers may apply the proposed regulations to transfers of non-PTP interests during this time. For additional guidance to brokers required to withhold on transfers of PTP interests,

see Notice 2023-08, available at [IRS.gov/irb/2023-02_IRB#NOT-2023-8](https://www.irs.gov/irb/2023-02_IRB#NOT-2023-8).

Section 1446(f): Non-PTP Interests

Exceptions to 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 the referenced regulations. A transferee may not rely on a certification if it has actual knowledge that the certification is incorrect or unreliable. A partnership that is a transferee because it makes a distribution may not rely on its books and records if it knows, or has reason to know, that the information 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 taxpayer identification number of

the transferor. See Regulations sections 1.1446(f)-1(c)(2)(i) and 1.1446(f)-2(b)(1). Also, separate rules apply if the transfer results from a partnership distribution. Only the certification in exception six must be submitted to the IRS.

The certifications in several of the exceptions are based on a **determination date**. The determination date must be one of the following: (a) the date of the transfer; (b) any date no more than 60 days before the date of the transfer; or (c) if the transferor is not a controlling partner, as defined in Regulations section 1.1446(f)-1(b)(2), the later of (i) the first day of the partnership's taxable year in which the transfer occurs, or (ii) the date before the transfer of the partnership's most recent capital account revaluation event. See Regulations section 1.1446(f)-1(c)(4).

1. **Certification of non-foreign status.** The transferor provides a certification of non-foreign 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 certificate of non-foreign status includes a Form W-9. See Regulations section 1.1446(f)-2(b)(2).
2. **Certification of no realized gain.** The transferor provides a certification that there was no realized gain on the transfer of the partnership interest (including no ordinary income arising from the application of section 751 and Regulations section 1.751-1) as of the determination date. See Regulations section 1.1446(f)-2(b) (3).

3. **Certification of less than 10% effectively connected gain.** The partnership provides a certification stating that:
- a. 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: the partnership would have no effectively connected gain (or the net amount of its effectively connected gain would be less than 10% of the total net gain) on all its assets; or 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

- b. The partnership was not engaged in a trade or business within the United States at any time during the taxable year of the partnership until the date of transfer. See Regulations section 1.1446(f)-2(b)(4).

4. **Certification of less than 10% effectively connected income.** The transferor provides a certification that:

- a. 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) 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;
- b. The transferor's distributive share of gross ECI from the

partnership, and any 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;

- c. The transferor's distributive share of partnership gross ECI, as reported on a Schedule K-1 or K-3 (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
- d. 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 have been timely paid, provided the return was required to be filed when the transferor furnishes the certification. See Regulations section 1.1446(f)-2(b)(5).

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. See Regulations section 1.1446(f)-2(b)(6).

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 transferor may not provide this certification if any portion of the gain is subject to tax. 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 certain information, plus a copy of the certificate, to the IRS, at the address in the Instructions for Form 8288. See Regulations section 1.1446(f)-2(b)(7).



See the discussion, later, regarding certification of maximum tax liability if a nonrecognition provision applies to only a portion of the gain realized on the transfer or only a portion of the gain on the transfer is not subject to tax pursuant to an income tax treaty.

A non-PTP making a distribution to a partner may generally rely on any of the above exceptions, with certain additional considerations:

- In Exception 2, the no realized gain exception, a distributing partnership generally may rely on its books and records or on a certification from the distributee partner.

- In Exception 4, the less than 10% ECI exception, a distributing partnership may generally 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.

Determining the amount to withhold. In general, the transferee must withhold 10% of the amount realized. The amount realized includes the cash paid, the fair market value of property transferred, plus the assumption of and relief from liabilities, and liabilities to which the partnership interest is subject. See Regulations section 1.1446(f)-2(c) (2)(i). 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. See Regulations section 1.1446(f)-2(c)(2)(ii) and (iii).

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 certificate of non-foreign 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 certification the transferor foreign partnership provides does not need to be submitted to the IRS. See Regulations section 1.1446(f)-2(c)(2)(iv).

Lack of money or property or lack of knowledge regarding liabilities. Under certain circumstances, the amount the transferee must withhold equals the entire amount realized, rather than 10% of the amount realized, but the amount realized is determined without regard to any decrease in the transferor's share of 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) or a certification of the transferor's share of liabilities received from the partnership). See Regulations section 1.1446(f)-2(c)(3)(ii).

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 under 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. See Regulations section 1.1446(f)-2(c)(4) for further information.

The certificate does not need to and should not be submitted to the IRS for approval.

Effect of withholding on transferor. A transferee's withholding of tax under section 1446(f)(1) does not relieve a foreign person from filing a U.S. tax return with respect to the transfer. Further, it does not relieve a nonresident alien individual or foreign corporation subject to tax on gain by reason of section 864(c)(8) from paying with the return any tax due that has not been fully satisfied through withholding.

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 consist of USRPI, and 90% or more of the value of its gross assets consist of USRPI 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, generally 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 under this paragraph, will be deemed to satisfy its withholding requirement.

Forms for paying and reporting section 1446(f)(1) withholding. To meet the withholding, payment, and reporting requirements under section 1446(f)(1) for transfers of interests in partnerships other than PTPs, taxpayers must use Forms 8288 and 8288-A and follow the instructions for those forms.

The time for filing Forms 8288 and 8288-A to report section 1446(f)(1) withholding is the same as for section 1445 withholding. The same rules for filing Forms 8288 and 8288-A by transferees withholding tax under section 1445 apply to transferees withholding tax under section 1446(f)(1). The same rules for claiming a credit for withholding of tax under section 1445 apply to transferors receiving Form 8288-A claiming credit for withholding under section 1446(f)(1). The rules relating to Forms 8288 and 8288-A discussed in this paragraph are described, later, under *U.S.*

Real Property Interest, Reporting and Paying the Tax and in the [Instructions for Form 8288](#).

Transferee reporting to partnership. No later than 10 days after the transfer, a transferee (other than a partnership that is a transferee because it made a distribution) must certify to the partnership the extent to which it has satisfied its withholding obligation. See Regulations section 1.1446(f)-2(d)(2) for the documentation required for making this certification.

Partnership's requirement to withhold under section 1446(f)(4) on distributions to transferee. Section 1446(f)(4) requires a partnership to withhold on distributions to a transferee on any amount that the transferee failed to properly withhold under section 1446(f)(1), plus any interest on this amount. See Regulations section 1.1446(f)-3.

These rules apply to transfers occurring on or after January 1, 2023. See 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).

Requirement to withhold. If a transferee fails to withhold any amount required by Regulations section 1.1446(f)-2 in connection with the transfer of a partnership interest, the partnership must withhold from the distributions it makes to the transferee. Generally, a partnership may rely on the certification described in Regulations section 1.1446(f)-2(d)(2) that it receives from the transferee to determine whether a transferee has withheld the amount required by Regulations section 1.1446(f)-2, unless it knows, or has reason to know, that the certification is incorrect or unreliable. See Regulations section 1.1446(f)-3(a)(1).

If the partnership receives, within 10 days from the transfer, a certification from the transferee stating that an exception to

withholding applies or establishing that the transferee has withheld the amount required to be withheld under Regulations section 1.1446(f)-2, then the partnership generally is not required to withhold under Regulations section 1.1446(f)-3(a)(1). See Regulations section 1.1446(f)-3(b)(1). However, a partnership is required to withhold under section 1446(f)(4) if it receives notification from the IRS that the transferee has provided incorrect information on the certification. This may occur when the IRS determines that the transferee has provided incorrect information on the certification regarding the amount realized or the amount withheld, or that the transferee failed to pay the amounts reported as withheld to the IRS. See Regulations section 1.1446(f)-3(a)(2).

A partnership that is a transferee because it makes a distribution subject to section 1446(f)(1) is not required to withhold under section 1446(f)(4).

However, the partnership remains liable for its failure to withhold in its capacity as a transferee. A publicly traded partnership is not required to withhold on distributions made to a transferee under section 1446(f)(4). See Regulations sections 1.1446(f)-3(b)(2) and (3).

Withholding rules. A partnership that does not receive, or cannot rely on, a timely certification from a transferee stating that an exception to withholding applies or that the proper amount has been withheld must begin withholding on distributions made to the transferee on the later of the date that is 30 days after the transfer or the date that is 15 days after the partnership acquires actual knowledge of the transfer. See Regulations section 1.1446(f)-3(c)(1)(i).

The partnership must withhold on the entire amount of each distribution made to the transferee until it may rely on a certification from the transferee that states that an

exception to withholding applies or that provides the information necessary to determine the amount required to be withheld. See Regulations section 1.1446(f)-3(c)(1)(ii). The partnership may rely on this certification to determine its withholding obligation regardless of whether it is provided within the time prescribed in Regulations section 1.1446(f)-2(d)(2). Once the partnership receives a certification from the transferee, the partnership must withhold 10% of the amount realized on the transfer, reduced by any amount already withheld by the transferee, plus any computed interest. See Regulations section 1.1446(f)-3(c)(2)(i).

A partnership that is required to withhold under Regulations section 1.1446(f)-3(a)(1) may not take into account any adjustment procedures that would otherwise affect the amount required to be withheld under Regulations section 1.1446(f)-2(c)(2)(i).

See Regulations section 1.1446(f)-3(c)(2)(i)(A). Thus, for example, a partnership may not reduce the amount that it is required to withhold under the procedures described in Regulations section 1.1446(f)-2(c)(4) (adjusting the amount subject to withholding based on a transferor's maximum tax liability). For example, if a partnership is required to withhold \$30 under section 1441 on a \$100 distribution, the maximum amount required to be withheld on that distribution under section 1446(f)(4) is \$70.

A partnership that does not receive or cannot rely on a certification from the transferee must withhold the full amount of each distribution made to the transferee until the partnership receives a certification that it can rely on. However, any amount required to be withheld on a distribution under any other withholding provision in the Code is not required to be withheld under section

1446(f)(4). See Regulations section 1.1446(f)-3(c)(3). Nevertheless, the partnership may stop withholding if the transferee disposes of all of its interest in the partnership, unless the partnership has actual knowledge that any successor to the transferee is related to the transferee or the transferor from which the transferee acquired the interest.

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. See Regulations section 1.1446(f)-3(c)(2)(ii).

Forms and filing dates. A partnership required to withhold under section 1446(f)(4) must report and pay the tax withheld using Forms 8288 and 8288-C. See Regulations section 1.1446(f)-3(d). To report section 1446(f)(4) withholding, see the [*Instructions for Form 8288*](#) for the deadline to file Forms 8288 and 8288-C.

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. See Regulations section 1.1446(f)-3(e). 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. If a transferee that has not yet completed and filed Part III of Form 8288 with respect to a transfer and is now claiming a refund for amounts withheld under section 1446(f)(4), the transferee must complete Part III when filing Part V of Form 8288.

Section 1446(f): PTP Interests

For purposes of section 1446(f), a broker is generally required to withhold at a 10% rate on an amount realized from the transfer of a PTP interest that it effects for the transferor of the interest. However, certain exceptions to withholding may apply under Regulations section 1.1446(f)-4(b), which include exceptions for a transferor providing a certification of non-foreign status, a certification from a transferor claiming an exemption from tax on any gain from the

transfer under an income tax treaty, or a certification of the transferor's status as a dealer in securities stating that any gain from the transfer is effectively connected with a trade or business in the U.S. without regard to section 864(c)(8). Additionally, for an amount realized paid to a transferor that is a foreign partnership, a broker may rely on a claim for a modified amount realized made by the partnership on a valid Form W-8IMY and determine its withholding taking into account a certification of non-foreign status or claim for treaty benefits provided for a partner in the partnership that meets the requirements of Regulations section 1.1446(f)-4(b)(2) or (5). See Regulations section 1.1446(f)-4(c)(2)(ii) for further information on a modified amount realized. For an amount realized paid to a transferor that is a grantor trust, a broker may similarly determine its withholding taking into account any withholding exception applicable to a grantor or owner in the trust.

A broker is also required to withhold under section 1446(f) an amount realized from the transfer of a PTP interest that it pays to a broker that is an NQI, a QI (other than a QI assuming primary withholding responsibility for the amount realized), or U.S. branch or territory financial institution that is not treated as a U.S. person for the amount realized. In the case of an amount realized paid to an NQI (including a U.S. branch or territory financial institution not treated as a U.S. person), a broker is required to withhold at the 10% rate under section 1446(f). See the Instructions for Form W-8IMY for additional information on the amount realized paid to NQIs. In the case of an amount realized paid to a QI not assuming primary withholding responsibility for the amount, a broker may withhold based on either withholding rate pool information provided by the QI or information on the transferors of the PTP interest when the QI acts as a disclosing QI.

Regardless of whether an amount realized is paid to a transferor of a PTP interest through a broker, a broker is not required to withhold under section 1446(f) when it may rely on a qualified notice from the PTP that states the applicability of the "10% exception" to withholding. See Regulations section 1.1446(f)-4(b)(3) for further information on this exception, which applies to a PTP with less than 10% effectively connected gain (or that is otherwise not engaged in a trade or business in the United States).

An amount realized from the sale of a PTP interest is the amount of gross proceeds paid or credited from the sale. In the case of a PTP distribution, an amount realized on the distribution is limited to an amount described in Regulations section 1.1446(f)-4(c)(2)(iii).

For when an amount realized is reportable on Form 1042-S and other requirements for reporting amounts realized on Form 1042-S, see Regulations section 1.1461-1(c)(2)(i) and

the Instructions for Form 1042-S. Also see the Instructions for Form 1042-S for the reporting of an amount realized paid to an NQI, or to a QI (including when the QI acts as a disclosing QI for the amount realized). See Revenue Procedure 2022-43 for the withholding and reporting requirements of QIs with respect to amounts realized paid to their account holders (including QIs acting as disclosing QIs), effective starting January 1, 2023.

U.S. Real Property Interest

The disposition of a USRPI by a foreign person (the transferor) is subject to income tax withholding under section 1445. 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.

Foreign person. A foreign person is a nonresident alien individual, or a foreign corporation that has not made an election under section 897(i) to be treated as a domestic corporation, foreign partnership, foreign trust, or foreign estate. It does not include a resident alien individual or, in certain cases, a qualified foreign pension fund. See Retirement and pension funds, later.

Transferor. A transferor is any foreign person that disposes of a USRPI by sale, exchange, gift, or any other transfer. A transfer includes distributions to shareholders of a corporation and beneficiaries of a trust or estate.

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

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

USRPI defined. A USRPI is an interest, other than as a creditor, in real property (including an interest in a mine, well, or other natural deposit) located in the United States or the USVI, 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 (applicable periods). An interest in a corporation is not a USRPI if:

1. Such corporation did not hold any USRPI on the date of disposition,

2. All the USRPI held by such corporation 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, and
3. Such corporation and any predecessor of such corporation was not a RIC or a REIT during the shorter of the applicable periods during which the interest was held.

Exception for publicly traded stock. If, at any time during the calendar year, any class of stock of a domestic corporation is regularly traded on an established securities market, an interest in such corporation will not be treated as a USRPI if the beneficial owner did not own more than 5% of the total fair market value of that class of interests, or 10% of the total fair market value of that class of interests in the case of a REIT, at any time during the shorter of the applicable periods.

Certain constructive ownership rules apply for purposes of determining whether any person meets the above ownership threshold of any class of stock. See section 897(c)(6)(C) for more information on the constructive ownership rules.

Amount to withhold. The transferee must deduct and withhold a tax on the total amount realized by the foreign person on the disposition. The rate of withholding is generally 15%.

The amount realized is the sum of:

- The cash paid, or to be paid (principal only);
- 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 property is subject immediately before and after the transfer.

If the property transferred was owned jointly by U.S. and foreign persons, the amount realized is allocated between the transferors based on the capital contribution of each transferor.

Residences. This rule applies when the property disposed of is acquired by the transferee for use by the transferee as a residence. If the amount realized on such disposition does not exceed \$300,000, no withholding is required. Otherwise, the transferee must generally withhold 10% of the amount realized by a foreign person. The rate of withholding is 15% when the amount realized is in excess of \$1,000,000.

Foreign corporations. A foreign corporation that distributes a USRPI must withhold a tax equal to 21% of the gain it recognizes on the distribution to its shareholders.

Domestic corporations. A domestic corporation must withhold tax on the fair market value of the property distributed to a foreign shareholder if:

- The shareholder's interest in the corporation is a USRPI, and
- The property distributed is either in redemption of stock or in liquidation of the corporation.

The corporation must generally withhold 15% of the amount realized by a foreign person.

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 chapter 3 withholding and withholding under the USRPI provisions. This also applies to a corporation that was a USRPHC at any time during the shorter of the period during which the USRPI 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 chapter 3 withholding on the full amount of the distribution, whether or not any part of the distribution represents a return of basis or capital gain. If a reduced tax rate applies under an income tax treaty, see Regulations section 1.1441-3T(c)(4)(i)(A) for the minimum withholding rate that may be applicable.
- Apply chapter 3 withholding to the part of the distribution that the USRPHC estimates is a dividend. Then, withhold 15% 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 or foreign partnership with any foreign partners disposes of a USRPI at a gain, the gain is treated as ECI and is generally subject to the rules explained earlier under *Partnership Withholding on ECTI*. A foreign partnership that disposes of a USRPI may credit the taxes withheld by the transferee against the tax liability determined under the partnership withholding on ECTI rules.

If a foreign person disposes of an interest in a partnership in which 50% or more of the value of the gross assets consist of USRPI and 90% or more of the value of the gross assets consist of USRPI plus any cash or cash equivalents, the transferee of the partnership interest must deduct and withhold 15% of the amount realized on the disposition.

Trusts 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 USRPI account. You enter in the account all gains and losses realized during the tax year of the trust or estate from dispositions of USRPI. You must withhold 21% 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 USRPI account and then to other amounts.

A trust with more than 100 beneficiaries may elect to withhold from each distribution 21% 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 REITs. For more information about this election, see Regulations section 1.1445-5(c).

Publicly traded partnership and trust interests. If any class of interest in a partnership or a trust is regularly traded on an established securities market, any interest in such a partnership or trust will be treated as an interest in a publicly traded corporation and will be subject to the rules applicable to those interests.

Qualified investment entities (QIEs).

Special rules apply to QIEs. A QIE is:

1. A REIT, or
2. A RIC that is a U.S. real property holding corporation.

Look-through rule for QIEs. In most cases, any distribution from a QIE to a nonresident alien, foreign corporation, or other QIE that is attributable to the QIE's gain from the sale or exchange of a USRPI is treated as gain recognized by the nonresident alien, foreign corporation, or other QIE from the sale or exchange of a USRPI.