

(ii) *Substantial amendments.* If an amending statement is submitted and the Service finds that the statement substantially amends to the facts of the underlying application or substantially alters the terms of the withholding certificate as requested in the initial application, the time within which the Service must act upon the amended application shall be extended by 60 days. The applicant shall be so notified.

(iii) *Amending statement received after the requested withholding certificate has been signed by the Assistant Commissioner (International).* If an amending statement is received after the withholding certificate, drafted in response to the underlying application, has been signed by the Assistant Commissioner (International) or his delegate and prior to the day such certificate is mailed to the applicant, the time in which the Service must act upon the amended application shall be extended by 90 days.

(3) *Information required to be submitted.* No particular form is required for an amending statement but the statement must provide the following information:

(i) *Identification of applicant.* The amending statement must set forth the name, address, and identifying number (if any) of the person submitting the amending statement.

(ii) *Date of application.* The amending statement must set forth the date of the underlying application for a withholding certificate.

(iii) *Real property interest to be (or that has been) transferred.* The amending statement must set forth a brief description of the real property interest with respect to which the underlying application for a withholding certificate was submitted.

(iv) *Amending information.* The amending statement must fully set forth the basis for the amendment including any modification of the facts supporting the application for a withholding certificate and any change sought in the terms of the withholding certificate.

(g) *Early refund of overwithheld amounts.* If the Internal Revenue Service issues a withholding certificate pursuant to this section, and an amount greater than that specified in

the certificate was withheld by the entity or fiduciary, then pursuant to the rules of this paragraph (g) a relevant taxpayer may apply for an early refund of a proportionate share of the excess amount (without interest) prior to the date on which the relevant taxpayer's return is due (without extensions). An application for an early refund must be addressed to the Assistant Commissioner (International), at the address provided in § 1.1445-1(g)(10). No particular form is required for the application, but the following information must be set forth in separate paragraphs numbered to correspond with the numbers given below:

(1) Name, address, and identifying number (if any) of the relevant taxpayer seeking the refund;

(2) Amount required to be withheld pursuant to withholding certificate;

(3) Amount withheld by entity or fiduciary (attach a copy of Form 8288-A stamped by IRS pursuant to § 1.1445-5(b)(4) or provide substantial evidence of the amount withheld in the case of a failure to receive Form 8288-A, as provided in § 1.1445-5(b)(7)); and

(4) Amount to be refunded to the relevant taxpayer.

An application for an early refund cannot be processed unless the required copy of Form 8288-A or substantial evidence of the amount withheld in the case of a failure to receive Form 8288-A (as provided in § 1.1445-5(b)(7)) is attached to the application. If an application for a withholding certificate is submitted after the transfer takes place, then that application may be combined with an application for an early refund. The Service will act upon a claim for refund within the time limits set forth in § 1.1445-6(a)(1).

[T.D. 8113, 51 FR 46648, Dec. 24, 1986; 52 FR 3796, 3917, Feb. 6, 1987]

§ 1.1445-7 Treatment of foreign corporation that has made an election under section 897(i) to be treated as a domestic corporation.

(a) *In general.* Pursuant to section 897(i) a foreign corporation may elect to be treated as a domestic corporation for purposes of sections 897 and 6039C. A foreign corporation that has made such an election shall also be treated as a domestic corporation for purposes of

the withholding required under section 1445, in accordance with the provisions of this section.

(b) *Withholding under section 1445(a)*—
(1) *Dispositions by corporation.* A foreign corporation that has made an election under section 897(i) may provide a transferee with a certification of non-foreign status in connection with the corporation's disposition of a U.S. real property interest. However, in accordance with the provisions of §§1.1445-2(b)(2)(ii) and 1.1445-5(b)(3)(ii)(C), such an electing foreign corporation must attach to such certification a copy of the acknowledgment of the election provided to the corporation by the Internal Revenue Service pursuant to §1.897-3(d)(4) which states that the information required by §1.897-3 has been determined to be complete.

(2) *Dispositions of interests in corporation.* Dispositions of interests in electing foreign corporations shall be subject to the withholding requirements of section 1445(a) and the rules of §§1.1445-1 through 1.1445-4. Therefore, if a foreign person disposes of an interest in such a corporation, and that interest is a U.S. real property interest under the provisions of section 897 and regulations thereunder, then the transferee is required to withhold under section 1445(a).

(c) *Withholding under section 1445(e).* Because a foreign corporation that has made an election under section 897(i) is treated as a domestic corporation for purposes of determining withholding obligations under section 1445, such a corporation is not subject to the requirement of section 1445(e)(2) that a foreign corporation withhold at the corporate capital gain rate from the gain recognized upon the distribution of a U.S. real property interest. Such a corporation is subject to the provisions of section 1445(e)(3). Thus, if interests in an electing corporation constitute U.S. real property interests, then the corporation is required to withhold with respect to the non-dividend distribution of any property to an interest-holder that is a foreign person. See §1.1445-5(e). Dividend distributions (distributions that are described in section 301) shall be treated as provided in sections 897(f), 1441 and 1442. In addition, if interests in an electing foreign cor-

poration do not constitute U.S. real property interests, then distributions by such corporation shall be treated as provided in sections 897(f) (if applicable), 1441 and 1442.

(Approved by the Office of Management and Budget under control number 545-0902)

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§ 1.1445-8 Special rules regarding publicly traded partnerships, publicly traded trusts and real estate investment trusts (REITs).

(a) *Entities to which this section applies.* The rules of this section apply to—

(1) Any partnership or trust, interests in which are regularly traded on an established securities market (regardless of the number of its partners or beneficiaries), and

(2) Any REIT (regardless of the form of its organization).

For purposes of paragraph (a)(1) of this section, the rules of section 1445 (e)(1) and this section shall not apply to a publicly traded partnership (as defined in section 7704) which is treated as a corporation under section 7704(a), or to those entities that are classified as "associations" and taxed as corporations. See §301.7701-2.

(b) *Obligation to withhold*—(1) *In general.* An entity described in paragraph (a) of this section is not required to withhold under the provisions of §1.1445-5(c), which states the withholding requirements of domestic partnerships, trusts and estates upon the disposition of U.S. real property interests. Except as otherwise provided in this paragraph (b), an entity described in paragraph (a) of this section shall be liable to withhold tax upon the distribution of any amount attributable to the disposition of a U.S. real property interest, with respect to each holder of an interest in the entity that is a foreign person. The amount to be withheld is described in paragraph (c) of this section.

(2) *Publicly traded partnerships.* Publicly traded partnerships which comply with the withholding procedures under section 1446 will be deemed to have satisfied their withholding obligations under this paragraph (b).