

§ 1.1463-1

26 CFR Ch. I (4-1-01 Edition)

partnership or with respect to the distributive share of partners in an upper tier partnership, such amount is deemed to have been withheld by the upper tier partnership.

(c) *Effective date.* This section applies to payments made after December 31, 2000.

[T.D. 8734, 62 FR 53471, Oct. 14, 1997, as amended by T.D. 8804, 63 FR 72188, Dec. 31, 1998]

§ 1.1463-1 Tax paid by recipient of income.

(a) *Tax paid.* If the tax required to be withheld under chapter 3 of the Internal Revenue Code is paid by the beneficial owner of the income or by the withholding agent, it shall not be recouped from the other, regardless of the original liability therefor. However, this section does not relieve the person that did not withhold tax from liability for interest or any penalties or additions to tax otherwise applicable. See § 1.1441-7(b) for additional applicable rules.

(b) *Effective date.* This section applies to failures to withhold occurring after December 31, 2000.

[T.D. 8734, 62 FR 53471, Oct. 14, 1997, as amended by T.D. 8804, 63 FR 72188, Dec. 31, 1998; T.D. 8856, 64 FR 73412, Dec. 30, 1999]

§ 1.1464-1 Refunds or credits.

(a) *In general.* The refund or credit under chapter 65 of the Code of an overpayment of tax which has actually been withheld at the source under chapter 3 of the Code shall be made to the taxpayer from whose income the amount of such tax was in fact withheld. To the extent that the overpayment under chapter 3 was not in fact withheld at the source, but was paid, by the withholding agent the refund or credit under chapter 65 of the overpayment shall be made to the withholding agent. Thus, where a debtor corporation assumes liability pursuant to its tax-free covenant for the tax required to be withheld under chapter 3 upon interest and pays the tax in behalf of its bondholder, and it can be shown that the bondholder is not in fact liable for any tax, the overpayment of tax shall be credited or refunded to the with-

holding agent in accordance with chapter 65 since the tax was not actually deducted and withheld from the interest paid to the bondholder. In further illustration, where a withholding agent who is required by chapter 3 to withhold \$300 tax from rents paid to a non-resident alien individual mistakenly withholds \$320 and mistakenly pays \$350 as internal revenue tax, the amount of \$30 shall be credited or refunded to the withholding agent in accordance with chapter 65 and the amount of \$20 shall be credited or refunded in accordance with such chapter to the person from whose income such amount has been withheld.

(b) *Tax repaid to payee.* For purposes of this section and § 1.6414-1, any amount of tax withheld under chapter 3 of the Code, which, pursuant to paragraph (a)(1) of § 1.1461-2, is repaid by the withholding agent to the person from whose income such amount was erroneously withheld shall be considered as tax which, within the meaning of sections 1464 and 6414, was not actually withheld by the withholding agent.

[T.D. 6922, 32 FR 8713, June 17, 1967, as amended by T.D. 8804, 63 FR 72188, Dec. 31, 1998]

Rules Applicable to Recovery of Excessive Profits on Government Contracts

RECOVERY OF EXCESSIVE PROFITS ON GOVERNMENT CONTRACTS

§ 1.1471-1 Recovery of excessive profits on government contracts.

The inclusion of the statutory provisions of section 1471 in this part does not supersede the provisions of 26 CFR (1939) part 17 (Treasury Decision 4906) and 26 CFR (1939) part 16 (Treasury Decision 4909) as made applicable to section 1471 by Treasury Decision 6091 (19 FR 5167, C.B. 1954-2, 47).

[T.D. 6500, 25 FR 12081, Nov. 26, 1960]

EDITORIAL NOTE: For the convenience of the user, the text of parts 16 and 17 (not entirely superseded) of 26 CFR (1939) referred to above is set forth below: