

interest in an entity described in paragraph (a) of this section on behalf of another domestic or foreign person.

(e) *Determination of non-foreign status by withholding agent.* A withholding agent may rely on a certificate of non-foreign status pursuant to §1.1445-2(b) or on the statements and address provided to it on Form W-9 or a form that is substantively similar to such form, to determine whether an interest holder is a domestic person. Reliance on these documents will excuse the withholding agent from liability imposed under section 1445(e)(1) in the absence of actual knowledge that the interest holder is a foreign person. A withholding agent may also employ other means to determine the status of an interest holder, but, if the agent relies on such other means and the interest holder proves, in fact, to be a foreign person, then the withholding agent is subject to any liability imposed pursuant to section 1445 and the regulations thereunder for failure to withhold.

(f) *Qualified notice.* A qualified notice for purposes of paragraph (b)(3)(iv) of this section is a notice given by a partnership, trust or REIT regarding a distribution that is attributable to the disposition of a U.S. real property interest in accordance with the notice requirements with respect to dividends described in 17 CFR 240.10b-17(b) (1) or (3) issued pursuant to the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* In the case of a REIT, a qualified notice is only a notice of a distribution, all or any portion of which the REIT actually designates, or characterizes in accordance with paragraph (c)(2)(ii)(C) of this section, as a capital gain dividend in accordance with 17 CFR 240.10b-17(b) (1) or (3), with respect to each share or certificate of beneficial interest. A deemed designation under paragraph (c)(2)(ii)(A) of this section may not be the subject of a qualified notice under this paragraph (f). A person described in paragraph (b)(3) of this section shall be treated as receiving a qualified notice at the time such notice is published in accordance with 17 CFR 240.10b-17(b) (1) or (3).

(g) *Reporting and paying over withheld amounts.* With respect to an amount withheld under this section, a withholding agent is not required to con-

form to the requirements of §1.1445-5(b)(5) but is required to report and pay over to the Internal Revenue Service any amount required to be withheld pursuant to the rules and procedures of section 1461, the regulations thereunder and §1.6302-2. Forms 1042 and 1042S are to be used for this purpose.

(h) *Early refund procedure not available.* The early refund procedure set forth in §1.1445-6(g) shall not apply to amounts withheld under the rules of this section. For adjustment of over-withheld amounts, see §1.1461.4.

(i) *Liability upon failure to withhold.* For rules regarding liability upon failure to withhold under §1445(e) and this section, see §1.1445-1(e).

[T.D. 8321, 55 FR 50553, Dec. 7, 1990; 56 FR 4542, Feb. 5, 1991, as amended by T.D. 8647, 60 FR 66077, Dec. 21, 1995]

§ 1.1445-9T Special rule for section 1034 nonrecognition (temporary).

(a) *Purpose and scope.* This section provides a temporary regulation that, if and when adopted as a final regulation, will add a new paragraph (d)(2)(iii) to §1.1445-2. Paragraph (b) of this section would then appear as paragraph (d)(2)(iii) of §1.1445-2.

(b) No particular form is required for a transferor's notice to a transferee that the transferor is not required to recognize gain or loss with respect to a transfer. The notice must be verified as true and signed under penalties of perjury by a responsible officer in the case of a corporation, by a general partner in the case of a partnership, and by a trustee or equivalent fiduciary in the case of a trust or estate. The following information must be set forth in paragraphs labeled to correspond with the designation set forth below:

(1) A statement that the document submitted constitutes a notice of a nonrecognition transfer pursuant to the requirements of §1.1445-2(d)(2);

(2) The name, identifying number (if any), and home address (in the case of an individual) or office address (in the case of an entity) of the transferor submitting the notice;

(3) A statement that the transferor is not required to recognize any gain or loss with respect to the transfer;

(4) A brief description of the transfer;

(5) A brief summary of the law and facts supporting the claim that recognition of gain or loss is not required with respect to the transfer; and

(6) If the transferor claims nonrecognition on the sale or exchange of a principal residence under section 1034(a) and another principal residence in the United States has not been purchased as of the date of sale of the principal residence, either (i) a copy of an executed binding contract for purchase by the transferor of a further principal residence in the United States with a purchase price exceeding the adjusted sales price of the old principal residence or (ii) an affidavit by the transferor signed under penalties of perjury stating that the transferor intends to complete purchase of another principal residence within the United States with a purchase price exceeding the adjusted sales price of the old principal residence by April 15 of the year following the taxable year of the sale of the principal residence, and that the transferor is expected to continue to be employed or stationed in the United States for a period of two years from the sale of the principal residence. If the transferor's adjusted sales price of the old principal residence exceeds the transferor's cost of purchasing another principal residence in the United States, withholding shall be required at the rate of ten percent on the portion of the gross amount realized on the sale or exchange of the principal residence equal to such excess.

(c) *Effective Date.* The rules of this section are effective with respect to sale of a principal residence after August 3, 1988.

[T.D. 8198, 53 FR 16230, May 5, 1988]

§ 1.1445-10T Special rule for Foreign governments (temporary).

(a) This section provides a temporary regulation that, if and when adopted as a final regulation will add a new paragraph (d)(6) to § 1.1445-2. Paragraph (b) of this section would then appear as paragraph (d)(6) of § 1.1445-2.

(b) *Foreign government*—(1) *As transferor.* A foreign government is subject to U.S. taxation under section 897 on the disposition of a U.S. real property interest except to the extent specifically otherwise provided in the regula-

tions issued under section 892. A foreign government that disposes of a U.S. real property interest that is not subject to taxation as specifically provided by the regulations under section 892 may present a notice of nonrecognition treatment pursuant to paragraph (d)(2) of this section that specifically cites the provision of such regulation, and thereby avoids withholding by the transferee of the property. A foreign government that disposes of a U.S. real property interest or the transferee of the property may obtain a withholding certificate from the Internal Revenue Service that confirms the applicability of section 892, but neither is required to do so. Rules concerning the issuance of withholding certificates are provided in § 1.1445-3.

(2) *As transferee.* A foreign government or international organization that acquires a U.S. real property interest is fully subject to section 1445 and the regulations thereunder. Therefore, such an entity is required to withhold tax upon the acquisition of a U.S. real property interest from a foreign person.

(c) *Effective date.* The rules of this section shall be effective for transfers, exchanges, distributions and other dispositions occurring on or after June 6, 1988.

[T.D. 8198, 53 FR 16230, May 5, 1988]

§ 1.1445-11T Special rules requiring withholding under § 1.1445-5 (temporary).

(a) *Purpose and scope.* This section provides temporary regulations that, if and when adopted as a final regulation will add certain new paragraphs within § 1.1445-5 (b) and (c). The paragraphs of this section would then appear as set forth below. Paragraph (b) of this section would then appear as paragraph (b)(8)(v) of § 1.1445-5. Paragraph (c) of this section would then appear as paragraph (c)(2)(i) of § 1.1445-5. Paragraph (d) of this section would then appear as paragraph (g) of § 1.1445-5.

(b) *Dispositions of interests in partnerships, trusts, and estates.* The provisions of section 1445(e)(5), requiring withholding upon certain dispositions of interests in partnerships, trusts, and estates, that own directly or indirectly a U.S. real property interest shall apply