

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:INTL:B04:RMGootzeit

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to: IRS Reports Clearance Officer OP:FS:FP

from: Ronald M. Gootzeit, CC:INTL:4

subject: Final Regulations Relating to Special Rules to Reduce Section 1446 Withholding



The collections of information contained in these final regulations were submitted to the Office of Management and Budget in a notice of proposed rulemaking by cross reference to temporary regulation (REG-108524-00) and approved on September 22, 2005, under control number 1545-1934.

Written comments responding to the notice were received and all interested parties attended a public hearing that occurred on November 16, 2005. The regulations provide rules regarding when a partnership may consider certain deductions and losses of a foreign partner that the partner certifies to the partnership to reduce or eliminate the partnership's obligation to pay withholding tax under section 1446 on effectively connected taxable income allocable under section 704 to such partner. The final regulations adopt the proposed regulations with the following modifications.

The proposed regulations required that the foreign partner timely filed its prior four years' income tax returns and timely paid any tax due with the returns to certify deductions and losses to the partnership. The final regulations reduce the number of prior years' filed returns from four years to three years. The regulations also modify the filing requirement of a tax return for a preceding taxable year in which the partner did not submit a certificate to any partnership, if the return has a due date (without extensions) before the beginning of the partnership taxable year for which the certificate is provided. The final regulations provide that such returns must be filed and all amounts due with such return (including interest, penalties, and additions to tax, if any) must be paid on or before the earlier of: (1) The date that is one year from the due date (without extensions) of such return; or (2) The date on which the certificate for the current taxable year is submitted to the partnership. Once a partner submits a certificate to a partnership, however, it must timely file all its subsequent years' returns (and timely pay all amounts due with the returns) to submit a certificate to a partnership in a later year.

In addition to allowing the partners to certify deductions and losses, the regulations allow partnerships to consider state and local taxes paid by the partnership on behalf of the partner with respect to the partner's allocable share of partnership income.

The use of these regulations is voluntary. While these changes are expected to increase taxpayers' use of the regulations, taxpayers' use of the temporary regulations were less than projected. Therefore, overall there is expected to be no change to the paperwork burden.

Attachment