2009

Department of the Treasury
Internal Revenue Service

Instructions for Form 8804-W

Section references are to the Internal Revenue Code unless otherwise noted.

What's New

- Final regulations were issued under section 1.1446-6. These final regulations address special rules to reduce a partnership's section 1446 tax with respect to a foreign partner's allocable share of effectively connected taxable income.
- Effective July 29, 2008, Form 8804-C, Certificate of Partner-Level Items to Reduce Section 1446 Withholding, is the sole method for foreign partners to certify partner-level items.
- The instructions for lines 1, 22, and 32 have been modified to reflect the reduction for state and local taxes permitted under Regulations section 1.1446-6(c)(1)(iii).

General Instructions

Who Must Make Estimated Section 1446 Tax Payments

Partnerships generally must make installment payments of estimated section 1446 tax if they expect the aggregate tax on the effectively connected taxable income (ECTI) that is allocable to all foreign partners to be $500 or more.

When To Make Estimated Section 1446 Tax Payments

The installments are due by the 15th day of the 4th, 6th, 9th, and 12th months of the partnership's tax year. If any date falls on a Saturday, Sunday, or legal holiday, the installment is due on the next regular business day.

Underpayment of Estimated Section 1446 Tax

A partnership that does not make estimated section 1446 tax payments when due may be subject to an underpayment penalty for the period of underpayment. See Schedule A (Form 8804) for details.

How To Make Estimated Section 1446 Tax Payments

A partnership that is required to make an installment payment of section 1446 tax must file Form 8813, Partnership Withholding Tax Payment Voucher (Section 1446). Furthermore, the partnership is generally required to notify each foreign partner of the section 1446 tax paid on the partner's behalf within 10 days of the installment payment due date. See Regulations section 1.1446-3(d) and the Instructions for Forms 8804, 8805, and 8813 for more information.

Refiguring Estimated Section 1446 Tax

If, after the partnership figures and makes an installment payment of estimated section 1446 tax, it finds that its section 1446 tax liability for the year will be more or less than originally estimated, it may have to refigure its required installments. If earlier installments were underpaid, the partnership may owe a penalty for underpayment of estimated tax. An immediate catch-up payment should be made to reduce the amount of any penalty resulting from the underpayment of any earlier installments, whether caused by a change in estimate, failure to make a payment, or a mistake.

Specific Instructions

Part I—Determination of Installment Payments

Complete Form 8804-W for each installment payment of section 1446 tax based on the information available at the time of the installment payment.

Lines 1 through 6—Current Year Safe Harbor

Lines 1a, 1e, 1i, and 1m. To determine the foreign partner's allocable share of ECTI, see *Effectively Connected Taxable Income* in the Instructions for Forms 8804, 8805, and 8813. With respect to lines 1e, 1i, and 1m, enter the specified types of ECTI if such partner would be entitled to use a preferential rate on such income or gain (see Regulations section 1.1446-3(a)(2)).

If the partnership has net ordinary loss, net short-term capital loss, or net 28% rate loss, each net loss should be netted against the appropriate categories of income and gain to determine the amounts of income and gain to be entered on lines 1e, 1i, and 1m, respectively. See section 1(h) and Notice 97-59, 1997-45 I.R.B. 7, for rules for netting gains and losses.

Lines 1b, 1f, 1j, and 1n. Enter the reduction amounts for state and local taxes under Regulations section 1.1446-6(c)(1)(iii). See *Reductions for State and Local Taxes* in the Instructions for Forms 8804, 8805, and 8813 for additional information. The netting rules under section 1(h) and Notice 97-59 must be considered in determining the category of income the reduction amounts offset.

Lines 1c, 1g, 1k, and 1o. Enter the reduction amounts resulting from certified partner-level items received from foreign partners using Form 8804-C. See *Certification of Deductions and Losses* in the Instructions for Forms 8804, 8805, and 8813 for additional information. The netting rules under section 1(h) and Notice 97-59 must be considered in determining the category of income the reduction amounts offset.

Line 6. Add lines 2 through 5.

Alternative tax for foreign corporate partners with qualified timber gain. In the case of a foreign corporate partner, if taxable income expected for the year (line 1a) includes both a net capital gain and qualified timber gain, an alternative maximum 15% capital gains tax may apply to the qualified timber gain. For this purpose, a qualified timber gain means the net gains described in sections 631(a) and (b), determined by taking into account only trees held more than 15 years. Only qualified timber gains for the period that begins after May 22, 2008, and before May 23, 2009, are eligible for the alternative tax.

With respect to a foreign corporate partner with both a net capital gain and a qualified timber gain, enter on line 6 the smaller of the alternative tax or the amount on line 2. Use Form 1120-W, Part II to compute the alternative tax. For these purposes, the following modifications must be made to Form 1120-W, Part II:

- On lines 30, 32, and 35, substitute "the amount shown on Form 8804-W, line 1d" for "Part I, line 1."
- On line 33, enter the product of line 32 times 35%.

As mentioned above, the Form 1120-W, Part II, line 37 result (computed with the modifications noted above) is compared to Form 8804-W, line 2, and the smaller of these two amounts is entered on Form 8804-W, line 6.

Line 7—Prior Year Safe Harbor

Enter the total section 1446 tax that would have been due for 2008 on ECTI allocable to foreign partners for 2008, without any reductions for state and local taxes under Regulations section 1.1446-6(c)(1)(iii) or certified partner-level items. With respect to the partnership's first installment payment, if the 2008 Form 8804 has not yet been filed, an estimate is acceptable. However, if the partnership later determines that this estimate is incorrect, see *Refiguring Estimated Section 1446 Tax* on page 1.

Complete line 7 only if all of the following apply:

- The prior tax year consisted of 12 months,
- The partnership timely files (including extensions) a U.S. return of partnership income (e.g., Form 1065) for the prior year, and
- The amount of ECTI for the prior tax year is not less than 50% of the ECTI expected for the current tax year. Furthermore, the Form 8804 on which the current year ECTI will be reported must be timely filed.

If any of the above does not apply, skip line 7 and enter the amount from line 6 on line 8.

If the partnership qualifies to use the prior year safe harbor and chooses that method, it must use that method to pay each of its installments during the tax year. Furthermore, for each installment payment, the average of that installment and prior installments during the tax year must be at least 25% of the amount that satisfies the partnership's section 1446 tax liability under the prior year safe harbor. If the partnership does not satisfy both of these requirements, it will not qualify for the prior year safe harbor when determining any penalty due on Schedule A (Form 8804).

If the partnership begins using the prior year safe harbor method and it determines later in the tax year (based upon the standard option annualization method described later in these instructions) that it will not meet the 50% of ECTI requirement described in the last bulleted item above, it may make all subsequent installment payments using the standard option annualization method and it will not be subject to the penalty determined on Schedule A (Form 8804). This change in method must be disclosed in a statement attached to the Form 8804 the partnership files for the current tax year and the statement must include enough information to allow the IRS to determine whether the change was appropriate.

If the partnership begins using the prior year safe harbor method and switches to the current year safe harbor (because the partnership does not qualify for the relief described in the previous paragraph (i.e., using the standard option annualization method) or the partnership chooses not to continue using it), in order to avoid an underpayment penalty with respect to the current installment payment, the partnership must pay the sum of **(a)** the current installment payment based on the current year safe harbor, plus **(b)** the sum of the amount by which the current year safe harbor exceeds the prior year safe harbor amount paid in for each prior installment period during which it qualified for the prior year safe harbor.

Line 8

Enter the smaller of line 6 or line 7. However, if, for any installment payment, line 6 is smaller than line 7 and you enter that smaller line 6 amount on line 8, you will not qualify for the prior year safe harbor when determining any penalty due on Schedule A (Form 8804) (see the line 7 instructions above). Therefore, in that case, for any subsequent installment payment during the tax year, do not use the line 7 amount.

Line 9—Installment Due Dates

Calendar-year taxpayers. Enter 4-15-2009, 6-15-2009, 9-15-2009, and 12-15-2009, respectively, in columns (a) through (d).

Fiscal-year taxpayers. Enter the 15th day of the 4th, 6th, 9th, and 12th months of the partnership's tax year in columns (a) through (d). If the regular due date falls on a Saturday, Sunday, or legal holiday, enter the next business day.

Line 10

Enter 25% of line 8 in columns (a) through (d) unless the partnership uses the annualized income installment method or the adjusted seasonal installment method.

Annualized income installment method and/or adjusted seasonal installment method. If the partnership's ECTI is expected to vary during the year because, for example, it operates its business on a seasonal basis, it may be able to lower the amount of one or more required installments by using the annualized income installment method and/or the adjusted seasonal installment method. For example, a ski shop, which receives most of its income during the winter months, may be able to benefit from using one or both of these methods in figuring one or more of its required installments.

To use one or both of these methods, complete Part II and/or Part III of the form. If those Parts are used for any payment date, those Parts must be used for all subsequent payment due dates. To arrive at the amount of each required installment, Part IV automatically selects the **smallest** of **(a)** the annualized income installment (if applicable), **(b)** the adjusted seasonal installment (if applicable), or **(c)** the current year safe harbor (increased by any recapture of a reduction in a required installment under section 6655(e)(1)(B)).

Line 11

Include on line 11 any 2008 overpayment that the partnership chose to credit against its 2009 tax. The overpayment is credited against unpaid required installments in the order in which the installments are required to be paid.

Also include on line 11 any:

- Section 1446 tax withheld and paid by another partnership because the partnership preparing this Form 8804-W was a partner in that partnership during the tax year. See the instructions for Form 8804, line 6b, in the Instructions for Forms 8804, 8805, and 8813.
- Section 1445(a) or 1445(e)(1) tax withheld from or paid by the partnership filing this Form 8804-W during the tax year for a disposition of a U.S. real property interest. See the instructions for Form 8804, line 6c, in the Instructions for Forms 8804, 8805, and 8813.

The partnership generally enters these amounts in the column that corresponds to the installment period for which these amounts were paid or withheld. However, if the partnership learns about the payments or withholding in a subsequent installment period, the partnership may claim them in that period.

Parts II Through IV

If only the adjusted seasonal installment method (Part II) is used, complete Parts II and IV. If only the annualized income installment method (Part III) is used, complete Parts III and IV. If both methods are used, complete all three parts. Enter in each column on line 10 the amounts from the corresponding column of line 42.

CAUTION *Do not figure any required installment until after the end of the month preceding the due date for that installment.*

Extraordinary items. Generally, under the annualized income installment method, extraordinary items must be taken into account after annualizing the effectively connected taxable income for the annualization period. Similar rules apply in determining effectively connected taxable income under the adjusted seasonal installment method. An extraordinary item includes:

- Any item identified in Regulations section 1.1502-76(b)(2)(ii)(C)(1), (2), (3), (4), (7), and (8);
- A section 481(a) adjustment; and
- Net gain or loss from the disposition of 25% or more of the fair market value of the partnership's business assets during the tax year.

These extraordinary items must be accounted for in the appropriate annualization period. However, a section 481(a) adjustment (unless the partnership makes the alternative choice under Regulations section 1.6655-2(f)(3)(ii)(C)) is treated as an extraordinary item occurring on the first day of the tax year in which the item is taken into account in determining effectively connected taxable income.

For more information regarding extraordinary items, see Regulations section 1.6655-2(f)(3)(ii) and the examples in Regulations section 1.6655-2(f)(3)(vii). Also see Regulations section 1.6655-3(d)(3).

De minimis rule. Extraordinary items identified above resulting from a particular transaction that total less than $1 million (other than a section 481(a) adjustment) may be annualized using the general rules of Regulations section 1.6655-2(f), or, if the partnership chooses, may be taken into account after annualizing the effectively connected taxable income for the annualization period.

Part II—Adjusted Seasonal Installment Method

Note. Part II does not reflect the lower preferential rates permitted under Regulations section 1.1446-3(a)(2). These were omitted because, for most taxpayers, the income reported in Part II will be predominantly (or exclusively) ordinary income. If the partnership wishes to consider lower preferential rates for Part II (and if the requirements outlined in the **Note** in the line 30 instructions are met), it must attach a schedule which appropriately expands lines 14 and 21 through 24 to show the applicable special types of income or gain and the applicable percentages (see, for example, lines 32 and 33 of this schedule).

Complete this part only if the partnership's base period percentage for any 6 consecutive months of the tax year equals or exceeds 70%. Figure the base period percentage using the 6-month period in which the partnership normally receives the largest part of its ECTI. The base period percentage for any period of 6 consecutive months is the average of the three percentages figured by dividing the ECTI for the corresponding 6-consecutive-month period in each of the 3 preceding tax years by the ECTI for each of their respective tax years.

Example. An amusement park with a calendar year as its tax year receives the largest part of its ECTI during a 6-month period, May through October. To compute its base period percentage for this 6-month period, the amusement park figures its ECTI for each May–October period in 2006, 2007, and 2008. It then divides the ECTI for each May–October period by the total ECTI for that particular tax year. The resulting percentages are 69% (.69) for May–October 2006, 74% (.74) for May–October 2007, and 67% (.67) for May–October 2008. Because the average of 69%, 74%, and 67% is 70%, the base period percentage for May through October 2009 is 70%. Therefore, the amusement park qualifies for the adjusted seasonal installment method.

Line 14

If the partnership has certain extraordinary items, special rules apply. Do not include on line 14 the de minimis extraordinary items that the partnership chooses to include on line 21b. See *Extraordinary items* on page 2.

Line 21b

If the partnership has certain extraordinary items of $1 million or more from a transaction, or a section 481(a) adjustment, special rules apply. Include these amounts on line 21b for the appropriate period. Also, include on line 21b the de minimis extraordinary items that the partnership chooses to exclude from line 14. See *Extraordinary items* on page 2.

Line 22

Enter the reduction to the line 21c amount for state and local taxes under Regulations section 1.1446-6(c)(1)(iii) and for valid certificates received from the foreign partner under Regulations section 1.1446-6. See *Certification of Deductions and Losses* in the Instructions for Forms 8804, 8805, and 8813 for additional information.

Part III—Annualized Income Installment Method

Line 29—Annualization Periods

Enter in the space on line 29, columns (a) through (d), respectively, the annualization periods that the partnership is using, based on the options listed below. For example, if the partnership elects Option 1, enter on line 29 the annualization periods 2, 4, 7, and 10, in columns (a) through (d), respectively.

CAUTION *Use Option 1 or Option 2 **only** if the partnership elected to use one of these options by filing **Form 8842,** Election To Use Different Annualization Periods for Corporate Estimated Tax, on or before the due date of the first required installment payment. Once made, the election is irrevocable for the particular tax year.*

	1st Installment	2nd Installment	3rd Installment	4th Installment
Standard Option	3	3	6	9
Option 1	2	4	7	10
Option 2	3	5	8	11

Line 30—Foreign Partner's Allocable Share of ECTI

Enter on lines 30a through 30d the foreign partner's allocable share of ECTI for the months entered for each annualization period in columns (a) through (d) on line 29. To determine the foreign partner's allocable share of ECTI, see *Effectively Connected Taxable Income* in the Instructions for Forms 8804, 8805, and 8813.

If the partnership has certain extraordinary items, special rules apply. Do not include on line 30a, 30b, 30c, or 30d the de minimis extraordinary items that the partnership chooses to include on line 32a, 32e, 32i, or 32m, respectively. See *Extraordinary items* on page 2.

Note. With respect to lines 30b through 30d, enter the specified types of ECTI if **(a)** such partner would be entitled to use a preferential rate on such income or gain (see Regulations section 1.1446-3(a)(2)) and **(b)** the partnership has sufficient documentation to meet the requirements of Regulations section 1.1446-3(a)(2)(ii).

If the partnership has net ordinary loss, net short-term capital loss, or net 28% rate loss, each net loss should be netted against the appropriate categories of income and gain to determine the amounts of income and gain to be entered on lines 30e, 30i, and 30m, respectively. See section 1(h) and Notice 97-59, 1997-45 I.R.B. 7, for rules for netting gains and losses.

Line 31—Annualization Amounts

Enter the annualization amounts for the option used on line 29. For example, if the partnership elects Option 1, enter on line 31 the annualization amounts 6, 3, 1.71429, and 1.2, in columns (a) through (d), respectively.

	1st Installment	2nd Installment	3rd Installment	4th Installment
Standard Option	4	4	2	1.33333
Option 1	6	3	1.71429	1.2
Option 2	4	2.4	1.5	1.09091

Lines 32a, 32e, 32i, and 32m

If the partnership has certain extraordinary items that total $1 million or more from a particular transaction, or a section 481(a) adjustment, special rules apply. Include these amounts on line 32a, 32e, 32i, or 32m, depending upon the type of income against which the item applies, for the appropriate period. Also include on line 32a, 32e, 32i, or 32m the de minimis extraordinary items that the partnership chooses to exclude from line 30a, 30b, 30c, or 30d, respectively. See *Extraordinary items* on page 2.

Lines 32b, 32f, 32j, and 32n

Enter the reduction amounts for state and local taxes under Regulations section 1.1446-6(c)(1)(iii). See *Reductions for State and Local Taxes* in the Instructions for Forms 8804, 8805, and 8813 for additional information. The netting rules under section 1(h) and Notice 97-59 must be considered in determining the category of income the reduction amounts offset.

Lines 32c, 32g, 32k, and 32o

Enter the reduction amounts resulting from certified partner-level items received from foreign partners using Form 8804-C. See *Certification of Deductions and Losses* in the Instructions for Forms 8804, 8805, and 8813 for additional information. The netting rules under section 1(h) and Notice 97-59 must be considered in determining the category of income the reduction amounts offset.

Part IV—Required Installments Under Part II and/or Part III

Line 37

Before completing line 37 in columns (b) through (d), complete lines 38 through 42 in each of the preceding columns. For example, complete lines 38 through 42 in column (a) before completing line 37 in column (b).

Line 42—Required Installments

For each installment, enter the smaller of line 38 or line 41 on line 42. Also enter the result on line 10.

Paperwork Reduction Act Notice. Your use of this form is optional. It is provided to aid the partnership in determining its tax liability.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete this form will vary depending on individual circumstances. The estimated average time is:

Form	Recordkeeping	Learning about the law or the form	Preparing the form
8804-W, Part I	8 hr., 7 min.	47 min.	57 min.
8804-W, Part II	21 hr., 16 min.	6 min.	27 min.
8804-W, Part III	21 hr., 3 min.	6 min.	27 min.
8804-W, Part IV	5 hr., 58 min.	6 min.	12 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the tax form to this office. Instead, keep the form for your records.