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If you have comments on reducing paperwork and respondent (filer) burden, with respect to draft or final forms, please respond to the relevant information collection through the Federal Register process; for more info, click [here](#).

# Instructions for Form 8288

(Rev. January 2023)



Department of the Treasury  
Internal Revenue Service

(Use with the January 2023 revision of Form 8288.)

## U.S. Withholding Tax Return for Certain Dispositions by Foreign Persons

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

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## Future Developments

For the latest information about developments related to Form 8288 and its instructions, such as legislation enacted after they were published, go to [IRS.gov/Form8288](https://www.irs.gov/Form8288).

## What's New

- The Tax Cuts and Jobs Act added section 1446(f), effective January 1, 2018, which generally requires that if any portion of the gain on a disposition of an interest in a partnership would be treated under section 864(c)(8) as gain effectively connected with the conduct of a trade or business in the United States, the transferee purchasing the interest in the partnership from a non-U.S. transferor must withhold a tax equal to 10% of the amount realized on the disposition unless an exception to withholding applies.
- Notice 2018-08, 2018-07 I.R.B. 352, available at [IRS.gov/IRB/2018-07\\_IRB#NOT-2018-08](https://www.irs.gov/IRB/2018-07_IRB#NOT-2018-08), temporarily suspended the application of section 1446(f) to the transfer of publicly traded partnership (PTP) interests.
- Notice 2018-29, 2018-16 I.R.B. 495, available at [IRS.gov/IRB/2018-16\\_IRB#NOT-2018-29](https://www.irs.gov/IRB/2018-16_IRB#NOT-2018-29), provided interim guidance under section 1446(f)(1) on withholding

related to transfers of non-PTP interests and temporarily suspended withholding under section 1446(f)(4).

- Proposed regulations under section 1446(f), available at [IRS.gov/IRB/2019-27\\_IRB#REG-105476-18](https://www.irs.gov/irb/2019-27_IRB#REG-105476-18), were issued on May 7, 2019, for transfers of both non-PTP and PTP interests. During the period that [Notice 2018-29](https://www.irs.gov/irb/2018-29) applied, instead of applying the rules described in the Notice, taxpayers and other affected persons may choose to apply Regulations sections 1.1446(f)-1, 1.1446(f)-2, and 1.1446(f)-5 of the proposed regulations in their entirety to all transfers as if they were final regulations.
- T.D. 9926, published on November 30, 2020, available at [IRS.gov/IRB/2020-51\\_IRB#TD-9926](https://www.irs.gov/irb/2020-51_IRB#TD-9926), contains final regulations (the section 1446(f) regulations) relating to withholding and reporting required under section 1446(f)(1), including requirements that apply to brokers effecting transfers of PTP interests and partnership withholding under section 1446(f)(4) (on distributions to a transferee that failed to properly withhold under section 1446(f)(1)). The section 1446(f) regulations also revise certain requirements under section 1446(a) relating to withholding and reporting on distributions made by PTPs.
- The section 1446(f) regulations generally apply to transfers occurring on or after January 29, 2021. However, in accordance with Notice 2021-51, 2021-36 I.R.B. 361, available at [IRS.gov/IRB/2021-36\\_IRB#NOT-2021-51](https://www.irs.gov/irb/2021-36_IRB#NOT-2021-51), the following provisions of the section 1446(f) regulations apply to transfers occurring on or after January 1, 2023:

- Withholding and reporting on transfers of PTP interests,
  - The revisions included in the section 1446(f) regulations relating to withholding on PTP distributions under section 1446(a), and
  - Partnership withholding under section 1446(f)(4) on distributions to a transferee that failed to properly withhold under section 1446(f)(1).
- To reflect the withholding and reporting requirements under sections 1446(f)(1) and (f)(4), applicable to transfers occurring on or after January 1, 2023, updated Forms 8288 and 8288-A and a new Form 8288-C are being released.
  - These instructions have been updated to incorporate the use of this form for a transferee of a non-PTP interest required to withhold under section 1446(f)(1) on the amount realized from the transfer and for partnership withholding under section 1446(f)(4) on distributions to a transferee that failed to withhold under section 1446(f)(1).
  - The *General Instructions* have been subdivided into three major sections:
    - The [General Instructions for Section 1445 Withholding](#),
    - The [General Instructions for Section 1446\(f\)\(1\) Withholding](#), and
    - The [General Instructions for Section 1446\(f\)\(4\) Withholding](#).

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## General Instructions

### Purpose of Form

Form 8288 is used to report and transmit amounts withheld on certain dispositions and distributions that are

subject to sections 1445 and 1446(f)(1). It is also used to report and transmit amounts withheld under section 1446(f)(4) or to claim a credit or refund for amounts withheld under section 1446(f)(4) for transfers occurring on or after January 1, 2023.

**Section 1445 withholding.** A withholding obligation under section 1445 is generally imposed on the buyer or other transferee (withholding agent) when a U.S. real property interest (USRPI) is acquired from a foreign person. The withholding obligation also applies to foreign and domestic corporations, qualified investment entities (QIEs), and the fiduciaries of certain trusts and estates that make certain distributions. This withholding serves to collect U.S. tax that may be owed by the foreign person.

**TIP** *If an exception applies, you may be required to withhold at a reduced rate or you may not be required to withhold. See [Exceptions to Section 1445 Withholding](#), later.*

**Section 1446(f)(1) withholding.** Section 1446(f)(1) generally imposes a withholding obligation on the buyer or other transferee (withholding agent) on a transfer of an interest in a partnership (including a distribution made with respect to such interest) by a foreign person (transferor) if:

- The transferor realized a gain on the sale, and
- Any portion of the gain would be treated under section 864(c)(8) as effectively connected with the conduct of a trade or business within the United States.

**TIP** *If an exception applies, you may be required to withhold at a reduced rate or you may not be required to withhold. See [Exceptions to Section 1446\(f\)\(1\) Withholding on Transfers of Non-PTP Interests](#), later.*

**Section 1446(f)(4) withholding.** Section 1446(f)(4) generally imposes a withholding obligation on a partnership that makes a distribution with respect to the transferee of a partnership interest that failed to withhold the required amount under section 1446(f)(1). A transferee may claim a refund for the excess amount if the partnership has withheld amounts in excess of the tax and interest owed by the transferee.

**TIP** *If an exception applies, the partnership may not be required to withhold. See [Exceptions to Section 1446\(f\)\(4\) Withholding](#), later.*

**When not to use Forms 8288 and 8288-A.** Do not use Forms 8288 and 8288-A, instead use Forms 1042 and 1042-S to report and pay over these withheld amounts for any of the following.

- A distribution with respect to gains from the disposition of a USRPI from a trust that is regularly traded on an established securities market is subject to section 1445 but is not reported on Forms 8288 and 8288-A.
- A dividend distribution by a qualified investment entity (QIE) to a nonresident alien or a foreign corporation that is attributable to gains from sales or exchanges of a USRPI by the QIE. However, a dividend distribution by a QIE is not subject to withholding under section 1445 as a gain from the sale or exchange of a USRPI if:

- a. The distribution is on stock regularly traded on a securities market in the United States, and
- b. The nonresident alien or foreign corporation did not own more than 10% (for dispositions and distributions before December 17, 2015, did not own more than 5% of such stock in the case of a real estate investment trust (REIT)) of that stock at any time during the 1-year period ending on the date of the distribution.

The dividend distribution, however, may be subject to withholding under section 1441 or 1442.

3. A distribution of effectively connected taxable income by a PTP that is subject to the withholding requirements of section 1446(a).
4. The transfer of a PTP interest (including a distribution made with respect to the PTP interest) that is subject to withholding under section 1446(f)(1).

## General Instructions for Section 1445 Withholding

A withholding obligation under section 1445 is generally imposed on the buyer or other transferee (withholding agent) when a USRPI is acquired from a foreign person. The withholding obligation also applies to foreign and domestic corporations, QIEs, and the fiduciaries of certain trusts and estates.

### Who Must File

A buyer or other transferee of a USRPI must complete and file Part I of Form 8288 to report and transmit the amount withheld. A corporation, QIE, or fiduciary that is required to withhold tax under section 1445(e) must complete and file Part II of Form 8288 to report and transmit the amount withheld. If two or more persons are joint transferees, each is obligated to withhold. However, the obligation of each will be met if one of the joint transferees withholds and transmits the required amount to the IRS.

### Amount To Withhold

Generally, you must withhold 15% of the amount realized on the disposition by the [transferor](#), defined later.

**Note.** Prior to February 17, 2016, the transferor was generally required to withhold 10% of the amount realized on the disposition.

For information about:

- Withholding at 21% (35% for distributions made before January 1, 2018), see [Entities Subject to Section 1445\(e\)](#), later;
- Withholding at a reduced amount, see [Purchase of residence for \\$1 million or less](#); and
- Applying for reduction or elimination of withholding, see [Withholding certificate issued by the IRS](#), later.

**Joint transferors.** If one or more foreign persons and one or more U.S. persons jointly transfer a USRPI, you must determine the amount subject to withholding in the following manner.

1. Allocate the amount realized from the transfer among the transferors based on their capital contribution to the property. For this purpose, a husband and wife are treated as having contributed 50% each.

2. Withhold on the total amount allocated to foreign transferors.

3. Credit the amount withheld among the foreign transferors as they mutually agree. The transferors must request that the withholding be credited as agreed upon by the 10th day after the date of transfer. If no agreement is reached, credit the withholding by evenly dividing it among the foreign transferors.

### When To File

A transferee must file Form 8288 and transmit the tax withheld to the IRS by the 20th day after the date of transfer.

You must withhold even if an application for a withholding certificate is or has been submitted to the IRS on the date of transfer. However, you do not have to file Form 8288 and transmit the withholding until the 20th day after the day the IRS mails you a copy of the withholding certificate or notice of denial. But, if the principal purpose for filing the application for a withholding certificate was to delay paying the IRS the amount withheld, interest and penalties will apply to the period beginning on the 21st day after the date of transfer and ending on the day full payment is made.

**Installment payments.** You must withhold the full amount at the time of the first installment payment. If you cannot because the payment does not involve sufficient cash or other liquid assets, you may obtain a withholding certificate from the IRS. See the instructions for Form 8288-B for more information.

### Where To File

Send Form 8288 with the amount withheld, and copies A and B of Form(s) 8288-A to:

Ogden Service Center  
P.O. Box 409101  
Ogden, UT 84409

### Forms 8288-A Must Be Attached

Anyone who completes Form 8288 must also complete a Form 8288-A for each person subject to withholding. Copies A and B of Form 8288-A must be attached to Form 8288. Copy C is for your records. Multiple Forms 8288-A related to a single transaction can be filed with one Form 8288. You are not required to furnish a copy of Form 8288 or 8288-A directly to the transferor.

The IRS will stamp Copy B of each Form 8288-A and will forward the stamped copy to the foreign person subject to withholding at the address shown on Form 8288-A. To receive credit for the withheld amount, the transferor must generally attach the stamped Copy B of Form 8288-A to a U.S. income tax return (for example, Form 1040-NR or 1120-F) or application for early refund filed with the IRS.

**Transferor's taxpayer identification number (TIN) missing.** If you do not have the transferor's TIN, you must still file Forms 8288 and 8288-A. A stamped copy of Form 8288-A will not be provided to the transferor if the transferor's TIN is not included on that form. The IRS will send a letter to the transferor requesting the TIN and

providing instructions for how to get a TIN. When the transferor provides the IRS with a TIN, the IRS will provide the transferor with a stamped Copy B of Form 8288-A.

## Penalties

Under section 6651, penalties apply for failure to file Form 8288 when due and for failure to pay the withholding when due. In addition, if you are required to but do not withhold tax under section 1445, the tax, including interest, may be collected from you. Under section 7202, you may be subject to a penalty of up to \$10,000 for willful failure to collect and pay over the tax. Corporate officers or other responsible persons may be subject to a penalty under section 6672 equal to the amount that should have been withheld and paid over to the IRS.

## Definitions for Section 1445 Withholding

**Agent.** An agent is any person who represents the transferor or transferee in any negotiation with another person (or another person's agent) relating to the transaction or in settling the transaction.

**Amount realized.** The sum of the cash paid or to be paid (not including interest or original issue discount), the fair market value of other property transferred or to be transferred, and the amount of any liability assumed by the transferee or to which the USRPI is subject immediately before and after the transfer. Generally, the amount realized for purposes of this withholding is the sales or contract price.

**Date of transfer.** The first date on which consideration is paid or a liability is assumed by the transferee. However, for purposes of sections 1445(e)(2), (3), and (4), and Regulations sections 1.1445-5(c)(1)(iii) and 1.1445-5(c)(3), the date of transfer is the date of distribution that creates the obligation to withhold. Payment of consideration does not include the payment before passage of legal or equitable title of earnest money (other than pursuant to an initial purchase contract), a good-faith deposit, or any similar amount primarily intended to bind the parties to the contract and subject to forfeiture. A payment that is not forfeitable may also be considered earnest money, a good-faith deposit, or a similar sum.

**Domestically controlled QIE.** A QIE is domestically controlled if at all times during the testing period less than 50% in value of its stock was held, directly or indirectly, by foreign persons. The testing period is the shorter of:

- The 5-year period ending on the date of the disposition (or distribution), or
- The period during which the entity was in existence.

For the purpose of determining whether a QIE is domestically controlled, the following rules apply.

1. A person holding less than 5% of any class of stock of a QIE which is regularly traded on an established securities market in the United States at all times during the testing period will be treated as a U.S. person unless the QIE has actual knowledge that such person is not a U.S. person.

2. Any stock in a QIE that is held by another QIE will be treated as held by a foreign person if:

- Any class of stock of such other QIE is regularly traded on an established securities market, or

- Such other QIE is a regulated investment company (RIC) that issues certain redeemable securities.

Notwithstanding the above, the stock of the QIE will be treated as held by a U.S. person if such other QIE is domestically controlled.

3. Stock in a QIE that is held by any other QIE not described above will be treated as held by a U.S. person in proportion to the stock ownership of such other QIE which is (or is treated as) held by a U.S. person.

**Foreign person.** A nonresident alien individual, a foreign corporation that does not have a valid election under section 897(i) to be treated as a domestic corporation, a foreign partnership, a foreign trust, or a foreign estate. A resident alien individual is not a foreign person.

A qualified foreign pension fund or any entity wholly owned by such fund is not a foreign person for purposes of section 1445. See sections 897(l) and 1445(f)(3) for more information.

**Qualified investment entity (QIE).** A QIE is:

- Any REIT, and
- Any RIC which is a U.S. real property holding corporation or which would be a U.S. real property holding corporation.

In determining if a RIC is a U.S. real property holding corporation, the RIC is required to include as USRPIs its holdings of stock in a RIC or REIT that is a U.S. real property holding company, even if such stock is regularly traded and the RIC did not own more than 10% of such stock in the case of a REIT (5% for dispositions before December 17, 2015) or 5% of such stock in the case of a RIC, and even if such stock is domestically controlled.

For more information, see [Pub. 515](#).

**Qualified substitute.** For this purpose, a qualified substitute is:

- The person (including any attorney or title company) responsible for closing the transaction, other than the transferor's agent; and
- The transferee's agent.

**Transferee.** Any person, foreign or domestic, that acquires a USRPI by purchase, exchange, gift, or any other transfer.

**Transferor.** For purposes of this withholding, this means any foreign person that disposes of a USRPI by sale, exchange, gift, or any other disposition. A disregarded entity cannot be the transferor for purposes of section 1445. Instead, the person considered as owning the assets of the disregarded entity for federal tax purposes is regarded as the transferor. A **disregarded entity** for these purposes means an entity that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, a qualified REIT subsidiary as defined in section 856(i), or a qualified subchapter S subsidiary under section 1361(b)(3)(B).

**Transferee's or transferor's agent.** For purposes of section 1445(e), a transferee's or transferor's agent is any person who represents or advises an entity, a holder of an interest in an entity, or a fiduciary with respect to the planning, arrangement, or completion of a transaction described in sections 1445(e)(1) through (4).

**U.S. real property interest (USRPI).** Any interest, other than an interest solely as a creditor, in the following.

1. Real property located in the United States or the U.S. Virgin Islands.
2. Certain personal property associated with the use of real property.
3. A domestic corporation, unless it is shown that the corporation was not a U.S. real property holding corporation during the previous 5 years (or during the period in which the transferor held the interest, if shorter).

A USRPI does not include the following.

1. An interest in a domestically controlled QIE.
2. An interest in a REIT that is held by a qualified shareholder. For the definition of a qualified shareholder, see section 897(k)(3). But see section 897(k)(2)(B) for the cut-back rule if the qualified shareholder has one or more applicable investors.
3. An interest in a corporation that:
  - Did not hold any USRPI as of the date the interest in such corporation is disposed,
  - Has disposed of all its USRPIs in transactions in which the full amount of any gain was recognized as provided in section 897(c)(1)(B), and
  - Neither such corporation nor any predecessor of such corporation was a REIT or a RIC at any time during the shorter of the previous 5 years or the period in which the transferor held the interest.
4. An interest in certain publicly traded corporations, partnerships, and trusts.

See Regulations sections 1.897-1 and 1.897-2 for more information. Also see [Transferred property that isn't a USRPI](#), later.

**Withholding agent.** For purposes of this return, this means the buyer or other transferee who acquires a USRPI from a foreign person.

## Exceptions to Section 1445 Withholding

### Withholding at a Reduced Rate

#### **Purchase of residence for \$1 million or less.**

Withholding is required at a reduced rate of 10% in the case of a disposition of:

- A property which is acquired by the transferee for use by the transferee as a residence, and
- The amount realized for the property is \$1 million or less. However, see *Purchase of residence for \$300,000 or less* next.

### Withholding Not Required

**Purchase of residence for \$300,000 or less.** If one or more individuals acquire U.S. real property for use as a residence and the amount realized (in most cases, the sales price) is \$300,000 or less, no withholding is required.

A USRPI is acquired for use as a residence if you or a member of your family has definite plans to reside in the property for at least 50% of the number of days the property is used by any person during each of the first two 12-month periods following the date of transfer. Do not

take into account the number of days the property will be vacant in making this determination. No form or other document is required to be filed with the IRS for this exception, however, if you do not in fact use the property as a residence, the withholding tax may be collected from you.

This exception applies whether or not the transferor (seller) is an individual, partnership, trust, corporation, or other transferor. However, this exception does not apply if the actual transferee (buyer) is not an individual, even if the property is acquired for an individual.

**Transferor not a foreign person.** Generally, no withholding is required if you receive a certification of nonforeign status from the transferor, signed under penalties of perjury, stating that the transferor is not a foreign person and containing the transferor's name, address, and TIN (social security number (SSN) or employer identification number (EIN)). A certification of nonforeign status includes a valid Form W-9 submitted by the transferor. The transferor can give the certification to a [qualified substitute](#) (defined earlier). The qualified substitute gives you a statement, under penalties of perjury, that the certification is in the qualified substitute's possession.

If you receive a certification (or statement), the withholding tax cannot be collected from you unless you knew that the certification (or statement) was false or you received a notice from your agent, the transferor's agent, or the qualified substitute that it was false. The certification must be signed by the individual, a responsible officer of a corporation, a general partner of a partnership, or the trustee, executor, or fiduciary of a trust or estate.

A disregarded entity may not certify that it is the transferor for U.S. tax purposes. Rather, the owner of the disregarded entity is treated as the transferor of the property and must provide the certificate of nonforeign status to avoid withholding under section 1445.

A foreign corporation electing to be treated as a domestic corporation under section 897(i) must attach to the certification a copy of the acknowledgment of the election received from the IRS. The acknowledgment must state that the information required by Regulations section 1.897-3 has been determined to be complete. If the acknowledgment is not attached, you may not rely on the certification. Keep any certification of nonforeign status you receive in your records for 5 years after the year of transfer.

A qualified foreign pension fund or any entity wholly owned by such fund may provide a certification of nonforeign status to establish that it is not a foreign person for purposes of section 1445. See sections 897(l) and 1445(f)(3) for more information.

You may also use other means to determine that the transferor is not a foreign person. But if you do and it is later determined that the transferor is a foreign person, the withholding tax may be collected from you.

**Late notice of false certification.** If, after the date of transfer, you receive a notice from your agent, the transferor's agent, or the qualified substitute that the certification of nonforeign status is false, you do not have

to withhold on consideration paid before you received the notice. However, you must withhold the full 15% of the amount realized from any consideration that remains to be paid, if possible. You must do this by withholding and paying over the entire amount of each successive payment of consideration until the full 15% has been withheld and paid to the IRS. These amounts must be reported and transmitted to the IRS by the 20th day following the date of each payment.

**Transferred property that isn't a USRPI.** If you acquire an interest in property that is not a USRPI (defined under [U.S. real property interest \(USRPI\)](#), earlier), withholding is generally not required. A USRPI includes certain interests in U.S. corporations, as well as direct interests in real property and certain associated personal property.

No withholding is required on the acquisition of an interest in a domestic corporation if (a) any class of stock of the corporation is regularly traded on an established securities market, or (b) the transferee receives a statement issued by the corporation that the interest is not a USRPI, unless you know that the statement is false or you receive a notice from your agent or the transferor's agent that the statement is false. A corporation's statement may be relied on only if it is dated not more than 30 days before the date of transfer.

**Late notice of false statement.** If, after the date of transfer, you receive a notice indicating that the statement is false, see [Late notice of false certification](#), earlier.

Generally, no withholding is required on the acquisition of an interest in a foreign corporation. However, withholding may be required if the foreign corporation has made the election under section 897(i) to be treated as a domestic corporation.

**Transferor's nonrecognition of gain or loss.** You may receive a notice from the transferor signed under penalties of perjury stating that the transferor is not required to recognize gain or loss on the transfer because of a nonrecognition provision of the Internal Revenue Code (see Temporary Regulations section 1.897-6T(a)(2)) or a provision in a U.S. tax treaty. You may rely on the transferor's notice, and not withhold, unless (a) only part of the gain qualifies for nonrecognition, or (b) you know or have reason to know that the transferor is not entitled to the claimed nonrecognition treatment.

No particular form is required for this notice. By the 20th day after the date of transfer, you must send a copy of the notice of nonrecognition (with a cover letter giving your name, address, and TIN) to:

Ogden Service Center  
P.O. Box 409101  
Ogden, UT 84409

See Regulations section 1.1445-2(d)(2) for more information on the transferor's notice of nonrecognition.



*A notice of nonrecognition cannot be used for the exclusion from income under section 121, like-kind exchanges that do not qualify for nonrecognition treatment in their entirety, and deferred like-kind exchanges that have not been completed when it is time to file Form 8288. In these cases, a withholding certificate issued by the IRS, as described next, must be obtained.*

**Withholding certificate issued by the IRS.** A withholding certificate may be issued by the IRS to reduce or eliminate withholding on dispositions of USRPIs by foreign persons. Either a transferee or transferor may apply for the certificate. The certificate may be issued if:

- Reduced withholding is appropriate because the 10%, 15%, or 21% (35% for distributions made before January 1, 2018) amount exceeds the transferor's maximum tax liability;
- The transferor is exempt from U.S. tax or nonrecognition provisions apply; or
- The transferee or transferor enters into an agreement with the IRS for the payment of the tax.

An application for a withholding certificate must comply with the provisions of Regulations sections 1.1445-3 and 1.1445-6, and Rev. Proc. 2000-35, 2000-35 I.R.B. 211. You can find Rev. Proc. 2000-35 at [IRS.gov/pub/irs-irbs/irb00-35.pdf](https://www.irs.gov/pub/irs-irbs/irb00-35.pdf). In certain cases, you may use Form 8288-B to apply for a withholding certificate. The IRS will normally act on an application by the 90th day after a complete application is received.

If you receive a withholding certificate from the IRS that excuses withholding, you are not required to file Form 8288. However, if you receive a withholding certificate that reduces (rather than eliminates) withholding, there is no exception to withholding, and you are required to file Form 8288. Attach a copy of the withholding certificate to Form 8288. See [When To File](#) under *General Instructions for Section 1445 Withholding*, earlier, for more information.

**No consideration paid.** Withholding is not required if the amount realized by the transferor is zero (for example, the property is transferred as a gift and the recipient does not assume any liabilities or furnish any other consideration to the transferor).

**Options to acquire USRPIs.** No withholding is required with respect to any amount realized by the grantor on the grant or lapse of an option to acquire a USRPI. However, withholding is required on the sale, exchange, or exercise of an option.

**Property acquired by a governmental unit.** If the property is acquired by the United States, a U.S. state or possession or political subdivision, or the District of Columbia, withholding is generally not required.

For rules that apply to foreclosures, see Regulations section 1.1445-2(d)(3).

**Applicable wash sale transaction.** If a distribution from a domestically controlled QIE is treated as a distribution of a USRPI only because an interest in the entity was disposed of in an applicable wash sale transaction, withholding is generally not required. See section 897(h)(5).

## Late Filing of Certification or Notice

You may be eligible for relief for a late filing if a statement or notice was not provided to the relevant person or the IRS by the specified deadline and if you have reasonable cause for the failure to make a timely filing. Once you become aware that you have failed to timely file certain certificates or notices, you must file the required certification or notice with the appropriate person or the IRS. Also include the following.

- A statement at the top of the document(s) that it is "FILED PURSUANT TO REV. PROC. 2008-27."
- An explanation describing why the failure was due to reasonable cause. Within the explanation, provide that you filed with, or obtained from, an appropriate person the required certification or notice.

The completed certification or notice attached to the explanation must be sent to:

Ogden Service Center  
P.O. Box 409101  
Ogden, UT 84409

For more information, see Rev. Proc. 2008-27, 2008-21 I.R.B. 1014, available at [IRS.gov/IRB/2008-21\\_IRB#RP-2008-27](https://www.irs.gov/irb/2008-21_IRB#RP-2008-27).

## Liability of Agents

If you (or the [qualified substitute](#)) received (a) a transferor's certification of nonforeign status, or (b) a corporation's statement that an interest is not a USRPI, and the [transferee's or transferor's agent](#), or the substitute, knows the document is false, the agent (or substitute) must notify you. If notification is not provided, the agent (or substitute) will be liable for the tax that should have been withheld, but only to the extent of the agent's (or substitute's) compensation from the transaction.

If you (or the substitute) receive a notice of false certification or statement from your [agent](#), the transferor's agent, or the qualified substitute, you must withhold tax as if you had not received a certification or statement. See [Late notice of false certification](#), earlier.

A person is not treated as an agent if the person only performs one or more of the following acts in connection with the transaction.

1. Receiving and disbursing any part of the consideration.
2. Recording any document.
3. Typing, copying, and other clerical tasks.
4. Obtaining title insurance reports and reports concerning the condition of the property.
5. Transmitting documents between the parties.
6. Functioning exclusively in his or her capacity as a representative of a condominium association or cooperative housing corporation. This exemption includes the board of directors, the committee, or other governing body.

## Entities Subject to Section 1445(e)

Withholding under section 1445(e) is required on certain distributions and other transactions by domestic or foreign

corporations, QIEs, trusts, and estates. A domestic trust or estate must withhold 21% (35% for distributions made before January 1, 2018) of the amount distributed to a foreign beneficiary from a "U.S. real property interest account" that it is required to establish under Regulations section 1.1445-5(c)(1)(iii). A foreign corporation that has not made the election under section 897(i) must withhold 21% (35% for distributions made before January 1, 2018) of the gain it recognizes on the distribution of a USRPI to its shareholders. Certain domestic corporations are required to withhold tax on distributions to foreign shareholders.

No withholding is required on the transfer of an interest in a domestic corporation if any class of stock of the corporation is regularly traded on an established securities market. Also, no withholding is required on the transfer of an interest in a PTP or trust.

No withholding will be required with respect to an interest holder if the entity or fiduciary receives a certification of nonforeign status from the interest holder. A certification of nonforeign status includes a valid Form W-9 submitted by the transferor. An entity or fiduciary may also use other means to determine that an interest holder is not a foreign person, but if it does so and it is later determined that the interest holder is a foreign person, the withholding may be collected from the entity or fiduciary.

## Section 1445(e)(1) Transactions

**Partnerships.** A domestic partnership that is not publicly traded must withhold tax under section 1446(a) on effectively connected taxable income allocated to its foreign partners and must file Forms 8804 and 8805. A PTP or nominee must generally withhold tax under section 1446(a) on distributions to its foreign partners and must file Forms 1042 and 1042-S. Because a domestic partnership that disposes of a USRPI is required to withhold under section 1446(a), it is not required to withhold under section 1445(e)(1).

**Trusts and estates.** If a domestic trust or estate disposes of a USRPI, the amount of gain realized must be paid into a separate "USRPI account." For these purposes, a domestic trust is one that does not make the large trust election (explained next), is not a QIE, and is not publicly traded. The fiduciary must withhold 21% (35% for distributions made before January 1, 2018) of the amount distributed to a foreign person from the account during the tax year of the trust or estate in which the disposition occurred. The withholding must be paid over to the IRS within 20 days of the date of distribution. Special rules apply to grantor trusts. See Regulations section 1.1445-5 for more information and how to compute the amount subject to withholding.

**Large trust election.** Trusts with more than 100 beneficiaries may make an election to withhold upon distribution rather than at the time of transfer. The amount to be withheld from each distribution is 21% (35% for distributions made before January 1, 2018) of the amount attributable to the foreign beneficiary's proportionate share of the current balance of the trust's section 1445(e)(1) account. This election does not apply to any QIE or to any publicly traded trust. Special rules apply to large trusts that make recurring sales of growing crops and timber.



A trust's section 1445(e)(1) account is the total net gain realized by the trust on all section 1445(e)(1) transactions after the date of the election, minus the total of all distributions made by the trust after the date of the election from such total net gain. See Regulations section 1.1445-5(c)(3) for more information.

### Section 1445(e)(2) Transactions

A foreign corporation that distributes a USRPI must generally withhold 21% (35% for distributions made before January 1, 2018) of the gain recognized by the corporation. No withholding or reduced withholding is required if the corporation receives a withholding certificate from the IRS.

### Section 1445(e)(3) Transactions

Generally, a domestic corporation that distributes any property to a foreign person that holds an interest in the corporation must withhold 15% (10% for distributions before February 17, 2016) of the fair market value of the property distributed if:

- The foreign person's interest in the corporation is a USRPI under section 897; and
- The property is distributed in redemption of stock under section 302, in liquidation of the corporation under sections 331 through 346, or with respect to stock under section 301 that is not made out of the earnings and profits of the corporation.

No withholding or reduced withholding is required if the corporation receives a withholding certificate from the IRS.

### Section 1445(e)(4) Transactions

No withholding is required under section 1445(e)(4), relating to certain taxable distributions by domestic or foreign partnerships, trusts, and estates, until the effective date of a Treasury Decision under section 897(e)(2)(B)(ii) and (g).



*Though withholding is not currently required under section 1445(e)(4), withholding may be required under section 1446(f)(1) on the amount realized when a domestic or foreign partnership makes a distribution to a foreign partner.*

### Section 1445(e)(5) Transactions

The transferee of a partnership interest must withhold 15% (10% for dispositions before February 17, 2016) of the amount realized on the disposition by a foreign partner of an interest in a domestic or foreign partnership in which at least 50% of the value of the gross assets consists of USRPIs and at least 90% of the value of the gross assets consists of U.S. real property, interests plus any cash or cash equivalents. However, no withholding is required under section 1445(e)(5) for dispositions of interests in other partnerships, trusts, or estates until the effective date of a Treasury Decision under section 897(g). No withholding is required if, no earlier than 30 days before the transfer, the transferee receives a statement signed by a general partner under penalties of perjury that at least 50% of the value of the gross assets of the partnership does not consist of USRPIs or that at least 90% of the value of the gross assets does not consist of USRPIs, plus

cash or cash equivalents. The transferee may rely on the statement unless the transferee knows it is false or the transferee receives a false statement notice pursuant to Regulations section 1.1445-4.



*A disposition of a partnership interest that meets this exception may instead be subject to withholding under section 1446(f)(1). See [Transfers of Partnership Interests Subject to Withholding Under Sections 1445\(e\)\(5\) and 1446\(f\)\(1\)](#), later.*

### Section 1445(e)(6) Transactions

A QIE must withhold 21% (35% for distributions made before January 1, 2018) of a distribution to a nonresident alien or a foreign corporation that is treated as gain realized from the sale or exchange of a USRPI. No withholding under section 1445 is required on a distribution to a nonresident alien or foreign corporation if the distribution is on stock regularly traded on a securities market in the United States and the alien or corporation did not own more than 10% (for distributions before December 17, 2015, did not own more than 5% of such stock in case of a REIT) of that stock at any time during the 1-year period ending on the date of distribution.

A distribution made after December 17, 2015, by a REIT is generally not treated as gain from the sale or exchange of a USRPI if the shareholder is a qualified shareholder (as described in section 897(k)(3)).

## General Instructions for Section 1446(f)(1) Withholding

Section 1446(f)(1) generally imposes a 10% withholding obligation on the buyer or other transferee (withholding agent) when an interest in a partnership is acquired from a foreign person (transferor) if:

1. The transferor realized a gain on the sale, and
2. Any portion of the gain would be treated under section 864(c)(8) as effectively connected with the conduct of a trade or business within the United States (effectively connected gain).

A transfer can occur when a partnership distribution results in gain under section 731. Under section 1446(f)(4), if the transferee fails to withhold any required amount, the partnership must deduct and withhold from distributions to the transferee the amount that the transferee failed to withhold (plus interest). See [General Instructions for Section 1446\(f\)\(4\) Withholding](#), later.

### Who Must File

Unless any of exceptions 1 through 6 of the [Exceptions to Section 1446\(f\)\(1\) Withholding on Transfers of Non-PTP Interests](#), later, applies, a buyer or other transferee of a partnership interest must complete and file Part III of Form 8288 to report and transmit the amount withheld. However, if [exception 6](#) applies, the transferee has a separate filing obligation.

### Amount To Withhold

Generally, you must withhold 10% of the [transferor's](#) amount realized on the [transfer](#), defined later.

## When To File

A transferee must file Form 8288 and transmit the tax withheld to the IRS by the 20th day after the date of transfer.

## Where To File

Send Form 8288 with the amount withheld, and copies A and B of Form(s) 8288-A to:

Ogden Service Center  
P.O. Box 409101  
Ogden, UT 84409

## Forms 8288-A Must Be Attached

Anyone who completes Form 8288 must also complete a Form 8288-A for each person subject to withholding. Copies A and B of Form 8288-A must be attached to Form 8288. Copy C is for your records. Multiple Forms 8288-A related to a single transaction can be filed with one Form 8288. You are not required to furnish a copy of Form 8288 or 8288-A directly to the transferor.

The IRS will stamp Copy B of each Form 8288-A and will forward the stamped copy to the foreign person subject to withholding at the address shown on Form 8288-A. To receive credit for the withheld amount, the transferor must generally attach the stamped Copy B of Form 8288-A to a U.S. income tax return (for example, Form 1040-NR or 1120-F).

**Transferor's taxpayer identification number (TIN) missing.** If you do not have the transferor's TIN, you must still file Forms 8288 and 8288-A. A stamped copy of Form 8288-A will not be provided to the transferor if the transferor's TIN is not included on that form. The IRS will send a letter to the transferor requesting the TIN and provide instructions for how to get a TIN. When the transferor provides the IRS with a TIN, the IRS will provide the transferor with a stamped Copy B of Form 8288-A.

## Penalties

Under section 6651, penalties apply for failure to file Form 8288 when due and for failure to pay the withholding when due. In addition, if you are required to but do not withhold tax under section 1446(f)(1), the tax, including interest, may be collected from you. Under section 7202, you may be subject to a penalty of up to \$10,000 for willful failure to collect and pay over the tax. Corporate officers or other responsible persons may be subject to a penalty under section 6672 equal to the amount that should have been withheld and paid over to the IRS. See Regulations section 1.1461-3 for other penalties that may apply.

## Definitions for Section 1446(f)(1) Withholding

**Amount realized.** See [Determining the Amount To Withhold](#), later.

**Controlling partner.** A partner that, together with any person that bears a relationship described in section 267(b) or 707(b)(1) to the partner, owns directly or indirectly a 50% or greater interest in the capital, profits, deductions, or losses of the partnership at any time within the 12 months before the determination date.

**Foreign person.** A person that is not a U.S. person, including a qualified intermediary (QI) branch of a U.S. financial institution (as defined in Regulations section 1.1471-1(b)(109)).

**TIN.** The TIN assigned to a person under section 6109.

**Transfer.** A sale, exchange, or other disposition, which includes a distribution from a partnership to a partner, as well as a transfer treated as a sale or exchange under section 707(a)(2)(B).

**Transferee.** Any person, foreign or domestic, that acquires a partnership interest through a transfer, and includes a partnership that makes a distribution.

**Transferor.** Generally means any person, foreign or domestic, that transfers a partnership interest. In the case of a trust, to the extent all or a portion of the income of the trust is treated as owned by the grantor or another person under sections 671 through 679 (such trust, a grantor trust), the term "transferor" means the grantor or such other person.

**Transferor's agent or transferee's agent.** Any person who represents the transferor or transferee (respectively) in any negotiation with another person relating to the transaction or in settling the transaction. A person will not be treated as a transferor's agent or a transferee's agent solely because it performs one or more of the activities described in Regulations section 1.1445-4(f)(3) (relating to activities of settlement officers and clerical personnel).

**U.S. person.** A person described in section 7701(a)(30).

## Exceptions to Section 1446(f)(1) Withholding on Transfers of Non-PTP Interests

A transferee, including a partnership when the partner is a distributee, is not required to withhold on the transfer of a non-PTP interest if it properly relies on one of the following six certifications, the requirements of which are more fully described in Regulations section 1.1446(f)-2(b) and [Pub. 515](#). A transferee may not rely on a certification if it has actual knowledge that the certification is incorrect or unreliable. A certification must provide the name and address of the person providing it, be signed under penalties of perjury, and generally include the TIN of the transferor. See Regulations sections 1.1446(f)-1(c)(2)(i) and 1.1446(f)-2(b)(1). Only the certification for exception 6 (related to claims for treaty benefits) must be submitted to the IRS.

A partnership that is a transferee because it makes a distribution may generally rely on a certification from a transferor in the same manner, with the following modifications.

- For exception 2, a distributing partnership may rely on its books and records or on a certification from the distributee partner.
- For exception 3, a distributing partnership may only rely on its books and records.
- For exception 4, a distributing partnership may only rely on its books and records but must also obtain a representation from the distributee partner stating that the distributee partner satisfies the reporting and tax payment requirements with respect to the partnership's ECI for the look-back period.

A partnership may not rely on its books and records if it knows, or has reason to know, that the information in its own books and records is incorrect or unreliable.

## Exceptions

The relevant information for many of the exceptions is based on a determination date. See Regulations section 1.1446(f)-1(c)(4) and [Pub. 515](#) for more information regarding the determination date.

**1. Certification of nonforeign status.** The transferor provides a certification of nonforeign status signed under penalties of perjury that states that the transferor is not a foreign person, and provides the transferor's name, TIN, and address. A certification of nonforeign status includes a valid Form W-9 (including a valid form that the transferee already has in its possession).

**2. Certification of no realized gain.** The transferor provides a certification that, on the transfer of the partnership interest, there was no realized gain (including no ordinary income arising from the application of section 751 and Regulations section 1.751-1) as of the determination date.

**3. Certification of less than 10% effectively connected gain.** The transferor provides a certification from the partnership stating that:

1. On the deemed sale of the partnership assets in the manner described in Regulations section 1.864(c)(8)-1(c) as of the determination date either:

a. The partnership would have no effectively connected gain (or the net amount of its effectively connected gain would be less than the 10% of the total net gain), or

b. The transferor's distributive share of net effectively connected gain resulting from the deemed sale would be less than 10% of the transferor's distributive share of the total net gain; or

2. The partnership was not engaged in a trade or business within the United States at any time during the tax year of the partnership until the date of transfer.

**4. Certification of less than 10% effectively connected income (ECI).** The transferor provides a certification that:

1. The transferor was a partner in the partnership for the transferor's immediately prior tax year (for which it has already received a Schedule K-1 (Form 1065)) and the 2 preceding tax years (the look-back period) and had a distributive share of gross income from the partnership in each of these years;

2. The transferor's distributive share of gross ECI from the partnership, and from certain persons related to the transferor, as reported on a Schedule K-1 (Form 1065) or other statement required by the partnership, was less than \$1 million for each of the tax years during the look-back period;

3. The transferor's distributive share of partnership gross ECI, as reported on a Schedule K-1 (Form 1065) or other statement required by the partnership, for each year

during the look-back period, was less than 10% of its total distributive share of partnership gross income; and

4. For each year during the look-back period, the transferor's distributive share of partnership ECI or gain (or losses properly allocated and apportioned to that income) has been timely reported on a federal income tax return of the transferor (or if the transferor was a partnership, its direct or indirect nonresident alien and foreign corporate partners) and any tax due with respect to such amounts has been timely paid, provided the return was required to be filed when the transferor furnishes the certification.

**5. Certification of nonrecognition.** The transferor provides a certification that it is not required to recognize any gain or loss with respect to the transfer by reason of the operation of a nonrecognition provision of the Internal Revenue Code. The certification must briefly describe the transfer and provide the relevant law and facts relating to the certification.

This exception does not apply if only a portion of the gain is not recognized. In that case, the transferor may be able to provide a [Certification of maximum tax liability](#), later, if the requirements under Regulations section 1.1446(f)-2(c)(4)(v) are met.

**6. Certification that an income tax treaty applies.** The transferor provides a certification using Form W-8BEN or W-8BEN-E, as applicable, or applicable substitute form that meets the requirements under Regulations section 1.1446-1(c)(5) that the transferor is not subject to tax on any gain from the transfer pursuant to an income tax treaty. The form should contain the information necessary to support the claim for treaty benefits. Within 30 days after the date of the transfer, the transferee must mail a copy of the certificate, together with a cover letter providing the name, TIN, and address of the transferee and the partnership in which the interest was transferred to the IRS, at the address in [Where To File](#), earlier. See Regulations section 1.1446(f)-2(b)(7).

The transferor may not provide this certification if any portion of the gain is subject to tax. In that case, the transferor may be able to provide a [Certification of maximum tax liability](#), later, if the requirements under Regulations section 1.1446(f)-2(c)(4)(vi) are met.

## Determining the Amount To Withhold

In general, the transferee must withhold 10% of the amount realized. The amount realized includes the following.

1. The cash paid (or to be paid),
2. The fair market value of property transferred (or to be transferred),
3. The amount of any liabilities assumed by the transferee or to which the partnership is subject, and
4. The reduction in the transferor's share of partnership liabilities.

The rules for determining the amount to withhold are contained in Regulations section 1.1446(f)-2(c). See also [Pub. 515](#). If certain requirements are met, the transferee may rely on a certification of the amount of the transferor's share of partnership liabilities reported on the most recent

Schedule K-1 (Form 1065) issued by the partnership or a certification from a partnership that provides the amount of the transferor's share of partnership liabilities as of the determination date.

**Modified amount realized.** If a foreign partnership is the transferor, separate rules may apply to determine a modified amount realized. The modified amount realized is determined by multiplying the amount realized by the aggregate percentage computed as of the determination date. The aggregate percentage is the percentage of the gain (if any) arising from the transfer that would be allocated to any presumed foreign taxable persons. For this purpose, a presumed foreign taxable person is any person that has not provided a certification of nonforeign status, as previously described in the [exception 1](#) to withholding, or a certification that, pursuant to a tax treaty, no portion of the foreign taxable person's gain is subject to tax. The foreign partnership claims the modified amount realized by providing a certification on Form W-8IMY as provided under Regulations section 1.1446(f)-2(c)(2)(iv). The transferee should not submit the certification to the IRS for approval.

**Lack of money or property or lack of knowledge regarding liabilities.** Under certain circumstances, the amount that the transferee must withhold equals 100% of the amount realized without regard to any decrease in the transferor's share of the partnership liabilities. These circumstances are if:

1. The amount otherwise required to be withheld would exceed the amount realized determined without regard to the decrease in the transferor's share of partnership liabilities, or
2. The transferee is unable to determine the amount realized because it does not have actual knowledge of the transferor's share of partnership liabilities (and has not received or cannot rely on a certification of the transferor's share of partnership liabilities received from the transferor (including the most recent Schedule K-1 (Form 1065)) or a certification of the transferor's share of liabilities received from the partnership).

**Certification of maximum tax liability.** A transferor that meets certain requirements can certify its maximum tax liability to the transferee. The maximum tax liability is the amount of the transferor's effectively connected gain multiplied by the applicable percentage described in Regulations section 1.1446-3(a)(2). The applicable percentage for foreign corporations is the highest rate of tax under section 11(b) and for non-corporations is the highest rate of tax under section 1. This certification may be used if a nonrecognition provision or an income tax treaty excludes only a portion of the effectively connected gain. While the certification should not be submitted to the IRS for approval, if a portion of the gain on the transfer is not subject to tax pursuant to an income tax treaty, the certification requirements described in [exception 6](#) must be met.

## Transfers of Partnership Interests Subject to Withholding Under Sections 1445(e)(5) and 1446(f)(1)

The transfer of a partnership interest may be subject to withholding under section 1445(e)(5) or Regulations section 1.1445-11T(d)(1) if 50% or more of the value of the partnership's gross assets consists of USRPIs, and 90% or more of the value of its gross assets consists of USRPIs plus any cash or cash equivalents. The transfer of a partnership interest may also be subject to withholding under section 1446(f)(1) and Regulations section 1.1446(f)-2, if the partnership also holds other property used in the conduct of a trade or business within the United States. If both sections 1445(e)(5) and 1446(f)(1) could apply to the same transfer, the transfer is subject to the payment and reporting requirements of section 1445 only and not section 1446(f)(1). However, if the transferor has applied for a withholding certificate under the last sentence of Regulations section 1.1445-11T(d)(1), the transferee must withhold the greater of the amounts required under section 1445(e)(5) or 1446(f)(1). A transferee that has complied with the withholding requirements under either section 1445(e)(5) or 1446(f)(1), as described in this paragraph, will be deemed to satisfy its withholding requirement.

## Liability of Agents

A transferee's or transferor's agent must provide notice to a transferee (or other person required to withhold) if that agent is furnished with a certification described in Regulations 1.1446(f)-1 or 1.1446(f)-2 that the agent knows is false. A person required to withhold may not rely on a certification if it receives the notice described in Regulations section 1.1446(f)-5(c)(1). An agent's liability is limited to the amount of compensation that the agent derives from the transaction. In addition, an agent that assists in the preparation of, or fails to disclose knowledge of, a false certification may be liable for civil and criminal penalties. For more information, see Regulations section 1.1446(f)-5.

## General Instructions for Section 1446(f)(4) Withholding

Section 1446(f)(4) generally imposes a withholding obligation on a partnership that makes a distribution to a transferee partner that failed to withhold the required amount under section 1446(f)(1) when it acquired an interest in the partnership. Withholding under section 1446(f)(4) applies to transfers of interests in partnerships, other than publicly traded partnerships (PTPs), that occur on or after January 1, 2023.

## Who Must File

Unless an exception applies (see [Exceptions to Section 1446\(f\)\(4\) Withholding](#), later), a partnership that makes a distribution to a transferee partner that failed to properly withhold under section 1446(f)(1) must complete and file Part IV of Form 8288 to report and transmit the amount withheld.

## Amount To Withhold

The partnership must generally withhold the entire amount of each distribution made to the transferee partner until it has met its withholding obligation under section 1446(f)(4). Generally, the partnership's withholding obligation will be 10% of the amount realized on the transfer, plus interest. See [Withholding under Section 1446\(f\)\(4\)](#), later.

## When To File

A partnership must file Form 8288 and transmit the tax withheld to the IRS by the 20th day after the date of the distribution to the transferee.

## Where To File

Send Form 8288 with the amount withheld, and copy A of Form(s) 8288-C to:

Ogden Service Center  
P.O. Box 409101  
Ogden, UT 84409

## Form 8288-C Must Be Attached

A partnership should file a separate Form 8288 with Part IV completed and only one Form 8288-C attached for each distribution per transferee partner subject to the withholding requirements of section 1446(f)(4). Copy A of Form 8288-C must be attached to Form 8288. Copy B is sent to the transferee(s). Copy C is for your records.

**Transferor's taxpayer identification number (TIN) missing.** If you do not have the transferee's TIN, you must still file Forms 8288 and 8288-C. The IRS will send a letter to the transferee requesting the TIN and provide instructions for how to get a TIN.



*For the definitions of transfer, transferee, and transferor, see Definitions for Section 1446(f)(1) Withholding, earlier.*

## Penalties

Under section 6651, penalties apply for failure to file Form 8288 when due and for failure to pay the withholding when due. In addition, if you are required to but do not withhold tax under section 1446(f)(4), the tax, including interest, may be collected from you. Under section 7202, you may be subject to a penalty of up to \$10,000 for willful failure to collect and pay over the tax. The general partner(s) or other responsible persons may be subject to a penalty under section 6672 equal to the amount that should have been withheld and paid over to the IRS.

## Exceptions to Section 1446(f)(4) Withholding

**Withholding has been satisfied by transferee.** A partnership is not required to withhold under section 1446(f)(4) if it relies on a timely certification of withholding received from the transferee that states that an exception to withholding applies or that the transferee withheld the full amount required to be withheld.

**PTP interests.** A PTP is not required to withhold under section 1446(f)(4).

**Distributing partnerships.** A partnership that is a transferee because it made a distribution subject to

section 1446(f)(1) is not required to withhold under section 1446(f)(4).

## Withholding under Section 1446(f)(4)

**Certification of withholding.** A partnership must determine the amount realized on the transfer and any amount withheld by the transferee based on a certification of withholding from the transferee, without regard to whether the certification is received timely. A partnership may not rely on the certification of withholding if it knows or has reason to know that it is incorrect or unreliable. A partnership that already possesses a certification of nonforeign status (including a Form W-9) for the transferor may instead rely on this certification to determine that it has no withholding obligation. However, if the partnership receives a certification of withholding that is inconsistent with the information on the certification of nonforeign status in its possession, the partnership is treated as having actual knowledge, or reason to know, that the certification of nonforeign status is incorrect or unreliable.

A partnership that does not receive or cannot rely on a certification from the transferee must withhold under section 1446(f)(4) until it receives a certification that it can rely on.

**Notification from the IRS.** A partnership that receives notification from the IRS that a transferee has provided incorrect information regarding the amount realized or amount withheld on the certification or has failed to pay the IRS the amount reported as withheld on the certification must withhold the amount prescribed in the notification on any distributions made to the transferee on or after the date that is 15 days after it receives the notification. The IRS will not issue a notification on the basis that the amount realized on the certification is incorrect if it determines that the transferee properly relied on a certification that included the incorrect information to compute the amount realized.

**Subsequent transferees.** A partnership is not required to withhold on distributions that are made after the date on which the transferee disposes of the transferred interest, unless the partnership has actual knowledge that any person that acquires the transferee's interest in the partnership is a related person, that is, a person that bears a relationship described in section 267(b) or 707(b)(1) with respect to the transferee or the transferor from which the transferee acquired the interest.

**When to withhold.** A partnership must withhold on distributions made with respect to a transferred interest beginning on the later of:

- The date that is 30 days after the date of transfer, or
- The date that is 15 days after the date on which the partnership acquires actual knowledge that the transfer has occurred.

A partnership is treated as satisfying its withholding obligation and may stop withholding on distributions with respect to a transferred interest on the earlier of:

- The date on which the partnership completes withholding and paying the amount required to be withheld, or
- The date on which the partnership receives and may rely on a certification from the transferee (without regard

to whether such certification is timely received) that claims an [exception](#) to section 1446(f)(1) withholding.

**Amount of withholding.** A partnership required to withhold under section 1446(f)(4) must withhold the full amount of each distribution made with respect to the transferred interest until it has withheld:

- A tax of 10% of the amount realized (generally the amount realized on the transfer determined solely under Regulations section 1.1446(f)-2(c)(2)(i)), reduced by any amount withheld by the transferee; plus
- Any interest computed on the amount that should have been withheld.

However, any amount of a distribution that is required to be withheld under another withholding provision (such as under section 1441 or 1442) is not also required to be withheld under section 1446(f)(4).

**Withholding following a notification from the IRS.** A partnership that receives [notification from the IRS](#) (discussed earlier) must withhold the amount prescribed in the notification on any distributions made to the transferee on or after the date that is 15 days after it receives the notification.

**Computation of interest.** The amount of interest required to be withheld is the amount of interest that would be required to be paid under section 6601 and Regulations section 301.6601-1 if the amount that should have been withheld by the transferee was considered an underpayment of tax. Interest is payable between the date that is 20 days after the date of the transfer and the date on which the transferee's withholding tax liability due under section 1446(f)(1) is satisfied.

### Buyer/Transferee Claiming Refund of Section 1446(f)(4) Withholding

A transferee may claim a refund for an excess amount if it has been overwithheld upon under section 1446(f)(4). An excess amount is the amount of tax and interest withheld that exceeds the transferee's withholding tax liability plus any interest owed by the transferee with respect to such liability. The transferee may also be liable for any applicable penalties or additions to tax. A transferee must complete Part V of Form 8288 and attach Form(s) 8288-C it received from the partnership when making a claim for refund of section 1446(f)(4) withholding.

## Specific Instructions for Form 8288

**Corrected return.** Check the box at the top of the page to indicate the Form 8288 you are filing is a corrected return.

### Withholding Agent Information

**Line 1.** Name, address, and TIN of the withholding agent. For purposes of Form 8288, the withholding agent is:

- The buyer/transferee of a USRPI liable for section 1445(a) withholding,
- The entity or fiduciary liable for section 1445(e) withholding,

- The buyer/transferee of a partnership interest liable for section 1446(f)(1) withholding,
- The partnership liable for section 1446(f)(4) withholding, or
- The buyer/transferee of a partnership interest making a claim of refund of section 1446(f)(4) withholding.

Do not enter the name, address, or TIN of a title company, mortgage company, etc., unless it happens to be the actual person or entity responsible for withholding.



*IRS will contact the person or entity listed on line 1 to resolve any problems that may arise concerning underwithholding and/or penalties.*

**Name and address.** If you are a fiduciary for either section 1445(a) or 1446(f)(1) withholding, list your name and the name of the trust or estate. Enter the home address of an individual or the office address of an entity.

**Taxpayer Identification Number (TIN).** For a U.S. individual, the TIN is a social security number (SSN). For any person other than an individual (for example, corporation, QIE, estate, or trust), the TIN is an employer identification number (EIN). If you do not have an EIN, you can apply for one. For more information on how to apply for an EIN, go to [IRS.gov/Businesses/Small-Businesses-Self-Employed/How-to-Apply-for-an-EIN](https://www.irs.gov/Businesses/Small-Businesses-Self-Employed/How-to-Apply-for-an-EIN).

For a nonresident alien individual who is not eligible for an SSN, the TIN is an IRS individual taxpayer identification number (ITIN). For more information on the requirements and how to apply for an ITIN, go to [IRS.gov/ITIN](https://www.irs.gov/ITIN).

Even if the individual does not already have an ITIN, he or she should complete Forms 8288 and 8288-A and mail the forms along with any payment to the address shown under [Where To File](#), earlier.

**Line 2.** Enter the location and a description of the property, including any substantial improvements (for example, "12-unit apartment building"). For an interest in a corporation that constitutes a USRPI, enter the class or type and amount of the interest (for example, "10,000 shares Class A Preferred Stock XYZ Corporation"). For an interest in a partnership, enter the type of partnership interest (such as capital or preferred) transferred and if there are multiple classes of the same type of partnership interest enter the class of interest transferred. Also, enter the percentage interest in the partnership or the number of units in the partnership that were transferred. For example, "40% of the Class B capital interest in the ABC Partnership."

**Line 3.** Enter the date of the transfer that is subject to withholding. If you are completing Part II and are a QIE, a domestic trust or estate, or you make a large trust election, enter the date of distribution. If you are completing Part III and are a partnership that made a distribution subject to withholding under section 1446(f)(1), enter the date of the distribution.

**Line 4.** If you are completing Part II and the IRS issued a withholding certificate for this transfer under Regulations section 1.1445-3 or 1.1445-6 and [Rev. Proc. 2000-35](#), provide the date that the withholding certificate was issued. If a partnership is completing Part IV because it is

withholding under section 1446(f)(4), enter the date of the applicable distribution.

**Line 5.** Enter the number of Forms 8288-A or 8288-C attached, as applicable. If the partnership is completing Part IV, the number of Forms 8288-C attached will always be one. Copies A and B of each Form 8288-A should be counted as one form.



**Complete only one part of Parts I through V.**

## Part I—To Be Completed by the Buyer or Other Transferee Required To Withhold Under Section 1445(a)

**Line 6.** Enter the amount subject to withholding, generally the amount realized on the transfer.

**Line 7. Withholding tax liability.** Enter an amount on only one of lines 7a, 7b, or 7c.

**Line 7a.** Enter the amount subject to withholding multiplied by 10% (0.10). Amounts entered on line 7a include the following:

- Withholding under section 1445(a) for the purchase of a residence with an amount realized of more than \$300,000, but less than or equal to \$1 million. Generally, no withholding is required for the purchase of a residence if the amount realized is \$300,000 or less. For more information, see [Exceptions to Section 1445 Withholding](#), earlier.
- Any dispositions of property prior to February 17, 2016, subject to a 10% rate of withholding under section 1445(a).

**Line 7b.** Enter the amount subject to withholding multiplied by 15% (0.15). Generally, this is the rate of withholding for transactions required to be reported under section 1445(a) in Part I. Include withholding for the purchase of a residence with an amount realized of more than \$1 million.

**Line 7c.** If withholding is at a reduced rate, enter the adjusted withholding amount, and check the box. Attach a copy of the withholding certificate. See [Exceptions to Section 1445 Withholding](#), earlier.

**Line 8.** Enter the amount you actually withheld.

**Example 1.** B, a corporation, purchases a USRPI from F, a foreign person. On settlement day, the settlement agent pays off existing loans, withholds 15% of the amount realized by F on the sale, and disburses the remaining amount to F. B, not the settlement agent, is the withholding agent and must complete Form 8288 and Form 8288-A.

## Part II—To Be Completed by an Entity Subject to the Provisions of Section 1445(e)

**Line 9.** If withholding is from a large trust election to withhold upon distribution, check the box. See [Large trust election](#) under *Section 1445(e)(1) Transactions*, earlier.

**Line 10.** Enter the amount subject to withholding.

**Line 11. Withholding tax liability.** Enter an amount on only one of lines 11a, 11b, 11c, or 11d.

**Line 11a.** Enter the amount subject to withholding multiplied by 10% (0.10). This rate is used for any dispositions of property prior to February 17, 2016, subject to a 10% rate of withholding under section 1445(e).

**Line 11b.** Enter the amount subject to withholding multiplied by 15% (0.15). Generally, this is the rate of withholding for transactions required to be reported under section 1445(e) in Part II. However, see the discussion of various section 1445(e) transactions under [Entities Subject to Section 1445\(e\)](#), earlier.

**Line 11c.** Enter the amount subject to withholding multiplied by 21% (0.21) (35% (0.35) for distributions made before January 1, 2018). See the discussion of various section 1445(e) transactions under [Entities Subject to Section 1445\(e\)](#), earlier.

**Line 11d.** If withholding is at a reduced rate, enter the adjusted withholding amount, and check the box. Attach a copy of the withholding certificate. See the discussion of various section 1445(e) transactions under [Entities Subject to Section 1445\(e\)](#), earlier.

**Line 12.** Enter the amount you actually withheld.

**Example 2.** C, a domestic corporation, distributes property to F, a foreign shareholder whose interest in C is a USRPI. The distribution is in redemption of C's stock (section 1445(e)(3) transaction). C must withhold 15% of the fair market value of the property distributed to F. C must complete Form 8288 and Form 8288-A.

## Part III—To Be Completed by Buyer/Transferee Required To Withhold Under Section 1446(f)(1)



**Each separate transfer subject to the withholding requirements of section 1446(f)(1) requires the filing of a separate Form 8288.**

**Line 13.** Amount subject to withholding, generally, the amount realized by the transferor. However, see the discussion earlier regarding [modified amount realized](#).

**Line 14. Withholding tax liability.** Enter an amount on line 14a or 14b but not both.

**Line 14a.** Enter the amount subject to withholding multiplied by 10% (0.10). Generally, this is the rate of withholding for transactions required to be reported under section 1446(f)(1) in Part III.

**Line 14b.** If withholding is at an adjusted amount, enter the adjusted withholding amount, and check the box. For circumstances when withholding is at an adjusted amount, see discussion earlier under [Determining the Amount To Withhold](#).

**Line 15.** Enter the amount you actually withheld.

## Part IV—To Be Completed by the Partnership Required To Withhold Under Section 1446(f)(4)



**File a separate Form 8288 for each distribution made to a transferee partner that is subject to the withholding requirements of section 1446(f)(4). Only attach the Form 8288-C applicable to the current distribution.**

**Line 16.** Line 16 is used to report the cumulative number and amounts related to this distribution plus any prior distributions that you have made to a transferee that failed to properly withhold with respect to a transfer under section 1446(f)(1). These distributions are subject to withholding under section 1446(f)(4) and Regulations section 1.1446(f)-3.

**Line 16a.** Enter the total number of distributions, including this one, made to the transferee. This amount should equal the total number of Forms 8288-C that you filed, including this one, for the transferee with respect to the transfer.

**Line 16b.** Enter the total amount of distributions, including this one, made to the transferee. This amount should equal the total of the amounts in box 5 of the Form(s) 8288-C you have filed, including this one, for the transferee with respect to the transfer.

**Line 16c.** If any portion of a distribution, including this one, was subject to withholding under another provision of the Internal Revenue Code (such as section 1441 or 1442), enter the total amount of other withholding on these distributions. This amount should equal the total of the amount(s) in box 6 of the Form(s) 8288-C you have filed, including this one, for the transferee with respect to the transfer.

**Line 17.** If known, enter the total amount of the transferee's liability under section 1446(f)(1), without regard to any withholding you performed under section 1446(f)(4). Generally, this amount will be 10% of the amount realized on the transfer.

**Line 18.** Enter the total amount of section 1446(f)(4) tax that you have withheld on the transferee with respect to this transfer. This should equal the total of the amounts in box 5 of the Form(s) 8288-C you have filed, including this one, for the transferee with respect to the transfer.

**Example 3.** On a transfer of an interest in Partnership, Transferee had a section 1446(f)(1) withholding obligation of \$110, but failed to withhold any tax on the transfer or to provide a certification of withholding to Partnership. Partnership has actual knowledge of the transfer at the time that it occurred. For its first distribution following the date on which it is required to withhold under section 1446(f)(4), Partnership distributes \$100 of income described in section 871(a) to Transferee. Partnership is required to withhold \$30 under section 1441 on the \$100 distribution. Partnership must withhold the remaining \$70 (\$100 - \$30) from the distribution under section 1446(f)(4). Transferee receives net \$0 on the distribution. Partnership must file a Form 8288 and complete Part IV by entering "1" on line 16a; entering "\$100" on line 16b; entering "\$30" on line 16c; leaving line 17 blank since it has not received

a certification of withholding from Transferee; and entering "\$70" on line 18. Partnership must also attach Copy A of Form 8288-C to its Form 8288 and send Copy B of Form 8288-C to the transferee. Partnership should retain Copy C of Form 8288-C for its records.

Partnership must continue to withhold under section 1446(f)(4) on future distributions made to Transferee until it can rely on a certification of withholding from Transferee and it has withheld the required amount plus interest. For each distribution, it must file a Form 8288 and complete Part IV with the cumulative amounts related to all distributions Partnership has made to Transferee. It must also complete Form 8288-C with the amounts specific to this distribution.

## Part V—To Be Completed by Buyer/Transferee Claiming a Refund of Withholding Under Section 1446(f)(4)



**The IRS can process your refund claim only if you either (a) previously filed Form 8288 with Part III completed under section 1446(f)(1) or (b) file this Form 8288 with both Parts III and V completed. If you are filing under the latter case, because you have not withheld any amounts under section 1446(f)(1), do not attach a Form 8288-A.**

**Line 19.** Enter the amount that was subject to withholding under section 1446(f)(1) on the transfer, generally the amount realized by the transferor.

**Line 20.** Enter the total of the amount(s) that the partnership has withheld under section 1446(f)(4) (attach a copy of Copy B of Form(s) 8288-C).

**Line 21. Withholding tax liability.** Enter the amount you were required to withhold under section 1446(f)(1) on either line 21a or 21b (but not both). Do not reduce this line by:

- Amounts you withheld on the transfer as reflected on Form(s) 8288-A,
- An amount of tax you paid pursuant to an IRS Notice, or
- Tax that the transferor has paid for which you have obtained proof, such as on Form 4669.

Instead, attach copies of these documents to Form 8288 along with any other information relevant to determining your outstanding withholding tax liability.

**Line 21a.** Enter the amount subject to withholding multiplied by 10% (0.10). Generally, this is the rate of withholding for transactions required to be reported under section 1446(f)(1) in Part III.

**Line 21b.** If withholding is at a reduced rate, enter the adjusted withholding amount, and check the box. See the instructions for line 14b, earlier, for circumstances when withholding is at an adjusted amount.

**Line 22.** Enter the excess of line 20 over line 21a or 21b. Note that you are also liable for interest on any withholding tax liability reported on line 21. The IRS will compute that amount and reduce your claimed excess amount accordingly. You may also be liable for any penalties or additions to tax.



## Paid Preparer

Generally, anyone you pay to prepare Form 8288 must sign it and include their Preparer Tax Identification Number (PTIN) in the space provided.

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### Privacy Act and Paperwork Reduction Act Notice.

We ask for the information on this form to carry out the Internal Revenue laws of the United States. Section 1445 generally imposes a withholding obligation on the withholding agent (the buyer or other transferee) when a USRPI is acquired from a foreign person. Section 1445 also imposes a withholding obligation on certain foreign and domestic corporations, QIEs, and the fiduciaries of certain trusts and estates. Section 1446(f)(1) generally imposes a withholding obligation on the withholding agent (the buyer or other transferee, including a partnership that makes a distribution resulting in gain under section 731) when an interest in a partnership is acquired from a foreign person (transferor) that results in gain any portion of which would be treated under section 864(c)(8) as effectively connected with the conduct of a trade or business within the United States. Section 1446(f)(4) generally imposes a withholding obligation on a partnership if a transferee fails to withhold any amount required to be withheld under section 1446(f)(1). This form is used to report and transmit the amount withheld.

You are required to provide this information. Section 6109 requires you to provide your taxpayer identification number. We need this information to ensure that you are complying with the Internal Revenue laws and to allow us to figure and collect the right amount of tax. Failure to provide this information in a timely manner, or providing false information, may subject you to penalties. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for administration of their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law

enforcement and intelligence agencies to combat terrorism.

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 and file these forms will vary depending on individual circumstances. The estimated burden for business taxpayers filing this form is approved under OMB control number 1545-0123. The estimated burden for all other taxpayers who file these forms is shown next.

	Form 8288	Form 8288-A	Form 8288-C
<b>Record keeping</b> . . . . .	9hrs., 5 min.	3 hrs., 6 min.	2hrs., 52 min.
<b>Learning about the law or the form</b> . . . . .	5 hrs., 13 min.	35 min.	24 min.
<b>Preparing and sending the form to the IRS</b> . . . . .	6 hrs., 48 min.	40 min.	27 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making these forms simpler, we would be happy to hear from you. You can send us comments from [IRS.gov/FormComments](https://www.irs.gov/FormComments). Or you can write to the Internal Revenue Service, Tax Forms and Publications, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the form to this address. Instead, see [Where To File](#), earlier.

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