

SUPPORTING STATEMENT
Internal Revenue Service (IRS)
Regulations Providing Guidance Under Section 1446(f)
TD 9926
OMB Control Number 1545-2292

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 1446(f), which was added to the Internal Revenue Code (the “Code”) by section 13501 of the Tax Cuts and Jobs Act, Public Law 115–97 (2017) (the “Act”), provides rules for withholding on the transfer of a partnership interest described in section 864(c)(8). The final regulations affect certain foreign persons that recognize gain or loss from the sale or exchange of an interest in a partnership that is engaged in the conduct of a trade or business within the United States, and persons that acquire those interests. The final regulations also affect partnerships that, directly or indirectly, have foreign persons as partners.

2. USE OF DATA

The final regulations provide guidance for withholding, reporting, and paying tax under section 1446(f) upon the sale, exchange, or other disposition of an interest in a partnership described in section 864(c)(8).

Sections 1.446(f)-2, -3, -4 and 1.864(c)(8)-2 provides rules regarding certifications, notifications, and statements being reported between, and maintained by, a partnership and a transferor. These are third-party disclosures and recordkeeping requirements.

Also, the regulations make changes to the rules regarding withholding on distributions by publicly traded partnerships under section 1.1446-4, including the rules that apply to qualified notices and nominees. Finally, the regulations provide rules coordinating withholding under section 1446(f) with other withholding regimes to prevent over withholding of tax.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

The section 1446(f) regulations provide a streamlined method for providing certifications, allowing them to be sent electronically, including as text in an email, an image embedded in an email, or a Portable Document Format (.pdf) attached to an email. See §1.1446-1(c)(2)(iv).

4. EFFORTS TO IDENTIFY DUPLICATION

The information obtained through this collection is unique and is not already available

for use or adaptation from another source.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

These final regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (5 U.S.C. chapter 6). The regulations affect (i) foreign persons that recognize gain or loss from the sale or exchange of an interest in a partnership that is engaged in the conduct of a trade or business within the United States, and who are not subject to the Regulatory Flexibility Act, (ii) U.S. persons that are transferors providing Forms W-9 to transferees to certify that they are not foreign persons, (iii) persons who acquire those interests, (iv) partnerships that, directly or indirectly, have foreign persons as partners, and (v) brokers that effect transfers of interests in publicly traded partnerships.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

A less frequent collection of the information will prevent the IRS from being able to determine the taxpayer's compliance and or reporting with the requirements outlined in section 1446(f) of the Code thereby engendering the inability of the IRS to meet its mission.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

In response to the *Federal Register* notice (88 FR 54709), dated August 11, 2023, regarding TD 9926, Withholding of Tax and Information Reporting With Respect to Interests in Partnerships Engaged in a U.S. Trade or Business, IRS received comments from the Law Office of Kimberly S. Blanchard.

The commenter requested that the IRS and Treasury amend the section 1446(f) regulations to eliminate withholding tax and reporting in cases explicitly not covered by the relevant statutory language.

IRS Response: A transferee partner will generally not know whether a transfer results in tax on gain under section 864(c)(8) without information from either the transferor partner or the partnership. Thus, §1.1446(f)-2(a) requires the transferee to withhold on the transfer of a partnership interest unless it can rely on a certification claiming an exception to withholding. The section 1446(f) regulations provide a streamlined method for providing certifications, allowing them to be sent electronically, including as text in an email, an image embedded in an email, or a Portable Document Format (.pdf) attached to an email. See §1.1446-1(c)(2)(iv). The regulations also generally allow the transferor to self-certify to the transferee, without any need to also file the certification with the IRS. A transferee that obtains and properly relies on this certification will generally not be subject to any withholding tax liability, even if the transfer results in gain under section 864(c)(8).

Further, under §1.1446(f)-5(b), any person required to withhold under section 1446(f) is not liable for failure to withhold, or any interest, penalties, or additions to tax, if it establishes to the satisfaction of the Commissioner that the transferor had no gain under section 864(c)(8) subject to tax on the transfer. Thus, in cases in which the transferee knows that a transfer will not result in gain under section 864(c)(8), it may choose to not withhold rather than obtain a certification from the transferor partner.

The commenter states that it is unclear what the transferee must do to meet this “satisfaction of the Commissioner” standard. A transferee would only be required to make this showing to the IRS upon an audit and would be expected to do so in a manner consistent with long-standing procedures that apply to each of the other withholding regimes under chapter 3. See, e.g., §1.1441-1(b)(7)(ii); §1.1445-1(e)(3).

The commenter also requested that the IRS and Treasury amend the regulations to allow a transferor partner to certify that it invests in any ECI-generating activities of the partnership only through one or more domestic blockers and, thus, can never be allocated ECI.

IRS Response: The commenter acknowledges that the regulations provide that the partnership may provide a certification that addresses her concern. See §1.1446(f)-2(b)(4). The partnership, and not the transferor partner, has the best knowledge as to the transferor partner’s distributive share of gain, if any, on a deemed sale of the partnership’s assets. Thus, it is appropriate to collect the relevant certification from the partnership.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

No payment or gift has been provided to any respondents.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

For the affiliated forms, a privacy impact assessment (PIA) has been conducted for information collected under this request as part of the “Business Master file (BMF)” and a Privacy Act System of Records notice (SORN) has been issued for these systems under IRS 22.062 – Electronic Filing Records; IRS 24.030 – Customer Account Data Engine (CADE) Individual Master File; IRS 24.046 - CADE Business Master File (BMF); IRS 34.037 - IRS Audit Trail and Security Records System. The Internal Revenue Service PIA’s can be found at <https://www.irs.gov/uac/privacy-impact-assessments-pia>.

Title 26 USC 6109 requires inclusion of identifying numbers in returns, statements, or other documents for securing proper identification of persons required to make such returns, statements, or documents and is the authority for social security numbers (SSNs) in IRS systems.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Section 1446(f) requires withholding “if any portion of the gain (if any) on any disposition of an interest in a partnership would be treated under section 864(c)(8) as effectively connected with the conduct of a trade or business within the United States.”

The third-party disclosure and recordkeeping burden estimates are as follows:

Section	# Respondents	# Responses Per Respondent	# Annual Responses	Hours Per Response	Total Annual Burden
IRC 1446(f)	76,000	1	76,000	.67	50,920
TOTALS	76,000		76,000		50,920

Please continue to assign OMB number 1545-2292 to these regulations.

1.864(c)(8)-2

1.1446(f)-2 through -4

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

From our Federal Register notice, dated August 11, 2023, no public comments on the estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to

provide information were received. However, to ensure more accuracy and consistency across its information collections, the IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, the IRS will update this information collection to reflect a more precise estimate of burden costs.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

There is no cost to the government for these third-party disclosures and recordkeeping requirements.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical analysis and publication.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulation sunsets as of the expiration date. Taxpayers are not likely to be aware that the IRS intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions to the certification statement.

Note: The following paragraph applies to all the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.