

# Instructions for Form 8804-C

(Rev. November 2012)



Department of the Treasury  
Internal Revenue Service

(Use with the March 2009 revision of Form 8804-C)

## Certificate of Partner-Level Items to Reduce Section 1446 Withholding

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

### Future Developments

For the latest information about developments related to Form 8804-C, and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/form8804](http://www.irs.gov/form8804).

## General Instructions

### Purpose of Form

Form 8804-C is used by a foreign partner who chooses to provide to a partnership a certification under Regulations section 1.1446-6 to reduce or eliminate the partnership's withholding tax obligation under section 1446 (1446 tax) on the partner's allocable share of effectively connected taxable income (ECTI) from the partnership. The foreign partner uses Form 8804-C to certify to the partnership that it has certain partner-level deductions and losses that can reduce or eliminate the 1446 tax on its allocable share of ECTI from the partnership or that its investment in the partnership is its only activity giving rise to effectively connected income, gain, loss, or deduction. The foreign partner also uses Form 8804-C to update information previously certified to the partnership for the same tax year (updated certificate).

Each foreign partner who chooses to submit a certificate to a partnership must submit a separate Form 8804-C. Also, a foreign partner must submit a new Form 8804-C for each tax year in which it chooses to utilize the provisions of Regulations section 1.1446-6.

A partnership that receives a Form 8804-C from a foreign partner may consider the form in calculating, paying, and reporting the 1446 tax due with respect to the ECTI allocable to the foreign partner. A partnership may consider, in whole or in part, a Form 8804-C received from a foreign partner to reduce or eliminate the 1446 tax withheld and paid with respect to that partner based on the deductions and losses certified by the foreign partner on the Form 8804-C.

A partnership may also eliminate the 1446 tax due with respect to a partner that certifies, using Form 8804-C, that its

investment in the partnership is its only activity giving rise to effectively connected income, gain, loss, or deduction, if the partnership estimates that the annualized (or, in the case of a partnership completing its Form 8804, the actual) 1446 tax otherwise due for that partner is less than \$1,000, without taking into account any deductions or losses certified by the partner to the partnership or any state and local taxes paid by the partnership on behalf of the partner.

### Who Must File

**Foreign partner.** A foreign partner must use Form 8804-C to provide a certification to a partnership under Regulations section 1.1446-6 to reduce or eliminate the 1446 tax the partnership must withhold and pay on ECTI allocable to the foreign partner. The foreign partner uses Form 8804-C to certify to the partnership that it meets all the requirements of the regulations, and represents that the information provided, including filing requirements, is true, correct, and complete.



*Failure to accurately supply all the information requested by the form (including attachments) may result in the IRS rejecting the form and prevent the partnership from considering the certifications in the form in calculating its 1446 tax on the partner's allocable share of ECTI.*



*A foreign partner should not file Form 8804-C with the IRS. Only the partnership files Form 8804-C with the IRS.*

**Partnership.** A partnership that receives a Form 8804-C from a foreign partner is not obligated to consider the Form 8804-C in computing the 1446 tax due with respect to that foreign partner. However, if the partnership considers the Form 8804-C in computing the 1446 tax due with respect to a foreign partner, the partnership must submit a copy of the Form 8804-C to the IRS as explained in *When To File* below.

If the partnership receives written notification from the IRS that a foreign partner's certificate is defective, the partnership may not use that certificate or any other certificate submitted by the foreign partner for the year submitted or any subsequent year until the partnership

receives written notification from the IRS revoking or modifying the original notification.

### When To File

**Foreign partner.** A foreign partner may submit a Form 8804-C to a partnership at any time during the partnership's year and prior to the partnership's filing of its Form 8804.

**Partnership.** A partnership must make installment payments of 1446 tax with respect to a foreign partner using Form 8813. For the first installment period in which the partnership considers a Form 8804-C in calculating an installment payment of 1446 tax, the partnership must attach a copy of the Form 8804-C to the Form 8813. For all subsequent installment periods for which the partnership considers the same Form 8804-C, the partnership may, instead of attaching a copy of the Form 8804-C, attach to the Form 8813 a statement listing the following information for each foreign partner whose certificate was relied upon during that installment period:

- Name,
- Taxpayer identification number, and
- The amount of certified deductions and losses, and the amount of state and local taxes (if any) the partnership may consider under Regulations section 1.1446-6(c)(1)(iii).

If the partnership is relying on a de minimis certification submitted by a foreign partner, the statement attached to the Form 8813 should instead indicate that no 1446 tax is due with respect to that partner based on the de minimis certification.

In all events, the partnership must attach the foreign partner's most recently submitted Form 8804-C to the Form 8805 filed for the partnership's tax year in which the Form 8804-C was considered.

Also, in all events, the partnership must attach a copy of the computation of 1446 tax due with respect to such foreign partner to all Forms 8813, Partnership Withholding Tax Payment Voucher (Section 1446), and Forms 8805, Foreign Partner's Information Statement of Section 1446 Withholding Tax, filed with the IRS for any installment period or year for which such Form 8804-C is considered in computing the partnership's 1446 tax. The computation of 1446 tax due attached to

each form must include the amount, if any, of state and local taxes described in Regulations section 1.1446-6(c)(1)(iii) that is taken into account with respect to that partner.

A partnership that considers a Form 8804-C received from a foreign partner (including an updated Form 8804-C) when computing its 1446 tax due with respect to such partner must file Form 8813 for each installment period for which the Form 8804-C is considered, even if, as a result of relying on the certificate, no 1446 tax (or an installment of such tax) is due with respect to such foreign partner. The same rule applies with respect to the filing of Forms 8804 and 8805 at the end of the partnership's tax year.

A partnership that fails to timely file a valid certificate and computation of 1446 tax due is considered to have satisfied the above filing requirements if the partnership demonstrates to the IRS that the failure was due to reasonable cause and not willful neglect. See Regulations section 1.1446-6(d)(3)(ii) for more information, including the requirements and documents necessary to be submitted to satisfy this requirement. All required documentation should be mailed to:

Department of the Treasury  
Internal Revenue Service Center  
Philadelphia, PA 19255-0549



*A partnership that fails to comply with the above requirements will not qualify to consider a foreign partner's Form 8804-C in calculating its 1446 tax. Therefore, a partnership that considers a foreign partner's Form 8804-C under these circumstances will have underpaid its 1446 tax and may be subject to an underpayment penalty. See Regulations sections 1.1446-3(b)(2) and 1.1446-6(d)(3).*

## Tiered Partnership Rules

The following special rules apply to a partnership (upper-tier partnership), with one or more foreign partners, that is also a partner in another partnership (lower-tier partnership).

1. An upper-tier partnership may submit Forms 8804-C for its direct or indirect foreign partners to a lower-tier partnership only to the extent that Regulations section 1.1446-5 applies to allow the lower-tier partnership to look through the upper-tier partnership (and any partnership owning an interest in the upper-tier partnership for which the upper-tier partnership is submitting Forms 8804-C for that partnership) to its partners. Included in this requirement is that the upper-tier partnership provide the lower-tier partnership sufficient documentation under Regulations section

1.1446-1 to determine the status of these partners and determine their indirect share of the lower-tier partnership's ECTI. See Regulations sections 1.1446-5(c) and (e).

2. An upper-tier partnership that submits a Form 8804-C of a direct or indirect foreign partner to a lower-tier partnership may not submit that Form 8804-C to another lower-tier partnership.

3. An upper-tier partnership that relies on a Form 8804-C submitted to it by a direct or indirect foreign partner to compute its 1446 tax due on ECTI allocable to that partner (other than ECTI allocated to it from a lower-tier partnership) may not submit that Form 8804-C to any lower-tier partnership.

4. A lower-tier partnership that relies on a Form 8804-C of a foreign partner in an upper-tier partnership to reduce the 1446 tax due with respect to such foreign partner must submit sufficient information with each Form 8813, and Form 8805, so that the IRS may reliably associate the ECTI and the Form 8804-C with the foreign partner in the upper-tier partnership. The information submitted must include the foreign partner's name and taxpayer identification number, as well as the allocations of effectively connected items at each partnership level.

## Avoid Common Errors

**Foreign partner.** To ensure that your Form 8804-C is accepted, be sure that you:

- Answer all applicable questions completely.
- Complete the date of certification in the space provided in Part I.
- Enter your complete name, address, and identifying number in Part I, Section A.
- Enter the complete name, address, and EIN of the partnership in Part I, Section B.
- Attach any statement required by line 5f, 8b, 8d, 8e, or 8f, if the line(s) is applicable.
- If making the certification in Part II, complete lines 8a through 8f accurately to allow the IRS to determine the benefit you are claiming.
- List on line 4a all returns that have not been filed.
- Sign and date Part IV. If signed by an authorized representative, be sure to attach a copy of the power of attorney.

**Partnership.** To qualify to consider a Form 8804-C to reduce the amount of 1446 tax withheld and paid, be sure to:

- Attach Form 8804-C to Form 8813 for the first installment the Form 8804-C is considered. For subsequent installments, see *When To File*, earlier. Also attach Form 8804-C to Form 8805 when filing Form 8804.
- Attach the required computation of 1446 tax due (see *When To File*, earlier)

to Form 8813 for any installment period such Form 8804-C is considered in computing the partnership's 1446 tax. Also attach the required computation of 1446 tax due to Form 8805 when filing Form 8804.

## Specific Instructions

**Partnership tax year.** Enter in the space below the title of Form 8804-C the tax year of the partnership to whom you are furnishing this certificate. If you are uncertain, contact the partnership and request its tax year.

### Part I – General Information

#### Item A. First certificate

Check the box only if the partner is submitting a Form 8804-C to any partnership for the first time, and has never submitted a certificate to any partnership under the section 1446 regulations for any tax year.

#### Item B. Previously submitted certificate

If applicable, enter the foreign partner's first tax year for which it submitted a certificate under the section 1446 regulations to any partnership. For example, if the foreign partner is a calendar year taxpayer and previously submitted a certificate for its 2010 tax year, enter "January 1, 2010 – December 31, 2010."

#### Item C. Updated certificate

See Form 8804-C, line 5, for the circumstances when an updated certificate is required.

#### Addresses

When providing a U.S. street address on Form 8804-C, include the suite, room, or other unit number after the street address. If the Post Office does not deliver mail to the street address and the foreign partner (or partnership) has a P.O. box, enter the box number instead of the street address. If the foreign partner (or partnership) receives its mail in care of a third party (such as an accountant or attorney), enter on the street address line "c/o" followed by the third party's name and street address or P.O. box. When providing a foreign address on Form 8804-C, enter the number and street, city, province or state, and the name of the country. Follow the foreign country's practice in placing the postal code in the address. Do not abbreviate the country name.

## Section A – Partner Information

### Foreign partner's name

Enter the foreign partner's name. If the partner is an individual, enter the partner's last name (surname), then first name. For business entities, enter the complete and official business name (as set forth in the charter or other legal document creating it). If a "c/o" or another person's name is necessary, insert that information in the address line.

### Foreign partner's taxpayer identifying number (TIN)

If the partner is an individual, the TIN is the individual's social security number or individual taxpayer identification number, and must be entered using a NNN-NN-NNNN format (for example, 123-45-6789). The TIN of any other foreign partner is its U.S. employer identification number (EIN), and must be entered using a NN-NNNNNNN format (for example, 12-3456789).

### Date of certification

Enter the date when the foreign partner submits the certificate (Form 8804-C) to the partnership. Use a MM/DD/YYYY format (for example, 09/24/2012).

### Foreign partner's address

See *Addresses*, earlier.

## Section B – Partnership Information

### Partnership's name

Enter the partnership's name. If a "c/o" or another person's name is necessary, insert that information in the address line.

### Employer identification number (EIN)

Enter the partnership's EIN using a NN-NNNNNNN format (for example, 12-3456789).

### Partnership's address

See *Addresses*, earlier.

## Section C – Partner Representations

### Line 1a

A foreign partner must represent that the Form 8804-C is not being submitted to a publicly traded partnership. A publicly traded partnership is any partnership (a) whose interests are regularly traded on an established securities market or is readily tradable on a secondary market (or the substantial equivalent thereof), and (b) that is not treated as a corporation. See section 7704.

### Line 1b

The only type of trust that may submit a certificate to a partnership is a grantor trust. A grantor trust is any trust over which the grantor or other owner retains the power to control or direct the trust's income or assets. See sections 671 through 679. A grantor trust may submit a certificate if the grantor or other owner of the trust has submitted the certificate and has met the documentation requirements of Regulations section 1.1446-1.

### Line 2a

A partner may make estimated payments for both income tax and self-employment tax, as well as other taxes and amounts reported on its tax return. If the partner does not pay enough tax through withholding or estimated tax payments, it may be charged a penalty. If the partner does not pay enough tax by the due date of each payment period, it may be charged a penalty even if it is due a refund when it files its tax return. For more information see Forms 2210 and 2220.

### Line 2b

The character of a loss includes whether the loss is ordinary or capital and whether or not it is passive.

### Line 2c

See *Form of certification* in the Instructions for Forms 8804, 8805, and 8813 for a listing of documentation a foreign partner can provide to a partnership under Regulations section 1.1446-1 to establish its foreign status.

### Lines 3a and 3b

The following examples illustrate the required representations.

**Example 1.** A foreign individual (NRA) and a U.S. individual (B) form a partnership (PRS) in 2012 to conduct a trade or business in the United States. NRA and B provide PRS appropriate documentation under Regulations section 1.1446-1 to establish their status for purposes of section 1446. NRA, B, and PRS are calendar year taxpayers. NRA submits a Form 8804-C to PRS on July 23, 2012, to be considered by PRS in determining its 1446 tax due with respect to NRA for the third installment period in 2012. The Form 8804-C indicates that NRA reasonably expects to have an effectively connected net operating loss of \$5,000 available to offset his allocable share of ECTI from PRS in 2012. Prior to 2012, NRA had not submitted a certificate to a partnership. NRA filed his 2009 U.S. federal income tax return on March 14, 2011; his 2010 U.S. federal income tax return on February 13, 2012; and his 2011 U.S. federal income tax return on April 13, 2012. NRA will file his 2012 U.S. federal income tax return on May 14, 2013. NRA

paid (or will pay) all amounts due with respect to the returns (including interest, penalties, and additions to tax, if any) by the date they are filed. NRA's 2009 through 2011 U.S. federal income tax returns report income or gain effectively connected with a U.S. trade or business or deductions or losses properly allocated and apportioned to such activities.

Because 2012 is NRA's first tax year for which he is submitting a certificate to any partnership (regardless of whether he was a partner in PRS or any other partnership during each of these years), he must meet the following requirements:

1. His U.S. federal income tax return for the 2011 tax year must be timely filed, including any extensions he obtained;
2. His U.S. federal income tax return for the 2009 and 2010 tax years must have been filed by the earlier of:
  - The date that is one year after the due date set forth in section 6072(c) for filing such return, not including any extensions of time to file; or
  - July 23, 2012, the date on which this certificate is submitted to the partnership;
3. All amounts due with each return (including interest, penalties, and additions to tax, if any) must have been (or will be) paid on or before these dates for filing such returns.

While NRA's 2009 and 2010 U.S. federal income tax returns were filed after their due dates, they were filed within one year of the due date and before NRA submitted his certificate to PRS. In addition, if NRA files his 2011 U.S. federal income tax return on April 13, 2012, and his 2012 U.S. federal income tax return on May 14, 2013, then such returns will be timely filed. Finally, all amounts due with each return (including interest, penalties, and additions to tax, if any) were (or will be) paid on or before these dates. Therefore, NRA is eligible to submit a certificate to PRS in 2012.

**Example 2.** Assume the same facts as Example 1 except NRA had submitted a certificate to another partnership in 2009. Under these circumstances NRA was required to have timely filed his U.S. federal income tax return for 2009 and all subsequent tax years. Because NRA did not timely file his 2009 U.S. federal income tax return, NRA is not eligible to submit a certificate to any partnership, including PRS, for any subsequent tax year, including 2012.

### Line 4a

A foreign partner submitting a Form 8804-C to the partnership must list all returns required under line 3a or 3b that have not been filed at the time of the Form 8804-C submission.

**Example 3.** A foreign partner submits a Form 8804-C to its U.S. partnership on June 1, 2012, but has not yet filed its 2011 U.S. federal income tax return. The foreign partner discloses the required information on line 4a as follows.

Return Form: 1040NR  
Tax Year Ended: December 31, 2011  
Filing Due Date: June 15, 2012

## Section D – Updated Certificates


A foreign partner must submit any updated certificate(s) required by line 5a, 5c, 5d, or 5e within 10 days of the occurrence of the event described on the applicable line(s). Like the first Form 8804-C, a partner must submit any updated Forms 8804-C to the partnership, not the IRS.

**Example 4.** When the foreign partner submitted its first certificate to the partnership, it had not yet filed a prior year U.S. federal income tax return. When the foreign partner files the tax return, it determines that it had overstated the amount of the loss certified on its first certificate. The partner would check boxes 5a and 5d when it submits its updated certificate.

### Lines 5b and 5c

A foreign partner checks the box on line 5b or line 5c to provide the status update required by Regulations section 1.1446-6(c)(2)(ii)(B)(1), if applicable. This update informs the partnership that an un-filed prior year U.S. federal income tax return listed on a previous certificate remains un-filed. This updated certificate must be provided to the partnership before the partnership's final installment due date of 1446 tax. The partnership's installment due dates of 1446 tax are the 15th day of the 4th, 6th, 9th, and 12th months of its tax year. For calendar year partnerships, these correspond to the 15th day of April, June, September, and December.

If the first certificate submitted can continue to be considered by the partnership, check the box on line 5b. If the first certificate submitted can no longer be considered by the partnership, check the box on line 5c.

 *If the partnership does not receive an updated certificate from the partner prior to the partnership's final installment due date (or if the statement described in the previous paragraph is not attached to the certificate), the partnership must disregard the partner's certificate when computing the 1446 tax due with respect to that partner for the final installment period and when completing its Form 8804 for the tax year. See Regulations section 1.1446-6(c)(2)(ii)(B)(1) for additional information.*

The foreign partner is also required to submit to the partnership another updated Form 8804-C when it files the prior year income tax return. On that updated Form 8804-C, the foreign partner will check the box on line 5a to inform the partnership of the occurrence of the event.



*The foreign partner must inform the partnership if it fails to file the prior year return by its due date including any extensions obtained. In this case, the partnership must disregard the partner's certificate when computing the 1446 tax due with respect to that partner for all remaining installment periods and when completing its Form 8804 for the tax year.*

### Line 5d

The character of a loss includes whether the loss is ordinary or capital and whether or not it is passive.

### Line 5e

Examples of when another activity would give rise to effectively connected income, gain, loss, or deduction include if the foreign partner began a U.S. trade or business or invested in a partnership that is engaged in a U.S. trade or business.

### Line 5f

Examples of other information that would require an updated certificate include a partner correcting an incorrect taxpayer identification number or address listed on the first Form 8804-C.

## Part II – Certifications of Deductions and Losses Under Regulations Section 1.1446-6(c)(1)(i)

In Part II, the foreign partner makes representations about the character and amounts of its deductions and losses that are available to offset its allocable share of ECTI. The foreign partner also lists the amounts and character of the eligible deductions and losses. Deductions and losses certified to a partnership for a tax year of the partnership may not be certified to another partnership whose tax year begins or ends with or within the tax year of the partnership to which the deductions and losses were certified.

**Note.** If Part III is applicable, it is not necessary to complete Part II. However, under some circumstances, it may be advisable to complete both Part II and Part III. See the instructions for line 11, later, for more information.

### Line 6

A partner may not certify charitable contribution deductions to the partnership.

### Line 7

A foreign partner may not certify a loss or deduction for a tax year that ends on the same date as or after the partnership's tax year ends. See the instructions for lines 3a and 3b, earlier, for the filing dates required for U.S. federal income tax returns on which the deductions and losses must be reflected.

**Example 5.** Both the foreign partner and the partnership have calendar tax years. The foreign partner may certify a net operating loss (NOL) for its 2011 tax year to the partnership for the partnership's 2012 tax year. However, the foreign partner may not certify an NOL for its 2012 tax year for the partnership's 2012 tax year.

**Example 6.** The foreign partner has a fiscal tax year ending on June 30, and the partnership has a calendar tax year. The foreign partner may not certify an NOL for its tax year ending June 30, 2012, to the partnership until after June 30, 2012. If the foreign partner certifies the NOL on July 16, 2012, the partnership is not permitted to consider that NOL until its September 15, 2012, installment due date.

### Line 8

The following instructions explain the responsibilities of the partner and the partnership with respect to this line.

**Partnership.** A partnership must take into account any limitations on the use of any deduction or loss certified by the foreign partners on Form 8804-C in determining the 1446 tax due with respect to the partner. For example, a partner certifies passive activity losses on line 8d and identifies the activities the partnership conducts that the partner expects will be passive activities. The partnership must limit the amount of certified loss it considers relating to each activity to the amount of income the partnership generates from that activity.

**Foreign partner.** Enter on the appropriate line the amount of the eligible deductions and losses that are being represented to the partnership. The character of the deductions and losses will determine where the entry is made. Any deductions and losses certified to the partnership from another partnership must be reported on a Form 1065 (Schedule K-1) issued (or to be issued) to the foreign partner by such other partnership.



*A foreign partner may not certify current year deductions and losses to a partnership.*

## Column (a)

A partner submitting its first certificate for the current tax year should complete column (a) only. A partner submitting an updated certificate should complete columns (a), (b), and (c).

A partner submitting an updated certificate should enter in column (a) the amounts from its first certificate submitted to the partnership for the current tax year. If the first certificate has been superseded, enter in column (a) the amounts from the most recent certificate submitted to the partnership.

## Column (b)

Enter the net increase or net decrease for each line being changed.

## Column (c)

Add the increase in column (b) to the amount in column (a), or subtract the column (b) decrease from column (a). Enter the result in column (c). For an item that did not change, enter the amount from column (a) in column (c).

**Note.** Show any negative numbers (losses or decreases) in columns (a), (b), or (c) in parentheses.

## Line 8a. Net Operating Loss Carryover

**Foreign partner.** The NOL must be connected with gross income which is effectively connected (or treated as effectively connected) with conduct of the partner's trade or business in the United States.

**Partnership.** Regulations section 1.1446-6(c)(1)(i)(C) provides that a partnership may not consider a partner's certified NOL deduction in an amount greater than 90% of the partner's allocable share of ECTI reduced by all other certified deductions whether or not otherwise taken into account, as well as state and local income taxes the partnership withholds on behalf of the partner that are taken into account under Regulations section 1.1446-6(c)(1)(iii). The 90% limitation should be applied on a cumulative basis for each installment period. Note that if the partnership's annualized income changes during the year, the limitation on the amount of the certified NOL deduction that the partnership may take into account can increase or decrease accordingly. See Regulations section 1.1446-3(b)(2)(i)(B).

## Line 8b

Attach a statement that indicates the type and amount of each capital loss. The foreign partner must distinguish short-term

capital losses from long-term capital losses in the attachment.

## Line 8c

Enter only those losses suspended under section 704(d) that are attributable to the partnership to which this certificate is being submitted. Section 704(d) limits the amount of losses (that flow through a partnership to a partner) to the partner's basis in the partnership. Any excess losses are suspended and may not be used by the partner until the partner's basis increases. A partner may certify its losses suspended under section 704(d) only to the partnership to whom those losses are attributable.

## Line 8d

Enter only those suspended activity losses that meet the requirements of Regulations section 1.1446-6(c)(1)(i)(D). Attach a statement identifying the partnership activity to which each loss relates. For more information regarding passive activity losses, see Form 8582 and Pub. 925.

## Line 8e

Enter only those suspended at-risk losses that meet the requirements of Regulations section 1.1446-6(c)(1)(i)(D). Attach a statement identifying the partnership activity to which each loss relates. For more information regarding at-risk loss limitations, see Form 6198 and Pub. 925.

## Line 8f

Enter other ordinary deductions and losses described in Regulations section 1.1446-6(c)(1)(i) that are subject to partner level limitation or warrant special consideration. A foreign partner must identify in an attachment any other certified losses or deductions that are subject to special limitations at the partner level.

## Line 9

If a foreign partner is a partner in more than one partnership, the partner may certify some of its deductions and losses to one partnership and some to another. However, the total of any one type of deduction or loss certified to all partnerships may not exceed the amount of that deduction or loss carried forward from a prior year that the partner may claim on its current year U.S. federal tax return.

## Line 10

The foreign partner may not utilize deductions and losses that have been disallowed or proposed to be adjusted by the IRS. This refers not only to loss disallowances or proposed adjustments resulting from an IRS audit of the foreign partner, but also to those resulting from an administrative proceeding of a partnership

(in which the partner is or was a partner) that affects the foreign partner's original distributive share of deductions and losses from a prior year.

## Part III – Certification Under Regulations Section 1.1446-6

### Line 11

When applicable under Regulations section 1.1446-6(c)(1)(ii)(B), a foreign partner may certify that its investment in the partnership is (and will be) the sole activity that will give rise to effectively connected income, gain, deduction, or loss during the partner's tax year in which Form 8804-C is submitted to the partnership. The foreign partner must make this determination based on the partnership's tax year that ends with or within the partner's tax year. A qualifying foreign partner makes this certification by checking the box on line 11.

A foreign partner may make the certification on line 11 without making the certifications in Part II. However, see the next paragraph for the only circumstance under which a partnership may consider a certification on line 11. A foreign partner making the certifications in Part II need not make the certification on line 11.

A partnership that receives this certification from a foreign partner, and that may reasonably rely on such certification, is not required to pay 1446 tax (or any installment of such tax) with respect to such partner if the partnership estimates that the annualized (or, in the case of a partnership completing its Form 8804, the actual) 1446 tax otherwise due with respect to such partner is less than \$1,000, without taking into account any deductions or losses the foreign partner certified to the partnership or any state and local taxes the partnership withholds on behalf of the partner.

## Part IV – Disclosure Consent and Signature

Foreign partners should note the importance of the two statements on the form to which they are consenting and certifying under penalties of perjury. The first statement reads as follows:

*“Consent is hereby given to disclosures of return and return information by the Internal Revenue Service pertaining to the validity of this certificate to the partnership or other withholding agent to which this certificate is submitted for the purpose of administering section 1446.”*

The foreign partner's consent gives the IRS authority to contact the partnership or withholding agent directly with questions to ensure processing of the certificate.

The foreign partner will receive copies of all IRS correspondence with the partnership regarding the certificate.

The second statement on the form is a penalty of perjury statement required by the regulations. The statement requires the signature of the partner, or its authorized representative, under penalties of perjury, and the date that the Form 8804-C was signed.

If a representative of the partner signs and dates the Form 8804-C, a power of attorney specifically authorizing this representation must be attached to the Form 8804-C.

A partnership will not be able to consider a Form 8804-C unless all the above requirements are met.

**Date**

Enter the date when the foreign partner signs Form 8804-C. Use the format MM/DD/YYYY (for example, 09/24/2012).

**Paperwork Reduction Act Notice.** We ask for the information on these forms to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

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 this form will vary depending on individual

circumstances. The estimated average times are:

<b>Recordkeeping</b> . . . . .	10 hrs., 16 min.
<b>Learning about the law or the form</b> . . . . .	3 hr., 26 min.
<b>Preparing the form</b> . . . . .	4 hrs., 41 min.
<b>Copying, assembling, and sending the form to the IRS</b> . . . . .	16 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:M:S, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. **Do not** send Form 8804-C to this address. Instead, send it to the partnership.