

Hummingbird Tribal Foundation
Woodside, CA
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Special Rules To Reduce Section 1446 Withholding; Correction

Announcement 2009-42

AGENCY: Internal Revenue Service
(IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final regulations (T.D. 9394, 2008-21 I.R.B. 988) that were published in the **Federal Register** on Tuesday, April 29, 2008 (73 FR 23069) regarding when a partnership may consider certain deductions and losses of a foreign partner to reduce or eliminate the partnership's obligation to pay withholding tax under section 1446 on effectively connected taxable income allocable under section 704 to such partner. The regulations will affect partnerships engaged in a trade or business in the United States that have one or more foreign partners.

DATES: This correction is effective on April 2, 2009, and is applicable on April 29, 2008.

FOR FURTHER INFORMATION CONTACT: Ronald M. Gootzeit at (202) 622-3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this document are under sections 1446, 1464, 6071, 6091, 6151, 6302, and 6414 of the Internal Revenue Code.

Need for Correction

As published, final regulations (T.D. 9394) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1446-6 is amended as follows:

1. Paragraph (c)(2)(i) is revised.
2. The last sentence of paragraph (d)(3)(ii) is revised and a new sentence is added at the end of the paragraph.
3. Paragraphs (e)(1)(vi) second occurrence, (e)(1)(vii), and (e)(1)(viii) are redesignated as paragraphs (e)(1)(vii), (e)(1)(viii), and (e)(1)(ix), respectively.
4. The first sentence of paragraph (e)(2) *Example 2.(i)* is revised.
5. The third and fourth sentences of paragraph (e)(2) *Example 2.(ii)* are revised.
6. The fourth sentence of paragraph (e)(2) *Example 4.* is revised.
7. Paragraph (e)(2) *Example 6.(ii)* is revised.

The revisions and addition read as follows:

§1.1446-6 Special rules to reduce a partnership's 1446 tax with respect to a foreign partner's allocable share of effectively connected taxable income.

* * * * *

(c) * * *

(2) * * *

(i) *Form of certification.* A partner's certification to a partnership under paragraph (c)(1)(i) or (iii) of this section shall be made using Form 8804-C, "*Certificate Of Partner-Level Items to Reduce Section 1446 Withholding,*" in accordance with the instructions of the form and the rules of this section.

* * * * *

(d) * * *

(3) * * *

(ii) * * * To permit the partnership to reasonably rely on such certificate, the partnership shall be considered to have satisfied the requirements of paragraph (d)(3)(i) of this section if the partnership

demonstrates that such failure was due to reasonable cause and not willful neglect and if once the partnership becomes aware of the failure, the partnership attaches the certificate and computation, as well as a written statement setting forth the reasons for the failure to comply with the requirements of paragraph (d)(3)(i) of this section, to an amended Form 8813 or amended Forms 8804 and 8805 for the relevant period. All such submissions should be sent to the address provided in the instructions to Form 8804-C.

* * * * *

(e) * * *

(2) * * *

Example 2. * * *

(i) Assume the same facts as in Example 1. * * *

(ii) * * * As described in Example 1, NRA's year 4 U.S. income tax return is a qualifying U.S. income tax return because it will report income or gain effectively connected with a U.S. trade or business and is described under paragraph (b)(2)(iii)(C) of this section. Although NRA's year 5 U.S. income tax return reports income or gain effectively connected with a U.S. trade or business or deductions or losses properly allocated and apportioned to such activities it is not a qualifying U.S. income tax return under paragraph (b)(2)(iii) of this section. * * *

* * * * *

Example 4. * * * NRA timely-filed (within the meaning of paragraph (b)(2) of this section) U.S. income tax returns for years 1 through 6 reporting its allocable share of ECTI (or loss) from XYZ (and timely paid all tax shown on such returns). * * *

* * * * *

Example 6. * * *

(ii) If PRS had considered only \$900 (or a lesser amount) of NRA's certified net operating loss when computing and paying its 1446 tax during year 4 then, under paragraph (d)(2)(iii) of this section, PRS would not be liable for 1446 tax because it did not consider a net operating loss greater than the amount actually available to NRA.

Par. 3. Section 1.1464-1 is amended by revising paragraph (c) to read as follows:

§1.1464-1 Refunds or credits.

* * * * *

(c) *Effective/Applicability date.* The last sentence in paragraph (a) of this section shall apply to partnership taxable years beginning after April 29, 2008.

Par. 4. Section 1.6151-1 is amended by revising paragraph (e) to read as follows:

§1.6151-1 Time and place for paying tax shown on returns.

* * * * *

(e) *Effective/Applicability date.* Paragraph (d)(2) of this section shall apply to publicly traded partnerships described in §1.1446-4 for partnership taxable years beginning after *April 29, 2008*.

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LaNita Van Dyke,
*Chief, Publications and
Regulations Branch,
Legal Processing Division,
Associate Chief Counsel
(Procedure and Administration).*

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