officer under the authority of § 41.105(a) are considered papers submitted with the alien's application within the meaning of INA 221(g)(1).

(3) *Signature.* The Form DS–160 shall be signed electronically by clicking the box designated ''Sign Application'' in the certification section of the application. This electronic signature attests to the applicant's familiarity with and intent to be bound by all statements in the NIV application under penalty of perjury. Alternatively, except as provided in paragraph (a)(2) of this section, the Form DS–156 shall be signed by the applicant, with intent to be bound by all statement in the NIV application under penalty of perjury.

(4) *Registration.* The Form DS–160 or the Form DS–156, when duly executed, constitutes the alien's registration for the purposes of INA 221(b).

■ 6. Section 41.106 is revised to read as follows:

§ 41.106 Processing.

Consular officers must ensure that the Form DS–160 or, alternatively, Form DS–156 is properly and promptly processed in accordance with the applicable regulations and instructions.

■ 7. Section 41.113 is amended by revising paragraphs (g) and (h) to read as follows:

§ 41.113 Procedures in issuing visas.

* * * * *

(g) *Delivery of visa.* In issuing a nonimmigrant visa, the consular officer should deliver the visaed passport, or the prescribed Form DS–232, which bears the visa, to the alien or to the alien's authorized representative. Any evidence furnished by the alien in accordance with 41.103(b) should be retained in the consular files, along with Form DS–156, if received.

(h) *Disposition of supporting documents.* Original supporting documents furnished by the alien should be returned for presentation, if necessary, to the immigration authorities at the port of entry. Duplicate copies may be retained in the consular files or scanned into the consular system.

* * * * *

Dated: April 22, 2008.

Janice L. Jacobs,

Assistant Secretary for Consular Affairs, Acting, Department of State.

[FR Doc. E8–9336 Filed 4–28–08; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9390]

RIN 1545–BE37

Standards for Recognition of Tax-Exempt Status if Private Benefit Exists or if an Applicable Tax-Exempt Organization Has Engaged in Excess Benefit Transaction(s); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 9390) that were published in the **Federal Register** on Friday, March 28, 2008 (73 FR 16519) clarifying the substantive requirements for tax exemption under section 501(c)(3) of the Internal Revenue Code. These final regulations also contain provisions that clarify the relationship between the substantive requirements for tax exemption under section 501(c)(3) and the imposition of section 4958 excise taxes on excess benefit transactions.

DATES: This correction is effective April 29, 2008 and is applicable on March 28, 2008.

FOR FURTHER INFORMATION CONTACT: Galina Kolomietz, (202) 622–7971 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this document are under sections 501(c)(3) and 4958 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9390) contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

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 * * *

§ 1.501(c)(3)–1 [Amended]

■ **Par. 2.** Section 1.501(c)(3)–1 is amended as follows:

■ 1. In paragraph (d)(1)(iii) *Example 2.* (ii), in the second sentence, the language ''As a result, the sole activity of O serves the private interests of these artists.'' is removed and the language ''As a result, the principal activity of O serves the private interests of these artists.'' is added in its place.

■ 2. In paragraph (f)(2)(iv) *Example 2.* (iii), in the sixth sentence, the language ''Beginning in Year 4, however, as O's exempt function activities grow, the size and scope of the excess benefit transactions that occurred in Year 3 become less and less significant as compared to the size and extent of O's regular and ongoing exempt function activities.'' is removed and the language ''Beginning in Year 4, however, as O's exempt function activities grow, the size and scope of the excess benefit transactions that occurred in Year 3 become less and less significant as compared to the size and scope of O's regular and ongoing exempt function activities.'' is added in its place.

■ 3. In paragraph (f)(2)(iv) *Example 4.* (iii), in the fourth sentence, the language ''By adopting a conflicts of interest policy and significant new contract review procedures and by terminating C, O has implemented safeguards that are reasonably calculated to prevent future violations.'' is removed and the language ''By adopting a conflicts of interest policy and new contract review procedures and by terminating C, O has implemented safeguards that are reasonably calculated to prevent future violations.'' is added in its place.

* * * * *

LaNita Van Dyke,

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

[FR Doc. E8–9362 Filed 4–28–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, and 602

[TD 9394]

RIN 1545–BD80

Special Rules To Reduce Section 1446 Withholding

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations 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. The final regulations also include conforming amendments to §§ 1.1446–3 and 1.1446–5 and to regulations under sections 1464, 6071, 6091, 6151, 6302, 6402, 6414, and 6722.

DATES: *Effective Date:* These regulations are effective on April 29, 2008.

Applicability Dates: The regulations are generally applicable for partnership taxable years beginning after December 31, 2007. See § 1.1446–6(f). For a transition rule see § 1.1446–6(g).

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

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1934. The collection of information in these final regulations is in § 1.1446–6(c) and (d). This information is required to determine the extent to which a partnership will consider certifications of losses and deductions in calculating the amount of withholding tax it must pay with respect to a foreign partner on the partner's allocable share of effectively connected taxable income earned by such partnership.

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 control number.

Books or records relating to a collection of information must be retained as long as 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.

Background

On September 3, 2003, the IRS and the Treasury Department published in the **Federal Register** a notice of proposed rulemaking [REG–108524–00; 2003–42 IRB 869; 68 FR 52466], corrected at 68 FR 62553 (November 5, 2003) under sections 871, 1443, 1446, 1461, 1462, 1463, 6109, and 6721 of the Internal Revenue Code (Code). The regulations provide guidance for partnerships required to pay withholding tax under section 1446 of the Code (1446 tax). On May 18, 2005, the IRS and the Treasury Department issued final and temporary regulations under section 1446. The 2005 final regulations set forth the provisions of the 2003 proposed regulations in final form and the temporary regulations established a new procedure by which a partnership could consider certain partner-level deductions and losses when computing its 1446 tax. The temporary regulations generally apply to partnership taxable years beginning after the date of their issuance, but an election was provided that permitted a partnership to apply the regulations to partnership taxable years beginning after December 31, 2004, provided the partnership elected to apply the 2005 final regulations to partnership taxable years beginning after December 31, 2004. On May 18, 2005, the IRS and the Treasury Department also published in the **Federal Register** a notice of proposed rulemaking [REG–108524–00; 2005–1CB 1158; 70 FR 28701], under sections 1464, 6071, 6091, 6151, 6302, 6402, 6414, and 6722 of the Code to implement the section 1446 regime, as well as cross-referencing the temporary regulations under § 1.1446–6T (see 26 CFR Part 1, revised as of April 1, 2007). Written comments were received in response to the notice of proposed rulemaking, and a public hearing was held on November 16, 2005. After consideration of all the comments, the proposed regulations are adopted, as revised by this Treasury decision and the temporary regulations are removed.

Explanation of Provisions

Section 1446 requires a partnership to pay section 1446 tax on a foreign partner's allocable share of effectively connected taxable income (ECTI) from the partnership. The temporary regulations allow certain foreign partners to certify certain deductions and losses to a partnership to reduce the 1446 tax required to be paid by the partnership with respect to ECTI allocable to such partners. The temporary regulations also permit a nonresident alien partner to certify to the partnership that the partnership investment is (and will be) its only activity for its taxable year that gives rise to effectively connected income, gain, deduction, or loss. In that case, the partnership 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 ''Annual Return for Partnership Withholding Tax (Section 1446),'' the actual) 1446 tax due with respect to such nonresident alien partner is less than $1,000.

I. Modifications to the Temporary Regulations

A. Format of Certificate Submitted to a Partnership

The temporary regulations state that no particular form is required for the partner's certificate of deduction and losses to the partnership. However, the temporary regulations list 13 items the certificate must contain and the caption that must appear at the top of the certificate. To ensure uniformity of the certificates and to reduce the likelihood of an inadvertently omitted item causing the certificate to be defective, the IRS developed a form (Form 8804–C, ''Certificate of Partner-Level Items to Reduce Section 1446 Withholding'') to be used by the partner providing a certificate to the partnership. The IRS and the Treasury Department believe that the Form 8804–C will facilitate a partner's ability to provide original and updated certificates.

B. Partners Entitled To Certify Deductions and Losses

1. *Filing period requirement: number of years*

To be eligible to provide a certificate to a partnership the temporary regulations require a partner to have timely filed (or to represent that it will timely file) a U.S. income tax return for each of its preceding four taxable years and for the taxable year during which the certificate is provided and will be considered by the partnership. The partner is also required to have timely paid (or to represent that it will timely pay) all tax shown on such returns. The final regulations clarify that only returns that report income or gain effectively connected with a U.S. trade or business or deductions or losses properly allocated and apportioned to such activities will satisfy the tax return filing requirement (for the current or relevant prior years). Accordingly, the partner may not fulfill this requirement with a U.S. income tax return that reports no items of income or gain effectively connected with a U.S. trade or business or deductions or losses properly allocated and apportioned to such activities.

Several commentators suggested reducing the temporary regulations' prior years U.S. tax return filing requirement. One commentator suggested reducing the requirement to the lesser of the two prior years or the number of years the partner has been a partner in the relevant partnership. Another commentator suggested reducing the requirement from four to two years.

The IRS and the Treasury Department believe it appropriate to require the foreign partner to have filed a certain number of returns and paid any tax relating to those returns regardless of the number of years the partner has been a member of the relevant partnership. The IRS and the Treasury Department do not believe that a reduction to two years is appropriate. Because the return for the year immediately preceding the year a partner submits a certificate to a partnership may not have been filed by the date when the certificate is submitted, reducing the prior years filing requirement to two years could result in only one return being filed by the date on which the certificate is submitted. In response to these comments, however, the IRS and the Treasury Department have determined that it is appropriate to reduce the prior years filing requirement to three years.

The IRS and the Treasury Department have also decided to modify the filing requirement of a tax return for a preceding taxable year in which the partner did not submit a certificate to any partnership, if the return has a due date (without extensions) before the beginning of the partnership taxable year for which the certificate is provided. The final regulations provide that such returns must be filed and all amounts due with such return (including interest, penalties, and additions to tax, if any) must be paid on or before the earlier of: (1) The date that is one year from the due date (without extensions) of such return; or (2) The date on which the certificate for the current taxable year is submitted to the partnership. Once a partner submits a certificate to a partnership, however, it must timely file all its subsequent years' returns (and timely pay all amounts due with the returns) to submit a certificate to a partnership in a later year. The IRS and the Treasury Department anticipate that this modified rule will permit more foreign partners to provide certificates to partnerships under the final regulations.

2. *Trusts and estates*

One commentator requested that the IRS and the Treasury Department explain why foreign estates and domestic or foreign trusts, other than grantor trusts, are not permitted to certify deductions and losses to partnerships. Another commentator asked that the decedent's compliance record be considered in determining whether the estate can certify deductions and losses to a partnership. The final regulations do not modify the treatment of estates and trusts. The IRS and the Treasury Department continue to believe, as stated in the preamble to the temporary regulations, that because trusts and estates are not always pure conduits for tax purposes it is difficult for a partnership to determine the taxpayer (that is, the trust, estate or beneficiary) that will pay tax on the ECTI allocated to the trust or estate. Further, a decedent's filing history may have limited relevance in predicting the estate's likely compliance.

3. *Tiered partnerships*

In a tiered partnership structure, a lower-tier partnership must withhold 1446 tax on ECTI allocable to an upper-tier foreign partnership that is a partner in the lower-tier partnership. However, if the upper-tier foreign partnership provides sufficient information regarding its partners to the lower-tier partnership, the lower-tier partnership may withhold 1446 tax based on the partners in the upper-tier partnership. These rules may also apply to upper-tier domestic partnerships that have foreign partners. See § 1.1446–5. Similarly, an upper-tier partnership that receives certificates of deductions and losses from its foreign partners may provide the certificates to the lower-tier partnerships.

The final regulations add several rules to ensure that deductions and losses certified to an upper-tier partnership are not taken into account by both the upper-tier partnership and a lower-tier partnership or by more than one lower-tier partnership. A new rule is also added requiring that sufficient information regarding a partner in the upper-tier partnership submitting the certificate be provided to the lower-tier partnership and then to the IRS so that the IRS can reliably associate the ECTI and the certificate with the partner in the upper-tier partnership.

C. Submissions of Certificates

1. *Time lags for submission of certificates*

The temporary regulations provide that the partnership may rely on the first certificate submitted by the foreign partner for a partnership taxable year only if the partnership receives the certificate at least 30 days before the installment due date or the annual Form 8804 filing due date (without regard to extensions) for the partnership taxable year for which the partner would like the certificate to be considered in computing the 1446 tax due with respect to the partner. Updated certificates may only be considered if received at least ten days before the installment due date or the Form 8804 filing date (without regard to extensions). Several commentators questioned the appropriateness of these timing requirements if the partnership is willing to rely on a certification submitted at the last moment and remits the 1446 tax installment or files the final return on a timely basis. The IRS and the Treasury Department agree with the commentators and have removed these requirements in the final regulations.

2. *Resubmission of certificates*

The temporary regulations require the partnership to attach a copy of any certificate, and the computation of 1446 tax due with respect to a partner, to both the Form 8813, ''Partnership Withholding Tax Payment Voucher (Section 1446),'' and Form 8805, ''Foreign Partner's Information Statement of Section 1446 Withholding Tax,'' filed with the IRS for any period for which such certificate is considered in computing the partnership's 1446 tax (or any installment of such tax). One commentator suggested that a certificate submitted with Form 8813 should not be required to be submitted with subsequent filings of Form 8813 or with Form 8805. The IRS and the Treasury Department agree with the comment regarding Form 8813. The final regulations provide that a partner's certificate need only be submitted for the first installment period for which it is considered. For subsequent installment periods for which the certificate is considered, the partnership may instead attach a list of the name, taxpayer identification number, and the amount of certified deductions of each foreign partner whose certificate was previously considered during the taxable year and whose certificate was again considered in the subject installment period. The partnership would also indicate if it was relying on the state and local taxes withheld and remitted on behalf of the partner. If the partnership is relying on the de minimis rule for the partner, the partnership would indicate that, in lieu of indicating the amount of certified deductions. However, if a partnership receives an updated certificate from a partner, that certificate must be attached with the Form 8813 for the first installment period it is considered. In all events, a partnership must attach to the Form 8813 and Form 8805, a computation of 1446 tax due with respect to such

partner for all periods for which a certificate received from the partner is considered by the partnership. In addition, in all events the partnership must attach to the Form 8805 a copy of the partner's original or updated certificate, as appropriate.

3. *Denying partnerships the ability to submit certificates*

Consistent with the temporary regulations, the final regulations provide that upon receipt of written notification from the IRS that a foreign partner's certificate is defective, the partnership may no longer rely on the defective certificate or any other certificate submitted by the partner until the IRS notifies the partnership in writing and revokes or modifies the original notice. The final regulations provide that the IRS may also notify the partnership in writing if either a substantial portion of the certificates submitted by the partnership are defective or a substantial amount of the deductions and losses relied on by the partnership in computing its 1446 tax due are reported on one or more defective certificates. Upon receiving that notification the partnership may not rely on any certificate submitted by any partner for the partnership taxable year in which such notification is received or any subsequent partnership taxable year, until the IRS notifies the partnership again in writing and revokes or modifies the original notice.

D. Deductions and Losses Certified to the Partnership

1. *Current year deductions*

The temporary regulations provide that a foreign partner can only certify deductions and losses that are or will be reflected on the partner's U.S. income tax return filed (or to be filed) for a taxable year ending prior to the installment due date or Form 8804 filing date (without regard to extensions) for the partnership taxable year for which the certificate is considered. Therefore, no anticipated deduction or loss with respect to current operations may be considered. One commentator suggested that partners should be permitted to certify current year deductions to the partnership. The IRS and the Treasury Department are concerned about the uncertainty associated with fluctuations in estimates of current-year activities and therefore have not adopted this suggestion.

2. *Charitable deductions*

One commentator requested that partners be permitted to certify charitable contribution deductions. The IRS and the Treasury Department have not adopted this recommendation because of the difficulty a partnership would have in determining the amount of a charitable contribution deduction allowed to the foreign partner. Section 170 provides separate rules for corporations and individuals, the type of charity to which the contribution is made, and the type of property contributed to the charity. In addition, separate rules apply to determine the deduction amount in the case of charitable contribution carryover.

3. *Suspended losses*

One commentator raised a concern that a foreign partner could certify a passive activity loss to a partnership that conducts a different activity in which the partner materially participates. If the partnership took that loss into account it would inappropriately reduce its 1446 tax due with respect to that partner. Because on its income tax return the partner could not offset the loss against its allocable share of partnership ECTI, the partner might inappropriately each year recertify that loss to the partnership. To address that concern the final regulations clarify that a partner must identify any certified deductions and losses that are subject to special limitations at the partner level and provide information to the partnership that will allow the partnership to take into account the special limitations.

4. *Net operating losses*

The temporary regulations provide that a partnership may not consider a partner's net operating loss (NOL) deduction in an amount greater than 90 percent of the partner's allocable share of ECTI. Two commentators discerned that this requirement reflects a concern about the alternative minimum tax (AMT) limitation on NOL deductions and suggested the regulations should be tied to the continuing applicability of the 90 percent AMT limitation on the use of NOL carryovers. The IRS and the Treasury Department have adopted this suggestion. One commentator further suggested that if the 90 percent limitation is retained, or as long as it applies, the regulations should be clarified to explain that the limitation should be applied on a cumulative basis for each installment period. This suggestion has also been adopted. With this clarification, if the partnership's annualized income changes during the year, the NOL deduction that the partnership may take into account can increase or decrease accordingly.

E. Partnership Items Allocable to Partners That Give Rise to Partner Level Deductions, Losses or Credits But Are Not Partnership Allocations of Deductions and Losses Under Section 704

1. *State income taxes*

One commentator suggested allowing the partnership to reduce a foreign partner's ECTI by the amount of any state and local taxes paid by the partnership on behalf of the partner with respect to the partner's allocable share of partnership income. The final regulations adopt this recommendation but provide that the partnership may only consider 90 percent of the state and local taxes withheld and remitted on behalf of the partner but only with respect to the partner's allocable share of ECTI. The partnership may consider these amounts regardless of whether the partner submits a certification of deductions and losses or of its de minimis status to the partnership for the relevant partnership taxable year.

2. *Section 199 deductions*

One commentator suggested allowing a partnership to consider a partner's available deduction under section 199 in determining its section 1446 tax with respect to that partner. The section 199 deduction is a percentage of the lesser of the qualified production activities income (QPAI) of the taxpayer for the taxable year or the taxpayer's taxable income or, in the case of an individual, adjusted gross income determined without regard to section 199 for the taxable year. In addition, the deduction is limited to 50 percent of the Form W–2, ''Wage and Tax Statement'', wages for the taxpayer for the taxable year. Depending on a taxpayer's gross receipts and assets, there are up to three permissible methods for calculating QPAI.

In the case of a pass-through entity (such as a partnership), section 199(d)(1)(A) provides that the section 199 deduction is calculated at the partner level. A partner may be a member of more than one partnership and may engage in its own qualifying activities under section 199. The QPAI and Form W–2 wages, and any other QPAI and Form W–2 wages reported by a partnership to the partner, must be added to the partner's own calculation of QPAI and Form W–2 wages. Therefore, because of the difficulty in a partnership determining the section 199 deduction of a partner, the IRS and the Treasury Department determined it would be inappropriate to allow a partnership to consider the section 199 deduction of a partner in determining

the amount of section 1446 tax to be withheld with respect to that partner.

3. *Section 470 deductions*

One commentator suggested that the regulations allow the partnership to consider partner-level deductions previously suspended under section 470 (limitation on deductions allocable to property used by governments or other tax-exempt entities) and relating to the partnership, when the deductions become available. Section 470 currently allows the partnership to consider these suspended partner-level deductions in determining the partner's ECTI. Therefore, there is no need to modify the regulations in response to this suggestion.

4. *Tax credits*

One commentator suggested that a foreign partner should be able to certify credits to the partnership and that the partnership be able to consider current-year credits in determining the amount of its 1446 tax. Section 1446 requires that a partnership pay a withholding tax on its ECTI allocable to foreign partners. It provides no authority for partnerships to consider credits in determining the amount of 1446 tax the partnership is required to withhold and pay. Therefore, this suggestion has not been adopted.

F. Effect on Reasonable Reliance on Certificate of Deductions and Losses

The temporary regulations provide that a partnership is not relieved from liability for 1446 tax under section 1461 or for any applicable addition to the tax, interest, or penalties if a partner's certificate is defective or the partner submits an updated certificate that increases the 1446 tax due with respect to such partner. If a certificate is determined to be defective for a reason other than the amount or character of the deductions and losses set forth on such certificate (for example, the partner failed to timely file a U.S. income tax return), then the partnership is liable for the entire 1446 tax amount under section 1461 (or any installment of such tax).

Further, under the temporary regulations, if it is determined that a certificate is defective because the actual deductions and losses available to the partner are less than the amount certified to the partnership (other than when it is determined that the partner certified the same deduction or loss to more than one partnership), the partnership is liable for 1446 tax under section 1461 (or any installment of such tax) only to the extent the amount of certified deductions and losses taken into account by the partnership is greater than the amount determined to be actually available to the partner and permitted to be used under regulations.

Similarly, if it is determined that a certificate is defective because the character of the certified deductions and losses is erroneous, the partnership is liable for 1446 tax under section 1461 (or any installment of such tax) only to the extent the actual character of the deductions and losses results in an increase in the 1446 tax due with respect to such partner.

However, the temporary regulations provide that the partnership is not liable for the addition to tax under section 6655 (as applied though § 1.1446–3) for the period during which the partnership reasonably relied on the certificate. Further, the temporary regulations provide that although a partnership is generally liable for the 1446 tax, any addition to the tax, interest, and penalties, the partnership may be relieved of some penalties in certain circumstances.

One commentator stated that reasonable reliance on a certificate should protect a partnership against liability not only under section 6655, but also for liability for the tax under section 1461, interest on the tax under section 6601, and various other penalty provisions. The IRS and the Treasury Department have not adopted this recommendation. Use of the certification procedures under § 1.1446–6 is voluntary. The foreign partner is not required to submit a certificate of deductions and losses to the partnership. Moreover, even if the partnership receives a certificate it may consider all, none or only a portion of the certified deductions and losses when calculating its payment of 1446 tax. Further, as the temporary regulations stated, the partnership may be relieved of some penalties in certain circumstances.

G. Relief for a Partnership's Failure To Comply Timely With the Requirements of This Section

Among other requirements, to apply the rules of § 1.1446–6 the partnership must receive a valid certificate from the foreign partner and attach the certificate, along with the computation of 1446 tax due with respect to that partner, to certain Forms 8813 and Form 8805 filed with respect to that partner. The IRS and the Treasury Department believe that a reasonable cause standard should be applied to determine whether a partnership that failed to attach the certificate and 1446 tax computation to the relevant filing is eligible for an extension of time to comply with this requirement.

Under the reasonable cause standard, if a partnership that may otherwise rely on a partner's certificate fails to comply timely with the requirements of § 1.1446–6, the partnership is considered to have satisfied the timeliness requirement if it demonstrates, to the satisfaction of the Area Director, Field Examination, Small Business/Self-Employed or the Director, Field Operations, Large and Mid-Size Business (Director) having jurisdiction of the partnership's return for the taxable year, that such failure was due to reasonable cause and not willful neglect. Once the partnership becomes aware of the failure, the partnership must demonstrate reasonable cause and must satisfy the filing requirement by attaching the certificate and the partnership's computation of 1446 tax due with respect to that partner to an amended Form 8813 or Forms 8804 and 8805 (that amends the tax return to which the certificate and computation should have been attached). A written statement must be included that explains the reasons for the failure to comply.

In determining whether the partnership has reasonable cause, the Director shall determine whether the partnership acted reasonably and in good faith based on all the facts and circumstances. The Director shall notify the partnership in writing within 120 days of the filing if it is determined that the failure to comply was not due to reasonable cause or if additional time will be needed to make such determination. If the Director fails to notify the partnership within 120 days of the filing, the partnership shall be considered to have demonstrated to the Director that such failure was due to reasonable cause and not willful neglect.

H. Effective/Applicability Dates and Transition Rule

The final regulations are effective for partnership taxable years beginning after December 31, 2007. However, any certificate submitted on or before July 28, 2008 that met the requirements of the temporary regulations shall not be considered defective solely because it does not meet the requirements of the final regulations. However, any certificate (including any updated certificates and status reports) submitted, or required to be submitted, after July 28, 2008, must comply with the requirements of these final regulations.

II. Modifications to the 2005 Final Regulations

The final regulations make several clarifying and conforming changes to the 2005 final regulations including with respect to the calculation of installment payments of 1446 tax when a partnership considers a certificate received under § 1.1446–6 and the information that a lower-tier partnership must receive from an upper-tier partnership when the lower-tier partnerships pays 1446 tax on behalf of the partners in the upper-tier partnership. Also the prior year safe harbor provision in § 1.1446–3 was conformed with section 6655 to provide that the partnership must compute its current year 1446 tax installments based on the total 1446 tax (without regard to § 1.1446–6) as computed for the prior taxable year. These revisions are effective for partnership taxable years beginning after December 31, 2007.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. It also has been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collections of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that only a few small entities are expected to be impacted by these collections and the burden associated with such collections is estimated to be 0.5 hours. Moreover, the information collection in § 1.1446–6 and its use is voluntary. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding the final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Ronald M. Gootzeit of the Office of the Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1, 301, and 602 are amended as follows:

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 1.1446–0 is amended is as follows:
■ 1. Adding entries for § 1.1446–6.
■ 2. Removing entries for § 1.1446–6T.
■ 3. Revising the entry for § 1.1446–7.

The addition and revision read as follows:

§ 1.1446–0 Table of contents.

* * * * *

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(i) Form of certification.
(ii) Time of certification provided to partnership.
(A) First certificate submitted for a partnership's taxable year.
(B) Updated certificates and status updates.
(*1*) Preceding year tax returns not yet filed.
(*2*) Other circumstances requiring an updated certificate.
(*3*) Form and content of updated certificate.
(*4*) Partnership consideration of an updated certificate.
(3) Notification to partnership when a partner's certificate cannot be relied upon.
(4) Partner to receive copy of notice.
(5) Notification to partnership when no foreign partner's certificate can be relied upon.
(6) Partnership notification to partner regarding use of deductions and losses.
(7) Partner's certificate valid only for partnership taxable year for which submitted.
(d) Effect of certificate of deductions and losses on partner and partnership.
(1) Effect on partner.
(i) No effect on liability for income tax of foreign partner.
(ii) No effect on partner's estimated tax obligations.
(iii) No effect on partner's obligation to file U.S. income tax return.
(2) Effect on partnership.
(i) Reasonable reliance to relieve partnership from addition to tax under section 6665.
(ii) Continuing liability for withholding tax under section 1461 and for applicable interest and penalties.
(A) In general.
(B) Certificate defective because of amount or character of deductions and losses.
(3) Partnership level rules and requirements.
(i) Filing requirement.
(ii) Reasonable cause for failure to timely file a valid certificate and computation.
(A) Determining reasonable cause.
(B) Notification.
(e) Examples.
(f) Effective/Applicability date.
(g) Transition rule.
§ 1.1446–7 Effective/Applicability date.

■ **Par. 3.** For each entry in the table in the ''Section'' column remove the phrase in the ''Remove'' column and add the phrase in the ''Add'' column in its place.

Section	Remove	Add
1.1443–1(a) (First sentence)	1.1446–6T	1.1446–6
1.1446–1(a)	1.1446–6T	1.1446–6
1.1446–1(b)	§ 1.1446–6T	§ 1.1446–6

Section	Remove	Add
1.1446–1(c)(5) (Second sentence)	1.1446–6T	1.1446–6
1.1446–2(a) (Third sentence)	§ 1.1446–6T	§ 1.1446–6
1.1446–2(b)(1) (Second sentence)	§ 1.1446–6T	§ 1.1446–6
1.1446–2(b)(1) (Last sentence)	1.1446–6T	1.1446–6
1.1446–2(b)(3)(iii) (First sentence)	§ 1.1446–6T	§ 1.1446–6
1.1446–2(b)(3)(iii) (Second sentence)	§ 1.1446–6T	§ 1.1446–6
1.1446–2(b)(3)(vii)	§ 1.1446–6T	§ 1.1446–6
1.1446–2(b)(5) *Example 3* (Sixth sentence)	§ 1.1446–6T	§ 1.1446–6
1.1446–3(b)(2)(v)(F) (Second sentence)	§ 1.1446–6T	§ 1.1446–6(c)(1)(ii)
1.1446–3(d)(1)(i) (Third sentence)	§ 1.1446–6T	§ 1.1446–6(d)(3)
1.1446–3(d)(1)(iii) (Third sentence)	§ 1.1446–6T	§ 1.1446–6
1.1446–3(e)(3)(i) (Last sentence)	§ 1.1446–6T	§ 1.1446–6(d)(2)(i)
1.1446–5(f) *Example 1*(i) (Ninth sentence)	§ 1.1446–6T	§ 1.1446–6

■ **Par. 4.** Section 1.1446–3 is amended by:

■ 1. Removing the acronym ''ECTI'' from the first sentence in paragraph (b)(1) and adding the language ''effectively connected taxable income (ECTI)'' in its place.

■ 2. Revising paragraphs (b)(2)(i) and (b)(3)(i)(A).

The revisions read as follows:

§ 1.1446–3 Time and manner of calculating and paying over the 1446 tax.

* * * * *

(b) * * *

(2) * * * (i) *Application of the principles of section 6655*—(A) *In general.* Installment payments of 1446 tax required during the partnership's taxable year are based upon partnership ECTI for the portion of the partnership taxable year to which the payments relate, and, except as set forth in this paragraph (b)(2) or paragraph (b)(3) of this section, shall be calculated using the principles of section 6655. The principles of section 6655, except as otherwise provided in § 1.6655–2, are applied to annualize the partnership's items of effectively connected income, gain, loss, and deduction to determine each foreign partner's allocable share of partnership ECTI. Each foreign partner's allocable share of partnership ECTI is then multiplied by the relevant applicable percentage for the type of income allocable to the foreign partner under paragraph (a)(2) of this section. The respective 1446 tax amounts are then added for each foreign partner to yield an annualized 1446 tax with respect to such partner. The installment of 1446 tax due with respect to a foreign partner equals the excess of the section 6655(e)(2)(B)(ii) percentage of the annualized 1446 tax for that partner (or, if applicable, the adjusted seasonal amount) for the relevant installment period, over the aggregate amount of 1446 tax installment payments previously paid with respect to that partner during the partnership's taxable year. The partnership's total 1446 tax installment payment equals the sum of the installment payments due for such period on behalf of all the partnership's foreign partners.

(B) *Calculation rules when certificates are submitted under § 1.1446–6*—(*1*) To the extent applicable, in computing the 1446 tax due with respect to a foreign partner, a partnership may consider a certificate received from such partner under § 1.1446–6(c)(1)(i) or (ii) and the amount of state and local taxes permitted to be considered under § 1.1446–6(c)(1)(iii). For this purpose, a partnership shall first annualize the partner's allocable share of the partnership's items of effectively connected income, gain, deduction, and loss before—

(*i*) Considering under § 1.1446–6(c)(1)(i) the partner's certified deductions and losses;

(*ii*) Determining under § 1.1446–6(c)(1)(ii) whether the 1446 tax otherwise due with respect to that partner is less than $1,000 (determined with regard to any certified deductions or losses); or

(*iii*) Considering under § 1.1446–6 (c)(1)(iii) the amount of state and local taxes withheld and remitted on behalf of the partner.

(*2*) The amount of the limitation provided in § 1.1446–6(c)(1)(i)(C) shall be based on the partner's allocable share of these annualized amounts. For any installment period in which the partnership considers a partner's certificate, the partnership must also consider the following events to the extent they occur prior to the due date for paying the 1446 tax for such installment period—

(*i*) The receipt of an updated certificate or status update from the partner under § 1.1446–6(c)(2)(ii)(B) certifying an amount of deductions or losses that is less than the amount reflected on the superseded certificate (see § 1.1446–6(e)(2) *Example 4*);

(*ii*) The failure to receive an updated certificate or status update from the partner that should have been provided under § 1.1446–6(c)(2)(ii)(B); and

(*iii*) The receipt of a notification from the IRS under § 1.1446–6(c)(3) or (c)(5) (see § 1.1446–6(e)(2) *Example 5*).

* * * * *

(3) * * * (i) * * *

(A) The average of the amount of the current installment and prior installments during the taxable year is at least 25 percent of the total 1446 tax (without regard to § 1.1446–6) for the prior taxable year;

* * * * *

■ **Par. 5.** Section 1.1446–5(c)(2) is amended by adding two new sentences after the first sentence to read as follows:

§ 1.1446–5 Tiered partnership structures.

* * * * *

(c) * * *

(2) * * * The lower-tier partnership required to pay 1446 tax must be able to provide the information necessary for the IRS to determine the chain of ownership, allocation of effectively connected items at each partnership level, as well as to the ultimate beneficial owner of the effectively connected items, and whether the amount of 1446 tax paid was appropriate. This information should permit each partnership in the tiered structure and the IRS to reliably associate any effectively connected items allocable to such upper-tier partnership, as well as to the ultimate beneficial owner of the effectively connected items. * * *

§ 1.1446–6T [Removed]

■ **Par. 6.** Section 1.1446–6T is removed.

■ **Par. 7.** Section 1.1446–6 is added to 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.

(a) *In general*—(1) *Purpose and scope.* This section provides rules regarding when a partnership required to pay

withholding tax under section 1446 (1446 tax), or an installment of 1446 tax, may consider certain partner-level deductions and losses in computing its 1446 tax obligation under § 1.1446–3, or otherwise not pay a de minimis amount of 1446 tax due with respect to a nonresident alien individual partner. A partnership determines the applicability of the rules of this section on a partner-by-partner basis for each installment period and when completing its Form 8804, ''Annual Return for Partnership Withholding Tax (Section 1446),'' and paying 1446 tax for the partnership taxable year. Except with respect to certain state and local taxes paid by the partnership on behalf of the partner, to apply the rules of this section with respect to a foreign partner, the partnership must receive a certificate from such partner for each partnership taxable year. Paragraph (b) of this section identifies the foreign partners to which this section applies. Paragraph (c) of this section identifies the deductions and losses that a foreign partner may certify to the partnership as well as the state and local taxes paid by the partnership on behalf of the foreign partner that can be taken into account without a certification, and establishes an exception that permits a partnership to not pay a de minimis amount of 1446 tax with respect to a nonresident alien partner. Paragraph (c) of this section also sets forth the requirements for a valid certificate. Paragraphs (a)(2) and (d) of this section establish when a partnership may rely on and consider a foreign partner's certificate in computing its 1446 tax, and the effects of relying on such a certificate. Paragraph (d) of this section also describes the effects of a partnership relying on a certificate (including an updated certificate) and the reporting requirements of a partnership with respect to a certificate. Paragraph (e) of this section sets forth examples that illustrate the rules of this section. Paragraph (f) of this section provides the Effective/Applicability date. Paragraph (g) of this section provides a transition rule.

(2) *Reasonable reliance on a certificate.* Subject to § 1.1446–2 and the rules of this section, a partnership receiving a certificate (including an updated certificate or status update under paragraph (c)(2)(ii)(B) of this section) of deductions and losses from a partner provided in accordance with the provisions of this section may reasonably rely on such certificate (to the extent of the certified deductions and losses or other representations set forth in the certificate) until such time that it has actual knowledge or reason to know that the certificate is defective or that the time for receiving an updated certificate or status update from the partner under paragraph (c)(2)(ii)(B) of this section has expired. For this purpose, a partnership shall be considered to have actual knowledge or reason to know that a certificate is defective upon receipt of written notification from the IRS under paragraph (c)(3) or (c)(5) of this section.

(b) *Foreign partner to whom this section applies*—(1) *In general.* Except as otherwise provided in paragraph (b)(3) of this section, a foreign partner to whom this section applies is a foreign partner that meets the requirements of this paragraph (b)(1).

(i) The partner has provided valid documentation to the partnership to which a certificate is submitted under this section in accordance with § 1.1446–1.

(ii) If the partner's current taxable year is the first taxable year in which the partner submits a certificate to any partnership, the partner has filed (or will file) a qualifying U.S. income tax return for each of its three taxable years ending before the end of the partnership's taxable year for which the partner is submitting a certificate (regardless of whether it was a partner in that partnership during each of these years). A qualifying U.S. income tax return for a taxable year that is prior to the first taxable year the partner submits a certificate to any partnership is a U.S. income tax return filed within the time specified in paragraph (b)(2)(iii) of this section.

(iii) If the current taxable year of the partner is not the first taxable year in which the partner submits a certificate to any partnership, the partner met the requirements in paragraph (b)(1)(ii) of this section for the first taxable year in which it submitted a certificate to any partnership and has filed (or will file) a qualifying U.S. income tax return for its first taxable year in which it submitted a certificate to any partnership and each subsequent taxable year ending before the beginning of the current taxable year (regardless of whether it was a partner in any partnership during each of those years). A qualifying U.S. income tax return for a taxable year that is prior to the taxable year the partner submits a certificate to any partnership is a U.S. income tax return filed within the time specified in paragraph (b)(2)(iii) of this section.

(iv) The partner files a qualifying U.S. income tax return (within the meaning of paragraph (b)(2)(iii) of this section) for its taxable year in which a certificate is provided to any partnership.

(2) *Definitions*—(i) *U.S. income tax return.* A U.S. income tax return means a Form 1040NR, ''U.S. Nonresident Alien Income Tax Return,'' in the case of a nonresident alien individual and a Form 1120F, ''U.S. Income Tax Return of a Foreign Corporation,'' in the case of a foreign corporation.

(ii) *Timely-filed.* Only for purposes of this section, a U.S. income tax return shall be considered timely-filed if the return is filed on or before the due date set forth in section 6072(c), plus any extension of time to file such return granted under section 6081.

(iii) *Qualifying U.S. income tax return.* A U.S. income tax return shall constitute a qualifying U.S. income tax return if the return reports income or gain that is effectively connected with a U.S. trade or business or deductions or losses properly allocated and apportioned to such activities and if the return is described in paragraph (b)(2)(iii)(A), (B), or (C) of this section. A protective return described in § 1.874–1(b)(6) or § 1.882–4(a)(3)(vi) is not a qualifying U.S. income tax return for purposes of this section.

(A) A U.S. income tax return for a partner's preceding taxable year in which it did not submit a certificate to any partnership (but not including a taxable year following the first taxable year in which the partner submitted a certificate to any partnership), with a due date as set forth in section 6072(c), not including any extensions of time to file, which falls before the beginning of the current partnership taxable year for which the certificate is provided is described in this paragraph (b)(2)(iii)(A) if the return is filed and all amounts due with respect to such return (including interest, penalties, and additions to tax, if any) are paid on or before the earlier of—

(1) The date that is one year after the due date set forth in section 6072(c) for such return, not including any extensions of time to file; or

(2) The date on which the certificate for the current partnership taxable year is submitted to the partnership.

(B) A U.S. income tax return for a partner's preceding taxable year in which it did not submit a certificate to any partnership (but not including a taxable year following the first taxable year in which the partner submitted a certificate to any partnership), with a due date as set forth in section 6072(c), not including any extensions of time to file, which falls within the current partnership taxable year for which the certificate is provided is described in this paragraph (b)(2)(iii)(B) if the return is timely-filed and all amounts due with respect to such return are timely paid.

(C) A U.S. income tax return for a taxable year in which the partner submits a certificate to any partnership and for a taxable year following the first taxable year in which the partner submits a certificate to any partnership is described in this paragraph (b)(2)(iii)(C) if the return is timely-filed and all amounts due with such return are timely paid with respect to such return.

(3) *Special rules*—(i) In the case of a partnership (upper-tier partnership) that is a partner in another partnership (lower-tier partnership)—

(A) The rules of this section may apply to reduce or eliminate the 1446 tax (or any installment of such tax) of the lower-tier partnership with respect to a foreign partner of the upper-tier partnership only to the extent the provisions of § 1.1446–5 apply to look through the upper-tier partnership to the foreign partner of such upper-tier partnership and the certificate described in paragraph (c) of this section is provided by such foreign partner to the upper-tier partnership and, in turn, provided to the lower-tier partnership with other appropriate documentation (see § 1.1446–5(c) and (e));

(B) An upper-tier partnership that submits a certificate of deductions and losses or a de minimis certificate to a lower-tier partnership may not submit that certificate to another lower-tier partnership;

(C) An upper-tier partnership that relies on a certificate submitted to it by a foreign partner under this section for computing its 1446 tax due on effectively connected taxable income (ECTI) allocable to that partner (other than ECTI allocable to it from a lower-tier partnership) may not submit that certificate to any lower-tier partnership; and

(D) In addition to any other information required by this section, a lower-tier partnership must submit with a Form 8813, ''Partnership Withholding Tax Payment Voucher (Section 1446),'' and Form 8805, ''Foreign Partner's Information Statement of Section 1446 Withholding Tax,'' for which it relies on a certificate from an upper-tier partnership to reduce the 1446 tax due with respect to a foreign partner of the upper-tier partnership, sufficient information so that the IRS may reliably associate the ECTI and the certificate of deductions and losses with the partner in the upper-tier partnership submitting the certificate, including the name, taxpayer identification number (TIN) and allocation of effectively connected items at each partnership tier, as well as to the ultimate upper-tier partner submitting the certificate.

(ii) This section shall not apply to a partner that is a foreign estate or its beneficiaries.

(iii) This section shall not apply to a partner that is a trust or to its beneficiaries, except to the extent that such trust is owned by a grantor or other person under subpart E of subchapter J of the Internal Revenue Code, the documentation requirements of § 1.1446–1 have been met by the grantor or other owner of such trust, and the certificate described in paragraph (c) of this section is provided by the grantor or other owner of such trust to the partnership.

(iv) This section shall not apply to a partner in a publicly-traded partnership subject to § 1.1446–4.

(c) *Reduction of 1446 tax with respect to a foreign partner*—(1) *General rules.* Under paragraph (c)(1)(i) of this section a foreign partner to whom this section applies may certify to a partnership for a partnership taxable year that it has certain deductions (other than charitable deductions) and losses properly allocated and apportioned to gross income that is effectively connected (or treated as effectively connected) with the conduct of the partner's trade or business in the United States, and that the partner reasonably expects those deductions and losses to be available and claimed on the partner's U.S. income tax return to be filed for that taxable year. Under paragraph (c)(1)(ii) of this section, a nonresident alien individual partner to whom this section applies may also certify to a partnership for a partnership taxable year that its only investment or activity giving rise to effectively connected items for the partnership's taxable year that ends with or within the partner's taxable year is (and will be) the partner's investment in the partnership. A certificate submitted by a foreign partner to a partnership under this section must be in accordance with the form and requirements set forth in paragraph (c)(2)(ii) of this section. Under paragraph (c)(1)(iii) of this section, a partnership may take into account certain state and local taxes withheld by the partnership on behalf of the partner.

(i) *Certified deductions and losses*—(A) *Deductions and losses from the partnership.* Under this paragraph (c)(1)(i)(A), a partner may certify to a partnership for a partnership taxable year deductions (other than charitable deductions) and losses properly allocated and apportioned to gross income which is effectively connected (or treated as effectively connected) with the conduct of the partner's trade or business in the United States, that are reported on a Form 1065 (Schedule K–1), ''Partner's Share of Income, Credits, Deductions, etc.,'' issued (or to be issued) to the partner by the partnership for a prior partnership taxable year, that are (or will be) reported on a qualifying U.S. income tax return for a partner's taxable year that ends before the installment due date or the close of the partnership taxable year for which the partner is certifying such deductions and losses, and that the partner reasonably expects to be available and claimed on a qualifying U.S. income tax return for the partner's taxable year ending with or after the close of the partnership taxable year. A partner that has a loss reported on a Form 1065 (Schedule K–1) issued (or to be issued) to the partner by the partnership for a prior partnership taxable year, but that is not (and will not be) reported on a qualifying U.S. income tax return for a prior taxable year of the partner because the loss is suspended under section 704(d) may also certify such suspended loss to the partnership under this paragraph (c)(1)(i)(A).

(B) *Deductions and losses from other sources.* Under this paragraph (c)(1)(i)(B), a foreign partner may certify to a partnership for a partnership taxable year deductions (other than charitable deductions) and losses properly allocated and apportioned to gross income that is effectively connected (or treated as effectively connected) with the conduct of the partner's trade or business in the United States and that are from sources other than the partnership to whom the certificate is submitted if the deductions and losses are (or will be) reported on a qualifying U.S. income tax return of the partner for a taxable year that ends before the installment due date or the close of the partnership taxable year for which the partner is certifying the deductions and losses and the partner reasonably expects the deductions and losses to be available and claimed on the qualifying U.S. income tax return filed for its taxable year ending with or after the close of the partnership taxable year. Any deductions and losses certified under this paragraph (c)(1)(i)(B) that are allocated to the partner from another partnership must be reported on a Form 1065 (Schedule K–1) issued (or to be issued) to the partner by such other partnership. However, the partner may not certify any deduction or loss allocated to it from another partnership that is suspended under section 704(d).

(C) *Limit on the consideration of a partner's net operating loss deduction.* A partnership may not consider a net operating loss deduction (as determined

under section 172) certified by the partner under this paragraph (c)(1)(i) in an amount greater than the percentage limitation, if any, provided in section 56(a)(4) and (d) multiplied by the partner's allocable share of ECTI from the partnership reduced by all other certified deductions and losses whether or not taken into account by the partnership, as well as deductions considered under paragraph (c)(1)(iii) of this section.

(D) *Limitation on losses subject to certain partner level limitations.* Pursuant to paragraph (c)(2)(i) of this section, a partner must identify any certified losses or deductions that are subject to special limitations at the partner level (for example, sections 465 and 469) and provide information to the partnership that will allow the partnership to take the special limitations into account. For example, where a partner certifies a loss to the partnership that is a passive activity loss under section 469, the partner shall identify the activities the partnership conducts that the partner expects will be passive activities. The partnership shall then ensure that these limitations are taken into account when determining the 1446 tax due with respect to the partner.

(E) *Certification of deductions and losses to other partnerships.* Deductions and losses certified to a partnership for a taxable year of the partnership may not be certified for the taxable year of another partnership that begins or ends with or within the taxable year of the partnership to which the deductions and losses were certified.

(F) *Partner level use of deductions and losses certified to a partnership.* Any deductions and losses certified to a partnership for a taxable year of the partner and considered by the partnership in computing its section 1446 tax due may not be considered by that partner for the same taxable year in computing the amount of its required installments under section 6654(d) or 6655(d) on income unrelated to the partnership to which the partner has submitted the certificate.

(ii) *De minimis certificate for nonresident alien individual partners*—(A) *In general.* Under this paragraph (c)(1)(ii), a nonresident alien individual partner to whom this section applies and that satisfies the requirements of paragraph (c)(1)(ii)(B) of this section may certify to a partnership that its only activity giving rise to effectively connected income, gain, deduction, or loss for the partnership's taxable year that ends with or within the partner's taxable year is (and will be) the partner's investment in the partnership. A partnership that receives a certificate from a nonresident alien partner under this paragraph (c)(1)(ii) and that may reasonably rely on such certificate 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 certified by the partner to the partnership under paragraph (c)(1)(i) of this section or any amounts under paragraph (c)(1)(iii) of this section.

(B) *Requirements for exception.* The requirements of this paragraph (c)(1)(ii)(B) are met if the nonresident individual alien partner's only activity giving rise to effectively connected income, gain, deduction, or loss for the partnership taxable year that ends with or within the partner's taxable year is (and will be) the partner's investment in the partnership. For this purpose, if the partner has (or has reason to expect to have) income or gain described in section 864(c)(6), such income or gain shall be considered derived from a separate investment activity. A certificate submitted by a nonresident alien individual partner under this paragraph (c)(1)(ii) is valid even if such certificate does not certify deductions and losses to partnership under this section. A nonresident alien individual partner that submits a certificate to a partnership under this paragraph (c)(1)(ii) must notify the partnership in writing and revoke such certificate within 10 days of the date that the partner invests or otherwise engages in another activity that may give rise to effectively connected income, gain, deduction, or loss for the partner's taxable year. For example, while an investment in a U.S. real property interest (as defined in section 897(c)) would not give rise to an activity requiring a notification (unless an election is in effect under section 871(d)), the disposition of the U.S. real property interest would give rise to an activity requiring a notification.

(iii) *Consideration of certain current year state and local taxes.* In addition to any deductions and losses certified by a foreign partner to a partnership under paragraph (c)(1)(i) of this section, the partnership may consider as a deduction of such partner 90-percent of any state and local income taxes withheld and remitted by the partnership on behalf of such partner with respect to the partner's allocable share of partnership ECTI. The partnership may consider the amount of state and local taxes of the foreign partner determined under this paragraph (c)(1)(iii) regardless of whether the foreign partner submits a certificate to the partnership under paragraph (c)(1)(i) or (ii) of this section.

(2) *Form and time of certification*—(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 the instructions of the form and the rules of this section.

(ii) *Time for certification provided to partnership*—(A) *First certificate submitted for a partnership's taxable year.* Provided the other requirements of this section are met, a partnership may only rely on the first certificate received from a foreign partner for any 1446 tax installment due or Form 8804 filing due (without regard to extensions) on or after the date on which the certificate is received. See § 1.1446–3 for 1446 tax installment due dates. See also paragraph (e) of this section for examples illustrating the rules of this paragraph (c)(2).

(B) *Updated certificates and status updates*—(*1*) *Preceding year tax returns not yet filed.* If a foreign partner's U.S. income tax return for a preceding taxable year has not been filed as of the time the partner submits to the partnership its first certificate under this paragraph (c), the certificate shall specify this fact and set forth the filing due date for such return set forth in section 6072(c), plus any extension of time to file such return granted under section 6081 and the regulations under section 6081. The partner shall also submit an updated certificate to the partnership in accordance with this paragraph (c) within 10 days of the date the partner files its U.S. income tax return for any such taxable year. In addition, prior to the partnership's final 1446 tax installment due date the partner shall provide to the partnership, under penalties of perjury, a status update regarding any U.S. income tax return for the prior taxable year that has not (or will not) be filed as of the final installment due date. The status update must identify the due date, set forth in section 6072(c), plus any extension of time to file such return granted under section 6081 and the regulations under section 6081, for any un-filed return identified in the first certificate and state whether the first certificate submitted may continue to be considered by the partnership. If the partnership does not receive an updated certificate or a status update from the partner prior to the partnership's final

installment due date, the partnership shall 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 taxable year. In addition, the foreign partner shall not be permitted to submit an additional or substitute certificate for the disregarded certificate. See § 1.1446–3(b)(2)(i) for computation requirements for installment payments of 1446 tax when a partnership receives, or fails to receive, an updated certificate or status update. See also paragraph (e)(2) *Examples 4 and 8* of this section. Notwithstanding this paragraph (c)(2)(ii)(B)(*1*), a partner that can meet the requirements of this section for a subsequent partnership taxable year may submit a certificate to the partnership under this section for such taxable year.

(*2*) *Other circumstances requiring an updated certificate.* If at any time during the partnership taxable year the partner determines that its most recent certificate furnished to the partnership for such taxable year is incorrect, then the partner shall submit to the partnership an updated certificate in accordance with this paragraph (c) within 10 days of such determination. For example, if the partner determines that the amount or character of the certified deductions or losses is incorrect, the partner shall submit an updated certificate to the partnership. See § 1.1446–3(b)(2)(i) for computation requirements for installment payments of 1446 tax when a partnership receives an updated certificate.

(*3*) *Form and content of updated certificate.* The updated certificate required by this paragraph (c)(2)(ii) must be provided using the form and instructions identified in paragraph (c)(2)(i) of this section. The updated certificate must indicate that it is an updated certificate filed in accordance with this paragraph (c)(2)(ii). The partner is not required to attach to the updated certificate a copy of the certificate that is being updated (superseded certificate).

(*4*) *Partnership consideration of an updated certificate.* A partnership may consider an updated certificate, that meets the requirements of this paragraph (c), that is received prior to an installment due date in the same partnership taxable year for which the superseded certificate was provided, or prior to the due date of its Form 8804 (without regard to extensions) to be filed for the year the superseded certificate was provided. A partnership must consider an updated certificate that meets all the requirements of this paragraph (c) if it would increase the amount of 1446 tax the partnership would pay by the next installment due date, if any, or the due date of its Form 8804. An updated certificate considered by the partnership under this paragraph (c)(2)(ii)(B)(4) supersedes all prior certificates submitted by the foreign partner for the same partnership taxable year, beginning with the installment period or Form 8804 filing date for which the partnership considers the updated certificate. See paragraph (e)(2) *Example 4* of this section.

(3) *Notification to partnership when a partner's certificate cannot be relied upon.* If the IRS determines, in its discretion based on all the facts and circumstances, that a foreign partner's certificate is defective (or that it lacks information sufficient to make this determination after providing written request for such information to the partnership), the IRS shall notify the partnership of such determination in writing. Upon receipt of such written notification, the partnership shall not rely on any certificate submitted by that foreign partner for the partnership taxable year to which the defective certificate relates (or any subsequent partnership taxable year), until the IRS provides written notification to the partnership revoking or modifying the original written notification. For purposes of this section, a foreign partner's certificate of deductions and losses shall be defective if—

(i) The partner is not described in paragraph (b) of this section;

(ii) Any deductions or losses set forth in such certificate are not described in paragraph (c)(1)(i) of this section;

(iii) The timing requirements under paragraph (c)(2) of this section for submitting an original certificate, an updated certificate or a status update to the partnership are not met;

(iv) The certificate does not include all of the information required by paragraph (c)(2)(i) of this section;

(v) Any representation made on the certificate is incorrect;

(vi) The actual amount of deductions and losses available to the partner is less than the amount of deductions and losses certified to the partnership for the partnership taxable year and considered by the partnership in determining its 1446 tax due; or

(vii) There is a failure to comply with any other provision of this section.

(4) *Partner to receive copy of notice.* If the IRS notifies a partnership under paragraph (c)(3) of this section that a certificate of a foreign partner is defective, the IRS shall send a copy of such notice to the partner's address as shown on the certificate. The partnership shall also promptly furnish a copy of the IRS notice to such partner.

(5) *Notification to partnership when no foreign partner's certificate can be relied upon.* If the IRS determines, in its discretion based on all the facts and circumstances, that there would be a substantial reduction in section 1446 tax as a result of the submission of one or more defective certificates or that a substantial portion of all certificates being submitted by partners to the partnership and by the partnership to the IRS are defective (or lack information sufficient to make this determination), then the IRS shall notify the partnership of such determination in writing. Upon receipt of such written notification, the partnership shall not rely on any certificate submitted by any partner for the partnership taxable year to which the notice relates or any subsequent partnership taxable year, until the IRS provides written notification to the partnership revoking or modifying the original notice.

(6) *Partnership notification to partner regarding use of deductions and losses.* Unless § 1.1446–3(d)(1)(i)(A) or (B) applies (relating to waiver of notice of tax paid during the partnership taxable year), a partnership must notify each foreign partner of the amount of such partner's certified deductions and losses and state and local taxes, if any, taken into account under this paragraph (c) in determining the 1446 tax due with respect to such partner for each installment period or Form 8804 filing date, as applicable.

(7) *Partner's certificate valid only for partnership taxable year for which submitted.* A partnership that receives a certificate from a partnership under this paragraph (c) shall consider such certificate only for the partnership taxable year for which the certificate is submitted, as set forth on the certificate.

(d) *Effect of certificate of deductions and losses on partners and partnership*—(1) *Effect on partner*—(i) *No effect on liability for income tax of foreign partner.* A foreign partner that certifies deductions and losses to a partnership under this section is not relieved of liability for income tax on its allocable share of ECTI from the partnership. Further, the submission of a certificate under this section does not constitute an acceptance by the IRS of the amount or character of the deductions or losses certified therein.

(ii) *No effect on partner's estimated tax obligations.* A foreign partner that certifies deductions and losses to a partnership under this section is not relieved of any estimated tax obligation otherwise applicable to such partner

with respect to income or gain allocated to such partner from the partnership.

(iii) *No effect on partner's obligation to file U.S. income tax return.* The submission of a certificate under paragraph (c) of this section does not relieve the foreign partner from its obligation to file a U.S. income tax return even if as a result of the partnership considering the certificate the partner would have no additional tax due with such return. See also § 1.1446–3(f).

(2) *Effect on partnership*—(i) *Reasonable reliance to relieve partnership from addition to tax under section 6655.* A partnership that has reasonably relied on a certificate received from a foreign partner and complied with the filing requirements of paragraph (d)(3)(i) of this section, shall not be liable for any addition to tax under section 6655 (as applied through § 1.1446–3) for any period during which the partnership reasonably relied on such certificate, even if such certificate is later determined to be defective or the partner submits an updated certificate under paragraph (c)(2) of this section that increases the 1446 tax due with respect to such partner.

(ii) *Continuing liability for withholding tax under section 1461 and for applicable interest and penalties*—(A) *In general.* Except as otherwise provided in this section, a partnership that has reasonably relied on a certificate received from a foreign partner and complied with the filing requirements of paragraph (d)(3)(i) of this section, is not relieved from liability for the 1446 tax (or any installment of such tax) under section 1461, any additions to the tax, interest or penalties. However, the partnership may be relieved of additions to the tax or penalties in certain circumstances. See §§ 301.6651–1(c) and 301.6724–1 of this chapter. Further, see § 1.1446–3(e) which deems a partnership to have paid 1446 tax with respect to ECTI allocable to a partner in certain circumstances. See also paragraph (e)(2) *Example 5* of this section.

(B) *Certificate defective because of amount or character of deductions and losses.* If a certificate is determined to be defective because the actual amount of deductions and losses available to the partner is less than the amount reflected on the certificate (other than when it is determined that the partner certified the same deduction or loss to more than one partnership), or because the character of the certified deductions and losses is erroneous, the partnership shall be liable for 1446 tax under section 1461 (or any installment of such tax) with respect to such partner to the extent the partnership considered an amount of certified deductions and losses greater than the amount actually available to the partner and permitted to be used under §§ 1.1446–1 through 1.1446–5 and this section, or to the extent that the proper character of the certified deductions and losses results in a greater amount of 1446 tax due with respect to such partner. See paragraph (e)(2) *Example 6* of this section.

(3) *Partnership level rules and requirements*—(i) *Filing requirement.* A partnership that relies in whole or in part on a certificate received from a partner under this section in computing its 1446 tax due with respect to such partner must still file Form 8813 or Form 8804 and 8805, whichever is applicable, for the period for which the certificate 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. See generally § 1.1446–3(d)(1). Except as otherwise provided in this paragraph (d)(3)(i), the partnership must attach a copy of the foreign partner's certificate, and the computation of the 1446 tax due with respect to such partner, to both the Form 8813 and Form 8805 filed with the IRS for any installment period or year for which such certificate is considered in computing the partnership's 1446 tax. See § 1.1446–3(d)(1)(iii) requiring the partnership to furnish Form 8805 to the IRS and such foreign partner even if no 1446 tax is paid on behalf of the partner. The partnership must include in that computation the amount of state and local taxes described in paragraph (c)(1)(iii) of this section taken into account in computing the 1446 tax due with respect to that partner. The partnership must also attach a computation of the 1446 tax due with respect to a partner for whom only state and local taxes described in paragraph (c)(1)(iii) are taken into account. For an installment period other than the first installment period for which the partnership considers a foreign partner's certificate or updated certificate, the partnership may, instead of attaching any partner's certificate, attach to Form 8813 a list containing the name, TIN, the amount of certified deductions and losses, and the amount of state and local taxes the partnership may consider under paragraph (c)(1)(iii) of this section for each foreign partner whose certificate was relied upon. For purposes of the preceding sentence, if the partnership is relying on a certificate received under paragraph (c)(1)(ii) of this section, instead of providing the amounts described in the prior sentence, it should attach a statement to Form 8813 which provides that, relying on that certificate, no 1446 tax is due with respect to that partner.

(ii) *Reasonable cause for failure to timely file a valid certificate and computation.* This paragraph (d)(3)(ii) provides the sole source of relief for a partnership that fails to timely file a valid certificate or attach a computation of 1446 tax as required under paragraph (d)(3)(i) of this section. 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 to the Area Director, Field Examination, Small Business/Self-Employed or the Director, Field Operations, Large and Mid-Size Business (Director) having jurisdiction of the partnership's return for the taxable year, 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.

(A) *Determining reasonable cause.* In determining whether the partnership has reasonable cause, the Director shall consider whether the partnership acted reasonably and in good faith considering all the facts and circumstances.

(B) *Notification.* If the IRS has notified, as provided in paragraph (c)(3) of this section, the partnership that the certificate is defective or that no foreign partner's certificate may be relied upon, as provided in paragraph (c)(5) of this section, the partnership will be deemed not to have acted reasonably and in good faith. Otherwise, the Director shall notify the partnership in writing within 120 days of the amended filing if it is determined that the failure to comply was not due to reasonable cause, or if additional time will be needed to make such determination. If the Director fails to notify the partnership within 120 days of the amended filing, the partnership shall be considered to have demonstrated to the Director that such failure was due to reasonable cause and not willful neglect.

(e) *Examples.* (1) The rules of this section are illustrated by the examples in paragraph (e)(2) of this section. Except as otherwise provided, in each example assume:

(i) Section 1.1446–3(b)(2)(v)(F) (relating to the de minimis exception to paying 1446 tax) does not apply;

(ii) Paragraph (c)(1)(ii) of this section (relating to a nonresident alien individual partner whose sole investment generating effectively connected income or gain is the partnership) does not apply;

(iii) All income and losses are ordinary;

(iv) For purposes of applying paragraph (c)(1)(i)(C) of this section, the percentage limitation under section 56(a)(4) and (d) is 90 percent;

(v) Any loss is not a passive activity loss within the meaning of section 469;

(vi) The partnership uses an acceptable annualization method under § 1.1446–3;

(vi) NRA is a nonresident alien individual who maintains a calendar taxable year for U.S. tax purpose;

(vii) B and C are U.S. individuals who maintain a calendar taxable year; and

(viii) Any partnership maintains a calendar taxable year.

(2) The examples are as follows:

Example 1. Qualifying U.S. income tax return. (i) NRA and B form a partnership (PRS) in year 4 to conduct a trade or business in the United States. NRA and B provide PRS appropriate documentation under § 1.1446–1 to establish their status for purposes of section 1446. NRA submits a certificate to PRS (using Form 8804–C) on March 20, year 4, to be considered by PRS in determining its 1446 tax due with respect to NRA for the first installment period in the year 4. The Form 8804–C states that NRA reasonably expects to have an effectively connected net operating loss of $5,000 available to offset its allocable share of ECTI from PRS in year 4. Prior to year 4, NRA had not submitted a certificate to a partnership under this section. NRA filed (or will file) its year 1 U.S. income tax return on March 11, year 3; its year 2 U.S. income tax return on February 12, year 4; its year 3 U.S. income tax return on April 13, year 4; and its year 4 U.S. income tax return on May 14, year 5. 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 years 1 though 3 U.S. 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.

(ii) To be eligible to submit a certificate of deductions and losses to PRS under this section, NRA must satisfy the requirements of paragraph (b)(1) of this section. In accordance with § 1.1446–1, NRA provided valid documentation to PRS to establish its status for purposes of section 1446. NRA's year 1 U.S. income tax return is a qualifying U.S. income tax return because it reported income or gain effectively connected with a U.S. trade or business or deductions or losses properly allocated and apportioned to such activities and is described under paragraph (b)(2)(iii)(A) of this section. Although NRA filed its year 1 return after the due date of the return (determined under section 6072(c) without regard to any extension of time to file) the return was filed on March 11, year 3, which was on or before the earlier of June 15, year 3, the date one year after its section 6072(c) due date without regard to any extension of time to file, and March 20, year 4, the date on which NRA submitted the certificate to PRS. NRA's year 2 U.S. income tax return is a qualifying U.S. income tax return because it reported income or gain effectively connected with a U.S. trade or business or deductions or losses properly allocated and apportioned to such activities and is described under paragraph (b)(2)(iii)(A) of this section. Although NRA filed its year 2 return after the due date of the return (determined under section 6072(c) without regard to any extension of time to file) the return was filed on February 12, year 4, which was on or before the earlier of June 15, year 4, the date one year after its section 6072(c) due date without regard to any extension of time to file, and March 20, year 4, the date on which NRA submitted the certificate to PRS. NRA's year 3 U.S. income tax return is a qualifying U.S. income tax return because it reported income or gain effectively connected with a U.S. trade or business or deductions or losses properly allocated and apportioned to such activities and is described under paragraph (b)(2)(iii)(B) of this section. Because NRA filed its year 3 U.S. income tax return on April 13, year 4, the return will be considered timely-filed under paragraph (b)(2)(ii) of this section, as the due date under section 6072(c) was June 15, year 4. NRA's year 4 U.S. income tax return is a qualifying U.S. income tax return because it reported income or gain effectively connected with a U.S. trade or business or deductions or losses properly allocated and apportioned to such activities and is described under paragraph (b)(2)(iii)(C) of this section. Because NRA filed its year 4 U.S. income tax return on May 14, year 5, the return will be considered timely-filed under paragraph (b)(2)(ii) of this section. Accordingly, NRA meets the conditions of paragraph (b)(1) of this section and is eligible to provide a certificate of deductions and losses to PRS for year 4.

Example 2. Subsequent year qualifying U.S. income tax return. (i) Assume the same facts as in Example 2. Further, NRA and C form a second partnership (XYZ) in year 7 to conduct a trade or business in the United States. NRA and C provide XYZ appropriate documentation under § 1.1446–1 to establish their status for purposes of section 1446. NRA did not submit a certificate under this section to any partnership for years 5 and 6. NRA submits a certificate to XYZ (using Form 8804–C) on April 10, year 7, to be considered by XYZ in determining its 1446 tax due with respect to NRA for its first installment period in year 7. The certificate states that NRA reasonably expects to have an effectively connected net operating loss of $8,000 available to offset its allocable share of ECTI from XYZ in year 7. Further, the certificate contains all of the necessary representations required under this section. NRA will file its U.S. income tax return for year 5 on March 25, year 7, (after its section 6072(c) due date and any extension of time to file that could have been granted under section 6081), its U.S. income tax return for year 6 on April 26, year 7; and its U.S. income tax return for year 7 on May 27, year 8. NRA will pay all amounts due with the returns (including interest, penalties, and additions to tax, if any) by the dates they are filed. NRA's years 5, 6, and 7 U.S. income tax returns will report income or gain that is effectively connected with a U.S. trade or business or deductions or losses properly allocated and apportioned to such activities.

(ii) To be eligible to submit a certificate of deductions and losses to XYZ under this section, NRA must satisfy the requirements of paragraph (b)(1) of this section. NRA provided valid documentation to XYZ in accordance with § 1.1446–1. As described in Example 2, 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. tax return under paragraph (b)(2)(iii) of this section. Because NRA submitted a certificate to PRS in year 4, to constitute a qualifying U.S. income tax return the year 5 U.S. income tax return must be timely-filed and all amounts due with such return must be timely paid. See paragraph (b)(2)(iii)(C) of this section. However, NRA will not file its U.S. income tax return for year 5 until March 25, year 7, (after its section 6072(c) due date and any extension of time to file that could have been granted under section 6081). Because the year 5 tax return is not a qualifying U.S. income tax return under paragraph (b)(2)(iii) of this section, NRA does not satisfy the requirements of paragraph (b)(1)(ii) of this section and, therefore, may not submit a certificate of deductions and losses to XYZ under this section in year 7.

Example 3. General application of the rules of this section. NRA and B form a partnership (PRS) to conduct a trade or business in the United States. NRA and B are equal partners under the partnership agreement. NRA and B provide PRS appropriate documentation under § 1.1446–1 to establish their status for purposes of section 1446. Prior to the formation of PRS, NRA had not invested in or engaged in the conduct of a U.S. trade or business. PRS incurs a $1,500 effectively connected net operating loss in years 1 and 2. The loss incurred in each is allocated equally between NRA and B. NRA has filed a qualifying U.S. income tax return (within the meaning of paragraph (b)(2)(iii) of this section) for years 1 and 2 that report its allocable share of effective connected net operating loss allocated to it from PRS, as reported on the Form 1065 (Schedule K–1) issued to NRA for each year.

(i) In year 3, NRA may not submit a certificate to PRS under paragraph (c) because it will not have filed qualifying U.S. income tax returns for the preceding three years. In year 3, PRS has ECTI of $1,000 that is allocated equally between NRA and B. PRS

satisfies its 1446 tax obligation with respect to NRA for year 3.

(ii) In year 4, PRS estimates that it will have ECTI of $4,000, which will be allocated equally between NRA and B. On or before April 15th of year 4 (the first installment due date), NRA submits a certificate to PRS under this section (using Form 8804–C) certifying that it reasonably expects to have an effectively connected net operating loss of $1,000 ($750 loss in both years 1 and 2, less $500 of income in year 3) available to offset its allocable share of ECTI from PRS in year 4. As of the date the certificate is submitted, NRA has received the Form 1065 (Schedule K–1) from PRS for year 3 but has not yet filed its U.S. income tax return for year 3.

(iii) With respect to year 4, and based upon paragraph (b)(1) of this section, NRA can include year 3 (NRA's preceding taxable year) as one of the preceding three years that it has filed or will file qualifying U.S. income tax returns (within the meaning of paragraph (b)(2)(iii) of this section). Therefore, provided PRS has, in accordance with paragraph (a)(2) of this section, no actual knowledge or reason to know the certificate is defective, PRS may reasonably rely on NRA's certificate. Accordingly, PRS may consider NRA's certificate to reduce the 1446 tax that would otherwise be required to be paid on NRA's behalf. Specifically, subject to paragraph (c)(1)(i)(C) of this section, the $1,000 of net losses that have been reported on Forms 1065 (Schedule K–1) issued to NRA that are available to reduce NRA's U.S. income tax on NRA's allocable share of effectively connected income or gain allocable from PRS may be used to reduce the $2,000 of ECTI estimated to be allocable to NRA. As a result, PRS must pay 1446 tax on only $1,100 of NRA's allocable share of partnership ECTI for the first installment period in year 5 ($2,000 − ($1,000 × .90)). PRS must pay 1446 tax of $96.25 for its first installment period with respect to the ECTI allocable to NRA ($1,100 (net ECTI after considering certified losses) × .35 (withholding tax rate) × .25 (section 6655(e)(2)(B) percentage for the first installment period)). See § 1.1446–3(b)(2). Pursuant to paragraph (d)(3) of this section, PRS must attach NRA's certificate and PRS's computation of its 1446 tax obligation with respect to NRA to its Form 8813, ''Partnership Withholding Tax Payment Voucher (Section 1446),'' filed for the first installment period. Under paragraph (c)(2)(ii)(B) of this section, NRA is required to provide an updated certificate on or before the 10th day after NRA files its U.S. income tax return for year 3, even if the updated certificate results in no change to the amount of deductions and losses reported on the superseded certificate.

(iv) The results are the same if NRA had not yet received a Form 1065 (Schedule K–1) from PRS for year 3. See paragraph (c)(1)(i)(A) of this section.

Example 4. Updated certificate submitted for losses. On January 1, year 8, NRA and B form a partnership (PRS) to conduct a trade or business in the United States. NRA and B are equal partners in PRS. NRA and B provide PRS appropriate documentation under § 1.1446–1 to establish their status for purposes of section 1446. During years 1 through 7 NRA held an interest in another partnership (XYZ) that conducted a trade or business in the United States. NRA timely-filed (within the meaning of paragraph (b)(2) of this section) a U.S. income tax return years 1 through 6 reporting its allocable year of ECTI (or loss) from XYZ (and timely paid all tax shown on such returns). NRA files its U.S. income tax return for year 7 on June 9, year 8 (and timely pays all tax due with such return). Therefore, NRA has filed qualifying U.S. income tax returns (within the meaning of paragraph (b)(2)(iii) of this section) for years 1 through 7. During years 1 through 7, NRA's only investment generating effectively connected items was its interest in XYZ. The XYZ partnership liquidated and ceased doing business on December 31, year 7.

(i) On or before April 15, year 8, PRS receives from NRA a valid certificate under this section using Form 8804–C in which NRA certifies that it reasonably expects to have available effectively connected net operating losses in the amount of $5,000. Among other statements made in accordance with paragraph (c) of this section, NRA represents that it has not yet filed its year 7 U.S. income tax return, but will timely file such return (and timely pay all tax due with such return). For its first installment period in year 8, PRS estimates that it will earn taxable income of $10,000 for the year which will be allocated equally to NRA and B (NRA's allocable share of PRS's ECTI is $5,000).

(ii) Provided PRS has, in accordance with paragraph (a)(2) of this section, no actual knowledge or reason to know the certificate is defective, PRS may reasonably rely on NRA's certificate when computing its 1446 tax obligation for the first installment period. PRS is limited under paragraph (c)(1)(i)(C) of this section and PRS may only consider $4,500 ($5,000 × .90) of the certified net operating loss. After consideration of the certified loss, PRS owes 1446 tax in the amount of $43.75 for the first installment period ($5,000 estimated allocable ECTI less $4,500 (certified loss as limited under paragraph (c)(1)(i)(C)) × .35 (1446 tax applicable percentage) × .25 (section 6655(e)(2)(B) percentage for the first installment period)). See § 1.1446–3(b)(2). Pursuant to paragraph (d)(3) of this section, PRS must attach a copy of NRA's certificate and the computation of 1446 tax due with respect to NRA to the Form 8813 filed with respect to NRA.

(iii) PRS's estimate of ECTI allocable to NRA for the second installment period remains unchanged from the first installment period. On June 10, year 8, NRA provides PRS an updated certificate reporting that NRA now reasonably expects to have an effectively connected net operating loss of $4,000 available to offset its allocable share of ECTI from PRS in year 4. NRA provided the updated certificate within 10 days of filing its U.S. income tax return for the year 7 taxable year, as required by paragraph (c)(2)(ii)(B) of this section. Provided the updated certificate is otherwise valid, PRS may rely on the updated certificate for the second installment period (due date June 15, year 8). Even if the updated certificate were not valid, PRS could no longer rely on the original certificate.

(iv) Under paragraph (d) of this section, PRS is not relieved from liability for the 1446 tax due with respect to NRA under section 1461 if it relies on a certificate determined to be defective, or if it receives an updated certificate reporting an amount of deductions and losses less than the amount reported on the superseded certificate. Under the principles of section 6655 (as applied through § 1.1446–3), PRS is required to have paid 50-percent of the annualized 1446 tax due with respect to NRA on or before the due date of the second installment period (section 6655(e)(2)(B) percentage for the second installment period). Under paragraph (c)(2)(ii)(B) of this section, because NRA's updated certificate is valid for the second installment period, if PRS considers a certificate for that period it must consider the updated certificate. Under paragraph (c)(1)(i)(C) of this section, PRS can only consider $3,600 ($4,000 × .90) of NRA's updated effectively connected net operating loss. Assuming PRS considers NRA's updated certificate for the second installment period, PRS must have paid a total of $245 of 1446 tax with respect to the ECTI estimated to be allocable to NRA as of the second installment due date ($1,400 ($5,000 ECTI less $3,600 net operating loss deduction) × .35 (withholding tax rate) × .50 (section 6655(e)(2)(B) percentage for the second installment period)). After considering PRS's payment of 1446 tax for the first installment period, PRS is required to pay $201.25 for the second installment period ($245 less previous payment of $43.75). See § 1.1446–3(b)(2). Further, if PRS considers NRA's updated certificate for the second installment period, when PRS files Form 8813 it must attach the updated certificate along with PRS's computation of 1446 tax due with respect to NRA.

(v) Under paragraph (d) of this section, PRS is not liable for the addition to the tax under section 6655 (as applied through § 1.1446–3) for the first installment period because PRS reasonably relied on NRA's certificate of losses for that period.

(vi) Assume that PRS's estimate of its ECTI allocable to NRA for the third and fourth installment periods is the same as for the first and second installment periods. Assume PRS may reasonably rely on NRA's updated certificate in calculating its payment of 1446 tax for the third and fourth installment periods. The third installment of 1446 tax would be $122.50 (($5,000 − $3,600) × .35 × .75 = $367.50 − $245 (total previous payments)). The fourth installment of 1446 tax would be $122.50 (($5,000 − $3,600) × .35 × 1.00 = $490 − $367.50 (total previous payments)). See § 1.1446–3(b)(2). PRS must attach to each Form 8813 a computation of the 1446 tax due with respect to NRA that takes into account the amount of effectively connected net operating loss reported on NRA's updated certificate.

(vii) Because NRA's certified net operating loss has not changed for the third and fourth installments, in lieu of attaching NRA's certificate, PRS may attach a statement containing NRA's name, TIN, and the certified net operating loss amount. However, PRS must attach NRA's certificate and a computation of the 1446 tax due with respect

to NRA that takes into account NRA's certified net operating loss to the Form 8805 filed with respect to NRA. See paragraph (d)(3) of this section.

Example 5. IRS determines in subsequent taxable year that partner's certificate is defective because partner failed to timely file a U.S. income tax return. NRA and B form a partnership (PRS) in year 1 to conduct a trade or business in the United States. NRA and B provide PRS appropriate documentation under § 1.1446–1 to establish their status for purposes of section 1446. In year 4, NRA timely submits a certificate under this section (using Form 8804–C) to be considered by PRS for its first installment period. The certificate reports that NRA reasonably expects to have an effectively connected net operating loss of $5,000 available to offset its allocable share of ECTI from PRS in year 4. Further, the certificate contains all of the necessary representations required under this section. PRS estimates for each installment period that NRA's allocable share of ECTI will be $5,000 for the taxable year. PRS's actual operating results for the year result in $5,000 of ECTI allocable to NRA.

(i) PRS reasonably relies on (within the meaning of paragraph (a)(2) of this section) NRA's certificate when computing each installment payment during year 4 and the 1446 tax due on Form 8804 and appropriately considers the limitation in paragraph (c)(1)(i)(C) of this section. As a result, PRS paid $175 of 1446 tax on behalf of NRA for the taxable year ($5,000 of ECTI less $4,500 net operating loss deduction × .35 applicable percentage). As required under paragraph (d) of this section, PRS attached the certificate to the Form 8813 for the first installment period and the Form 8805 for year 4. Because NRA did not submit an updated certificate to PRS in year 4, PRS attached to the Forms 8813 for the second, third and fourth installment periods a statement containing NRA's name, TIN, and the certified net operating loss as well as the computation of 1446 tax due with respect to NRA reflecting the amount of net operating loss considered.

(ii) In year 5, NRA timely submits to PRS a certificate under this section to be considered for the first installment period. The certificate represents that NRA reasonably expects to have an effectively connected net operating loss of $5,000 available to offset its allocable share of ECTI from PRS in year 5. For the first installment period, PRS estimates that NRA's allocable share of partnership ECTI is $5,000. PRS reasonably relies on the certificate for the first installment period and determines that it is required to make a 1446 tax installment payment of $43.75 ($5,000 allocable ECTI less $4,500 (certified net operating loss as limited under paragraph (c)(1)(i)(C) of this section) × .35 (1446 tax applicable percentage) × .25 (section 6655(e)(2)(B) percentage for the first installment period)). See § 1.1446–3(b)(2). PRS makes the installment payment with the Form 8813 filed for the first installment period, and complies with paragraph (d)(3) of this section by attaching NRA's certificate and the computation of 1446 tax due with respect to NRA to the Form 8813.

(iii) The IRS provides written notification to PRS on June 1, year 5, (pursuant to paragraph (c)(3) of this section) that the certificate received from NRA in year 4 is defective because NRA failed to file a qualifying U.S. income tax return (within the meaning of paragraph (b)(2)(iii) of this section) for one of the preceding taxable years as required under paragraph (b)(1) of this section. The notice further states that PRS is not to rely on any certificate received from NRA in year 5.

(iv) Under paragraph (d)(2)(ii) of this section, because the certificate submitted by NRA in year was determined to be defective for a reason other than the amount or character of the certified deductions and losses, under section 1461 PRS is fully liable for the 1446 tax due with respect to NRA's allocable share of ECTI year 4 without regard to the certificate. The total 1446 tax due for year 4 without regard to the certificate is $1,750 ($5,000 ECTI × .35) and PRS paid $175 of 1446 tax in year 4. Therefore, PRS owes $1,575 of 1446 tax. However, PRS may be deemed to have paid the outstanding 1446 tax due if NRA paid all of its U.S. tax due in year 4. See § 1.1446–3(e).

(v) However, because PRS did not have actual knowledge or reason to know that the certificate NRA submitted in year 4 was defective, PRS reasonably relied on the certificate for purposes of paragraph (d)(2) of this section. Therefore, PRS is not liable for an addition to the tax with respect to its underpayment of 1446 tax under the principles of section 6655 (as applied through § 1.1446–3) for any installment period in year 4.

(vi) However, PRS is generally liable for interest under section 6601 and for the failure to pay addition to tax under section 6651(a)(2) on the $1,575 of 1446 tax due for year 4 for the period from April 15, year 5 (last date prescribed for payment of 1446 tax) to the date PRS pays the 1446 tax or is deemed to have paid the 1446 tax under § 1.1446–3(e).

(vii) With respect to the year 5, PRS reasonably relied on NRA's certificate when computing its first installment payment (due on April 15, year 5). Therefore, in accordance with paragraph (d)(2)(i) of this section, PRS will not be liable for an addition to the tax under the principles of section 6655 (as applied through § 1.1446–3) for the first installment period. However, because the IRS provided written notification to PRS on June 1, year 5, to disregard any certificate received from NRA for year 5, PRS may not rely on any certificate received from NRA certificate (or any new certificate provided by NRA) when it computes its second installment payment in year 5. PRS is not permitted to consider any certificate submitted by NRA until the IRS provides written notification to PRS revoking or modifying the original notice. PRS's second installment payment in year 5 must include the additional amount of 1446 tax it would have paid for the first installment period without regard to the certificate received from NRA.

Example 6. IRS determines in subsequent taxable year that partner's certificate is defective because partner's actual losses are less than amount certified and considered by the partnership. Assume the same facts as in *Example 5,* except that the IRS determines that NRA's certificate submitted in year 4 is defective because the actual effectively connected net operating loss available to NRA for year 4 was $1,000 rather than the $5,000 certified.

(i) Under paragraph (d)(2)(ii) of this section, PRS is not relieved from its liability for 1446 tax under section 1461 when it relies on a certificate of losses from a foreign partner that is later determined to be defective. However, when the IRS determines that a partner's certificate is defective because of the amount of the certified deductions and losses, the partnership is liable for the 1446 tax, interest, additions to tax, and penalties to the extent the amount of certified deductions and losses taken into account when computing 1446 tax (or, unless there was reasonable reliance on the certificate, any installment of such tax) is greater than the actual amount of available deductions and losses. Here, PRS considered the certified deductions and losses in the amount of $4,500. The IRS subsequently determined that NRA only had $1,000 of actual losses, only $900 of which were permitted to be considered under paragraph (c)(1)(i)(C) of this section. Accordingly, PRS is liable for the 1446 tax due with respect to the portion of the overstated losses that it considered when computing its 1446 tax. The remaining 1446 tax due for year 4 is $1,260 ($3,600 ($4,500 less $900) of excess losses considered × .35). However, PRS may be deemed to have paid the $1,260 of 1446 tax under § 1.1446–3(e) if NRA has paid all of NRA's U.S. income tax.

(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.

Example 7. Partner with different taxable year than partnership. PRS partnership has two equal partners, FC, a foreign corporation, and DC, a domestic corporation. PRS conducts a trade or business in the United States and generates effectively connected income. FC maintains a June 30 fiscal taxable year end, while DC and PRS maintain a calendar taxable year end. FC and DC provide a valid Form W–8BEN and Form W–9, respectively, to PRS. FC and DC are the only persons that have ever been partners in PRS. For its year 1 through year 3 taxable years, PRS issued Forms 1065 (Schedule K–1) reporting in the aggregate $100 of net loss to each partner. For its year 4 taxable year, PRS issued Forms 1065 (Schedule K–1) to its partners reporting $150 of loss to each partner. All of the losses reported on the Forms 1065 (Schedule K–1) are effectively connected to PRS's and FC's trade or business in the United States.

(i) Assume that FC submits a valid certificate under this section certifying losses to the partnership for the partnership's year 5 taxable year. Further, assume that FC's only source of effectively connected income, gain, deduction, or loss is the activity of PRS.

(ii) For PRS's first installment period in year 5, FC may only certify deductions and

losses under this section in the amount of $100 (the losses as reported on the Forms 1065 (Schedule K–1) issued for PRS's year 1 through 3 taxable years). Under section 706, the taxable income of a partner shall include the income, gain, loss, deduction, or credit of the partnership for the partnership taxable year ending within or with the taxable year of the partner. PRS's year 4 calendar taxable year ends during FC's fiscal taxable year ending June 30, year 5. Therefore, under paragraph (c)(1) of this section, as of April 15, year 5 (the last date FC may submit its first certificate under paragraph (c) of this section to have it considered for PRS's first installment due date of April 15, year 5), FC's allocable share of the PRS losses for years 1 through 3 are the only losses that FC can represent have been or will be reported on an FC U.S. income tax return filed for a taxable year ending prior to such installment due date.

(iii) The result in paragraph (ii) of this *Example 7* is the same for the year 5 second installment period, the due date of which is June 15, year 5.

(iv) FC may submit an updated certificate under this section after June 30, year 5, which includes the $150 loss for year 4. PRS may consider such an updated certificate for its third installment period (due date September 15, year 5), provided the updated certificate is received by the due date for such installment in accordance with paragraph (c) of this section.

Example 8. Failure to provide status update with respect to prior year unfiled returns. FC, a foreign corporation, and DC, a domestic corporation, form a partnership (PRS) to conduct a trade or business in the United States. FC and DC provide PRS appropriate documentation under § 1.1446–1 to establish their status for purposes of section 1446. FC and DC are equal partners in PRS, and all partnership items are allocated equally between FC and DC.

(i) In the current taxable year FC submits a certificate under this section using Form 8804–C prior to PRS's first installment due date. FC represents that it has filed or will file a qualifying U.S. income tax return (within the meaning of paragraph (b)(2)(iii) of this section) in each of the preceding three taxable years. FC specifies that it has not filed its U.S. income tax return for the immediately preceding taxable year. FC also represents that it will timely file its U.S. income tax return for the partnership taxable year during which the certificate is considered (and will timely pay all tax due with such return). Assume all other requirements under paragraph (c) of this section are met for FC's certificate to be valid.

(ii) Provided that PRS does not possess actual knowledge or reason to know that FC's certificate is defective under paragraph (a)(2) of this section, PRS may reasonably rely on FC's certificate for its first, second, and third installment payments.

(iii) If FC does not submit to PRS either an updated certificate or a status update as required by paragraph (c)(2)(ii)(B)(*1*) of this section by December 15th (PRS's final installment due date), PRS must disregard FC's certificate when computing its fourth installment payment of 1446 tax and when completing its Form 8804 for the taxable year. PRS's payment of 1446 tax for its fourth installment period must include the additional amount of 1446 tax it would have paid in the first, second and third installment periods had it not considered FC's certificate. Further, even if the status update is provided by December 15th, PRS may only rely on the certificate if the status update does not contradict the original certificate and such update indicates that the immediately preceding year's return will be timely filed. Finally, even if the status update is provided by December 15th, FC must also submit an updated certificate to the partnership in accordance with paragraph (c) of this section within 10 days of the date FC timely files its U.S. income tax return for the preceding taxable year.

Example 9. Partnership consideration of certified deductions and losses or de minimis certificate. For purposes of this example assume paragraph (c)(1)(ii) of this section may apply. On January 1, year 4, NRA and B form a partnership (PRS) to conduct a trade or business in the United States. NRA and B are equal partners in PRS and all partnership items are shared equally. NRA and B provide PRS appropriate documentation under § 1.1446–1 to establish their status for purposes of section 1446. During years 1 through 3, NRA's only activity generating effectively connected items was an interest in partnership XYZ. XYZ allocated NRA a loss for all three years. NRA filed qualifying U.S. income tax returns (within the meaning of paragraph (b)(2)(iii) of this section) reporting its allocable share of losses from XYZ in years 1 through 3. The XYZ partnership dissolved on December 31, year 3.

(i) In year 4, NRA's only activity giving rise to effectively connected income, gain, deduction, or loss is its interest in PRS. NRA submits to PRS a valid certificate (using Form 8804–C) certifying under paragraph (c)(1)(i) its effectively connected net operating losses from years 1 through 3 and under (c)(1)(ii) of this section that its only activity giving rise to effectively connected income, gain, deduction, or loss for the PRS taxable year that ends with or within its taxable year is (and will be) its investment in PRS.

(ii) During year 4, PRS allocates ECTI to NRA. If the 1446 tax otherwise due on the annualized amount allocated to NRA is less than $1,000, determined without regard to any deductions and losses certified by NRA under paragraph (c)(1)(i) of this section, PRS may consider the certificate received from NRA under paragraph (c)(1)(ii) of this section and not pay 1446 tax (or any installment of such tax) with respect to NRA. Alternatively, PRS may consider the deductions and losses certified by NRA under paragraph (c)(1)(i) of this section.

(iii) Regardless of whether PRS considers NRA's certification under paragraph (c)(1)(i) or (c)(1)(ii) of this section in computing its 1446 tax due with respect to NRA, PRS must file Form 8813 for all installment periods as well as a Form 8805 for NRA with its Form 8804. If PRS considers NRA's certification under paragraph (c)(1)(i) or (c)(1)(ii) of this section, PRS must attach to each Form 8813, as well as to the Form 8805, a computation of the 1446 tax with respect to NRA that takes into account its consideration of NRA's certificate. In addition, PRS must attach NRA's certificate to the Form 8813 for the first installment period it considers the certificate, as well as to the Form 8805. For all subsequent installment periods, PRS may attach a statement containing NRA's name, and TIN. If PRS is relying on NRA's certified losses under paragraph (c)(1)(i) of this section, the statement must indicate the amount of losses and deductions NRA certified. If PRS is relying on NRA's certification under paragraph (c)(ii) of this section, the statement must indicate that it is relying on NRA meeting the requirements under paragraph (c)(1)(ii) of this section and the 1446 tax on the annualized amount allocated to NRA is less than $1,000. See paragraph (d)(3)(i) of this section.

Example 10. Application of transition rule. NRA and B form a partnership (PRS) on January 1, 2004, to conduct a trade or business in the United States. NRA and B are equal partners in PRS and all partnership items are shared equally. NRA and B provide PRS appropriate documentation under § 1.1446–1 to establish their status for purposes of section 1446. For its 2004 through 2007 tax years, PRS issued Forms 1065 (Schedule K–1) to NRA and B reporting a $1,000 net loss from its U.S. trade or business to each partner for each year (for an aggregate loss of $4,000 per partner). During the 2004 through 2007 tax years, NRA's only activity generating effectively connected items was its investment in PRS.

(i) On February 10, 2008, NRA submitted a certificate to PRS, reporting its aggregate $4,000 effectively connected loss to PRS, that met the requirements of § 1.1446–6T(c) (See 26 CFR Part 1, revised as of April 1, 2007), as in effect before January 1, 2008. The certificate stated that NRA had timely filed its U.S. income tax returns for the 2004, 2005 and 2006 tax years, and that it would timely file a U.S. income tax return for its 2007 tax year. For the first and second installments period in 2008, PRS estimates that it will earn ECTI of $10,000.

(ii) Because the certificate submitted by NRA to PRS on February 10, 2008, met the requirements of § 1.1446–6T (See 26 CFR Part 1, revised as of April 1, 2007), as in effect before January 1, 2008, PRS may consider such certificate when computing its 1446 tax due for the first and second installment period even if the certificate does not meet all the requirements of paragraph (c) of this section.

(iii) NRA timely files its U.S. income tax return for the 2007 tax year on July 24, 2008. In accordance with paragraph (c)(2)(ii)(B)(*1*) of this section, within 10 days of filing such return NRA prepares an updated certificate to be submitted to PRS certifying that it reasonably expects to have only $3,500 of losses available to reduce its allocable share of ECTI from PRS. Because the updated certificate will be submitted after July 28, 2008, to be valid the updated certificate must meet the requirements of paragraph (c) this section.

(f) *Effective/Applicability date.* Except as otherwise provided in this paragraph (f), the rules of this section are

applicable for partnership taxable years beginning after December 31, 2007. The rules of paragraphs (b)(3)(i)(B) through (D) shall apply to partnership taxable years beginning after July 28, 2008.

(g) *Transition rule.* A certificate that met the requirements of § 1.1446–6T(c) (See 26 CFR Part 1, revised as of April 1, 2007), as in effect before January 1, 2008, submitted on or before July 28, 2008 by a partner that met the requirements of § 1.1446–6T(b) (See 26 CFR Part 1, revised as of April 1, 2007), as in effect before January 1, 2008, shall not be considered defective because it does not meet the requirements of this section. However, any certificate (including any updated certificates and status updates) submitted, or required to be submitted, under paragraph (c) of this section after July 28, 2008, must meet the requirements of this section. See paragraph (e)(2) *Example 10* of this section.

■ **Par. 8.** In § 1.1446–7, the section heading is revised and two new sentences are added at the end of the paragraph to read as follows:

§ 1.1446–7 Effective/Applicability date.

* * * The revisions to §§ 1.1446–3(b)(2), 1.1446–3(b)(3)(i)(A) and 1.1446–5(c)(2) contained in the final regulations published in 2008 apply to partnership taxable years beginning after December 31, 2007. See § 1.1446–6(f) and (g) for the Effective/Applicability date and Transition rule for § 1.1446–6.

■ **Par. 9.** In § 1.1464–1, paragraph (a) is amended by adding one sentence at the end of the paragraph and new paragraph (c) is added to read as follows:

§ 1.1464–1 Refunds or credits.

(a) * * * With respect to section 1446, this section shall only apply to a publicly traded partnership described in § 1.1446–4.

* * * * *

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

■ **Par. 10.** In § 1.6071–1, paragraph (c)(15) is revised and paragraph (d) is added to read as follows:

§ 1.6071–1 Time for filing returns and other documents.

* * * * *

(c) * * *

(15) For provisions relating to the time for filing an annual information return on Form 1042–S, ''Foreign Person's U.S. Source Income subject to Withholding,'' or Form 8805, ''Foreign Partner's Information Statement of Section 1446 Withholding Tax,'' for any tax withheld under chapter 3 of the Internal Revenue Code (relating to withholding of tax on nonresident aliens and foreign corporations and tax-free covenant bonds), see § 1.1461–1(c) and § 1.1446–3(d).

* * * * *

(d) *Effective/Applicability date.* The references to Form 8805 and § 1.1446–3(d) in paragraph (c)(15) of this section shall apply to partnership taxable years beginning after *April 29, 2008.*

■ **Par. 11.** In § 1.6091–1, paragraph (b)(17) and paragraph (c) are added to read as follows:

§ 1.6091–1 Place for filing returns or other documents.

* * * * *

(b) * * *

(17) For the place for filing information returns on Form 8805, ''Foreign Partner's Information Statement of Section 1446 Withholding Tax,'' with respect to certain amounts paid on behalf of foreign partners, see the instructions to the form.

(c) *Effective/Applicability date.* Paragraph (b)(17) of this section shall apply to partnership taxable years beginning after *April 29, 2008.*

■ **Par. 12.** In § 1.6151–1, paragraph (d)(2) is amended by adding one sentence at the end of the paragraph and paragraph (e) is added to read as follows:

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

* * * * *

(d) * * *

(2) * * * With respect to section 1446, the previous sentence shall apply only to a publicly traded partnership described in § 1.1446–4.

(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 taxable years beginning after *April 29, 2008.*

■ **Par. 13.** In § 1.6302–2, paragraphs (a)(1)(i), (a)(2) and (g) are revised to read as follows:

§ 1.6302–2 Use of Government depositaries for payment of tax withheld on nonresident aliens and foreign corporations.

(a) * * * (1) * * *

(i) *Monthly deposits.* Except as provided in paragraphs (a)(1)(ii) and (iv) of this section, every withholding agent who, pursuant to chapter 3 of the Internal Revenue Code, has accumulated at the close of any calendar month beginning on or after January 1, 1973, an aggregate amount of undeposited taxes of $200 or more shall deposit such aggregate amount with an authorized financial institution (see paragraph (b)(1)(ii) of this section) within 15 days after the close of such calendar month. However, the preceding sentence shall not apply if the withholding agent has made a deposit of taxes pursuant to paragraph (a)(1)(ii) of this section with respect to a quarter monthly period which occurred during such month. With respect to section 1446, this section shall only apply to a publicly traded partnership described in § 1.1446–4.

* * * * *

(2) *Cross reference.* For rules relating to the adjustment of deposits, see §§ 1.1461–2(b) and 1.6414–1. For rules requiring payment of any undeposited tax, see § 1.1461–1.

* * * * *

(g) *Effective/Applicability date.* Except as otherwise provided, this section shall apply to tax required to be withheld under chapter 3 of the Internal Revenue Code after 1966. The last sentence of paragraph (a)(1)(i) of this section shall apply to partnership taxable years beginning after *April 29, 2008.*

■ **Par. 14.** Section 1.6414–1 is amended by:

■ 1. Adding two sentences at the end of paragraph (a)(2).

■ 2. Revising the third sentence of paragraph (b).

■ 3. Adding paragraph (d).

The additions and revision read as follows:

§ 1.6414–1 Credit or refund of tax withheld on nonresident aliens and foreign corporations.

(a) * * *

(2) * * * With respect to the payment of withholding tax under section 1446, this section shall only apply to a publicly traded partnership described in § 1.1446–4. See § 1.1446–3(d)(2)(iv) for rules regarding refunds to a withholding agent under section 1446.

(b) * * * The amount claimed as a credit may be applied, to the extent it has not been applied under § 1.1461–2(b), by the withholding agent to reduce the amount of a payment or deposit of tax required by § 1.1461–1 or § 1.6302–2(a) for any payment period occurring in the calendar year following the calendar year of overwithholding. * * *

* * * * *

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

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 15.** The authority for 26 CFR part 301 continues to read in part as follows:

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

■ **Par. 16.** In § 301.6402–3, the second and third sentences of paragraph (e) are revised and paragraph (f) is added to read as follows:

§ 301.6402–3 Special rules applicable to income tax.

* * * * *

(e) * * * Also, if the overpayment of tax resulted from the withholding of tax at source under chapter 3 of the Internal Revenue Code, a copy of the Form 1042–S, ''Foreign Person's U.S. Source Income subject to Withholding,'' Form 8805, ''Foreign Partner's Information Statement of Section 1446 Withholding Tax,'' or other statement (see § 1.1446–3(d)(2) of this chapter) required to be provided to the beneficial owner or partner pursuant to § 1.1461–1(c)(1)(i) or § 1.1446–3(d) of this chapter must be attached to the return. For purposes of claiming a refund, the Form 1042–S, Form 8805, or other statement must include the taxpayer identification number of the beneficial owner or partner even if not otherwise required. * * *

(f) *Effective/Applicability date.* References in paragraph (e) of this section to Form 8805 or other statements required under § 1.1446–3(d)(2) shall apply to partnership taxable years beginning after April 29, 2008.

■ **Par. 17.** In § 301.6722–1, paragraph (d)(3) is revised and paragraph (e) is added to read as follows:

§ 301.6722–1 Failure to furnish correct payee statements.

* * * * *

(d) * * *

(3) *Other items.* The term *payee statement* also includes any form, statement, or schedule required to be furnished to the recipient of any amount from which tax is required to be deducted and withheld under chapter 3 of the Internal Revenue Code (or from which tax would be required to be so deducted and withheld but for an exemption under the Internal Revenue Code or any treaty obligation of the United States) (generally the recipient copy of Form 1042–S, ''Foreign Person's U.S. Source Income subject to Withholding,'' or Form 8805, ''Foreign Partner's Information Statement of Section 1446 Withholding Tax.'')

(e) *Effective/Applicability date.* The reference in paragraph (d)(3) of this section to Form 8805 shall apply to partnership taxable years beginning after *April 29, 2008.*

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 18.** The authority citation for part 602 continues to read as follows:

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

■ **Par. 19.** In § 602.101, paragraph (b) is amended by removing the entry for § 1.1446–6T from the table, adding an entry for § 1.1446–6, and revising the entries to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.1446–1	1545–1934
1.1446–3	1545–1934
1.1446–4	1545–1934
1.1446–5	1545–1934
1.1446–6	1545–1934
* * * * *	

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: April 23, 2008

Eric Solomon,

Assistant Secretary of the Treasury.

[FR Doc. E8–9356 Filed 4–28–08; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2004–WI–0002; FRL–8557–6]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Redesignation of the Forest County Potawatomi Community Reservation to a PSD Class I Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this final action, EPA is approving the request by the Forest County Potawatomi Community's (FCP Community) Tribal Council to redesignate certain portions of the FCP Community Reservation as a non-Federal Class I area under the Clean Air Act (Act or CAA) program for the Prevention of Significant Deterioration (PSD) of air quality. These regulations are designed to preserve the air quality in national parks and other areas that are meeting the National Ambient Air Quality Standards (NAAQS). The Class I designation will result in lowering the allowable increases in ambient concentrations of particulate matter, sulfur dioxide, and nitrogen dioxide on the Reservation.

DATES: This final rule is effective on May 29, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2004–WI–0002. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507. This Facility is open from 8:30 a.m. to 4:30 p.m. Central Standard Time, Monday through Friday, excluding legal holidays. We recommend that you telephone Constantine Blathras at 312–886–0671 before visiting Region 5's office. Hard copies of these docket materials are also available in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW, Washington, DC. The EPA/DC Public Reading Room hours of operation will be 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507; telephone number: 312–886–0671; fax number: 312–886–5824; e-mail address: *blathras.constantine@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.