

# Instructions for Form 8288

(Rev. January 2023)

(Use with the January 2023 revision of Form 8288)

## Noncash Charitable Contributions

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Volume 1 of 2



Department of the Treasury  
**Internal Revenue Service**

Instruction for Form 8288 (Rev 01-2023) Catalog Number 58585K  
Department of the Treasury **Internal Revenue Service** [www.irs.gov](http://www.irs.gov)



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## Future Developments

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

## What's New

- The Tax Cuts and Jobs Act added section 1446(f), effective January 1, 2018, which generally requires that if any portion of the gain on a disposition of an interest in a partnership would be treated under section 864(c)(8) as gain effectively connected with the conduct of a trade or business in the United States, the transferee purchasing the interest in the partnership from a non-U.S. transferor must withhold a tax equal to 10% of the amount realized on the disposition unless an exception to withholding applies.
- Notice 2018-08, 2018-07 I.R.B. 352, available at

- [IRS.gov/IRB/2018-07 IRB#NOT-2018-08](https://www.irs.gov/irb/2018-07_IRB#NOT-2018-08), temporarily suspended the application of section 1446(f) to the transfer of publicly traded partnership (PTP) interests.
- Notice 2018-29, 2018-16 I.R.B. 495, available at [IRS.gov/IRB/2018-16 IRB#NOT-2018-29](https://www.irs.gov/irb/2018-16_IRB#NOT-2018-29), provided interim guidance under section 1446(f)(1) on withholding related to transfers of non-PTP interests and temporarily suspended withholding under section 1446(f)(4).
- Proposed regulations under section 1446(f), available at [IRS.gov/IRB/2019-27 IRB#REG-105476-18](https://www.irs.gov/irb/2019-27_IRB#REG-105476-18), were issued on May 7, 2019, for transfers of both non-PTP and PTP interests. During the period that [Notice 2018-29](https://www.irs.gov/irb/2018-29) applied, instead of applying the rules described in the Notice, taxpayers and other affected persons may choose to apply Regulations sections 1.1446(f)-1, 1.1446(f)-2, and 1.1446(f)-5 of the

proposed regulations in their entirety to all transfers as if they were final regulations.

- T.D. 9926, published on November 30, 2020, available at [IRS.gov/IRB/2020-51 IRB#TD-9926](https://www.irs.gov/irb/2020-51_IRB#TD-9926), contains final regulations (the section 1446(f) regulations) relating to withholding and reporting required under section 1446(f) (1), including requirements that apply to brokers effecting transfers of PTP interests and partnership withholding under section 1446(f)(4) (on distributions to a transferee that failed to properly withhold under section 1446(f)(1)). The section 1446(f) regulations also revise certain requirements under section 1446(a) relating to withholding and reporting on distributions made by PTPs.
- The section 1446(f) regulations generally apply to transfers occurring on or after January 29, 2021. However, in accordance with Notice 2021-51, 2021-36 I.R.B. 361, available at [IRS.gov/IRB/2021-](https://www.irs.gov/irb/2021-)

[36 IRB#NOT-2021-51](#), the following provisions of the section 1446(f) regulations apply to transfers occurring on or after January 1, 2023:

- a. Withholding and reporting on transfers of PTP interests,
  - b. The revisions included in the section 1446(f) regulations relating to withholding on PTP distributions under section 1446(a), and
  - c. Partnership withholding under section 1446(f)(4) on distributions to a transferee that failed to properly withhold under section 1446(f)(1).
- To reflect the withholding and reporting requirements under sections 1446(f)(1) and (f)(4), applicable to transfers occurring on or after January 1, 2023, updated Forms 8288 and 8288-A and a new Form 8288-C are being released.

- These instructions have been updated to incorporate the use of this form for a transferee of a non-PTP interest required to withhold under section 1446(f)(1) on the amount realized from the transfer and for partnership withholding under section 1446(f)(4) on distributions to a transferee that failed to withhold under section 1446(f)(1).
- The *General Instructions* have been subdivided into three major sections:
  - a. *The General Instructions for Section 1445 Withholding,*
  - b. *The General Instructions for Section 1446(f)(1) Withholding, and*
  - c. *The General Instructions for Section 1446(f)(4) Withholding.*

# General Instructions

## Purpose of Form

Form 8288 is used to report and transmit amounts withheld on certain dispositions and distributions that are subject to sections 1445 and 1446(f)(1). It is also used to report and transmit amounts withheld under section 1446(f)(4) or to claim a credit or refund for amounts withheld under section 1446(f)(4) for transfers occurring on or after January 1, 2023.

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

serves to collect U.S. tax that may be owed by the foreign person.



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

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

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



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

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



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



## **When not to use Forms 8288 and 8288-**

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

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

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

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

- 3. A distribution of effectively connected taxable income by a PTP that is subject to the withholding requirements of section 1446(a).

4. The transfer of a PTP interest (including a distribution made with respect to the PTP interest) that is subject to withholding under section 1446(f)(1).

## **General Instructions for Section 1445**

### **Withholding**

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

### **Who Must File**

A buyer or other transferee of a USRPI must complete and file Part I of Form 8288 to report and transmit the amount withheld. A

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

## **Amount To Withhold**

Generally, you must withhold 15% of the amount realized on the disposition by the transferor, defined later.

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

- Withholding at 21% (35% for distributions made before January 1, 2018), see Entities Subject to Section 1445(e), later;

- Withholding at a reduced amount, see Purchase of residence for \$1 million or less; and
- Applying for reduction or elimination of withholding, see Withholding certificate issued by the IRS, later.

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

1. Allocate the amount realized from the transfer among the transferors based on their capital contribution to the property. For this purpose, a husband and wife are treated as having contributed 50% each.
2. Withhold on the total amount allocated to foreign transferors.
3. Credit the amount withheld among the foreign transferors as they mutually

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

## **When To File**

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

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

interest and penalties will apply to the period beginning on the 21st day after the date of transfer and ending on the day full payment is made.

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

## **Where To File**

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

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

## **Forms 8288-A Must Be Attached**

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

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



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

## **Penalties**

Under section 6651, penalties apply for failure to file Form 8288 when due and for failure to pay the withholding when due. In addition, if you are required to but do not withhold tax under section 1445, the tax, including interest, may be collected from you. Under section 7202, you may be subject to a penalty of up to \$10,000 for willful failure to collect and pay over the tax. Corporate

officers or other responsible persons may be subject to a penalty under section 6672 equal to the amount that should have been withheld and paid over to the IRS.

## **Definitions for Section 1445**

### **Withholding**

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

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

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

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

foreign persons. The testing period is the shorter of:

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

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

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

- Any class of stock of such other QIE is regularly traded on an established securities market, or
- Such other QIE is a regulated investment company (RIC) that issues certain redeemable securities.

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

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

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

foreign estate. A resident alien individual is not a foreign person.

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

### **Qualified investment entity (QIE).**

A QIE is:

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

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

17, 2015) or 5% of such stock in the case of a RIC, and even if such stock is domestically controlled. For more information, see [Pub. 515](#).

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

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

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

**Transferor.** For purposes of this withholding, this means any foreign person that disposes of a USRPI by sale, exchange, gift, or any other disposition. A disregarded entity cannot be the transferor for purposes of section 1445. Instead, the person considered as owning the assets of the disregarded entity

for federal tax purposes is regarded as the transferor. A **disregarded entity** for these purposes means an entity that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, a qualified REIT subsidiary as defined in section 856(i), or a qualified subchapter S subsidiary under section 1361(b)(3)(B).

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

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

1. Real property located in the United States or the U.S. Virgin Islands.



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

A USRPI does not include the following.

1. An interest in a domestically controlled QIE.
2. An interest in a REIT that is held by a qualified shareholder. For the definition of a qualified shareholder, see section 897(k)(3). But see section 897(k)(2)(B) for the cut-back rule if the qualified shareholder has one or more applicable investors.
3. An interest in a corporation that:

- Did not hold any USRPI as of the date the interest in such corporation is disposed,
- Has disposed of all its USRPIs in transactions in which the full amount of any gain was recognized as provided in section 897(c)(1)(B), and
- Neither such corporation nor any predecessor of such corporation was a REIT or a RIC at any time during the shorter of the previous 5 years or the period in which the transferor held the interest.

4. An interest in certain publicly traded corporations, partnerships, and trusts.

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

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

# **Exceptions to Section 1445 Withholding**

## **Withholding at a Reduced Rate**

**Purchase of residence for \$1 million or less.** Withholding is required at a reduced rate of 10% in the case of a disposition of:

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

## **Withholding Not Required**

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

A USRPI is acquired for use as a residence if you or a member of your family has definite plans to reside in the property for at least 50% of the number of days the property is used by any person during each of the first two 12-month periods following the date of transfer. Do not take into account the number of days the property will be vacant in making this determination. No form or other document is required to be filed with the IRS for this exception. However, if you do not in fact use the property as a residence, the withholding tax may be collected from you.

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

## **Transferor not a foreign person.**

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

If you receive a certification (or statement), the withholding tax cannot be collected from you unless you knew that the certification (or statement) was false or you received a notice from your agent, the transferor's agent, or the qualified substitute that it was false. The

certification must be signed by the individual, a responsible officer of a corporation, a general partner of a partnership, or the trustee, executor, or fiduciary of a trust or estate.

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

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

nonforeign status you receive in your records for 5 years after the year of transfer.

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

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

***Late notice of false certification.*** If, after the date of transfer, you receive a notice from your agent, the transferor's agent, or the qualified substitute that the certification of nonforeign status is false, you do not have to withhold on consideration paid before you received the notice. However, you must withhold the full 15% of the amount realized from any consideration that remains to be

paid, if possible. You must do this by withholding and paying over the entire amount of each successive payment of consideration until the full 15% has been withheld and paid to the IRS. These amounts must be reported and transmitted to the IRS by the 20th day following the date of each payment.

**Transferred property that isn't a USRPI.**

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

No withholding is required on the acquisition of an interest in a domestic corporation if (a) any class of stock of the corporation is regularly traded on an established securities market, or (b) the transferee receives a statement issued by the corporation that the



interest is not a USRPI, unless you know that the statement is false or you receive a notice from your agent or the transferor's agent that the statement is false. A corporation's statement may be relied on only if it is dated not more than 30 days before the date of transfer.

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

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

**Transferor's nonrecognition of gain or loss.** You may receive a notice from the transferor signed under penalties of perjury stating that the transferor is not required to recognize gain or loss on the transfer because

of a nonrecognition provision of the Internal Revenue Code (see Temporary Regulations section 1.897-6T(a) (2)) or a provision in a U.S. tax treaty. You may rely on the transferor's notice, and not withhold, unless (a) only part of the gain qualifies for nonrecognition, or (b) you know or have reason to know that the transferor is not entitled to the claimed nonrecognition treatment.

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

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

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



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

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

- Reduced withholding is appropriate because the 10%, 15%, or 21% (35% for distributions made before January 1, 2018) amount exceeds the transferor's maximum tax liability;

- The transferor is exempt from U.S. tax or nonrecognition provisions apply; or
- The transferee or transferor enters into an agreement with the IRS for the payment of the tax.

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

If you receive a withholding certificate from the IRS that excuses withholding, you are not required to file Form 8288. However, if you receive a withholding certificate that reduces (rather than eliminates) withholding, there is no exception to withholding, and you are required to file Form 8288. Attach a copy of

the withholding certificate to Form 8288. See *When To File* under *General Instructions for Section 1445 Withholding*, earlier, for more information.

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

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

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

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

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

## **Late Filing of Certification or Notice**

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

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

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

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

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

## **Liability of Agents**

If you (or the qualified substitute) received (a) a transferor’s certification of nonforeign status, or (b) a corporation’s statement that

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

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

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

1. Receiving and disbursing any part of the consideration.



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

## **Entities Subject to Section 1445(e)**

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

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

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

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

## **Section 1445(e)(1) Transactions**

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

that disposes of a USRPI is required to withhold under section 1446(a), it is not required to withhold under section 1445(e)(1).

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

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

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

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

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

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

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

- The foreign person's interest in the corporation is a USRPI under section 897; and
- The property is distributed in redemption of stock under section 302, in liquidation

of the corporation under sections 331 through 346, or with respect to stock under section 301 that is not made out of the earnings and profits of the corporation.

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

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

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



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

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

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



assets does not consist of USRPIs, plus cash or cash equivalents. The transferee may rely on the statement unless the transferee knows it is false or the transferee receives a false statement notice pursuant to Regulations section 1.1445-4.



*A disposition of a partnership interest that meets this exception may instead be subject to withholding under section 1446(f)(1). See*

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

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

A QIE must withhold 21% (35% for distributions made before January 1, 2018) of a distribution to a nonresident alien or a foreign corporation that is treated as gain realized from the sale or exchange of a USRPI. No withholding under section 1445 is required on a distribution to a nonresident

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

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