

under this paragraph (e) is limited to the amount of compensation that that agent derives from the transaction. In addition, an agent who assists in the preparation of, or fails to disclose knowledge of, a false certification or statement may be liable for civil or criminal penalties.

(f) *Definition of transferor's or transferee's agent*—(1) *In general.* For purposes of this section, the terms “transferor's agent” and “transferee's agent” means any person who represents the transferor or transferee (respectively)—

(i) In any negotiation with another person (or another person's agent) relating to the transaction; or

(ii) In settling the transaction.

(2) *Transactions subject to section 1445(e).* In the case of transactions subject section 1445(e), the following definitions apply.

(i) The term “transferor's agent” means any person that represents or advises an entity or fiduciary with respect to the planning, arrangement, or consummation by the entity of a transaction described in section 1445(e) (1), (2), (3), or (4).

(ii) The term “transferee's agent” means any person that represents or advises the holder of an interest in an entity with respect to the planning, arrangement or consummation by the entity of a transaction described in section 1445(e) (1), (2), (3), or (4).

(3) *Exclusion of settlement officers and clerical personnel.* For purposes of this section, a person shall not be treated as a transferor's agent or transferee's agent with respect to any transaction solely because such person performs one or more of the following activities.

(i) The receipt and disbursement of any portion of the consideration for the transaction;

(ii) The recording of any document in connection with the transaction;

(iii) Typing, copying, and other clerical tasks;

(iv) The obtaining of title insurance reports and reports concerning the condition of the real property that is the subject of the transaction; or

(v) The transmission or delivery of documents between the parties.

(4) *Exclusion for governing body of a condominium association and the board of*

directors of a cooperative housing corporation. The members of a board, committee or other governing body of a condominium association and the board of directors and officers of a cooperative housing corporation will not be deemed agents of the transferor or transferee if such individuals function exclusively in their capacity as representatives of such association or corporation with respect to the transaction. In addition, the managing agent of a cooperative housing corporation or condominium association will not be deemed to be an agent of the transferee or transferor if such person functions exclusively in its capacity as a managing agent. If a person's activities include advising the transferee or transferor with respect to the transfer, this exclusion shall not apply.

[T.D. 8113, 51 FR 46641, Dec. 24, 1986; 52 FR 3796, 3917, Feb. 6, 1987; T.D. 9082, 68 FR 46086, Aug. 5, 2003]

§ 1.1445-5 Special rules concerning distributions and other transactions by corporations, partnerships, trusts, and estates.

(a) *Purpose and scope.* This section provides special rules concerning the withholding that is required under section 1445(e) upon distributions and other transactions involving domestic or foreign corporations, partnerships, trusts, and estates. Paragraph (b) of this section provides rules that apply generally to the various withholding requirements set forth in this section. Under section 1445(e)(1) and paragraph (c) of this section, a domestic partnership or the fiduciary of a domestic trust or estate is required to withhold tax upon the entity's disposition of a U.S. real property interest if any foreign persons are partners or beneficiaries of the entity. Paragraph (d) provides rules concerning the requirement of section 1445(e)(2) that a foreign corporation withhold tax upon its distribution of a U.S. real property interest to its interest-holders. Finally, under section 1445(e)(3) and paragraph (e) of this section a domestic U.S. real property holding corporation is required to withhold tax upon certain distributions to interest-holders that are foreign persons. Paragraphs (f) and

(g) of this section are reserved to provide rules concerning transactions involving interests in partnerships, trusts, and estates that will be subject to withholding pursuant to sections 1445(e) (4) and (5).

(b) *Rules of general application*—(1) *Double withholding not required.* If tax is required to be withheld with respect to a transfer of property in accordance with the rules of this section, then no additional tax is required to be withheld by the transferee of the property with respect to that transfer pursuant to the general rules of section 1445(a) and § 1.1445-1. For rules coordinating the withholding under section 1441 (or section 1442 or 1443) and under section 1445 on distributions from a corporation, see § 1.1441-3(b)(4). If a transfer of a U.S. real property interest described in section 1445(e) is exempt from withholding under the rules of this section, then no withholding is required under the general rules of section 1445(a) and § 1.1445-1.

(2) *Coordination with nonrecognition provisions*—(i) *In general.* Withholding shall not be required under the rules of this section with respect to a transfer described in section 1445(e) of a U.S. real property interest if—

(A) By reason of the operation of a nonrecognition provision of the Internal Revenue Code or the provisions of any treaty of the United States no gain or loss is required to be recognized by the foreign person with respect to which withholding would otherwise be required; and

(B) The entity or fiduciary that is otherwise required to withhold complies with the notice requirements of paragraph (b)(2)(ii) of this section. The entity or fiduciary must determine whether gain or loss is required to be recognized pursuant to the rules of section 897 and the applicable nonrecognition provisions of the Internal Revenue Code. An entity or fiduciary may obtain a withholding certificate from the Internal Revenue Service that confirms the applicability of a nonrecognition provision, but is not required to do so. For purposes of this paragraph (b)(2), a nonrecognition provision is any provision of the Internal Revenue Code for not recognizing gain or loss. If nonrecognition treatment is available only

with respect to part of the gain realized on a transfer, the exemption from withholding provided by this paragraph (b)(2) shall not apply. In such cases a withholding certificate may be sought pursuant to the provisions of § 1.1445-6.

(ii) *Notice of nonrecognition transfer.* An entity or fiduciary that fails to withhold tax with respect to a transfer in reliance upon the rules of this paragraph (b)(2) must by the 20th day after the date of the transfer deliver a notice thereof to the Director, Philadelphia Service Center, at the address provided in § 1.1445-1(g)(10). No particular form is required for a notice of transfer, but the following information must be set forth in paragraphs labelled to correspond with the letter set forth below:

(A) A statement that the document submitted constitutes a notice of a nonrecognition transfer pursuant to the requirements of § 1.1445-5(b)(2)(ii);

(B) The name, office address, and identifying number of the entity or fiduciary submitting the notice;

(C) The name, identifying number, and home address (in the case of an individual) or office address (in the case of an entity) of each foreign person with respect to which withholding would otherwise be required;

(D) A brief description of the transfer; and

(E) A brief statement of the law and facts supporting the claim that recognition of gain or loss is not required with respect to the transfer.

(3) *Interest-holder not a foreign person*—(i) *In general.* Pursuant to the provisions of paragraphs (c) and (e) of this section, an entity or fiduciary is required to withhold with respect to certain transfers of property if a holder of an interest in the entity is a foreign person. For purposes of determining whether a holder of an interest is a foreign person, and entity or fiduciary may rely upon a certification of non-foreign status provided by that person in accordance with paragraph (b)(3)(ii) of this section. Except to the extent provided in paragraph (b)(3)(iii) of this section, such a certification excuses the entity or fiduciary from any liability otherwise imposed pursuant to section 1445(e) and regulations thereunder. However, no obligation is imposed upon

an entity or fiduciary to obtain certifications from interest-holders; an entity or fiduciary may instead rely upon other means to ascertain the nonforeign status of an interest-holder. If the entity or fiduciary does rely upon other means but the interest-holder proves, in fact, to be a foreign person, then the entity or fiduciary is subject to any liability imposed pursuant to section 1445 and regulations thereunder.

An entity or fiduciary is not required to rely upon other means to ascertain the non-foreign status of an interest-holder and may demand a certification of non-foreign status. If the certification is not provided, the entity or fiduciary may withhold tax under section 1445 and will be considered, for purposes of sections 1461 through 1463, to have been required to withhold such tax.

(ii) *Interest-holder's certification of non-foreign status*—(A) *In general.* For purposes of this section, an entity or fiduciary may treat any holder of an interest in the entity as a U.S. person if that interest-holder furnishes to the entity or fiduciary a certification stating that the interest-holder is not a foreign person, in accordance with the provisions of paragraph (b)(3)(ii)(B) of this section. In general, a foreign person is a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, or foreign estate, but not a resident alien individual. In this regard, see § 1.897-1(k).

(B) *Procedural rules.* An interest-holder's certification of non-foreign status must—

(1) State that the interest-holder is not a foreign person;

(2) Set forth the interest-holder's name, identifying number, home address (in the case of an individual), or office address (in the case of an entity), and place of incorporation (in the case of a corporation); and

(3) Be signed under penalties of perjury.

Pursuant to § 1.897-1(p), an individual's identifying number is the individual's Social Security number and any other person's identifying number is its U.S. employer identification number. The certification must be signed by a responsible officer in the case of a cor-

poration, by a general partner in the case of a partnership, and by a trustee, executor, or equivalent fiduciary in the case of a trust or estate. No particular form is needed for a certification pursuant to this paragraph (b)(3)(ii)(B), nor is any particular language required, so long as the document meets the requirements of this paragraph. Samples of acceptable certifications are provided in paragraph (b)(3)(ii)(D) of this section. An entity may rely upon a certification pursuant to this paragraph (b)(3)(ii)(B) for a period of two calendar years following the close of the calendar year in which the certification was given.

If an interest holder becomes a foreign person within the period described in the preceding sentence, the interest-holder must notify the entity prior to any further dispositions or distributions and upon receipt of such notice (or any other notification of the foreign status of the interest-holder) the entity may no longer rely upon the prior certification. An entity that obtains and relies upon a certification must retain that certification with its books and records for a period of three calendar years following the close of the last calendar year in which the entity relied upon the certification.

(C) *Foreign corporation that has made an election under section 897(i).* A foreign corporation that has made a valid election under section 897(i) to be treated as a domestic corporation for purposes of section 897 may provide a certification of non-foreign status pursuant to this paragraph (b)(3)(ii). However, an electing foreign corporation must attach to such certification a copy of the acknowledgment of the election provided to the corporation by the Internal Revenue Service pursuant to § 1.897-3(d)(4).

An acknowledgment is valid for this purpose only if it states that the information required by § 1.897-3 has been determined to be complete.

(D) *Sample certifications*—(1) *Individual interest-holder.*

“Under section 1445(e) of the Internal Revenue Code, a corporation, partnership, trust or estate must withhold tax with respect to certain transfers of property if a holder of an interest in the entity is a foreign person. To inform (*name of entity*) that no withholding is

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required with respect to my interest in it, I, (*name of interest-holder*), hereby certify the following:

1. I am not a nonresident alien for purposes of U.S. income taxation;
2. My U.S. taxpayer identifying number (Social Security number) is _____; and
3. My home address is _____

I agree to inform [*name of entity*] promptly if I become a nonresident alien at any time during the three years immediately following the date of this notice.

I understand that this certification may be disclosed to the Internal Revenue Service by (*name of entity*) and that any false statement I have made here could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete.

[*Signature and date*]"

(2) *Entity interest-holder.* "Under section 1445(e) of the Internal Revenue Code, a corporation, partnership, trust, or estate must withhold tax with respect to certain transfers of property if a holder of an interest in the entity is a foreign person. To inform [*name of entity*] that no withholding is required with respect to [*name of interest-holder*]'s interest in it, the undersigned hereby certifies the following on behalf of [*name of interest-holder*]:

1. [*Name of interest-holder*] is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. [*Name of interest-holder*]'s U.S. employer identification number is _____; and
3. [*Name of interest-holder*]'s office address is _____

and place of incorporation (if applicable) is _____

[*Name of interest holder*] agrees to inform [*name of entity*] if it becomes a foreign person at any time during the three year period immediately following the date of this notice.

[*Name of interest-holder*] understands that this certification may be disclosed to the Internal Revenue Service by [*name of entity*] and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct, and complete, and I further declare that I have authority to sign this document on behalf of [*name of interest-holder*].

[*Signature and date*]

[*Title*]"

(iii) *Reliance upon certification not permitted.* An entity or fiduciary may not rely upon an interest-holder's certification of non-foreign status if, prior to or at the time of the transfer with respect to which withholding would be required, the entity or fiduciary either—

(A) Has actual knowledge that the certification is false;

(B) Has received a notice that the certification is false from a transferor's or transferee's agent, pursuant to § 1.1445-4; or

(C) Has received from a corporation that it knows to be a foreign corporation a certification that does not have attached to it a copy of the IRS acknowledgment of the corporation's election under section 897(i), as required by paragraph (b)(3)(ii)(C) of this section. Such an entity's or fiduciary's withholding obligations shall apply as if a statement had never been given, and such an entity or fiduciary may be held fully liable pursuant to § 1.1445-1(e) for any failure to withhold. For special rules concerning an entity's belated receipt of a notice concerning a false certification, see paragraphs (c)(2)(ii) and (e)(2)(iii) of this section.

(4) *Property transferred not a U.S. real property interest—(i) In general.* Pursuant to the provisions of paragraphs (c) and (d) of this section, an entity or fiduciary is required to withhold with respect to certain transfers of property, if the property transferred is a U.S. real property interest. (In addition, taxable distributions of U.S. real property interests by domestic or foreign partnerships, trusts, and estates will be subject to withholding pursuant to section 1445(e)(4) and paragraph (f) of this section after publication of a Treasury decision under sections 897 (e)(2) and (g). As defined in section 897(c) and § 1.897-1(c), a U.S. real property interest includes certain interests in U.S. corporations, as well as direct interests in real property and certain associated personal property. This paragraph (b)(4) provides rules pursuant to which an entity (or fiduciary thereof) that transfers an interest in a U.S. corporation may determine that withholding is not required because the interest transferred is not a U.S. real property

interest. To determine whether an interest in tangible property constitutes a U.S. real property interest the transfer of which would be subject to withholding, see § 1.897-1 (b) and (c).

(ii) *Interests in publicly traded entities.* Withholding is not required under paragraph (c) or (d) of this section upon an entity's transfer of an interest in a domestic corporation if any class of stock of the corporation is regularly traded on an established securities market. This exemption shall apply to a disposition incident to an initial public offering of stock pursuant to a registration statement filed with the Securities and Exchange Commission.

Similarly, no withholding is required under paragraph (c) or (d) of this section upon an entity's transfer of an interest in a publicly traded partnership or trust. However, the rule of this paragraph (b)(4)(ii) shall not apply to the transfer, to a single transferee (or related transferees as defined in § 1.897-1(i)) in a single transaction (or related transactions), of an interest described in § 1.897-1(c)(2)(iii)(B) (relating to substantial amounts of non-publicly traded interests in publicly traded corporations) or of similar interests in publicly traded partnerships or trusts. The entity making a transfer described in the preceding sentence must otherwise determine whether withholding is required, pursuant to section 1445(e) and the regulations thereunder. Transactions shall be deemed to be related if they are undertaken within 90 days of one another or if it can otherwise be shown that they were undertaken in pursuance of a prearranged plan.

(iii) *Corporation's statement that interest is not a U.S. real property interest.* (A) *In general.* No withholding is required under paragraph (c) or (d) of this section upon an entity's transfer of an interest in a domestic corporation if, prior to the transfer, the entity or fiduciary obtains a statement, issued by the corporation pursuant to § 1.897-2(h), certifying that the interest is not a U.S. real property interest. In general, a corporation may issue such a statement only if the corporation was not a U.S. real property holding corporation at any time during the previous five years (or the period in which the interest was held by its present holder, if

shorter) or if interests in the corporation ceased to be United States real property interests under section 897(c)(1)(B). (A corporation may not provide such a statement based on its determination that the interest in question is an interest solely as a creditor.) See § 1.897-2 (f) and (h). A corporation's statement may be relied upon for purposes of this paragraph (b)(4)(iii) only if the statement is dated not more than 30 days prior to the date of the transfer.

(B) *Reliance on statement not permitted.* An entity or fiduciary is not entitled to rely upon a statement that an interest in a corporation is not a U.S. real property interest, if, prior to or at the time of the transfer, the entity or fiduciary either—

(1) Has actual knowledge that the statement is false, or

(2) Receives a notice that the statement is false from a transferor's or transferee's agent, pursuant to § 1.1445-4.

Such an entity's or fiduciary's withholding obligations shall apply as if a statement had never been given, and such an entity or fiduciary may be held fully liable pursuant to § 1.1445-1(e) for any failure to withhold. For special rules concerning an entity's belated receipt of a notice concerning a false statement, see paragraphs (c)(2)(iii) and (d)(2)(i) of this section.

(5) *Reporting and paying over of withheld amounts—*(i) *In General.* An entity or fiduciary must report and pay over to the Internal Revenue Service any tax withheld pursuant to section 1445(e) and this section by the 20th day after the date of the transfer (as defined in § 1.1445-1(g)(8)). Forms 8288 and 8288-A are used for this purpose and must be filed at the location as provided in the instructions to Forms 8288 and 8288-A. The contents of Forms 8288 and 8288-A are described in § 1.1445-1(d). Pursuant to section 7502 and regulations thereunder, the timely mailing of Forms 8288 and 8288-A by U.S. mail will be treated as their timely filing. Form 8288-A will be stamped by the Internal Revenue Service to show receipt, and a stamped copy will be mailed by the Service to the interest holder if the Form 8288 is complete, including the transferor's identifying number, at the

address shown on the form, for the interest-holder's use. See paragraph (b)(7) of this section. If an application for a withholding certificate with respect to a transfer of a U.S. real property interest was submitted to the Internal Revenue Service on the day of or at any time prior to the transfer, the entity or fiduciary must withhold the amount required under section 1445(e) and the rules of this section. However, the amount withheld, or a lesser amount as determined by the Service, need not be reported and paid over to the Service until the 20th day following the Service's final determination. For this purpose, the Service's final determination occurs on the day when the withholding certificate is mailed to the applicant by the Service or when a notification denying the request for a withholding certificate is mailed to the applicant by the Service. An application is submitted to the Service on the day it is actually received by the Service at the address provided in §1.1445-1(g)(10) or, under the rules of section 7502, on the day it is mailed to the Service at the address provided in §1.1445-1(g)(10). For rules concerning the issuance of withholding certificates, see §1.1445-6.

(ii) *Anti-abuse rule.* An entity or fiduciary that in reliance upon the rules of this paragraph (b)(5)(ii) fails to report and pay over amounts withheld by the 20th day following the date of the transfer, shall be subject to the payment of interest and penalties if the relevant application for a withholding certificate (or an amendment of the application for a withholding certificate) was submitted for a principle purpose of delaying the payment to the IRS of the amount withheld. Interest and penalties shall be assessed on the amount that is ultimately paid over, with respect to the period between the 20th day after the date of the transfer and the date on which payment is made.

(6) *Liability upon failure to withhold.* For rules regarding liability upon failure to withhold under section 1445(e) and this §1.1445-5, see §1.1445-1(e).

(7) *Effect of withholding by entity or fiduciary upon interest holder.* The withholding of tax under section 1445(e) does not excuse a foreign person that is subject to U.S. tax by reason of the operation of section 897 from filing a U.S.

tax return. Thus, Form 1040NR, 1041, or 1120F, as appropriate must be filed and any tax due must be paid, by the filing date otherwise applicable to such person (or any extension thereof). The tax withheld with respect to the foreign person under section 1445(e) (as shown on Form 8288-A) shall be credited against the amount of income tax as computed in such return, but only if the stamped copy of Form 8288-A provided to the entity or fiduciary (under paragraph (b)(5) of this section) is attached to the return or substantial evidence of the amount of tax withheld is attached to the return in accordance with the succeeding sentence. If a stamped copy of Form 8288-A has not been provided to the interest-holder by the Service, the interest-holder may establish the amount of tax withheld by the entity or fiduciary by attaching to its return substantial evidence of such amount. Such an interest-holder must attach to its return a statement which supplies all of the information required by §1.1445-1(d)(2). If the amount withheld under section 1445(e) constitutes less than the full amount of the foreign person's U.S. tax liability for that taxable year, then a payment of estimated tax may be required to be made pursuant to section 6154 or 6654 prior to the filing of the income tax return for the year. Alternatively, if the amount withheld under section 1445(e) exceeds the foreign person's maximum tax liability with respect to the transaction (*as reflected* in a withholding certificate issued by the Internal Revenue Service pursuant to §1.1445-6), then the foreign person may seek an early refund of the excess pursuant to §1.1445-6(g). A foreign person that takes gain into account in accordance with the provisions of section 453 shall not be entitled to a refund to the amount withheld, unless a withholding certificate providing for such a refund is obtained pursuant to §1.1445-6. If an entity or fiduciary withholds tax under section 1445(e) with respect to a beneficial owner of an interest who is not a foreign person, such beneficial owner may credit the amount of any tax withheld against his income tax liability in accordance with the provisions of this §1.1445-5(b)(7) or apply for an early refund under §1.1445-6(g).

(8) *Effective dates*—(i) *Partnership, trust, and estate dispositions of U.S. real property interests.* The provisions of section 1445(e)(1) and paragraph (c) of this section, requiring withholding upon certain dispositions of U.S. real property interests by domestic partnerships, trusts, and estates, shall apply to any disposition on or after January 1, 1985.

(ii) *Certain distributions by foreign corporations.* The provisions of section 1445(e)(2) and paragraph (d) of this section, requiring withholding upon distributions of U.S. real property interests by foreign corporations shall apply to distributions made on or after January 1, 1985.

(iii) *Distributions by certain domestic corporations to foreign shareholders.* The provisions of section 1445(e)(3) and paragraph (e)(1) of this section, requiring withholding upon distributions in redemption of stock under section 302(a) or liquidating distributions under Part II of subchapter C of the Internal Revenue Code by U.S. real property holding corporations to foreign shareholders, shall apply to distributions made on or after January 1, 1985. The provisions of section 1445(e)(3) and paragraph (e)(1) of this section requiring withholding on distributions under section 301 by U.S. real property holding corporations to foreign shareholders shall apply to distributions made after August 20, 1996. The provisions of paragraph (e) of this section providing for the coordination of withholding between sections 1445 and 1441 (or 1442 or 1443) for distributions under section 301 by U.S. real property holding corporations to foreign shareholders apply to distributions after December 31, 2000 (see § 1.1441-3(c)(4) and (h)).

(iv) *Taxable distributions by domestic or foreign partnerships, trusts, and estates.* The provisions of section 1445(e)(4), requiring withholding upon certain taxable distributions by domestic or foreign partnerships, trusts, and estates, shall apply to distributions made on or after the effective date of a Treasury decision under section 897 (e)(2)(B)(ii) and (g).

(v) [Reserved]

(vi) *Tiered Partnerships.* No withholding is required upon the disposi-

tion of a U.S. real property interest by a partnership which is directly owned, in whole or in part, by another domestic partnership (but only to the extent that the amount realized is attributable to the partnership interest of that other partnership) until the effective date of a Treasury Decision published under section 1445(e) providing rules governing this matter.

(c) *Dispositions of U.S. real property interests by domestic partnerships, trusts, and estates*—(1) *Withholding required*—(i) *In general.* If a domestic partnership, trust, or estate disposes of a U.S. real property interest and any partner, beneficiary, or owner of the entity is a foreign person, then the partnership or the trustee, executor, or equivalent fiduciary of the trust or estate must withhold tax with respect to each such foreign person in accordance with the provisions of subdivision (ii), (iii), or (iv), of this paragraph (c)(1) (as applicable). The withholding obligation imposed by this paragraph (c) applies to the fiduciary of a trust even if the grantor of the trust or another person is treated as the owner of the trust or any portion thereof for purposes of the Internal Revenue Code. Thus, the withholding obligation imposed by this paragraph (c) applies to the trustee of a land trust or similar arrangement, even if such a trustee is not ordinarily treated under the applicable provisions of local law as a true fiduciary.

(ii) *Disposition by partnership.* A partnership must withhold a tax equal to 35 percent (or the highest rate specified in section 1445(e)(1)) of each foreign partner's distributive share of the gain realized by the partnership upon the disposition of each U.S. real property interest. Such distributive share of the gain must be determined pursuant to the principles of section 704 and the regulations thereunder. For the rules applicable to partnerships, interests in which are regularly traded on an established securities market, see § 1.1445-8.

(iii) *Disposition by trust or estate*—(A) *In general.* A trustee, fiduciary, executor or equivalent fiduciary (hereafter collectively referred to as the fiduciary) of a trust or estate having one or more foreign beneficiaries must withhold tax in accordance with the rules

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of this § 1.1445-5(c)(1)(iii). Such a fiduciary must establish a U.S. real property interest account and must enter in such account all gains and losses realized during the taxable year of the trust or estate from dispositions of U.S. real property interests. The fiduciary must withhold 35 percent (or the highest rate specified in section 1445(e)(1)) of any distribution to a foreign beneficiary that is attributable to the balance in the U.S. real property interest account on the day of the distribution. A distribution from a trust or estate to a beneficiary (domestic or foreign) shall, solely for purposes of section 1445(e)(1), be deemed to be attributable first to any balance in the U.S. real property interest account and then to other amounts. However, a distribution that occurs prior to the transfer of a U.S. real property interest in a taxable year or at any other time when the amount contained in the U.S. real property interest account is zero, is not subject to withholding under this § 1.1445-5(c)(1)(iii). The U.S. real property interest account is reduced by the amount distributed to all beneficiaries (domestic and foreign) attributable to such account during the taxable year of the trust or estate. Any

ending balance of the U.S. real property interest account not distributed by the close of the taxable year of the trust or estate is cancelled and is not carried over (or carried back) to any other year. Thus, the beginning balance of such account in any taxable year of the trust or estate is always zero. For rules applicable to grantor trusts see § 1.1445-5(c)(1)(iv). For rules applicable to trusts, interests in which are regularly traded on an established securities market and real estate investment trusts, see § 1.1445-8.

(B) *Example.* The following example illustrates the rules of paragraph (c)(1)(iii)(A) of this section.

On January 1, 1994, A establishes a domestic trust (which has as its taxable year, the calendar year) for the benefit of B, a non-resident alien, and C, a U.S. citizen. The trust is not a trust subject to sections 671 through 679. Under the terms of the trust, the trustee, T, is given discretion to distribute income and corpus of the trust to provide for the reasonable needs of B and C. During the trust's 1994 tax year, T disposes of three parcels of vacant land located in the United States. The following chart illustrates the computation of the amount subject to withholding under section 1445 with respect to distributions made by T to B and C during 1994.

Date	Parcel sold	Gains or (loss) realized	Distributions to C	Distributions to B (before withholding)	Section 1445 withholding 35% rate	U.S. real property interest account
1/01/94 .....	.....	.....	.....	.....	.....	-0-
3/01/94	Parcel 1	140,000	.....	.....	.....	140,000
3/05/94 .....	.....	.....	5,000	10,000	3,500	125,000
3/15/94 .....	.....	.....	10,000	5,000	1,750	110,000
5/01/94	Parcel 2	300,000	.....	.....	.....	410,000
5/15/94	Parcel 3	(50,000)	.....	.....	.....	360,000
12/01/94 .....	.....	.....	170,000	170,000	59,500	20,000
1/01/95 .....	.....	.....	.....	.....	.....	-0-

(iv) *Disposition by grantor trust.* The trustee or equivalent fiduciary of a trust that is subject to the provisions of subpart E of part 1 of subchapter J (sections 671 through 679) must withhold a tax equal to 35 percent (or the highest rate specified in section 1445(e)(1)) of the gain realized from each disposition of a U.S. real property interest to the extent such gain is allocable to a portion of the trust treated as owned by a foreign person under subpart E of part 1 of subchapter J.

(2) *Withholding not required under paragraph (c)—(i)* [Reserved]

(ii) *Interest-holder not a foreign person—(A) In general.* A domestic partnership, trust, or estate that disposes of a U.S. real property interest shall not be required to withhold with respect to any partner or beneficiary that it determines, pursuant to the rules of paragraph (b)(3) of this section, not to be a foreign person.

(B) *Belated notice of false certification.* If after the date of the transfer a partnership or fiduciary learns that a partner's or beneficiary's certification of non-foreign status is false, then that

partnership or fiduciary shall be required to withhold, with respect to the foreign partner or beneficiary that gave the false certification, the lesser of—

(1) The amount otherwise required to be withheld under the rules of this paragraph (c), or

(2) An amount equal to that partner's or beneficiary's remaining interests in the income or assets of the partnership, trust, or estate. Amounts so withheld must be reported and paid over by the 60th day following the date on which the partnership or fiduciary learns that the certification is false. For rules concerning the notifications of false certifications that may be required to be given to partnerships and fiduciaries, see § 1.1445-4(b).

(iii) *Property disposed of not a U.S. real property interest*—(A) *In general.* No withholding is required under this paragraph (c) if a domestic partnership, trust, or estate that disposes of property determines pursuant to the rules of paragraph (b)(4) of this section that the property disposed of is not a U.S. real property interest.

(B) *Belated notice of false statement.* If after the date of the transfer a partnership or fiduciary learns that a corporation's statement (that an interest in the corporation is not a U.S. real property interest) is false, then that partnership or fiduciary shall be required to withhold, with respect to each foreign partner or beneficiary, the lesser of—

(1) The amount otherwise required to be withheld under the rules of this paragraph (c), or

(2) An amount equal to that partner's or beneficiary's remaining interests in the income or assets of the partnership, trust, or estate.

Amounts so withheld must be reported and paid over by the 60th day following the date on which the partnership or fiduciary learns that the statement is false. For rules concerning the notifications of false statements that may be required to be given to partnerships or fiduciaries, see § 1.1445-4(b).

(iv) *Withholding certificate.* No withholding is required under this paragraph (c) with respect to the transfer of a U.S. real property interest if the Internal Revenue Service issues a with-

holding certificate that so provides. For rules concerning the issuance of withholding certificates, see § 1.1445-6.

(v) *Nonrecognition transactions.* For special rules concerning transactions entitled to nonrecognition of gain or loss, see paragraph (b)(2) of this section.

(3) *Large partnerships or trusts*—(i) *In general.* If a partnership or trust has more than 100 partners or beneficiaries, then the partnership or fiduciary of the trust may elect to withhold in accordance with the provisions of this § 1.1445-5(c)(3) in lieu of withholding in the manner required by § 1.1445-5(c)(1). However, the rules of this § 1.1445-5(c)(3) shall not apply to any partnership or trust interests in which are regularly traded on an established securities market except as described in § 1.1445-8(c)(1). The rules of this § 1.1445-5(c)(3) shall not apply to any real estate investment trust. See § 1445-8.

(ii) *Amount to be withheld.* A partnership or trust electing to withhold under this § 1.1445-5(c)(3) shall withhold from each distribution to a foreign person an amount equal to 35 percent (or the highest rate specified in section 1445(e)(1)) of the amount attributable to section 1445(e)(1) transfers.

(iii) *Amounts attributable to section 1445(e)(1) transfers.* A distribution is attributable to section 1445(e)(1) transfers to the extent of the partner's or beneficiary's proportionate share of the current balance of the entity's section 1445(e)(1) account. A distribution from a partnership or trust that has made an election under this § 1.1445-5(c)(3) shall be deemed first to be attributable to a section 1445(e)(1) transfer to the extent of the balance in the section 1445(e)(1) account. An entity's section 1445(e)(1) account shall be equal to—

(A) The total amount of net gain realized by the entity upon all transfers of U.S. real property interests carried out by the entity after the date of its election under this § 1.1445-5(c)(3); minus

(B) The total amount of all distributions by the entity to domestic and foreign distributees from such account.

(iv) *Special rules for entities that make recurring sales of growing crops and timber.* An entity that makes an election

under § 1.1445-5(c)(3) and that makes recurring sales of growing crops and timber may further elect to determine the amount subject to withholding under the rules of this § 1.1445-5(c)(3)(iv). Such an entity must withhold from each distribution to a foreign partner or beneficiary an amount equal to 10 percent of such partner's or beneficiary's proportionate share of the current balance of the entity's gross section 1445(e)(1) account. An entity's gross section 1445(e)(1) account equals—

(A) The total amount realized by the entity upon all transfers of U.S. real property interests carried out by the entity after the date of its election under this § 1.1445-5(c)(3)(iv); minus

(B) The total amount of all distributions to domestic and foreign distributees from such account.

An entity that elects to compute the amount subject to withholding under this § 1.1445-5(c)(3)(iv), shall make such election in accordance with § 1.1445-5(c)(3)(vi) and shall be subject to the provisions otherwise applicable under § 1.1445-5(c)(3).

(v) *Procedural rules.* An election under paragraph (c)(3) may be made by filing a notice thereof with the Director, Philadelphia Service Center, at the address provided in § 1.1445-1(g)(10). The notice must be submitted by a general partner (in the case of a partnership) or the trustee or equivalent fiduciary (in the case of a trust). The notice must set forth the name, office address, and identifying number of the partnership or fiduciary making the election, and, in the case of a partnership, must include the name, office address, and identifying number of the general partner submitting the election. An election under this paragraph (c)(3) may be revoked only with the consent of the Internal Revenue Service. Consent of the Service may be requested by filing an application to revoke the election with the Director, Philadelphia Service Center at the address stated above. This application must include all information provided to the Service with the election notice and must provide an explanation of the reasons for revoking the election. The application to revoke an election must also specify the amount remaining to be distrib-

uted in the section 1445(e)(1) account or the gross section 1445(e)(1) account.

An entity that ceases to qualify under section 1.1445-5(c)(3) because such entity does not have more than 100 partners or beneficiaries may revoke its election only with the consent of the Internal Revenue Service.

(d) *Distributions of U.S. real property interests by foreign corporations—(1) In general.* A foreign corporation that distributes a U.S. real property interest must deduct and withhold a tax equal to 35 percent (or the rate specified in section 1445(e)(2)) of the amount of gain recognized by the corporation on the distribution. The amount of gain required to be recognized by the corporation must be determined pursuant to the rules of section 897 and any other applicable section. For special rules concerning the applicability of a non-recognition provision to a distribution, see paragraph (b)(2) of this section. The withholding liability imposed by this paragraph (d) applies to the same taxpayer that owes the related substantive income tax liability pursuant to the operation of section 897. Only one such liability will be assessed and collected from a foreign corporation, but separate penalties for failures to comply with the two requirements will be asserted.

(2) *Withholding not required—(i) Property distributed not a U.S. real property interest—(A) In general.* No withholding is required under this paragraph (d) if a foreign corporation that distributes property determines pursuant to the rules of paragraph (b)(3) of this section that the property distributed is not a U.S. real property interest.

(B) *Belated notice of false statement.* If after the date of a distribution described in paragraph (d)(1) of this section a foreign corporation learns that another corporation's statement (that an interest in that other corporation is not a U.S. real property interest) is false, then the foreign corporation may not rely upon that statement for any purpose. Such a foreign corporation's withholding obligations under this paragraph (d) shall apply if a statement had never been given, and such a corporation may be held fully liable pursuant to § 1.1445-5(b)(5) for any failure to withhold. Amounts withheld

pursuant to the rule of this paragraph (d)(2)(i)(B) must be reported and paid over by the 60th day following the date on which the foreign corporation learns that the statement is false. No penalties or interest will be assessed for failures to withhold prior to that date. For rules concerning the notifications of false statements that may be required to be given to foreign corporations, see § 1.1445-4(b).

(ii) *Withholding certificate.* No withholding is required under this paragraph (d) with respect to a foreign corporation's distribution of a U.S. real property interest if the distributing corporation obtains a withholding certificate from the Internal Revenue Service that so provides. For rules concerning the issuance of withholding certificates, see § 1.1445-6.

(e) *Distributions to foreign persons by U.S. real property holding corporations—*

(1) *In general.* A domestic corporation that distributes any property to a foreign person that holds an interest in the corporation must deduct and withhold a tax equal to 10 percent of the fair market value of the property distributed to the foreign person, if—

(i) The foreign person's interest in the corporation constitutes a U.S. real property interest under the provisions of section 897 and regulations thereunder; and

(ii) There is a distribution of property in redemption of stock treated as an exchange under section 302(a), in liquidation of the corporation pursuant to the provisions of Part II of subchapter C of the Internal Revenue Code (sections 331 through section 346), or with respect to stock under section 301 that is not made out of earnings and profits of the corporation.

(2) *Coordination rules for Section 301 distributions.* If a domestic corporation makes a distribution of property under section 301 to a foreign person whose interest in such corporation constitutes a U.S. real property interest under the provisions of section 897 and the regulations thereunder, then see § 1.1441-3(c)(4) for rules coordinating withholding obligations under sections 1445 and 1441 (or 1442 or 1443).

(3) *Withholding not required—(i) Foreign person's interest not a U.S. real property interest.* Withholding is required

under this paragraph (e) only with respect to distributions to foreign persons holding interests in the corporation that constitute U.S. real property interests. In general, a foreign person's interest in a domestic corporation constitutes a U.S. real property interest if the corporation was a U.S. real property holding corporation at any time during the shorter of (A) the period in which the foreign person held the interest or (B) the previous five years (but not earlier than June 19, 1980). See section 897(c) and §§ 1.897-1(c) and 1.897-2 (b) and (h). However, an interest in such a corporation ceases to be a U.S. real property interest after all of the U.S. real property interests held by the corporation itself are disposed of in transactions on which gain or loss is recognized. See section 897(c)(1)(B) and § 1.897-2(f)(2). Thus, if a U.S. real property holding corporation in the process of liquidation does not elect section 337 nonrecognition treatment upon its sale of all U.S. real property interests held by the corporation, and recognizes gain or loss upon such sales, interests in that corporation cease to be U.S. real property interests. Therefore, no withholding would be required with respect to that corporation's subsequent liquidating distribution to a foreign shareholder of property other than a U.S. real property interest.

(ii) *Nonrecognition transactions.* For special rules concerning the applicability of a nonrecognition provision to a distribution described in paragraph (e)(1) of this section, see paragraph (b)(2) of this section.

(iii) *Interest-holder not a foreign person—(A) In general.* A domestic corporation shall not be required to withhold under this paragraph (e) with respect to a distribution of property to any distributee that it determines, pursuant to the rules of paragraph (b)(3) of this section, not to be a foreign person.

(B) *Belated notice of false certification.* If after the date of a distribution described in paragraph (e)(1) of this section a domestic corporation learns that an interest-holder's certification of non-foreign status is false, then the corporation may rely upon that certification only if the person providing the false certification holds (or held) less

than 10 percent of the value of the outstanding stock of the corporation. With respect to less than 10 percent interest-holders, no withholding is required under this paragraph (e) upon receipt of a belated notice of false certification. With respect to 10 percent or greater interest-holders, the corporation's withholding obligations under this paragraph (e) shall apply as if a certification had never been given, and such a corporation may be held fully liable pursuant to § 1.1445-5(b)(6) for any failure to withhold as of the date specified in this § 1.1445-5(e)(3)(iii)(B). Amounts withheld pursuant to the rule of this paragraph (e)(3)(iii)(B) must be reported and paid over by the 60th day following the date on which the corporation learns that the certification is false. No penalties or interest for failures to withhold will be assessed prior to that date. For rules concerning the notifications of false certifications that may be required to be given to U.S. real property holding corporations, see § 1.1445-4(b).

(iv) *Withholding certificate.* No withholding, or reduced withholding, is required under this paragraph (e) with respect to a domestic corporation's distribution of property if the distributing corporation obtains a withholding certificate from the Internal Revenue Service that so provides. For rules concerning the issuance of withholding certificates, see § 1.1445-6.

(f) *Taxable distributions by domestic or foreign partnerships, trusts, or estates.* [Reserved]

(g) *Dispositions of interests in partnerships, trusts, and estates.* [Reserved]

(h) *Effective date for taxpayer identification numbers.* The requirement in paragraphs (b)(2)(ii)(B) and (C) of this section that taxpayer identification numbers be provided (in all cases) is applicable for dispositions of U.S. real property interests occurring after November 3, 2003.

[T.D. 8113, 51 FR 46642, Dec. 24, 1986; 52 FR 3796, 3917, Feb. 6, 1987, as amended at T.D. 8198, 53 FR 16230, May 5, 1988; T.D. 8321, 55 FR 50553, Dec. 7, 1990; T.D. 8647, 60 FR 66076, Dec. 21, 1995; 61 FR 7157, Feb. 26, 1996; T.D. 8734, 62 FR 53467, Oct. 14, 1997; T.D. 9082, 68 FR 46086, Aug. 5, 2003]

§ 1.1445-6 Adjustments pursuant to withholding certificate of amount required to be withheld under section 1445(e).

(a) *Withholding certificate for purposes of section 1445(e)*—(1) *In general.* Pursuant to the provisions of § 1.1445-5(c)(2)(iv), (d)(2)(ii), and (e)(2)(iv), withholding under section 1445(e) may be reduced or eliminated pursuant to a withholding certificate issued by the Internal Revenue Service in accordance with the rules of this § 1.1445-6. A withholding certificate may be issued in cases where adjusted withholding is appropriate (e.g., because of the applicability of a nonrecognition provision—see paragraph (c) of this section), where the relevant taxpayers are exempt from U.S. tax (see paragraph (d) of this section), or where an agreement for the payment of tax is entered into with the Service (see paragraph (e) of this section). A withholding certificate that is obtained prior to a transfer allows the entity or fiduciary to withhold a reduced amount or excuses withholding entirely. A withholding certificate that is obtained after a transfer has been made may authorize a normal refund or an early refund pursuant to paragraph (g) of this section. The Internal Revenue Service will act upon an application for a withholding certificate not later than the 90th day after it is received. (The Service may deny a request for a withholding certificate where, after due notice, an applicant fails to provide the information necessary to make a determination.) Solely for this purpose (i.e., determining the day upon which the 90 day period commences), an application is received by the Service on the date when all information necessary for the Service to make a determination is provided by the applicant. In no event, however, will a withholding certificate be issued without the transferor's identifying number. (For rules regarding whether an application has been timely submitted, see § 1.1445-5(b)(5)). The Internal Revenue Service will act upon an application for an early refund not later than the 90th day after it is received. An application for an early refund must either (i) include a copy of a withholding certificate issued by the