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corporation paying a Federal tax, or any part of it, for someone else pursuant to its agreement is not entitled to deduct such payment from its gross income on any ground; nor shall the tax so paid be included in the gross income of the bondholder. The amount of the tax so paid may, nevertheless, be claimed by the bondholder in accordance with paragraph (a) of § 1.1462-1 as a credit against the total amount of income tax due. See also section 32. The tax so paid by the corporation upon tax-free covenant bond interest payable to a domestic or resident fiduciary and allocable to any nonresident alien beneficiary under section 652 or 662 is allowable, pro rata, as a credit against:

(i) The tax required to be withheld by the fiduciary in accordance with paragraph (f) of § 1.1441-3 from the income of the beneficiary, and

(ii) The total income tax computed in the return of the beneficiary, as indicated in paragraph (a) of § 1.1462-1.

(2) *State taxes.* In the case of corporate bonds or other obligations containing an appropriate tax-free covenant, the corporation paying for someone else, pursuant to its agreement, a State tax or any tax other than a Federal tax may deduct such payment as interest paid on indebtedness.

(g) *Alien resident of Puerto Rico.* For purposes of this section the term "nonresident alien individual" includes an alien resident of Puerto Rico.

(h) *Other rules for withholding of tax under section 1451.* The rules for withholding stated in paragraphs (c) (2) and (3), (f), and (g) of § 1.1441-3 shall also apply for purposes of withholding the tax under this section.

[T.D. 6500, 25 FR 12076, Nov. 26, 1960, as amended by T.D. 7157, 36 FR 25228, Dec. 30, 1971]

§ 1.1451-2 Exemptions from withholding under section 1451.

(a) *Claiming personal exemptions.* Withholding under § 1.1451-1 from interest on bonds or other obligations of corporations issued before January 1, 1934, and containing a tax-free covenant shall not be required if there is filed with the withholding agent when presenting coupons for payment, or not later than February 1 of the following

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year, an ownership certificate on Form 1000 stating:

(1) In the case of a citizen or resident of the United States, that his taxable income does not exceed his deductions for personal exemptions allowed under section 151; or

(2) In the case of an estate or trust the fiduciary of which is a citizen or resident of the United States, that its taxable income does not exceed the deduction for the personal exemption allowed under section 642(b).

(b) *Claiming residence in United States.* To claim residence in the United States for purposes of section 1451, see § 1.1441-5.

(c) *Other exemptions.* The exemptions allowed by paragraphs (d) and (h) of § 1.1441-4 shall also apply for purposes of section 1451.

[T.D. 6500, 25 FR 12077, Nov. 26, 1960, as amended by T.D. 6908, 31 FR 16774, Dec. 31, 1966]

APPLICATION OF WITHHOLDING PROVISIONS

§ 1.1461-1 Payment and returns of tax withheld.

(a) *Payment of withheld tax—(1) Deposits of tax.* Every withholding agent who withholds tax pursuant to chapter 3 of the Internal Revenue Code (Code) and the regulations under such chapter shall deposit such amount of tax as provided in § 1.6302-2(a). If for any reason the total amount of tax required to be returned for any calendar year pursuant to paragraph (b) of this section has not been deposited pursuant to § 1.6302-2, the withholding agent shall pay the balance of tax due for such year at such place as the Internal Revenue Service (IRS) shall specify. The tax shall be paid when filing the return required under paragraph (b)(1) of this section for such year, unless the IRS specifies otherwise. With respect to withholding under section 1446, this section shall only apply to publicly traded partnerships. See § 1.1461-3 for penalties applicable to partnerships that fail to withhold under section 1446 on effectively connected taxable income allocable to foreign partners. The previous two sentences shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time

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as the regulations under §§ 1.1446-1 through 1.1446-5 apply by reason of an election under § 1.1446-7.

(2) *Penalties for failure to pay tax.* For penalties and additions to the tax for failure to timely pay the tax required to be withheld under chapter 3 of the Code, see sections 6656, 6672, and 7202 and the regulations under those sections.

(b)(1) [Reserved] For further guidance, see § 1.1461-1T(b)(1).

(2) *Amended returns.* An amended return may be filed on a Form 1042 or such other form as the IRS may prescribe. An amended return must include such information as the form or accompanying instructions shall require, including, with respect to any information that has changed from the time of the filing of the return, the information that was shown on the original return and the corrected information.

(c)(1)(i) and (ii) [Reserved] For further guidance, see § 1.1461-1T(c)(1)(i) and (ii).

(2) *Amounts subject to reporting—(i) In general.* Subject to the exceptions described in paragraph (c)(2)(ii) of this section, amounts subject to reporting on Form 1042-S are amounts paid to a foreign payee or partner (including persons presumed to be foreign) that are amounts subject to withholding as defined in § 1.1441-2(a) or § 1.1446-4(a) (addressing publicly traded partnerships required to pay withholding tax under section 1446 on distributions of effectively connected income). The reference in the previous sentence to withholding under § 1.1446-4 shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446-1 through 1.1446-5 apply by reason of an election under § 1.1446-7. Amounts subject to reporting include amounts subject to withholding even if no amount is deducted and withheld from the payment because of a treaty or Internal Revenue Code exception to taxation or because an amount withheld was reimbursed to the payee under the adjustment procedures of § 1.1461-2. In addition, amounts subject to reporting include any amounts paid to a foreign payee on which a withholding agent withheld an amount (either under

chapter 3 of the Internal Revenue Code or section 3406) whether or not the amount is subject to withholding. Amounts subject to reporting include, but are not limited to, the following items—

(A) The entire amount of a corporate distribution (whether actual or deemed) irrespective of any estimate of the portion of the distribution that represents a taxable dividend;

(B) Interest, including the portion of a notional principal contract payment that is characterized as interest. Interest shall also be reported on Form 1042-S if it is bank deposit interest paid to nonresident alien individuals as required under § 1.6049-8;

(C) Rents;

(D) Royalties;

(E) Compensation for dependent and independent personal services performed in the United States;

(F) Annuities;

(G) Pension distributions and other deferred income;

(H) Gambling winnings that are not exempt from tax under section 871(j);

(I) Income from the cancellation of indebtedness unless the withholding agent is unrelated to the debtor and does not have knowledge of the facts that give rise to the payment (see § 1.1441-2(d));

(J) Amounts that are (or are presumed to be) effectively connected with the conduct of a trade or business in the United States (including deposit interest as defined in sections 871(i)(2)(A) and 881(d)) even if no withholding certificate is required to be furnished by the payee or beneficial owner. In the case of amounts paid on a notional principal contract described in § 1.1441-4(a)(3) that are presumed to be effectively connected with the conduct of a trade or business in the United States, the amount required to be reported is limited to the amount of cash paid from the notional principal contract;

(K) Scholarship, fellowship, or grant income and compensation for personal services that is not excludible from gross income under section 117 (whether or not the taxable scholarship, fellowship, grant income, or compensation for personal services is exempt from tax under an income tax treaty)

paid to foreign students, trainees, teachers, or researchers;

(L) Dividend equivalents as described in section 871(m) and the regulations thereunder;

(M) Amounts paid to foreign governments, international organizations, or the Bank for International Settlements, whether or not documentation must be provided; and

(N) Original issue discount paid on the redemption of an OID obligation. The amount to be reported is the amount of OID includible in the gross income of the holder of the obligation, if known, or, if not known, the total amount of original issue discount determined as if the holder held the obligation from its original issuance. A withholding agent may determine the total amount of OID by using the most recently published "List of Original Issue Discount Instruments," (Publication 1212, available from the IRS Forms Distribution Centers).

(ii) *Exceptions to reporting.* The amounts listed in this paragraph (c)(2)(ii) are not required to be reported on Form 1042-S—

(A) Interest (including original issue discount) that is deposit interest under sections 871(i)(2)(A) and 881(d) and that is not effectively connected with the conduct of a trade or business in the United States, unless reporting is required under § 1.6049-8 (regarding payments to certain foreign residents) or is interest that is effectively connected with the conduct of a trade or business in the United States;

(B) Interest or original issue discount on certain short-term obligations, described in section 871(g)(1)(B) or 881(a)(3);

(C) Interest paid on obligations sold between interest payment dates and the portion of the purchase price of an OID obligation that is sold or exchanged in a transaction other than a redemption, unless the sale or exchange is part of a plan, the principal purpose of which is to avoid tax and the withholding agent has actual knowledge or reason to know of such plan (see § 1.1441-2(a)(5) and (6));

(D) Any item required to be reported on a Form W-2, including an item required to be shown on Form W-2 solely by reason of § 1.6041-2 (relating to re-

turn of information for payments to employees) or § 1.6052-1 (relating to information regarding payment of wages in the form of group-term life insurance);

(E) [Reserved] For further guidance, see § 1.1461-1T(c)(2)(ii)(E).

(F) Amounts paid on a notional principal contract described in § 1.1441-4(a)(3)(i) that are not effectively connected with the conduct of a trade or business in the United States (or not treated as effectively connected pursuant to § 1.1441-4(a)(3)(ii));

(G) Amounts required to be reported on Form 8288 (U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests) or Form 8804 (Annual Return for Partnership Withholding Tax (section 1446)). A withholding agent that must report a distribution partly on a Form 8288 or 8804 and partly on a Form 1042-S may elect to report the entire amount on a Form 8288 or 8804;

(H) and (I) [Reserved] For further guidance, see § 1.1461-1T(c)(2)(ii)(H) and (I).

(J) Gain described in section 301(c)(3); and

(K) Amounts described in § 1.1441-1(b)(4)(xviii) (dealing with certain amounts paid by the U.S. government).

(iii) *Effective/applicability date.* Paragraph (c)(2)(i)(L) of this section applies on or after January 23, 2012.

(3) *Required information.* The information required to be furnished under this paragraph (c)(3) shall be based upon the information provided by or on behalf of the recipient of an amount subject to reporting (as corrected and supplemented based on the withholding agent's actual knowledge) or the presumption rules of §§ 1.1441-1(b)(3), 1.1441-4(a), 1.1441-5(d) and (e), 1.1441-9(b)(3), 1.1446-1(c)(3) (as applied to publicly traded partnerships required to pay tax under section 1446 on distributions of effectively connected income) or 1.6049-5(d). The reference in the previous sentence to presumption rules applicable to withholding under section 1446 shall apply to partnership taxable years beginning after May 18, 2005, or such earlier time as the regulations under §§ 1.1446-1 through 1.1446-5 apply by reason of an election under § 1.1446-

7. The Form 1042-S must include the following information, if applicable—

(i) [Reserved] For further guidance, see § 1.1461-1T(c)(3)(i).

(ii) A description of each category of income paid based on the income codes provided on the form (e.g., interest, dividends, royalties, etc.) and the aggregate amount in each category expressed in U.S. dollars;

(iii) [Reserved] For further guidance, see § 1.1461-1T(c)(3)(iii).

(iv) The name and address of the recipient;

(v) The name and address of any non-qualified intermediary, flow-through entity, or U.S. branch as described in § 1.1441-1(b)(2)(iv) (other than a branch that is treated as a U.S. person) to which the payment was made;

(vi) The taxpayer identifying number of the recipient if required under § 1.1441-1(e)(4)(vii) or if actually known to the withholding agent making the return;

(vii) The taxpayer identifying number of a nonqualified intermediary or flow-through entity (to the extent it is not a recipient) or other flow-through entity to the extent it is known to the withholding agent;

(viii) The country (based on the country codes provided on the form) of the recipient and of any nonqualified intermediary or flow-through entity the name of which appears on the form; and

(ix) Such information as the form or the instructions may require in addition to, or in lieu of, information required under this paragraph (c)(3).

(4) *Method of reporting*—(i) [Reserved] For further guidance, see § 1.1461-1T(c)(4)(i).

(ii) *Payments made by U.S. withholding agents to persons that are not recipients*—(A) [Reserved] For further guidance, see § 1.1461-1T(c)(4)(ii)(A).

(B) *Disregarded entities*. If a U.S. withholding agent makes a payment to a disregarded entity but receives a valid withholding certificate or other documentary evidence from a foreign person that is the single owner of a disregarded entity, the withholding agent must file a Form 1042-S treating the foreign single owner as the recipient. The taxpayer identifying number on

the Form 1042-S, if required, must be the foreign single owner's TIN.

(iii) *Reporting by qualified intermediaries, withholding foreign partnerships, and withholding foreign trusts*. A qualified intermediary, a withholding foreign partnership, and a withholding foreign trust shall report payments on Form 1042-S as provided in their agreements with the IRS and the instructions to the form.

(iv) [Reserved] For further guidance, see § 1.1461-1T(c)(4)(iv).

(v) [Reserved] For further guidance, see § 1.1461-1T(c)(4)(v).

(vi) *Other withholding agents*. Any person that is a withholding agent not described in paragraph (c)(4)(i), (iii), or (iv) of this section (e.g., a foreign person that is not a qualified intermediary, flow-through entity, or U.S. branch) shall file Form 1042-S in the same manner as a U.S. withholding agent and in accordance with the instructions to the form.

(5) [Reserved] For further guidance, see § 1.1461-1T(c)(5).

(d) *Report of taxpayer identifying numbers*. When so required under procedures that the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter), a withholding agent must attach to the Form 1042 a list of all the taxpayer identifying numbers (and corresponding names) that have been furnished to the withholding agent and upon which the withholding agent has relied to grant a reduced rate of withholding and that are not otherwise required to be reported on a Form 1042-S under the provisions of this section.

(e) *Indemnification of withholding agent*. A withholding agent is indemnified against the claims and demands of any person for the amount of any tax it deducts and withholds in accordance with the provisions of chapter 3 of the Code and the regulations under that chapter. A withholding agent that withholds based on a reasonable belief that such withholding is required under chapter 3 of the Code and the regulations under that chapter is treated for purposes of section 1461 and this paragraph (e) as having withheld tax in accordance with the provisions of chapter 3 of the Code and the regulations

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under that chapter. In addition, a withholding agent is indemnified against the claims and demands of any person for the amount of any payments made in accordance with the grace period provisions set forth in § 1.1441-1(b)(3)(iv). This paragraph (e) does not apply to relieve a withholding agent from tax liability under chapter 3 of the Code or the regulations under that chapter.

(f) *Amounts paid not constituting gross income.* Any amount withheld in accordance with § 1.1441-3 shall be reported and paid in accordance with this section, even though the amount paid to the beneficial owner may not constitute gross income in whole or in part. For this purpose, a reference in this section and § 1.1461-2 to an amount shall, where appropriate, be deemed to refer to the amount subject to withholding under § 1.1441-3.

(g) *Extensions of time to file Forms 1042 and 1042-S.* The IRS may grant an extension of time in which to file a Form 1042 or a Form 1042-S. Form 2758, Application for Extension of Time to File Certain Excise, Income, Information, and Other Returns (or such other form as the IRS may prescribe), must be used to request an extension of time for a Form 1042. Form 8809, Request for Extension of Time to File Information Returns (or such other form as the IRS may prescribe) must be used to request an extension of time for a Form 1042-S. The request must contain a statement of the reasons for requesting the extension and such other information as the forms or instructions may require. It must be mailed or delivered not later than March 15 of the year following the end of the calendar year for which the return will be filed.

(h) *Penalties.* For penalties and additions to the tax for failure to file returns or furnish statements in accordance with this section, see sections 6651, 6662, 6663, 6721, 6722, 6723, 6724(c), 7201, 7203, and the regulations under those sections.

(i) [Reserved] For further guidance, see § 1.1461-1T(i).

[T.D. 8734, 62 FR 53467, Oct. 14, 1997]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1.1461-1, see the List of CFR Sections Affected, which appears in the

Finding Aids section of the printed volume and at www.fdsys.gov.

§ 1.1461-1T Payments and returns of tax withheld (temporary).

(a) [Reserved] For further guidance, see § 1.1461-1(a).

(b) *Income tax return—(1) General rule.* A withholding agent shall make an income tax return on Form 1042 (or such other form as the IRS may prescribe) for income paid during the preceding calendar year that the withholding agent is required to report on an information return on Form 1042-S (or such other form as the IRS may prescribe) under paragraph (c)(1) of this section. See section 6011 and § 1.6011-1(c). The withholding agent must file the return on or before March 15 of the calendar year following the year in which the income was paid. The return must show the aggregate amount of income paid and tax withheld required to be reported on all the Forms 1042-S for the preceding calendar year by the withholding agent, in addition to such information as is required by the form and accompanying instructions. See § 1.1474-1(c) for the requirement to show the aggregate chapter 4 reportable amounts and tax withheld on Form 1042. A single Form 1042 may be filed by a withholding agent to report amounts under chapters 3 and 4, including tax withheld. Withholding certificates or other statements or information provided to a withholding agent are not required to be attached to the return. A return must be filed under this paragraph (b)(1) even though no tax was required to be withheld during the preceding calendar year. The withholding agent must retain a copy of Form 1042 for the applicable statute of limitations on assessments and collection with respect to the amounts required to be reported on the Form 1042. See section 6501 and the regulations thereunder for the applicable statute of limitations. Adjustments to the total amount of tax withheld, as described in § 1.1461-2, shall be stated on the return as prescribed by the form and accompanying instructions.

(2) [Reserved] For further guidance, see § 1.1461-1(b)(2).

(c) *Information returns—(1) Filing requirement—(i) In general.* A withholding