

PART 1208—[AMENDED]

1. The authority citation for Part 1208 continues to read as follows:

Authority: 23 U.S.C. 158; delegation of authority at 49 CFR 1.48 and 1.50.

2. Section 1208.4 is revised to read as follows:

§ 1208.4 Adoption of National Minimum Drinking Age.

The Secretary shall withhold ten percent of the amount required to be apportioned to any State under each of §§ 104(b)(1), 104(b)(2), 104(b)(5) and 104(b)(6) of title 23 U.S.C. on the first day of each fiscal year in which the purchase or public possession in such State of any alcoholic beverage by a person who is less than twenty-one years of age is lawful.

3. Section 1208.5 is revised to read as follows:

§ 1208.5 Unavailability of withheld funds.

Funds withheld under § 1208.4 from apportionment to any State will not be available for apportionment to the State.

§§ 1208.6—1208.8 [Removed]

4. Sections 1208.6 through 1208.8 are removed.

§ 1208.9 [Redesignated as § 1208.6]

5. Section 1208.9 is redesignated as 1208.6.

Issued on: December 18, 1995.

Rodney E. Slater,
Administrator, Federal Highway Administration.

Ricardo Martinez,
Administrator, National Highway Traffic Safety Administration

[FR Doc. 95-31118 Filed 12-20-95; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8647]

RIN 1545-AS51

Withholding of Tax on Dispositions of U.S. Real Property Interests by Foreign Persons

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to withholding upon certain distributions or dispositions of U.S. real property interests. These regulations reflect changes to the law

made by the Omnibus Budget Reconciliation Act of 1993 and affect withholding agents required to withhold tax due on certain dispositions and distributions of U.S. real property interests.

DATES: These final regulations are effective January 22, 1996. These regulations are applicable to transactions occurring after August 9, 1993.

FOR FURTHER INFORMATION CONTACT: Gwendolyn A. Stanley (202) 622-3860 (not a toll free-call).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations reflecting changes made by the Omnibus Budget Reconciliation Act of 1993 to the withholding rates on certain distributions and dispositions of U.S. real property interests. These regulations were not preceded by a Notice of Proposed Rulemaking because the withholding rates were changed by the Act. This document also updates the address of the Assistant Commissioner (International) to whom various forms must be sent.

Explanation of Provisions

The rate of withholding under section 1445(e) (1) and (2) of the Internal Revenue Code was increased from 34% to 35% by the Omnibus Budget Reconciliation Act of 1993. The existing regulations reflect the prior 34% withholding rate. These regulations reflect the increase in withholding to 35% (or the highest rate specified in section 1445(e) (1) or (2)) for dispositions occurring on or after August 10, 1993.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these final regulations were submitted to the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Gwendolyn Stanley, Office of Associate Chief Counsel

(International), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements. Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Section 1.1445-5 also issued under 26 U.S.C. 1445(e)(6).

Section 1.1445-8 also issued under 26 U.S.C. 1445(e)(6). * * *

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

Par. 2. In section 1.1445-1, the section heading and paragraph (g)(10) are revised to read as follows:

§ 1.1445-1 Withholding on dispositions of U.S. real property interests by foreign persons: In general.

* * * * *

(g) * * *

(10) *Address of the Assistant Commissioner International.* Any written communication directed to the Assistant Commissioner (International) is to be addressed as follows: Director, Philadelphia Service Center; 11601 Roosevelt Blvd.; Philadelphia, PA 19255; ATTN: Drop Point 543X.

Par. 3. Section 1.1445-5 is amended as follows:

1. Paragraph (c)(1)(ii) is revised.
2. The third sentence and the last sentence of paragraph (c)(1)(iii)(A) are revised.
3. Paragraph (c)(1)(iii)(B) is removed.
4. Paragraph (c)(1)(iii)(C) is redesignated as (c)(1)(iii)(B) and revised.
5. Paragraph (c)(1)(iv) is revised.
6. Paragraph (c)(3)(ii) is revised.
7. The first sentence of paragraph (d)(1) is revised.
8. The second sentence of paragraph (d)(1) is removed.

The revisions read as follows:

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

* * * * *

(c)(1) * * *

(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.* * * * 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. * * * 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 nonresident 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						
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						

(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.

* * * * *

(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.

* * * * *

(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. * * *

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Par. 4. Section 1.1445-8(c)(2)(i) is revised to read as follows:

§ 1.1445-8 Special rules regarding publicly traded partnerships, publicly traded trusts and real estate investment trusts (REITS).

* * * * *

(c) * * *

(2) *REITS*—(i) *In general.* The amount to be withheld with respect to a distribution by a REIT, under this section shall be equal to 35 percent (or the highest rate specified in section 1445(e)(1)) of the amount described in paragraph (c)(2)(ii) of this section.

* * * * *

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: November 28, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95-30871 Filed 12-20-95; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8648]

RIN 1545-AB21

Controlling corporation's basis adjustment in its controlled corporation's stock following a triangular reorganization

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under sections 358, 1032, and 1502 of the Internal Revenue Code of 1986. The final regulations provide rules for adjusting the basis of a controlling corporation in the stock of a

controlled corporation as the result of certain triangular reorganizations involving the stock of the controlling corporation. They also generally provide that the use of the controlling corporation's stock provided by the controlling corporation pursuant to the plan of reorganization is treated as a disposition of those shares by the controlling corporation.

DATES: These regulations are effective December 21, 1995.

For dates of applicability, see the "Effective Dates" section under the **SUPPLEMENTARY INFORMATION** portion of the preamble and the effective date provisions of the new or revised regulations.

FOR FURTHER INFORMATION CONTACT: Curt Cutting, (202) 622-7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations under sections 358, 1032, and 1502. The proposed regulations were published in the Federal Register on December 23, 1994 (59 FR 66280 [CO-993-71], 1995-4 I.R.B. 59 (January 23, 1995)). The IRS received many comments on the proposed regulations and held a public hearing on March 31, 1995.

After consideration of the comments and the statements made at the hearing, the proposed regulations are adopted as revised by this Treasury decision.